

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

FORM 10-Q

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

For the quarterly period ended October 3, 2021

OR

☐ TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the transition period from to

Commission file number 001-34166

SUNPOWER®

SunPower Corporation

(Exact Name of Registrant as Specified in Its Charter)

Delaware
(State or Other Jurisdiction of Incorporation or Organization)
51 Rio Robles San Jose California
(Address of Principal Executive Offices)

94-3008969
(I.R.S. Employer Identification No.)
95134
(Zip Code)

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

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading Symbol	Name of exchange on which registered
Common Stock, \$0.001 par value per share	SPWR	The Nasdaq Stock Market LLC

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 ☒ No ☐

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). Yes ☒ No ☐

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

Large accelerated filer ☐ Accelerated filer ☒
Emerging growth company ☐ Non-accelerated filer ☐
Smaller reporting company ☐

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act. ☐

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

The total number of outstanding shares of the registrant's common stock as of October 29, 2021 was 172,988,218.

SunPower Corporation
Form 10-Q for the quarterly period ended October 3, 2021

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PART I. FINANCIAL INFORMATION
ITEM 1. FINANCIAL STATEMENTS

SunPower Corporation
Condensed Consolidated Balance Sheets
(In thousands, except share par values)
(unaudited)

	October 3, 2021	January 3, 2021
Assets		
Current assets:		
Cash and cash equivalents	\$ 268,574	\$ 232,765
Restricted cash and cash equivalents, current portion ²	7,438	5,518
Short-term investments	310,720	—
Accounts receivable, net ¹	112,059	108,864
Contract assets ¹	90,235	114,506
Inventories	241,425	210,582
Advances to suppliers, current portion	3,501	2,814
Project assets - plants and land, current portion	12,080	21,015
Prepaid expenses and other current assets ¹	93,381	94,251
Total current assets	1,139,413	790,315
Restricted cash and cash equivalents, net of current portion ²	4,826	8,521
Property, plant and equipment, net	29,751	46,766
Operating lease right-of-use assets	57,978	54,070
Solar power systems leased, net	46,561	50,401
Other long-term assets ¹	150,205	696,409
Total assets	\$ 1,428,734	\$ 1,646,482
Liabilities and Equity		
Current liabilities:		
Accounts payable ¹	\$ 157,742	\$ 166,066
Accrued liabilities ¹	87,298	121,915
Operating lease liabilities, current portion	12,609	9,736
Contract liabilities, current portion ¹	70,515	72,424
Short-term debt	66,304	97,059
Convertible debt, current portion ¹	—	62,531
Total current liabilities	394,468	529,731
Long-term debt	42,082	56,447
Convertible debt, net of current portion ¹	423,370	422,443
Operating lease liabilities, net of current portion	36,099	43,608
Contract liabilities, net of current portion ¹	28,241	30,170
Other long-term liabilities ¹	137,469	157,597
Total liabilities	1,061,729	1,239,996
Commitments and contingencies (Note 8)		
Equity:		
Preferred stock, \$0.001 par value; 10,000 shares authorized; none issued and outstanding as of October 3, 2021 and January 3, 2021	—	—
Common stock, \$0.001 par value, 367,500 shares authorized; 186,226 shares issued, and 172,915 shares outstanding as of October 3, 2021; 183,442 shares issued, and 170,428 shares outstanding as of January 3, 2021	172	170
Additional paid-in capital	2,711,769	2,685,920
Accumulated deficit	(2,142,408)	(2,085,246)
Accumulated other comprehensive income	9,375	8,799
Treasury stock, at cost: 13,311 shares of common stock as of October 3, 2021; 13,014 shares of common stock as of January 3, 2021	(212,740)	(205,476)
Total stockholders' equity	366,168	404,167
Noncontrolling interests in subsidiaries	837	2,319
Total equity	367,005	406,486
Total liabilities and equity	\$ 1,428,734	\$ 1,646,482

¹ We have related-party balances for transactions made with TotalEnergies SE and its affiliates, Maxeon Solar Technologies, Ltd. ("Maxeon Solar"), and unconsolidated entities in which we have a direct equity investment. These related-party balances are recorded within the "accounts receivable, net," "contract assets," "prepaid expenses and other current assets," "other long-term assets," "accounts payable," "accrued liabilities," "contract liabilities, current portion," "convertible debt, net of current portion," "contract liabilities, net of current portion," and "other long-term liabilities" financial statement line items on our unaudited condensed consolidated balance sheets (see Note 2, Note 8, Note 9, Note 10, and Note 11).

² Amounts included in the "Restricted cash and cash equivalents, current portion" and "Restricted cash and cash equivalents, net of current portion" financial statement line items on our unaudited condensed consolidated balance sheets include cash balances set aside for various financial obligations including loans, distributions, letter of credit facilities,

and other projects' related cash transactions.

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

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

	Three Months Ended		Nine Months Ended	
	October 3, 2021	September 27, 2020	October 3, 2021	September 27, 2020
Revenues:				
Solar power systems, components, and other ¹	\$ 318,607	\$ 267,619	\$ 923,252	\$ 765,316
Residential leasing	1,291	1,284	3,765	3,937
Solar services	3,738	5,903	11,944	13,766
Total revenues	323,636	274,806	938,961	783,019
Cost of revenues:				
Solar power systems, components, and other ¹	260,251	233,144	760,408	681,649
Residential leasing	935	1,209	2,214	3,722
Solar services	2,800	3,313	5,784	5,672
Total cost of revenues	263,986	237,666	768,406	691,043
Gross profit	59,650	37,140	170,555	91,976
Operating expenses:				
Research and development ¹	2,979	5,344	12,705	19,106
Sales, general, and administrative	51,169	35,462	155,643	112,193
Restructuring (credits) charges	(230)	(97)	4,344	2,738
(Gain) loss on sale and impairment of residential lease assets	—	386	(294)	253
(Gain) loss on business divestitures, net	—	—	(224)	(10,458)
Income from transition services agreement, net ¹	(468)	(1,889)	(5,211)	(1,889)
Total operating expenses	53,450	39,206	166,963	121,943
Operating income (loss)	6,200	(2,066)	3,592	(29,967)
Other income (expense), net:				
Interest income	83	104	249	682
Interest expense ¹	(6,710)	(7,090)	(22,396)	(24,731)
Other, net	(86,074)	155,457	(45,474)	277,100
Other income (expense), net	(92,701)	148,471	(67,621)	253,051
(Loss) income from continuing operations before income taxes and equity in earnings of unconsolidated investees	(86,501)	146,405	(64,029)	223,084
Benefits from (provision for) income taxes	2,194	(36,725)	4,993	(38,716)
Net (loss) income from continuing operations	(84,307)	109,680	(59,036)	184,368
(Loss) income from discontinued operations before income taxes and equity in losses of unconsolidated investees	—	(70,761)	—	(125,599)
Benefits from (provision for) income taxes from discontinued operations	—	6,137	—	3,191
Equity in earnings (losses) of unconsolidated investees	—	58	—	(586)
Net (loss) income from discontinued operations, net of taxes	—	(64,566)	—	(122,994)
Net (loss) income	(84,307)	45,114	(59,036)	61,374
Net (income) loss from continuing operations attributable to noncontrolling interests	(69)	(230)	1,482	2,512
Net (income) loss from discontinued operations attributable to noncontrolling interests	—	(258)	—	(1,313)
Net (income) loss attributable to noncontrolling interests	(69)	(488)	1,482	1,199
Net (loss) income from continuing operations attributable to stockholders	(84,376)	109,450	(57,554)	186,880
Net (loss) income from discontinued operations attributable to stockholders	—	(64,824)	—	(124,307)
Net (loss) income attributable to stockholders	\$ (84,376)	\$ 44,626	\$ (57,554)	\$ 62,573
Net (loss) income per share attributable to stockholders - basic:				
Continuing operations	\$ (0.49)	\$ 0.64	\$ (0.33)	\$ 1.10
Discontinued operations	\$ —	\$ (0.38)	\$ —	\$ (0.73)
Net (loss) income per share – basic	\$ (0.49)	\$ 0.26	\$ (0.33)	\$ 0.37
Net (loss) income per share attributable to stockholders - diluted:				
Continuing operations	\$ (0.49)	\$ 0.57	\$ (0.33)	\$ 0.99
Discontinued operations	\$ —	\$ (0.33)	\$ —	\$ (0.62)
Net (loss) income per share – diluted	\$ (0.49)	\$ 0.24	\$ (0.33)	\$ 0.37
Weighted-average shares:				
Basic	172,885	170,113	172,242	169,646
Diluted	172,885	198,526	172,242	200,124

¹ We have related-party transactions with TotalEnergies SE and its affiliates, Maxeon Solar, and unconsolidated entities in which we have a direct equity investment. These related-party transactions are recorded within the "revenues: solar power systems, components, and other," "cost of revenues: solar power systems, components, and other," "operating expenses: research and development," "operating expenses: sales, general, and administrative," "operating expenses: income from transition services agreement, net," and "other income (expense), net: interest expense," financial statement line items in our unaudited condensed consolidated statements of operations (see Note 2, Note 9, and Note 11).

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

SunPower Corporation
Condensed Consolidated Statements of Comprehensive Income (Loss)
(In thousands)
(unaudited)

	Three Months Ended		Nine Months Ended	
	October 3, 2021	September 27, 2020	October 3, 2021	September 27, 2020
Net (loss) income	\$ (84,307)	\$ 45,114	\$ (59,036)	\$ 61,374
Components of other comprehensive (loss) income:				
Translation adjustment	(14)	2,619	(10)	2,753
Net change in derivatives	—	(1,602)	570	(2,540)
Net gain (loss) on long-term pension liability obligation	—	16	—	(33)
(Provision for) benefits from income taxes	—	(5)	16	(5)
Total other comprehensive (loss) income	(14)	1,028	576	175
Total comprehensive (loss) income	(84,321)	46,142	(58,460)	61,549
Comprehensive (loss) income attributable to noncontrolling interests	(69)	(488)	1,482	1,199
Comprehensive (loss) income attributable to stockholders	<u>\$ (84,390)</u>	<u>\$ 45,654</u>	<u>\$ (56,978)</u>	<u>\$ 62,748</u>

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

SunPower Corporation
Condensed Consolidated Statements of Equity
(In thousands)
(unaudited)

	<u>Common Stock</u>								
	Shares	Value	Additional Paid-in Capital	Treasury Stock	Accumulated Other Comprehensive Income (Loss)	Accumulated Deficit	Total Stockholders' Equity	Noncontrolling Interests in Subsidiaries	Total Equity
Balances at January 3, 2021	170,428	\$ 170	\$2,685,920	\$(205,476)	\$ 8,799	\$ (2,085,246)	\$ 404,167	\$ 2,319	\$ 406,486
Net income (loss)	—	—	—	—	—	(48,385)	(48,385)	(1,113)	(49,498)
Other comprehensive income	—	—	—	—	98	—	98	—	98
Issuance of restricted stock to employees, net of cancellations	1,908	2	—	—	—	—	2	—	2
Stock-based compensation expense ¹	—	—	5,437	—	—	—	5,437	—	5,437
Bond/debentures conversion	4	—	155	—	—	—	155	—	155
Purchases of treasury stock	(76)	—	—	(2,120)	—	—	(2,120)	—	(2,120)
Other adjustments	—	—	(89)	—	—	392	303	—	303
Balances at April 4, 2021	172,264	172	2,691,423	(207,596)	8,897	(2,133,239)	359,657	1,206	360,863
Net income (loss)	—	—	—	—	—	75,207	75,207	(438)	74,769
Other comprehensive income	—	—	—	—	492	—	492	—	492
Issuance of restricted stock to employees, net of cancellations	664	—	—	—	—	—	—	—	—
Issuance of common stock to executive ²	101	—	2,999	—	—	—	2,999	—	2,999
Stock-based compensation expense ¹	—	—	9,225	—	—	—	9,225	—	9,225
Purchases of treasury stock	(187)	—	—	(4,310)	—	—	(4,310)	—	(4,310)
Other adjustments	—	—	—	(25)	—	—	(25)	—	(25)
Balances at July 4, 2021	172,842	172	2,703,647	(211,931)	9,389	(2,058,032)	443,245	768	444,013
Net income (loss)	—	—	—	—	—	(84,376)	(84,376)	69	(84,307)
Other comprehensive loss	—	—	—	—	(14)	—	(14)	—	(14)
Issuance of restricted stock to employees, net of cancellations	107	—	—	—	—	—	—	—	—
Stock-based compensation expense ¹	—	—	4,725	—	—	—	4,725	—	4,725
Purchases of treasury stock	(34)	—	—	(809)	—	—	(809)	—	(809)
Income taxes ³	—	—	3,397	—	—	—	3,397	—	3,397
Balances at October 3, 2021	172,915	\$ 172	\$2,711,769	\$(212,740)	\$ 9,375	\$ (2,142,408)	\$ 366,168	\$ 837	\$ 367,005

SunPower Corporation
Condensed Consolidated Statements of Equity
(In thousands)
(unaudited)

	Common Stock								
	Shares	Value	Additional Paid-in Capital	Treasury Stock	Accumulated Other Comprehensive Income (Loss)	Accumulated Deficit	Total Stockholders' Equity (Deficit)	Noncontrolling Interests in Subsidiaries	Total Equity (Deficit)
Balances at December 29, 2019	168,121	\$ 168	\$2,661,819	\$ (192,633)	\$ (9,512)	\$ (2,449,679)	\$ 10,163	\$ 11,336	\$ 21,499
Net income (loss)	—	—	—	—	—	(1,431)	(1,431)	(707)	(2,138)
Other comprehensive income	—	—	—	—	723	—	723	—	723
Issuance of restricted stock to employees, net of cancellations	2,452	3	—	—	—	—	3	—	3
Stock-based compensation expense	—	—	6,885	—	—	—	6,885	—	6,885
Purchases of treasury stock	(818)	(1)	—	(6,910)	—	—	(6,911)	—	(6,911)
Balances at March 29, 2020	169,755	170	2,668,704	(199,543)	(8,789)	(2,451,110)	9,432	10,629	20,061
Net income (loss)	—	—	—	—	—	19,378	19,378	(980)	18,398
Other comprehensive loss	—	—	—	—	(1,576)	—	(1,576)	—	(1,576)
Issuance of restricted stock to employees, net of cancellations	533	—	—	—	—	—	—	—	—
Stock-based compensation expense	—	—	5,675	—	—	—	5,675	—	5,675
Purchases of treasury stock	(229)	—	—	(1,253)	—	—	(1,253)	—	(1,253)
Balances at June 28, 2020	170,059	170	2,674,379	(200,796)	(10,365)	(2,431,732)	31,656	9,649	41,305
Net income (loss)	—	—	—	—	—	44,626	44,626	488	45,114
Other comprehensive income	—	—	—	—	1,028	—	1,028	—	1,028
Distributions to non-controlling interest	—	—	—	—	—	—	—	(302)	(302)
Issuance of restricted stock to employees, net of cancellations	111	—	—	—	—	—	—	—	—
Stock-based compensation expense	—	—	5,581	—	—	—	5,581	—	5,581
Purchases of treasury stock	(31)	—	—	(294)	—	—	(294)	—	(294)
Contributions to non-controlling interest	—	—	—	—	—	—	—	22	22
Issuance of Maxeon Solar green convertible notes	—	—	53,040	—	—	—	53,040	—	53,040
Impact of Maxeon Solar Spin-Off	—	—	(53,040)	—	17,407	(110,303)	(145,936)	(6,624)	(152,560)
Balances at September 27, 2020	170,139	\$ 170	\$2,679,960	\$ (201,090)	\$ 8,070	\$ (2,497,409)	\$ (10,299)	\$ 3,233	\$ (7,066)

¹ Stock-based compensation expense includes a recharge to Maxeon Solar of \$0.4 million for the nine months ended October 3, 2021, under the collaboration agreement (see Note 11. Related-Party Transactions). There was no recharge to Maxeon Solar in the three months ended October 3, 2021.

² Refer to Note 11. Related-Party Transactions for details.

³ Relates to a reduction of income tax liability resulting from utilization of carryover R&D credits on book to tax difference on interest on convertible debt.

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

	Nine Months Ended	
	October 3, 2021	September 27, 2020
Cash flows from operating activities:		
Net (loss) income	\$ (59,036)	\$ 61,374
Adjustments to reconcile net (loss) income to net cash used in operating activities:		
Depreciation and amortization	7,498	45,737
Stock-based compensation	19,776	18,788
Non-cash interest expense	4,095	5,495
Equity in losses (earnings) of unconsolidated investees	—	586
Loss (gain) on equity investments	47,238	(275,645)
(Gain) loss on retirement of convertible debt	—	(3,060)
(Gain) loss on sale of investments	(1,162)	—
(Gain) loss on business divestitures, net	(224)	(10,458)
Deferred income taxes	(4,109)	1,639
Other, net	(6,335)	1,813
Changes in operating assets and liabilities:		
Accounts receivable	(4,450)	113,029
Contract assets	28,687	(22,771)
Inventories	(3,758)	(12,107)
Project assets	2,817	(11,202)
Prepaid expenses and other assets	(10,915)	(4,324)
Operating lease right-of-use assets	8,709	9,898
Advances to suppliers	(687)	16,296
Accounts payable and other accrued liabilities	(56,245)	(75,141)
Contract liabilities	(3,507)	(53,818)
Operating lease liabilities	(10,457)	(8,642)
Net cash used in operating activities	(42,065)	(202,513)
Cash flows from investing activities:		
Purchases of property, plant, and equipment	(3,934)	(13,174)
Investments in software development costs	(2,468)	—
Proceeds from sale of property, plant, and equipment	900	—
Cash paid for solar power systems	(635)	(5,394)
Purchases of marketable securities	—	(1,338)
Proceeds from maturities of marketable securities	—	6,588
Cash outflow upon Maxeon Solar Spin-Off, net of proceeds	—	(140,132)
Cash received from sale of investments	1,200	—
Proceeds from business divestitures, net of de-consolidated cash	10,516	15,418
Proceeds from sale of equity investment	177,780	119,439
Proceeds from return of capital from equity investments	2,276	7,724
Net cash provided by (used in) investing activities	185,635	(10,869)
Cash flows from financing activities:		
Proceeds from bank loans and other debt	123,669	183,731
Repayment of bank loans and other debt	(156,386)	(183,070)
Proceeds from issuance of non-recourse residential and commercial financing, net of issuance costs	—	13,434
Repayment of non-recourse residential and commercial financing debt	(9,798)	(7,231)
Contributions from noncontrolling interests and redeemable noncontrolling interests attributable to residential projects	—	22
Distributions to noncontrolling interests and redeemable noncontrolling interests attributable to residential projects	—	(302)
Repayment of convertible debt	(62,757)	(95,178)
Proceeds from issuance of Maxeon Solar green convertible debt	—	200,000
Receipt of contingent asset of a prior business combination	—	2,245
Issuance of common stock to executive	2,998	—
Equity offering costs paid	—	(928)
Purchases of stock for tax withholding obligations on vested restricted stock	(7,262)	(8,455)
Net cash (used in) provided by financing activities	(109,536)	104,268
Effect of exchange rate changes on cash, cash equivalents, and restricted cash	—	222
Net increase (decrease) in cash, cash equivalents, and restricted cash	34,034	(108,892)
Cash, cash equivalents, and restricted cash, Beginning of period	246,804	458,657
Cash, cash equivalents, and restricted cash, End of period	\$ 280,838	\$ 349,765
Reconciliation of cash, cash equivalents, and restricted cash to the unaudited condensed consolidated balance sheets:		
Cash and cash equivalents	\$ 268,574	\$ 324,741

Restricted cash and cash equivalents, current portion	7,438	16,605
Restricted cash and cash equivalents, net of current portion	4,826	8,419
Total cash, cash equivalents, and restricted cash	<u>\$ 280,838</u>	<u>\$ 349,765</u>
Supplemental disclosure of cash flow information:		
Costs of solar power systems funded by liabilities	\$ —	\$ 598
Property, plant and equipment acquisitions funded by liabilities	\$ 2,530	\$ 36
Right-of-use assets obtained in exchange for lease obligations	\$ 15,957	\$ 21,786
Deconsolidation of right-of-use assets and lease obligations	\$ 3,340	\$ —
Debt repaid in sale of commercial projects ¹	\$ 5,585	\$ —
Assumption of liabilities in connection with business divestitures	\$ —	\$ 9,056
Holdbacks in connection with business divestitures	\$ —	\$ 7,199
Cash paid for interest	\$ 23,734	\$ 27,587
Cash paid for income taxes	\$ 20,316	\$ 17,181

¹ Refer to Note 5, *Business Divestitures* for more details.

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

Notes to Condensed Consolidated Financial Statements (Unaudited)

Note 1. ORGANIZATION AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Organization

SunPower Corporation (together with its subsidiaries, "SunPower," the "Company," "we," "us," or "our") is a leading solar technology and energy services provider that offers fully integrated solar, storage and home energy solutions to customers primarily in the United States and Canada through an array of hardware, software, and financing options and "Smart Energy" solutions. Our Smart Energy initiative is designed to add layers of intelligent control to homes, buildings, and grids—all personalized through easy-to-use customer interfaces. We are a leader in the U.S. Distributed Generation ("DG") storage and energy services market, providing customers control over electricity consumption and resiliency during power outages while providing cost savings to homeowners, businesses, governments, schools, and utilities through multiple offerings. Our sales channels include a strong network of both installing and non-installing dealers and resellers that operate in both residential and commercial markets as well as a group of talented and driven in-house sales teams within each segment engaged in direct sales to end customers. SunPower is a majority-owned subsidiary of TotalEnergies Solar INTL SAS ("Total," formerly Total Solar International SAS) and Total Gaz Electricité Holdings France SAS ("Total Gaz"), each a subsidiary of TotalEnergies SE ("TotalEnergies SE," formerly Total SE) (see "Note 2. Transactions with Total and TotalEnergies SE").

On August 26, 2020, we completed the spin-off (the "Spin-Off") of Maxeon Solar, a Singapore public company limited by shares, consisting of certain non-U.S. operations and assets of our former SunPower Technologies business unit. As a result of the Spin-Off, we no longer consolidate Maxeon Solar within our financial results of continuing operations. For all periods prior to the Spin-Off, the financial results of Maxeon Solar are presented as net earnings from discontinued operations on the condensed consolidated statements of operations.

Liquidity

We believe that our total cash and cash equivalents will be sufficient to meet our obligations over the next 12 months from the date of issuance of these financial statements. In addition, we have historically been successful in generating liquidity by divesting certain investments, such as our shares of Enphase Energy Inc. ("Enphase") common stock, as well as non-core assets; securing other sources of financing, such as accessing the capital markets; and implementing other cost reduction initiatives such as restructuring, to address our liquidity needs. Although we have historically been able to generate liquidity, we cannot assure that we will be able to continue to do so.

Basis of Presentation and Preparation

Principles of Consolidation

The accompanying unaudited condensed consolidated financial statements have been prepared by us in accordance with generally accepted accounting principles in the United States ("United States" or "U.S.," and such accounting principles, "U.S. GAAP") for interim financial information, and include the accounts of SunPower, all of our subsidiaries and special purpose entities, as appropriate under U.S. GAAP. All intercompany transactions and balances have been eliminated in consolidation. The financial information included herein is unaudited, and reflects all adjustments which are, in the opinion of our management, of a normal recurring nature and necessary for a fair statement of the results for the periods presented. The January 3, 2021 consolidated balance sheet data was derived from SunPower's audited consolidated financial statements included in our Annual Report on Form 10-K for the fiscal year ended January 3, 2021, as filed with the Securities and Exchange Commission ("SEC") on February 22, 2021, but does not include all disclosures required by U.S. GAAP. The unaudited condensed consolidated financial statements should be read in conjunction with the audited consolidated financial statements and notes thereto included in SunPower's Annual Report on Form 10-K for the fiscal year ended January 3, 2021. The operating results for the three and nine months ended October 3, 2021 are not necessarily indicative of the results that may be expected for fiscal year 2021, or for any other future period.

We have a 52-to-53-week fiscal year that ends on the Sunday closest to December 31. Accordingly, every fifth or sixth year will be a 53-week fiscal year. The current fiscal year, fiscal 2021, is a 52-week fiscal year, while fiscal year 2020 was a 53-week fiscal year. The third quarter of fiscal 2021 ended on October 3, 2021, while the third quarter of fiscal 2020 ended on September 27, 2020.

Management Estimates

The preparation of the unaudited condensed consolidated financial statements in conformity with U.S. GAAP requires our management to make estimates and assumptions that affect the amounts reported in these unaudited condensed consolidated financial statements and accompanying notes. Significant estimates in these unaudited condensed consolidated financial statements include revenue recognition, specifically nature and timing of satisfaction of performance obligations, standalone selling price of performance obligations, and variable consideration; credit losses, including estimating macroeconomic factors affecting historical recovery rate of receivables; inventory and project asset write-downs; long-lived asset impairment, specifically estimates for valuation assumptions including discount rates and future cash flows; fair value of investments, including equity investments for which we apply the fair value option and other financial instruments; valuation of contingencies such as warranty and litigation; the incremental borrowing rate used in discounting of lease liabilities; the fair value of indemnities provided to customers and other parties; and income taxes and tax valuation allowances. Actual results could materially differ from those estimates.

Summary of Selected Significant Accounting Policies

Refer to our Annual Report on Form 10-K for the fiscal year ended January 3, 2021 for the full list of our significant accounting policies.

Recently Adopted Accounting Pronouncements

In December 2019, the FASB issued ASU 2019-12, *Simplifying the Accounting for Income Taxes*, which simplifies the accounting for income taxes, eliminates certain exceptions within ASC 740, *Income Taxes*, and clarifies certain aspects of the current guidance to promote consistency among reporting entities. Most amendments within the standard are required to be applied on a prospective basis, while certain amendments must be applied on a retrospective or modified retrospective basis. We adopted the ASU during the first quarter of fiscal 2021. The adoption did not have a material impact on our consolidated financial statements.

In January 2021, the FASB issued ASU 2021-01, *Reference Rate Reform (Topic 848): Scope*. The ASU is an update to ASU 2020-04 issued by the FASB in March 2020 and is intended to clarify the scope of ASC 848 to include derivatives that are affected by a change in the interest rate used for margining, discounting, or contract price alignment that do not also reference LIBOR or another reference rate expected to be discontinued as a result of reference rate reform. This guidance was effective immediately upon issuance on January 7, 2021. We adopted the ASU during the first quarter of fiscal 2021. The adoption did not have any impact on our consolidated financial statements and related disclosures.

Recent Accounting Pronouncements Not Yet Adopted

In August 2020, the FASB issued ASU 2020-06, *Debt—Debt with Conversion and Other Options (Subtopic 470-20) and Derivatives and Hedging—Contracts in Entity's Own Equity (Subtopic 815-40)—Accounting for Convertible Instruments and Contracts in an Entity's Own Equity*. The amendment reduces the number of accounting models used for convertible debt instruments and convertible preferred stock, which results in fewer embedded conversion features separately recognized from the host contracts. ASU 2020-06 is effective no later than the first quarter of fiscal 2022. Early adoption is permitted no earlier than the first quarter of fiscal 2021, and the ASU should be applied retrospectively. We are currently evaluating the impacts of the provisions of ASU 2020-06 on our financial statements and disclosures.

Note 2. TRANSACTIONS WITH TOTAL AND TOTALENERGIES SE

In June 2011, Total completed a cash tender offer to acquire 60% of our then outstanding shares of common stock at a price of \$23.25 per share, for a total cost of approximately \$1.4 billion. In December 2011, we entered into a Private Placement Agreement with Total, under which Total purchased, and we issued and sold, 18.6 million shares of our common stock for a purchase price of \$8.80 per share, thereby increasing Total's ownership to approximately 66% of our outstanding common stock as of that date. As of October 3, 2021, ownership of our outstanding common stock by TotalEnergies SE and its affiliates was approximately 51%. Subsequent to the Spin-Off, Total received a pro rata distribution of ordinary shares of Maxeon Solar, and its percentage ownership of shares in SunPower did not change.

Supply Agreements

In December 2019, we sold our membership interests in certain project companies that hold commercial solar power plant projects to Total Strong, LLC, a joint venture between Total and Hannon Armstrong Sustainable Infrastructure Capital, Inc. ("Hannon Armstrong"). During the three and nine months ended October 3, 2021, we recognized revenue of \$11.3 million and \$48.7 million, respectively, and revenue of \$34.3 million and \$65.7 million, during the three and nine months ended September 27, 2020, respectively, for sales to this joint venture. Sales were due to the continued recognition of engineering, procurement and construction ("EPC") revenue during the quarter, which is included within "Solar power systems, components, and other" on our consolidated statements of operations.

Affiliation Agreement

In April 2011, we and Total entered into an Affiliation Agreement that governs the relationship between Total and us (the "Affiliation Agreement"). Until the expiration of a standstill period specified in the Affiliation Agreement (the "Standstill Period"), and subject to certain exceptions, Total, TotalEnergies SE, and any of their respective affiliates and certain other related parties (collectively, the "Total Group") may not effect, seek, or enter into discussions with any third party regarding any transaction that would result in the Total Group beneficially owning our shares in excess of certain thresholds, or request us or our independent directors, officers, or employees to amend or waive any of the standstill restrictions applicable to the Total Group. The Standstill Period ends when Total holds less than 15% ownership of us.

The Affiliation Agreement imposes certain limitations on the Total Group's ability to seek to effect a tender offer or merger to acquire 100% of our outstanding voting power and imposes certain limitations on the Total Group's ability to transfer 40% or more of our outstanding shares or voting power to a single person or group that is not a direct or indirect subsidiary of TotalEnergies SE. During the Standstill Period, no member of the Total Group may, among other things, solicit proxies or become a participant in an election contest relating to the election of directors to our board of directors (the "Board").

The Affiliation Agreement provides Total with the right to maintain its percentage ownership in connection with any new securities issued by us, and Total may also purchase shares on the open market or in private transactions with disinterested stockholders, subject in each case to certain restrictions.

The Affiliation Agreement also imposes restrictions with respect to our and our Board's ability to take certain actions, including specifying certain actions that require approval by the directors other than the directors appointed by Total and other actions that require stockholder approval by Total.

On April 19, 2021, we entered into an amendment to the Affiliation Agreement with Total (the "April Affiliation Agreement Amendment"). The April Affiliation Agreement Amendment provides that our Board will include 11 members, composed of our president and chief executive officer, our immediate past chief executive officer, ("Mr. Werner"), six directors designated by Total, and three non-Total-designated directors. If the ownership of our voting securities by Total, together with the controlled subsidiaries of TotalEnergies SE, declines below certain thresholds, the number of members of the Board that Total is entitled to designate will be reduced as set forth in the Affiliation Agreement. Pursuant to the April Affiliation Agreement Amendment, Mr. Werner resigned from his position as a member of the Board on November 1, 2021. On October 29, 2021, we entered into a further amendment to the Affiliation Agreement (the "October Affiliation Agreement Amendment"), which provides that our Board will remain at 11 members until March 31, 2022 and allows for the appointment of one additional independent director to fill the vacancy created by Mr. Werner's resignation from the Board. The October Affiliation Agreement Amendment further provides that, after March 31, 2022, the Board will revert to nine members, at which time one independent director and one Total designee will resign from the Board.

Cooperation Agreement

In December 2020, we entered into a Strategic Cooperation Framework Agreement (the "Cooperation Agreement") with Total that governs the ongoing relationship between us and Total with respect to development and sale of certain future commercial solar power projects. The Cooperation Agreement lays the foundation for the potential to jointly develop certain projects and allows us and Total to expand investments in solar power projects to provide for future opportunities and investment volume.

Among other things, the Cooperation Agreement provides for:

- our obligation to offer and ability to sell certain projects to Total at pre-agreed model metrics;
- our ability to obtain non-recourse financing of construction costs;
- our ability to obtain financing of development costs as various milestones in the project development cycle are achieved;

- exclusivity over our offering of various post-sale services for projects sold to Total or its affiliates; and
- our right to offer EPC services on certain downstream generation projects being developed by Total.

The Cooperation Agreement remains in effect until December 31, 2023, unless otherwise terminated.

0.875% Debentures Due 2021

In June 2014, we issued \$400.0 million in principal amount of our 0.875% debentures due June 1, 2021. An aggregate principal amount of \$250.0 million of the 0.875% debentures due 2021 was initially acquired by Total. Interest was payable semi-annually, beginning on December 1, 2014. The 0.875% debentures due 2021 were convertible into shares of our common stock at any time. When issued, the initial conversion rate in respect of the 0.875% debentures due 2021 was 20.5071 shares of common stock per \$1,000 principal amount of 0.875% senior convertible debentures (which was equivalent to an initial conversion price of approximately \$48.76 per share). After giving effect to the Spin-Off, effective September 1, 2020, the conversion rate was adjusted to 25.1388 shares of common stock per \$1,000 principal amount of debentures (which is equivalent to a conversion price of approximately \$39.78 per share).

During the fiscal year ended January 3, 2021, we purchased \$337.4 million of aggregated principal amount of the 0.875% debentures due 2021, including \$250.0 million of principal amount representing the entire amount held by Total. In June 2021, we repaid the remaining outstanding principal amount of \$62.5 million, none of which was held by Total.

4.00% Debentures Due 2023

In December 2015, we issued \$425.0 million in principal amount of our 4.00% debentures due 2023. An aggregate principal amount of \$100.0 million of the 4.00% debentures due 2023 was acquired by Total. Interest is payable semi-annually, beginning on July 15, 2016. The 4.00% debentures due 2023 are convertible into shares of our common stock at any time. When issued, the initial conversion rate in respect of the 4.00% debentures due 2023 was 32.7568 shares of common stock per \$1,000 principal amount of debentures (which was equivalent to an initial conversion price of approximately \$30.53 per share). After giving effect to the Spin-Off, effective September 1, 2020, the conversion rate adjusted to 40.1552 shares of common stock per \$1,000 principal amount of debentures (which is equivalent to a conversion price of approximately \$24.90 per share), which provides Total the right to acquire up to 4,015,515 shares of our common stock. Notice of the conversion rate adjustment was delivered to Wells Fargo Bank, National Association, the trustee, in accordance with the terms of the indenture governing the 4.00% debentures due 2023. The applicable conversion rate may further adjust in certain circumstances, including a fundamental change, as described in the indenture governing the 4.00% debentures due 2023. If not earlier repurchased or converted, the 4.00% debentures due 2023 mature on January 15, 2023.

Joint Solar Projects with Total and Its Affiliates

We enter into various EPC and operations and maintenance ("O&M") agreements relating to solar projects, including EPC and O&M services agreements relating to projects owned or partially owned by Total and its affiliates. As of October 3, 2021, we had \$47.6 million of "Contract assets," \$1.8 million of "Contract liabilities" and \$0.3 million of "Accounts receivable, net" on our unaudited condensed consolidated balance sheets related to projects in which Total and its affiliates have a direct or indirect material interest.

Related-Party Transactions with Total and Its Affiliates:

The following are balances and transactions entered into with Total and its affiliates.

(In thousands)	As of	
	October 3, 2021	January 3, 2021
Accounts receivable	\$ 289	\$ 76

(In thousands)	Three Months Ended		Nine Months Ended	
	October 3, 2021	September 27, 2020	October 3, 2021	September 27, 2020
Revenue:				
Solar power systems, components, and other	\$ 11,275	\$ 34,465	\$ 48,652	\$ 98,244
Cost of revenue:				
Solar power systems, components, and other	11,945	26,177	43,762	70,501
Other income:				
Gain on early retirement of convertible debt	—	104	—	1,954
Interest expense:				
Guarantee fees incurred under the Credit Support Agreement	—	—	—	13
Interest expense incurred on the 0.875% debentures due 2021	—	384	—	1,216
Interest expense incurred on the 4.00% debentures due 2023	1,000	1,000	3,000	3,000

Note 3. REVENUE FROM CONTRACTS WITH CUSTOMERS
Disaggregation of Revenue

The following tables represent disaggregated revenue from contracts with customers for the three and nine months ended October 3, 2021 and September 27, 2020 along with the reportable segment for each category:

(In thousands)	Three Months Ended							
	October 3, 2021				September 27, 2020			
	Residential, Light Commercial	Commercial and Industrial Solutions	Others	Total	Residential, Light Commercial	Commercial and Industrial Solutions	Others	Total
Solar power systems sales and EPC services	\$ 276,606	\$ 36,956	\$ 980	\$ 314,542	\$ 191,016	\$ 73,840	\$ 2,688	\$ 267,544
Operations and maintenance	—	3,368	697	4,065	—	—	75	75
Residential leasing	1,291	—	—	1,291	1,284	—	—	1,284
Solar services	3,738	—	—	3,738	5,485	418	—	5,903
Total revenues	<u>\$ 281,635</u>	<u>\$ 40,324</u>	<u>\$ 1,677</u>	<u>\$ 323,636</u>	<u>\$ 197,785</u>	<u>\$ 74,258</u>	<u>\$ 2,763</u>	<u>\$ 274,806</u>

(In thousands)	Nine Months Ended							
	October 3, 2021				September 27, 2020			
	Residential, Light Commercial	Commercial and Industrial Solutions	Others	Total	Residential, Light Commercial	Commercial and Industrial Solutions	Others	Total
Solar power systems sales and EPC services	\$ 757,983	\$ 145,986	\$ 7,945	\$ 911,914	\$ 568,303	\$ 170,403	\$ 3,147	\$ 741,853
Operations and maintenance	—	8,776	2,562	11,338	—	3,619	19,844	23,463
Residential leasing	3,765	—	—	3,765	3,937	—	—	3,937
Solar services	11,944	—	—	11,944	12,524	1,242	—	13,766
Total revenues	<u>\$ 773,692</u>	<u>\$ 154,762</u>	<u>\$ 10,507</u>	<u>\$ 938,961</u>	<u>\$ 584,764</u>	<u>\$ 175,264</u>	<u>\$ 22,991</u>	<u>\$ 783,019</u>

We recognize revenue for sales of modules and components at the point that control transfers to the customer, which typically occurs upon shipment or delivery to the customer, depending on the terms of the contract, and we recognize revenue for operations and maintenance and solar services over the term of the service period.

For EPC revenue and solar power systems sales, we commence recognizing revenue when control of the underlying system transfers to the customer and continue recognizing revenue over time as work is performed based on the ratio of costs incurred to date to the total estimated costs at completion of the performance obligations. For contracts in which we sell membership interests in certain project companies, we recognize revenue for the initial development and other solar assets at the point that control transfers to the customer, and we recognize continuing EPC revenue for work provided to the joint venture over time as work is performed.

Our arrangements may contain clauses such as liquidated damages for delays or early performance bonuses, most favorable pricing, or other provisions that can either increase or decrease the transaction price. These variable amounts generally are awarded upon achievement of certain performance metrics or milestones. Variable consideration is estimated at each measurement date at its most likely amount to the extent that it is probable that a significant reversal of cumulative revenue recognized will not occur and true-ups are applied prospectively as such estimates change.

Judgment is required to evaluate assumptions including the amount of net contract revenues and the total estimated costs to determine our progress towards contract completion and to calculate the corresponding amount of revenue to recognize. If estimated total costs on any contract are greater than the net contract revenues, we recognize the entire estimated loss in the period the loss becomes known. For contracts with post-installation systems monitoring and maintenance, we recognize revenue related to systems monitoring and maintenance over the non-cancellable contract term on a straight-line basis.

Changes in estimates for sales of systems for EPC services occur for a variety of reasons, including but not limited to (i) construction plan accelerations or delays, (ii) product cost forecast changes, (iii) change orders, or (iv) changes in other information used to estimate costs. Changes in estimates may have a material effect in our consolidated statements of operations. The table below outlines the impact on revenue of net changes in estimated transaction prices and input costs for systems related sales contracts (both increases and decreases) for the three and nine months ended October 3, 2021 and September 27, 2020 as well as the number of projects that comprise such changes. For purposes of the following table, only projects with changes in estimates that have an impact on revenues and or costs of at least \$1.0 million, calculated on a quarterly basis during the periods, were presented. Also included in the table is the net change in estimate as a percentage of the aggregate revenue for such projects.

(In thousands, except number of projects)	Three Months Ended		Nine Months Ended	
	October 3, 2021	September 27, 2020	October 3, 2021	September 27, 2020
Increase in revenue from net changes in transaction prices	\$ —	\$ 1,142	\$ 2,131	\$ 834
Decrease in revenue from net changes in input cost estimates	—	(1,041)	(2,084)	(1,092)
Net increase (decrease) in revenue from net changes in estimates	\$ —	\$ 101	\$ 47	\$ (258)
Number of projects	—	2	3	4
Net change in estimate as a percentage of aggregate revenue for associated projects	— %	0.3 %	0.6 %	(0.2)%

Contract Assets and Liabilities

Contract assets consist of (i) retainage which represents the earned, but unbilled, portion of a construction and development project for which payment is deferred by the customer until certain contractual milestones are met; and (ii) unbilled receivables which represent revenue that has been recognized in advance of billing the customer, which is common for long-term construction contracts. Contract liabilities consist of deferred revenue and customer advances, which represent consideration received from a customer prior to transferring control of goods or services to the customer under the terms of a sales contract. Refer to Note 4. *Balance Sheet Components* for further details. Total contract assets and contract liabilities balances as of the respective dates are as follows:

(In thousands)	As of	
	October 3, 2021	January 3, 2021
Contract assets	\$ 94,115	\$ 122,802
Contract liabilities	98,756	102,594

During the three months ended October 3, 2021, the decrease in contract assets of \$4.2 million was primarily driven by billings for commercial projects where certain milestones had been reached. During the nine months ended October 3, 2021, decrease of \$28.7 million was primarily driven by a settlement for milestone achievement for one legacy power plant project, as well as a collection of variable consideration on a power plant development project sold in prior years.

During the three and nine months ended September 27, 2020, the increase in contract assets of \$5.7 million and \$4.5 million, respectively, was primarily driven by billings for commercial projects where certain milestones had not yet been reached, but criteria for revenue recognition has been met.

During the three months ended October 3, 2021, the increase in contract liabilities of \$5.0 million was primarily due to an increased volume of invoiced contracts waiting for revenue recognition. During the nine months ended October 3, 2021, decrease of \$3.8 million was due to the attainment of milestones billings for various projects.

During the three and nine months ended September 27, 2020, the decrease in contract liabilities of \$2.0 million and \$6.7 million, respectively, was primarily due to the utilization of customer advances.

During the three and nine months ended October 3, 2021, we recognized revenue of \$32.0 million and \$43.7 million, respectively, that was included in contract liabilities as of July 4, 2021 and January 3, 2021, respectively. During the three and nine months ended September 27, 2020, we recognized revenue of \$26.9 million and \$78.4 million, respectively, that was included in contract liabilities as of June 28, 2020 and December 29, 2019, respectively.

The following table represents the average percentage of completion as of October 3, 2021 for EPC agreements for projects that we are constructing. We expect to recognize \$152.0 million of revenue upon transfer of control of the projects.

Project	Revenue Category	EPC Contract/Partner Developed Project	Expected Year Revenue Recognition Will Be Completed	Average Percentage of Revenue Recognized
Various Distribution Generation Projects	Solar power systems sales and EPC services	Various	2023	92.2 %

As of October 3, 2021, we have entered into contracts with customers for sales of modules and components for an aggregate transaction price of \$357.3 million, the substantial majority of which we expect to recognize over the next 12 months.

Note 4. BALANCE SHEET COMPONENTS

Accounts Receivable, Net

(In thousands)	As of	
	October 3, 2021	January 3, 2021
Accounts receivable, gross ¹	\$ 127,006	\$ 124,402
Less: allowance for credit losses	(14,678)	(15,379)
Less: allowance for sales returns	(269)	(159)
Accounts receivable, net	\$ 112,059	\$ 108,864

¹ A lien exists on \$64.9 million of our consolidated accounts receivable, gross, as of October 3, 2021 in connection with a Loan and Security Agreement entered into on March 29, 2019. See Note 10. *Debt and Credit Sources*.

Allowance for Credit Losses

(In thousands)	Three Months Ended		Nine Months Ended	
	October 3, 2021	September 27, 2020	October 3, 2021	September 27, 2020
Balance at beginning of period	\$ 14,997	\$ 19,485	\$ 15,379	\$ 17,208
Provision for credit losses	37	(2,568)	228	998
Write-offs	(356)	69	(929)	(1,220)
Balance at end of period	<u>\$ 14,678</u>	<u>\$ 16,986</u>	<u>\$ 14,678</u>	<u>\$ 16,986</u>

Inventories

(In thousands)	As of	
	October 3, 2021	January 3, 2021
Photo-voltaic modules	\$ 178,957	\$ 170,013
Microinverters	13,467	16,774
Energy Storage	24,709	4,548
Other solar power system component materials	24,292	19,247
Inventories ^{1 2}	<u>\$ 241,425</u>	<u>\$ 210,582</u>

¹ A lien exists on \$176.6 million of our gross inventory as of October 3, 2021 in connection with a Loan and Security Agreement entered into on March 29, 2019. See Note 10. *Debt and Credit Sources*.

² Photovoltaic modules are classified as finished goods, while the remaining components of total inventories are classified as raw materials.

Prepaid Expenses and Other Current Assets

(In thousands)	As of	
	October 3, 2021	January 3, 2021
Deferred project costs	\$ 38,391	\$ 26,996
VAT receivables, current portion	973	1,174
Deferred costs for solar power systems	19,869	24,526
Prepaid taxes	107	205
Related party receivables	4,955	9,891
Other	29,086	31,459
Prepaid expenses and other current assets	<u>\$ 93,381</u>	<u>\$ 94,251</u>

Property, Plant and Equipment, Net

(In thousands)	As of	
	October 3, 2021	January 3, 2021
Manufacturing equipment ¹	\$ 13,352	\$ 17,134
Leasehold improvements	29,256	29,385
Solar power systems	8,601	30,110
Computer equipment	53,854	49,935
Furniture and fixtures	7,855	7,899
Work-in-progress	3,328	3,080
Property, plant and equipment, gross	116,246	137,543
Less: accumulated depreciation and impairment	(86,495)	(90,777)
Property, plant and equipment, net ²	\$ 29,751	\$ 46,766

¹ As of January 3, 2021 and October 3, 2021, manufacturing equipment is predominantly related to our equipment in our manufacturing facility in Hillsboro, Oregon.

² Property, plant and equipment is predominantly located in the U.S.

Other Long-term Assets

(In thousands)	As of	
	October 3, 2021	January 3, 2021
Equity investments with readily determinable fair value	\$ 77,683	\$ 614,148
Equity investments without readily determinable fair value	801	801
Equity investments with fair value option	8,374	9,924
Long-term inventory ¹	—	27,085
Cloud computing arrangements implementation costs ²	8,204	—
Software development costs ³	2,468	—
Long-term related party receivables	11,000	—
Long-term deferred project costs	11,202	5,758
Long-term prepaid taxes	4,145	3,677
Other	26,328	35,016
Other long-term assets	\$ 150,205	\$ 696,409

¹ Entire balance consists of finished goods under the safe harbor program. Refer to Note 9. *Equity Investments* for details.

² Includes our implementation costs incurred in cloud computing arrangements ("CCA") which are capitalized as other long-term assets in accordance with the guidance in ASC 350-40, *Internal-Use Software*.

³ Includes our external-use software development costs which are being capitalized in accordance with ASC 985-20, *Software to be Sold or Leased Externally*.

Accrued Liabilities

(In thousands)	As of	
	October 3, 2021	January 3, 2021
Employee compensation and employee benefits	\$ 20,327	\$ 23,312
Interest payable	3,830	8,796
Short-term warranty reserves	21,641	29,337
Restructuring reserve	2,538	2,808
Legal expenses	8,339	10,493
Taxes payable	4,126	25,968
Other	26,497	21,201
Accrued liabilities	<u>\$ 87,298</u>	<u>\$ 121,915</u>

Other Long-term Liabilities

(In thousands)	As of	
	October 3, 2021	January 3, 2021
Deferred revenue	\$ 41,528	\$ 44,927
Long-term warranty reserves	43,014	52,540
Unrecognized tax benefits	15,048	12,584
Long-term pension liability	5,685	5,185
Long-term deferred tax liabilities	1,950	13,468
Long-term taxes payable	2,234	2,234
Related party liabilities	1,458	1,458
Other	26,552	25,201
Other long-term liabilities	<u>\$ 137,469</u>	<u>\$ 157,597</u>

Accumulated Other Comprehensive Income

(In thousands)	As of	
	October 3, 2021	January 3, 2021
Cumulative translation adjustment	\$ 9,625	\$ 9,635
Net gain on long-term pension liability obligation	(250)	(250)
Net gain on long-term derivative financial instrument	—	(570)
Deferred taxes	—	(16)
Accumulated other comprehensive income	<u>\$ 9,375</u>	<u>\$ 8,799</u>

Note 5. BUSINESS DIVESTITURES

Sale of Commercial Projects

During the second quarter of fiscal 2021, we sold certain commercial projects including the underlying fixed assets and debt to SunStrong Capital Holdings, LLC ("SunStrong") for total consideration of \$8.9 million.

Upon closing, we received net cash consideration of \$2.8 million after holdbacks totaling \$0.4 million for certain retained obligations, and debt obligations repaid directly by the buyer totaling \$5.6 million which were related to our PNC Energy Capital loan. We assessed the recoverability of these holdbacks and included our best estimate of the amount recoverable in the future in our calculation of net loss on sale.

In evaluating the accounting treatment for this sale, the transaction was concluded to be a sale of a business in accordance with the guidance in ASC 805, *Business Combinations*. We recorded a loss of \$5.1 million, inclusive of \$0.1 million of transaction expenses, which was recorded and netted against "(gain) loss on business divestitures, net" in our unaudited condensed consolidated statements of operations for the nine months ended October 3, 2021.

The assets and liabilities of the commercial projects that were sold in the transaction are summarized below:

(In thousands)

Accounts receivable, net	\$	719
Prepaid expenses, other current assets, and cash		840
Property, plant and equipment, net		12,847
Total assets		14,406
Accrued liabilities		137
Short-term debt		614
Long-term debt		4,779
Other long-term liabilities		804
Total liabilities		6,334
Net assets	\$	8,072

Net proceeds received were as follows:

(In thousands)

Purchase price	\$	8,881
Transaction costs		(105)
Holdback receivables		(369)
Debt repaid directly by buyer		(5,585)
Net proceeds received	\$	2,822

Net loss on sale for the nine months ended October 3, 2021 was as follows:

(In thousands)

Net proceeds received	\$	2,822
Estimated receivable from amount held back for retained obligations		184
Book value of net assets sold		(8,072)
Net loss on sale	\$	(5,066)

Sale of Residential Leases

During the second quarter of fiscal 2021, we sold certain residential lease solar systems to SunStrong for total consideration of \$8.5 million.

In evaluating the accounting treatment for this sale, the transaction was concluded to be a sale of a business in accordance with the guidance in ASC 805, *Business Combinations*. We recorded a gain of \$5.3 million, inclusive of \$0.4 million of transaction expenses, which was recorded as "(gain) loss on business divestitures, net" in our unaudited condensed consolidated statements of operations for the nine months ended October 3, 2021.

The assets and liabilities related to the residential leases that were sold are summarized below:

(In thousands)

Accounts receivable, net	\$	253
Prepaid expenses and other current assets		825
Property, plant, and equipment, net		1,934
Solar power systems leased, net		186
Total assets		3,198
Accrued and other liabilities		106
Contract liabilities		332
Total liabilities		438
Net assets	\$	2,760

Net proceeds received were as follows:

(In thousands)

Purchase price	\$	8,500
Transaction costs		(449)
Net proceeds received	\$	8,051

Net gain on sale for the nine months ended October 3, 2021 was as follows:

(In thousands)

Net proceeds received	\$	8,051
Book value of net assets sold		(2,760)
Net gain on sale	\$	5,291

Note 6. FAIR VALUE MEASUREMENTS

Fair value is estimated by applying the following hierarchy, which prioritizes the inputs used to measure fair value into three levels and bases the categorization within the hierarchy upon the lowest level of input that is available and significant to the fair value measurement (observable inputs are the preferred basis of valuation):

- Level 1 — Quoted prices in active markets for identical assets or liabilities.
- Level 2 — Measurements are inputs that are observable for assets or liabilities, either directly or indirectly, other than quoted prices included within Level 1.
- Level 3 — Prices or valuations that require management inputs that are both significant to the fair value measurement and unobservable.

Assets and Liabilities Measured at Fair Value on a Recurring Basis

We measure certain assets and liabilities at fair value on a recurring basis. There were no transfers between fair value measurement levels during any presented period.

The following table summarizes our assets and liabilities measured and recorded at fair value on a recurring basis as of October 3, 2021 and January 3, 2021:

(In thousands)	October 3, 2021				January 3, 2021			
	Total Fair Value	Level 3	Level 2	Level 1	Total Fair Value	Level 3	Level 2	Level 1
Assets								
Other long-term assets:								
Equity investments with fair value option ("FVO")	\$ 8,374	\$ 8,374	\$ —	\$ —	\$ 9,924	\$ 9,924	\$ —	\$ —
Equity investments with readily determinable fair value	388,403	—	—	388,403	614,148	—	—	614,148
Total assets	<u>\$ 396,777</u>	<u>\$ 8,374</u>	<u>\$ —</u>	<u>\$ 388,403</u>	<u>\$ 624,072</u>	<u>\$ 9,924</u>	<u>\$ —</u>	<u>\$ 614,148</u>
Liabilities								
Other long-term liabilities:								
Interest rate swap contracts ¹	\$ —	\$ —	\$ —	\$ —	\$ 600	\$ —	\$ 600	\$ —
Total liabilities	<u>\$ —</u>	<u>\$ —</u>	<u>\$ —</u>	<u>\$ —</u>	<u>\$ 600</u>	<u>\$ —</u>	<u>\$ 600</u>	<u>\$ —</u>

¹ Our interest rate swap contracts were related to our PNC Energy Capital loan and were terminated during the second quarter of fiscal 2021 (see Note 10. *Debt and Credit Sources* for details).

Equity investments with fair value option ("FVO")

We have elected the fair value option in accordance with the guidance in ASC 825, *Financial Instruments*, for our investment in the SunStrong joint venture and SunStrong Partners, LLC ("SunStrong Partners"), to mitigate volatility in reported earnings that results from the use of different measurement attributes (see Note 9. *Equity Investments*). We initially computed the fair value for our investments consistent with the methodology and assumptions that market participants would use in their estimates of fair value with the assistance of a third-party valuation specialist. The fair value computation is updated using the same methodology on a quarterly basis considering material changes in the business of SunStrong and SunStrong Partners or other inputs. The investments are classified within Level 3 in the fair value hierarchy because we estimate the fair value of the investments using the income approach based on the discounted cash flow method which considered estimated future financial performance, including assumptions for, among others, forecasted contractual lease income, lease expenses, residual value of these lease assets and long-term discount rates, and forecasted default rates over the lease term and discount rates, some of which require significant judgment by management and are not based on observable inputs.

The following table summarizes movements in equity investments for the nine months ended October 3, 2021. There were no internal movements between Level 1 or Level 2 fair value measurements to or from Level 3 fair value measurements for the nine months ended October 3, 2021.

(In thousands)	Beginning balance as of January 3, 2021	Equity Distribution ¹	Additional Investment	Other adjustment ²	Ending balance as of October 3, 2021
Equity investments with FVO	\$9,924	\$(2,276)	\$—	\$ 726	\$ 8,374

¹ During the nine months ended October 3, 2021, we received \$2.3 million in cash proceeds from SunStrong Partners. The distribution reduced our equity investment balance in SunStrong Partners classified within "other long-term assets" on our unaudited condensed consolidated balance sheet.

² During the nine months ended October 3, 2021, we recognized \$0.7 million gain on change in valuation of equity investments within "other, net" in our unaudited condensed consolidated statement of operations. The gain was primarily due to change in forecasted cash flows of SunStrong, resulting from the sale by us to SunStrong of certain commercial projects (Refer to Note 5. *Business Divestitures*).

Level 3 significant unobservable inputs sensitivity

The following table summarizes the significant unobservable inputs used in Level 3 valuation of our investments carried at fair value as of October 3, 2021. Included in the table are the inputs and range of possible inputs that have an effect on the overall valuation of the financial instruments.

2021					
Assets:	Fair value	Valuation Technique	Unobservable input	Range (Weighted Average)	
Other long-term assets:					
Equity investments	\$	8,374	Discounted cash flows	Discount rate	12.5%-13% ¹
				Residual value	7.5% ¹
Total assets	\$	8,374			

¹ The primary unobservable inputs used in the fair value measurement of our equity investments, when using a discounted cash flow model, are the discount rate and residual value. Significant increases (decreases) in the discount rate in isolation would result in a significantly lower (higher) fair value measurement. We estimate the discount rate based on risk appropriate projected cost of equity. We estimate the residual value based on the contracted systems in place in the years being projected. Significant increases (decreases) in the residual value in isolation would result in a significantly higher (lower) fair value measurement.

Equity investments with readily determinable fair value

In connection with the divestment of our microinverter business to Enphase on August 9, 2018, we received 7.5 million shares of Enphase common stock (NASDAQ: ENPH). The common stock received was recorded as an equity investment with readily determinable fair value (Level 1), with changes in fair value recognized in net income in accordance with ASU 2016-01 *Recognition and Measurement of Financial Assets and Liabilities*. For the three and nine months ended October 3, 2021, we recorded losses of \$86.3 million and \$48.0 million, respectively, within "other, net" in our unaudited condensed consolidated statement of operations as compared to gains of \$155.4 million and \$274.4 million in the three and nine months ended September 27, 2020. During the three and nine months ended October 3, 2021, we sold one million shares of Enphase common stock, in open market transactions for cash proceeds of \$177.8 million. During the three and nine months ended September 27, 2020, we sold one million and two million shares of Enphase common stock, respectively, in open market transactions for cash proceeds of \$73.3 million and \$117.0 million, respectively.

Equity investments without readily determinable fair value

These equity investments are securities in privately-held companies without readily determinable market values. We periodically adjust the carrying value of our equity securities to cost less impairment, adjusted for observable price changes in orderly transactions for an identical or similar investment of the same issuer. Equity investments without readily determinable fair value are classified within Level 3 in the fair value hierarchy because we estimate the value based on valuation methods using a combination of observable and unobservable inputs including valuation ascribed to the issuing company in subsequent financing rounds, volatility in the results of operations of the issuers and rights and obligations of the securities we hold.

Note 7. RESTRUCTURING

January 2021 Restructuring Plan

During the first quarter of fiscal 2021, we adopted a restructuring plan to realign and optimize workforce requirements concurrent with the planned closure of our manufacturing facility in Hillsboro, Oregon. In connection with the restructuring plan, which included actions to be implemented in the first quarter of 2021 and expected to be completed by the third quarter of 2021, we expected the majority of our approximately 170 primarily manufacturing employees to exit over a period of three to six months. We expected to incur restructuring charges totaling approximately \$7.0 million to \$9.0 million, consisting primarily of severance benefits (between \$4.0 million and \$5.0 million) and real estate lease termination costs (between \$3.0 million and \$4.0 million).

In connection with the closure, in April 2021, we signed agreements with two independent third parties to sell certain assets and liabilities, as well as retain and engage certain employees at the facility providing R&D services. The proceeds for the assets and sale of R&D services, together with the assumption of certain liabilities, reduced our previously anticipated restructuring charges by approximately \$1.2 million.

As of October 3, 2021, we had incurred cumulative costs of approximately \$3.6 million in restructuring charges, primarily relating to the payment of severance benefits. Remaining activities on this January 2021 restructuring plan primarily relate to payroll for some employees expected to be incurred through 2022 concurrent with the end of the R&D services agreement.

December 2019 Restructuring Plan

During the fourth quarter of fiscal 2019, we adopted a restructuring plan to realign and optimize workforce requirements in light of changes to our business, including the Spin-Off. In connection with the restructuring plan, which included actions implemented in the fourth quarter of 2019, we expected between 145 and 160 non-manufacturing employees, representing approximately 3% of our global workforce, to exit over a period of approximately 12 to 18 months. Between 65 and 70 of these employees were expected in the legacy SunPower Technologies business unit and corporate, and most of whom exited our company following the Spin-Off, and the remainder of which exited upon completion of transition services. As the legacy SunPower Energy Services business unit refined its focus on distributed generation, storage, and energy services, 80 to 90 employees exited during the fourth fiscal quarter of 2019 and the first half of 2020. As of October 3, 2021, we had incurred cumulative costs of approximately \$11.0 million in restructuring charges consisting primarily of severance and retention benefits. The 2019 restructuring plan is substantially completed.

The following table summarizes the comparative periods-to-date restructuring charges by plan recognized in our unaudited condensed consolidated statements of operations:

(In thousands)	Three Months Ended		Nine Months Ended		Cumulative To Date
	October 3, 2021	September 27, 2020	October 3, 2021	September 27, 2020	
January 2021 Restructuring Plan:					
Severance and benefits	\$ (75)	\$ —	\$ 3,533	\$ —	\$ 3,533
Other costs ¹	1	—	36	—	36
Total January 2021 Restructuring Plan ²	(74)	—	3,569	—	3,569
December 2019 Restructuring Plan:					
Severance and benefits	(26)	(104)	793	2,784	10,826
Other costs ¹	—	—	112	—	159
Total December 2019 Restructuring Plan	(26)	(104)	905	2,784	10,985
Other Legacy Restructuring Plans	(130)	7	(130)	(46)	68,512
Total restructuring charges (credits)	\$ (230)	\$ (97)	\$ 4,344	\$ 2,738	\$ 83,066

¹ Other costs primarily represent associated legal and advisory services, and costs of relocating employees.

² A portion of the costs related to the plan were primarily comprised of real estate lease termination costs, amounting to \$2.5 million, and were classified as cost of revenues within our unaudited condensed consolidated statements of operations for the nine months ended October 3, 2021.

The following table summarizes the restructuring reserve activities during the nine months ended October 3, 2021:

(In thousands)	Nine months ended			
	January 3, 2021	Charges (Benefits)	(Payments) Recoveries	October 3, 2021
January 2021 Restructuring Plan:				
Severance and benefits	\$ —	\$ 3,533	\$ (1,938)	\$ 1,595
Other costs ¹	—	36	(36)	—
Total January 2021 Restructuring Plan	—	3,569	(1,974)	1,595
December 2019 Restructuring Plan:				
Severance and benefits	2,608	793	(2,458)	943
Other costs ¹	—	112	(112)	—
Total December 2019 Restructuring Plan	2,608	905	(2,570)	943
Other Legacy Restructuring Plans	200	(130)	(70)	—
Total restructuring reserve activities	\$ 2,808	\$ 4,344	\$ (4,614)	\$ 2,538

¹ Other costs primarily represent associated legal and advisory services, and costs of relocating employees.

Note 8. COMMITMENTS AND CONTINGENCIES

Facility and Equipment Leases

We lease certain facilities under non-cancellable operating leases from third parties. We also lease certain buildings under non-cancellable finance leases. Operating leases are subject to renewal options for periods ranging from one year to ten years.

We have disclosed quantitative information related to the lease contracts we have entered into as a lessee by aggregating the information based on the nature of asset such that the assets of similar characteristics and lease terms are shown within one single financial statement line item.

The table below presents the summarized quantitative information with regard to lease contracts we have entered into:

(In thousands)	Three Months Ended		Nine Months Ended	
	October 3, 2021	September 27, 2020	October 3, 2021	September 27, 2020
Operating leases:				
Operating lease expense	\$ 3,200	\$ 3,524	\$ 10,615	\$ 10,458
Sublease income	(81)	(111)	(292)	(166)
Rent expense	\$ 3,119	\$ 3,413	\$ 10,323	\$ 10,292
Cash paid for amounts included in the measurement of lease liabilities				
Operating cash flows for operating leases	\$ 3,473	\$ 7,117	\$ 12,073	\$ 14,314
Right-of-use assets obtained in exchange for leases	\$ 4,429	\$ 8,362	\$ 15,957	\$ 21,786
Weighted-average remaining lease term (in years) - operating leases	6.1	7.5	6.1	7.5
Weighted-average discount rate - operating leases	8.7 %	9 %	8.7 %	9 %

The future minimum lease payments to be paid under non-cancellable leases in effect as of October 3, 2021, are as follows (in thousands):

As of October 3, 2021	Operating Leases
2021 (remaining three months)	\$ 3,920
2022	15,805
2023	12,933
2024	9,100
2025	5,463
Thereafter	16,406
Total lease payments	63,627
Less: imputed interest	(14,919)
Total	\$ 48,708

Purchase Commitments

Future purchase obligations under non-cancellable purchase orders and long-term supply agreements as of October 3, 2021 are as follows:

(In thousands)	Fiscal 2021 (remaining three months)	Fiscal 2022	Fiscal 2023	Fiscal 2024	Fiscal 2025	Thereafter	Total ¹
Future purchase obligations	\$ 83,888	\$ 125,175	\$ 33,148	\$ 1,710	\$ 775	\$ 5,307	\$ 250,003

¹ Total future purchase obligations consisted of \$25.8 million related to non-cancellable purchase orders and \$224.2 million related to long-term supply agreements.

The future purchase obligations presented above primarily consist of commitments to purchase photovoltaic modules pursuant to the supply agreement with Maxeon Solar entered into on August 26, 2020, as amended, as well as commitments to purchase Module-Level Power Electronics ("MLPE") supplied by one vendor.

The terms of all our long-term supply agreements are reviewed annually by us and we assess the need for any accruals for estimated losses on adverse purchase commitments, such as lower of cost or net realizable value adjustments that will not be recovered by future sales prices, forfeiture of advanced deposits and liquidated damages, as necessary.

Product Warranties

The following table summarizes accrued warranty activities for the three and nine months ended October 3, 2021 and September 27, 2020:

(In thousands)	Three Months Ended		Nine Months Ended	
	October 3, 2021	September 27, 2020	October 3, 2021	September 27, 2020
Balance at the beginning of the period	\$ 66,785	\$ 92,399	\$ 81,877	\$ 101,380
Accruals for warranties issued during the period	3,791	5,682	15,641	13,356
Settlements and adjustments during the period	(5,921)	(9,688)	(32,863)	(26,343)
Balance at the end of the period	\$ 64,655	\$ 88,393	\$ 64,655	\$ 88,393

In some cases, we may offer customers the option to purchase extended warranties to ensure protection beyond the standard warranty period. In those circumstances, the warranty is considered a distinct service and we account for the extended warranty as a performance obligation and allocate a portion of the transaction price to that performance obligation. More frequently, customers do not purchase a warranty separately. In those situations, we account for the warranty as an assurance-type warranty, which provides customers with assurance that the product complies with agreed-upon specifications, and this does not represent a separate performance obligation. Such warranties are recorded separately as liabilities and presented within "accrued liabilities" and "other long-term liabilities" on our unaudited condensed consolidated balance sheets (see Note 4. Balance Sheet Components). Further, if we encounter issues related to the quality of our products or components of our products, we may institute corrective action plans, including proactive repair or replacement, delay or stop shipment of one or more products, the result of which may cause us to incur material costs and divert operational attention. We assess the impact of such issues and resulting warranty obligations on the sufficiency of our warranty accrual when the issue is known and amount to be incurred is probable and measurable.

Project Agreements with Customers

Project agreements entered into with our commercial and power plant customers often require us to undertake obligations including: (i) system output performance warranties, (ii) penalty payments or customer termination rights if the system we are constructing is not commissioned within specified time frames or other milestones are not achieved, and (iii) system put rights whereby we could be required to buy back a customer's system at fair value on specified future dates if certain minimum performance thresholds are not met for specified periods. Historically, our systems have generally performed above their performance warranty thresholds, and our output performance warranty payments to the customers have not been material. Also, there have been no cases in which we have had to buy back a system. As of October 3, 2021 and January 3, 2021, we had \$7.5 million and \$9.1 million, respectively, classified as "accrued liabilities," and \$2.7 million and \$3.1 million, respectively, classified as "other long-term liabilities" on our unaudited condensed consolidated balance sheets for such obligations.

Liabilities Associated with Uncertain Tax Positions

Total liabilities associated with uncertain tax positions were \$15.0 million and \$12.6 million as of October 3, 2021 and January 3, 2021, respectively. These amounts are included within "other long-term liabilities" on our unaudited condensed consolidated balance sheets in their respective periods as they are not expected to be paid within the next 12 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, if any, would be made for our liabilities associated with uncertain tax positions in Other long-term liabilities.

Indemnifications

We are a party to a variety of agreements under which we may be obligated to indemnify the counterparty with respect to certain matters. Typically, these obligations arise in connection with contracts and license agreements or the sale of assets, under which we customarily agree 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 including indemnification to customers under Section 48(c) of the Internal Revenue Code of 1986, as amended, regarding solar commercial investment tax credits ("ITCs") and U.S. Treasury Department ("U.S. Treasury") cash grant payments under Section 1603 of the American Recovery and Reinvestment Act (each a "Cash Grant"). Further, in connection with our sale of residential lease assets in fiscal 2018 to SunStrong, we provide Hannon Armstrong indemnification related to cash flow losses arising from a recapture of California property taxes on account of a change in ownership, recapture of federal tax attributes and cash flow losses from leases that do not generate the promised savings to homeowners. The maximum exposure to loss arising from the indemnification for SunStrong is limited to the consideration received for the solar power systems. In each of these circumstances, payment by us is typically subject to the other party making a claim to us that is contemplated by and valid under the indemnification provisions of the particular contract, which provisions are typically contract-specific, as well as bringing the claim under the procedures specified in the particular contract. These procedures typically allow us 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, our 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 or amount. In some instances, we may have recourse against third parties or insurance covering certain payments made by us.

In certain circumstances, we are contractually obligated to compensate customers and investors for losses they may suffer as a result of reductions in benefits received under ITCs and U.S. Treasury Cash Grant programs. The indemnity expires in conjunction with the statute of limitation and recapture periods in accordance with the underlying laws and regulations for such ITCs and related benefits. We apply for ITCs and Cash Grant incentives based on guidance provided by the Internal Revenue Service ("IRS") and the U.S. Treasury, which include assumptions regarding the fair value of the qualified solar power systems, among others. Certain of our development agreements, sale-leaseback arrangements, and financing arrangements with tax equity investors incorporate assumptions regarding the future level of incentives to be received, which in some instances may be claimed directly by our customers and investors. Generally, such obligations would arise as a result of reductions to the value of the underlying solar power systems as assessed by the IRS. At each balance sheet date, we assess and recognize, when applicable, the potential exposure from these obligations based on all the information available at that time, including any audits undertaken by the IRS. The maximum potential future payments that we could have to make under this obligation would depend on the difference between the eligible basis claimed on the tax filing for the solar energy systems sold or transferred to indemnified parties and the values that the IRS may determine as the eligible basis for the systems for purposes of claiming ITCs or Cash Grants. We use the eligible basis for tax filing purposes determined with the assistance of independent third-party appraisals to determine the ITCs that are passed through to and claimed by the indemnified parties. We continue to retain certain indemnities, specifically, around ITCs, Cash Grants and California property taxes, even after the underlying portfolio of assets is sold to a third party. For contracts that have such indemnification provisions, we recognize a liability under ASC 460, *Guarantees*, for the estimated premium that would be required by a guarantor to issue the same guarantee in a standalone arm's-length transaction with an unrelated party. We recognize such liabilities at the greater of the fair value of the indemnity or the contingent liability required to be recognized under ASC 450, *Contingencies*. We initially estimate the fair value of any such indemnities provided based on the cost of insurance policies that cover the underlying risks being indemnified and may purchase such policies to mitigate our exposure to potential indemnification payments. After an indemnification liability is recorded, we derecognize such amount typically upon expiration or settlement of the arrangement. As of October 3, 2021 and January 3, 2021, our provision was \$9.6 million and \$9.4 million, respectively, primarily for tax-related indemnifications.

SunPower is party to various supply agreements (collectively, the “Hemlock Agreements”) with Hemlock Semiconductor Operations LLC (f/k/a Hemlock Semiconductor Corporation) and its affiliate, Hemlock Semiconductor, LLC, for the procurement of polysilicon. In connection with the Spin-Off, SunPower and Maxeon Solar entered into an agreement pursuant to which Maxeon Solar received SunPower’s rights under the Hemlock Agreements (including SunPower’s deposits and advanced payments thereunder) and, in return, Maxeon Solar agreed to perform all of SunPower’s existing and future obligations under the Hemlock Agreements (including all take-or-pay obligations). While, as we remain a party to the Hemlock Agreements, we may contractually be liable to the vendor in case of non-payment by Maxeon Solar, we do not believe we have any current exposure under the Hemlock Agreements as of the quarter ended October 3, 2021. Maxeon Solar’s remaining obligations under the Hemlock Agreements amount to \$31.6 million and \$125.8 million for the remainder of fiscal 2021 and fiscal 2022, respectively. This is gross of prepayments of \$61.6 million as of October 3, 2021. This indemnity qualifies for the criteria for accounting under the guidance in ASC 460 which requires us to recognize such liabilities at the greater of the fair value of the indemnity or the contingent liability required to be recognized under ASC 450, *Contingencies*. As of the quarter ended October 3, 2021, our exposure to potential indemnification payments is deemed immaterial based on the information available to us.

Pursuant to the Separation and Distribution Agreement entered into by us and Maxeon Solar, we also agreed to indemnify Maxeon Solar for any liabilities arising out of certain existing litigation relating to businesses contributed to Maxeon Solar in connection with the Spin-Off. We expect to be actively involved in managing this litigation together with Maxeon Solar. The indemnity qualifies for the criteria for accounting under the guidance in ASC 460 and we have recorded the liability of litigation of \$4.3 million equal to the fair value of the guarantee provided as of the period ended October 3, 2021.

Legal Matters

We are a party to various litigation matters and claims that arise from time to time in the ordinary course of our business. While we believe that the ultimate outcome of such matters will not have a material adverse effect on us, their outcomes are not determinable and negative outcomes may adversely affect our financial position, liquidity, or results of operations.

Note 9. EQUITY INVESTMENTS

Our equity investments consist of equity investments with readily determinable fair value, investments without readily determinable fair value, equity investments accounted for using the fair value option, and equity method investments.

Our share of earnings (losses) from equity investments accounted for under the equity method is reflected as “Equity in earnings (losses) of unconsolidated investees” in our unaudited condensed consolidated statements of operations. Mark-to-market gains and losses on equity investments are reflected as “other, net” under other income (expense), net in our unaudited condensed consolidated statements of operations. The carrying value of our equity investments, classified as “other long-term assets” on our unaudited condensed consolidated balance sheets, are as follows:

(In thousands)	As of	
	October 3, 2021	January 3, 2021
<i>Equity investments with readily determinable fair value:</i>		
Enphase Energy, Inc.	\$ 388,403	\$ 614,148
Total equity investments with readily determinable fair value ¹	388,403	614,148
<i>Equity investments without readily determinable fair value:</i>		
Project entities	122	122
Other equity investments without readily determinable fair value	679	679
Total equity investments without readily determinable fair value	801	801
<i>Equity investments with fair value option:</i>		
SunStrong Capital Holdings, LLC	8,374	7,645
SunStrong Partners, LLC	—	2,279
Total equity investment with fair value option	8,374	9,924
Total equity investments	<u>\$ 397,578</u>	<u>\$ 624,873</u>

¹ During the three months ended October 3, 2021, we sold one million shares of Enphase common stock for cash proceeds. As of October 3, 2021, we currently have two million shares of Enphase common stock within current assets as short-term investments, and 0.5 million shares

of Enphase common stock within other long-term assets. Refer to Note 6. *Fair Value Measurements* and Note 4. *Balance Sheet Components* for details.

Variable Interest Entities ("VIEs")

A VIE is an entity that has either (i) insufficient equity to permit the entity to finance its activities without additional subordinated financial support, or (ii) equity investors who lack the characteristics of a controlling financial interest.

We follow guidance on the consolidation of VIEs that requires companies to utilize a qualitative approach to determine whether it is the primary beneficiary of a VIE. The process for identifying the primary beneficiary of a VIE requires consideration of the factors that indicate a party has the power to direct activities that most significantly impact the investees' economic performance, including powers granted to the investees' governing board and, to a certain extent, a company's economic interest in the investee. We analyze our investments in VIEs and classify them as either unconsolidated VIEs or consolidated VIEs (refer to our Form 10-K for the fiscal year ended January 3, 2021 for further details on our various VIE arrangements).

Unconsolidated VIEs

We have elected the FVO in accordance with the guidance in ASC 825, *Financial Instruments*, for our investments in SunStrong, SunStrong Partners, and 8point3 Holdings, our unconsolidated VIEs. Refer to Note 6. *Fair Value Measurements*.

Summarized Financial Information of Unconsolidated VIEs

The following table presents summarized financial statements for SunStrong, a significant investee, based on unaudited information provided to us by the investee:¹

(In thousands)	Three Months Ended		Nine Months Ended	
	October 3, 2021	September 27, 2020	October 3, 2021	September 27, 2020
Summarized statements of operations information:				
Revenues	\$ 34,363	\$ 31,299	\$ 100,157	\$ 90,056
Gross income (loss)	1,188	1,057	3,409	(5,839)
Net (loss) income	2,440	13,596	(40,633)	35,019

(In thousands)	As of	
	October 3, 2021	January 3, 2021
Summarized balance sheet information:		
Current assets	\$ 87,197	\$ 93,752
Long-term assets	1,536,690	1,378,382
Current liabilities	62,839	48,126
Long-term liabilities	1,219,489	1,130,484

¹ Note that amounts are reported one quarter in arrears as permitted by applicable guidance.

Related-Party Transactions with Investees

Related-party transactions and balances with SunStrong and SunStrong Partners are as follows:

(In thousands)	As of	
	October 3, 2021	January 3, 2021
Accounts receivable	\$ 31,302	\$ 16,767
Accrued liabilities	—	7,996
Contract liabilities	29,033	27,426

(In thousands)	Three Months Ended		Nine Months Ended	
	October 3, 2021	September 27, 2020	October 3, 2021	September 27, 2020
Revenues and fees received from investees for products/services	\$ 60,073	\$ 47,378	\$ 160,195	\$ 146,570
(Gain) loss on business divestitures, net ¹	—	—	(224)	—

¹ The gain relates to the net impact of the sales of businesses to SunStrong during the second quarter of fiscal 2021. Refer to Note 5. *Business Divestitures* for additional details on the sales.

Consolidated VIEs

For Solar Sail LLC ("Solar Sail") and Solar Sail Commercial Holdings, LLC ("Solar Sail Commercial"), a joint venture with Hannon Armstrong, our consolidated VIEs, total revenue was \$5.0 million and \$12.7 million for the three and nine months ended October 3, 2021, respectively. Total revenue was \$4.7 million and \$8.1 million for the three and nine months ended September 27, 2020, respectively. The assets of these consolidated VIEs are restricted for use only by the particular investee and are not available for our general operations. As of October 3, 2021, we had \$67.2 million of assets from the consolidated VIEs.

Note 10. DEBT AND CREDIT SOURCES

The following table summarizes our outstanding debt on our unaudited condensed consolidated balance sheets:

(In thousands)	October 3, 2021				January 3, 2021			
	Face Value	Short-term	Long-term	Total	Face Value	Short-term	Long-term	Total
Convertible debt:								
0.875% debentures due 2021	\$ —	\$ —	\$ —	\$ —	\$ 62,634	\$ 62,531	\$ —	\$ 62,531
4.00% debentures due 2023 ¹	424,995	—	423,370	423,370	425,000	—	422,443	422,443
CEDA loan	—	—	—	—	30,000	—	29,219	29,219
Other debt	109,445	66,304	42,082	108,386	126,283	97,059	27,228	124,287
	<u>\$ 534,440</u>	<u>\$ 66,304</u>	<u>\$ 465,452</u>	<u>\$ 531,756</u>	<u>\$ 643,917</u>	<u>\$ 159,590</u>	<u>\$ 478,890</u>	<u>\$ 638,480</u>

¹ The 4.00% debentures due 2023 with original principal amount of \$425.0 million was reduced by \$5.0 thousand during the first quarter of fiscal 2021 due to a bond conversion during the quarter.

As of October 3, 2021, the aggregate future contractual maturities of our outstanding debt, at face value, were as follows:

(In thousands)	Fiscal 2021 (remaining three months)	Fiscal 2022	Fiscal 2023	Fiscal 2024	Fiscal 2025	Thereafter	Total
Aggregate future maturities of outstanding debt	\$ 67,210	\$ 65	\$ 425,064	\$ 41,839	\$ 76	\$ 186	\$ 534,440

Convertible Debt

The following table summarizes our outstanding convertible debt:

(In thousands)	October 3, 2021			January 3, 2021		
	Carrying Value	Face Value	Fair Value ¹	Carrying Value	Face Value	Fair Value ¹
Convertible debt:						
0.875% debentures due 2021	\$ —	\$ —	\$ —	\$ 62,531	\$ 62,634	\$ 64,018
4.00% debentures due 2023	423,370	424,995	543,739	422,443	425,000	549,398
	<u>\$ 423,370</u>	<u>\$ 424,995</u>	<u>\$ 543,739</u>	<u>\$ 484,974</u>	<u>\$ 487,634</u>	<u>\$ 613,416</u>

¹ The fair value of the convertible debt was determined using Level 2 inputs based on quarterly market prices as reported by an independent pricing source.

Our outstanding convertible debentures are senior, unsecured obligations ranking equally with all of our existing and future senior unsecured indebtedness.

Loan Agreement with California Enterprise Development Authority ("CEDA")

In 2010, we borrowed the proceeds of the \$30.0 million aggregate principal amount of CEDA's tax-exempt Recovery Zone Facility Revenue Bonds (SunPower Corporation - Headquarters Project) Series 2010 (the "Bonds") under a loan agreement with CEDA. The Bonds mature on April 1, 2031 and bear interest at a fixed rate of 8.50% through maturity, and include customary covenants and other restrictions on us. As per the terms of the agreement, the bonds were subject to a 'make-whole' provision, wherein if retired prior to April 1, 2021, the Company has to 'make-whole' the bond holders for the full amount of unpaid interest through the term of the loan. After the make-whole provision expired in April 2021, the bonds can be retired any time at par value.

In April 2021, we repaid the outstanding principal amount of our \$30.0 million loan with CEDA.

Other Debt

We enter into other debt arrangements to finance our operations, including sometimes entering into project level non-recourse debt dependent on the needs of the project. As of October 3, 2021, we had other debt of \$108.4 million outstanding.

The following presents a summary of the other debt arrangements:

	Aggregate Carrying Value ¹		Balance Sheet Classification
(In thousands)	October 3, 2021	January 3, 2021	
Recourse Debt:			
PNC Energy Capital loan ²	\$ —	\$ 5,545	Short-term debt and Long-term debt
Asset-Backed Loan	\$ 41,662	\$ 32,690	Long-term debt
Safe Harbor	\$ 62,417	\$ 75,910	Short-term debt
Total Recourse Debt	<u>\$ 104,079</u>	<u>\$ 114,145</u>	
Non-Recourse Debt:			
Vendor financing and other debt	\$ 4,307	\$ 560	Short-term debt and Long-term debt
Construction project debt	\$ —	\$ 9,583	Short-term debt
Total Non-Recourse Debt	<u>\$ 4,307</u>	<u>\$ 10,143</u>	

¹ Based on the nature of the debt arrangements included in the table above, and our intention to fully repay or transfer the obligations at their face values plus any applicable interest, we believe their carrying value materially approximates fair value, which is categorized within Level 3 of the fair value hierarchy.

² In fiscal 2013, we entered into a financing agreement with PNC Energy Capital, LLC to finance our construction projects. Interest is calculated at a per annum rate equal to LIBOR plus 4.13%. These debt obligations, and corresponding interest rate swap contracts, were assumed by the buyer in our sale of commercial projects portfolio during the second quarter of fiscal 2021 (see Note 5. *Business Divestitures* for additional details).

Asset-Backed Loan with Bank of America

On March 29, 2019, we entered into a Loan and Security Agreement with Bank of America, N.A, which, together with subsequent amendments, provides a revolving credit facility secured by certain inventory and accounts receivable in the maximum aggregate principal amount of \$75.0 million. The Loan and Security Agreement contains negative and affirmative covenants, events of default and repayment and prepayment provisions customarily applicable to asset-backed credit facilities. The facility bears a floating interest rate of LIBOR plus an applicable margin, and matures on the earliest of (1) October 15, 2022 (a date that is 91 days prior to the maturity of our 4.00% debentures due 2023), (2) March 29, 2024, or (3) the termination of the commitments thereunder. The balance outstanding on the revolver was \$41.8 million and \$32.8 million, respectively, as of October 3, 2021 and January 3, 2021.

Note 11. RELATED-PARTY TRANSACTIONS

In connection with the Spin-Off, we entered into certain agreements with Maxeon Solar, including a transition services agreement, supply agreement, and collaboration agreement.

The below table summarizes our transactions with Maxeon Solar for the three and nine months ended October 3, 2021:

(In thousands)	Three Months Ended	Nine Months Ended
	October 3, 2021	October 3, 2021
Purchases of photovoltaic modules (recorded in cost of revenues)	\$ 61,967	\$ 167,313
Research and development expenses reimbursement received	\$ 7,736	\$ 25,759
Income from transition services agreement, net	\$ 468	\$ 5,211

The Company had the following balances related to transactions with Maxeon Solar as of October 3, 2021:

(In thousands)	As of	
	October 3, 2021	
Prepaid and other current assets	\$	2,265
Accrued liabilities	\$	7,838
Accounts payable	\$	29,906
Other long-term liabilities	\$	1,458

Refer to Note 2. *Transactions with Total and TotalEnergies SE*. for related-party transactions with Total and its affiliates and to Note 9. *Equity Investments* for related-party transactions with SunStrong and SunStrong Partners.

CEO Stock Purchase

In connection with his commencement of employment with the Company on April 19, 2021, Peter Faricy, SunPower Corporation's chief executive officer, was granted the right to purchase up to \$3.0 million in shares of SunPower's common stock based on the closing trading price on the date of purchase. For each share of common stock purchased within the 12-month period commencing on April 19, 2021, SunPower agreed to grant to Mr. Faricy one restricted stock unit (the "Matching RSUs"). The Matching RSUs vest in equal installments on each of the first two anniversaries of the last day of the calendar quarter in which Mr. Faricy purchases the related common stock. On April 26, 2021, Mr. Faricy purchased 101,730 shares of common stock for an aggregate of \$3.0 million and SunPower issued the equivalent Matching RSUs.

Note 12. INCOME TAXES

In the three months ended October 3, 2021, our income tax benefit of \$2.2 million on a loss from continuing operations before income taxes and equity in earnings of unconsolidated investees of \$86.5 million was primarily due to the deferred taxes on mark-to-market unrealized losses on equity investments. Our income tax provision of \$36.7 million in the three months ended September 27, 2020 on a profit from continuing operations before income taxes and equity in earnings of unconsolidated investees of \$146.4 million was primarily due to associated domestic tax expenses arising from the taxable gain related to the Spin-Off, and foreign withholding taxes from foreign dividend distributions.

In the nine months ended October 3, 2021, our income tax benefit of \$5.0 million on a loss from continuing operations before income taxes and equity in earnings of unconsolidated investees of \$64.0 million was primarily due to windfall benefits from stock-based compensation deduction and the true-up of estimated state tax liability. Our income tax provision of \$38.7 million in the nine months ended September 27, 2020 on a profit from continuing operations before income taxes and equity in earnings of unconsolidated investees of \$223.1 million was primarily due to domestic tax expense arising from the taxable gain related to the Spin-Off, and foreign withholding taxes from foreign dividend distributions.

During the three and nine months ended October 3, 2021, in accordance with FASB guidance for interim reporting of income tax, we have computed our provision for income taxes based on a projected annual effective tax rate. Estimates of the annual effective tax rate at the end of interim periods are, of necessity, based on evaluations of possible future events and transactions and may be subject to subsequent refinement or revision. If a reliable estimate cannot be made, the actual effective tax rate for the year to date may be the best estimate of the annual effective tax rate.

Total liabilities associated with uncertain tax positions were \$15.0 million and \$12.6 million as of October 3, 2021 and January 3, 2021, respectively. The increase of \$2.4 million was primarily due to amounts reclassified from deferred tax liability related to the treatment of equity investment tax gain for states.

Note 13. NET INCOME (LOSS) PER SHARE

We calculate basic net income (loss) per share by dividing earnings allocated to common stockholders by the basic weighted-average number of common shares outstanding for the period.

Diluted weighted-average shares is computed by using the basic weighted-average number of common shares outstanding plus any potentially dilutive securities outstanding during the period using the treasury-stock method and the if-converted method, except when their effect is anti-dilutive. Potentially dilutive securities include restricted stock units and the outstanding senior convertible debentures.

ASC 260 requires that companies use income from continuing operations as a "control number" or benchmark to determine whether potential common shares are dilutive or antidilutive. When calculating discontinued operations, we used the same number of potential common shares used in computing the diluted per-share amount of income from continuing operations in computing all other reported diluted per-share amounts, even if the effect will be antidilutive compared to their respective basic per-share amounts.

The following table presents the calculation of basic and diluted net income (loss) per share attributable to stockholders:

(In thousands, except per share amounts)	Three Months Ended		Nine Months Ended	
	October 3, 2021	September 27, 2020	October 3, 2021	September 27, 2020
Basic net (loss) income per share:				
Numerator:				
Net (loss) income attributable to stockholders - continuing operations	\$ (84,376)	\$ 109,450	\$ (57,554)	\$ 186,880
Net (loss) income attributable to stockholders - discontinued operations	—	(64,824)	—	(124,307)
Net (loss) income attributable to stockholders	<u>\$ (84,376)</u>	<u>\$ 44,626</u>	<u>\$ (57,554)</u>	<u>\$ 62,573</u>
Denominator:				
Basic weighted-average common shares	<u>172,885</u>	<u>170,113</u>	<u>172,242</u>	<u>169,646</u>
Basic net (loss) income per share - continuing operations	\$ (0.49)	\$ 0.64	\$ (0.33)	\$ 1.10
Basic net (loss) income per share - discontinued operations	—	(0.38)	—	(0.73)
Basic net (loss) income per share	<u>\$ (0.49)</u>	<u>\$ 0.26</u>	<u>\$ (0.33)</u>	<u>\$ 0.37</u>
Diluted net (loss) income per share:				
Numerator:				
Net (loss) income attributable to stockholders - continuing operations	\$ (84,376)	\$ 109,450	\$ (57,554)	\$ 186,880
Add: Interest expense on 0.875% debentures due 2021, net of tax	—	467	—	1,507
Add: Interest expense on 4.00% debentures due 2023, net of tax	—	3,358	—	10,066
Net (loss) income available to common stockholders - continuing operations	<u>(84,376)</u>	<u>113,275</u>	<u>\$ (57,554)</u>	<u>\$ 198,453</u>
Net (loss) income available to common stockholders - discontinued operations	<u>\$ —</u>	<u>\$ (64,824)</u>	<u>\$ —</u>	<u>\$ (124,307)</u>
Denominator:				
Basic weighted-average common shares	172,885	170,113	172,242	169,646
Effect of dilutive securities:				
Restricted stock units	—	3,560	—	3,354
0.875% debentures due 2021	—	7,785	—	10,056
4.00% debentures due 2023	—	17,068	—	17,068
Dilutive weighted-average common shares:	<u>172,885</u>	<u>198,526</u>	<u>172,242</u>	<u>200,124</u>
Dilutive net (loss) income per share - continuing operations	\$ (0.49)	\$ 0.57	\$ (0.33)	\$ 0.99
Dilutive net (loss) income per share - discontinued operations	—	(0.33)	—	(0.62)
Dilutive net (loss) income per share	<u>\$ (0.49)</u>	<u>\$ 0.24</u>	<u>\$ (0.33)</u>	<u>\$ 0.37</u>

The following is a summary of outstanding anti-dilutive potential common stock that was excluded from diluted net income per share attributable to stockholders in the following periods:

(In thousands)	Three Months Ended		Nine Months Ended	
	October 3, 2021	September 27, 2020	October 3, 2021	September 27, 2020
Restricted stock units	1,053	382	1,155	4,774
4.00% debentures due 2023	—	—	17,068	—

Note 14. STOCK-BASED COMPENSATION

The following table summarizes the consolidated stock-based compensation expense by line item in our unaudited condensed consolidated statements of operations:

(In thousands)	Three Months Ended		Nine Months Ended	
	October 3, 2021	September 27, 2020	October 3, 2021	September 27, 2020
Cost of revenues	\$ 1,049	\$ 968	\$ 3,021	\$ 2,154
Research and development	624	38	2,450	575
Sales, general, and administrative	3,053	3,448	14,305	10,657
Total stock-based compensation expense	\$ 4,726	\$ 4,454	\$ 19,776	\$ 13,386

Note 15. SEGMENT AND GEOGRAPHICAL INFORMATION

Our Residential, Light Commercial ("RLC") segment refers to sales of fully integrated solar, storage and home energy solutions and components, through a combination of our third-party installing and non-installing dealer network and resellers and our in-house sales team. The Commercial and Industrial Solutions ("C&I Solutions") segment refers to direct sales of turn-key EPC services and sales of energy under power purchase agreements ("PPAs"). Certain legacy businesses consisting of worldwide power plant project development and project sales that we are winding down, as well as U.S. manufacturing, are not significant to overall operations, and are deemed non-core to our other businesses and classified as "Others." Certain key cross-functional support functions and responsibilities including corporate strategy, treasury, tax and accounting support and services, among others, continue to be centrally managed within the Corporate function.

Each segment is managed by a business general manager that reports to our chief executive officer, as the chief operating decision maker ("CODM"), who reviews our business, manages resource allocations and measures performance of our activities between the RLC, C&I Solutions and Other segments. The CODM further views the business performance of each segment under two key sources of revenues - Dev Co and Power Co. Dev Co refers to our solar origination and installation revenue stream within each segment such as sale of solar power systems with our dealers and resellers network as well as installation and EPC revenue, while Power Co refers to our post-system sale recurring services revenue, mainly from asset management services and O&M services through our SunStrong partnership dealer services for RLC and our commercial dealer network for C&I Solutions. The risk profile of each revenue stream is different, and therefore the segregation of Dev Co and Power Co provides the CODM with appropriate information to review business performance and allocate resources to each segment.

Adjustments Made for Segment Purposes

Adjustments Based on International Financial Reporting Standards (“IFRS”)

Mark-to-market gain (loss) on equity investments

We recognize adjustments related to the fair value of equity investments with readily determinable fair value based on the changes in the stock price of these equity investments at every reporting period. Under U.S. GAAP, mark-to-market gains and losses due to changes in stock prices for these securities are recorded in earnings while under IFRS, an election can be made to recognize such gains and losses in other comprehensive income. Such an election was made by TotalEnergies SE. Further, we elected the FVO for some of our equity investments, and we adjust the carrying value of those investments based on their fair market value calculated periodically. Such option is not available under IFRS, and equity method accounting is required for those investments. Management believes that excluding these adjustments on equity investments is consistent with our internal reporting process as part of our status as a consolidated subsidiary of TotalEnergies SE and better reflects our ongoing results.

Other Adjustments

Intersegment gross margin

Our U.S. manufacturing operations that are part of the Others segment manufacture and sell solar modules to both operating segments, RLC and C&I Solutions, based on transfer prices determined by management's assessment of market-based pricing terms. Such intersegment sales and related costs are eliminated at the corporate level to derive our unaudited condensed consolidated financial results.

Gain or Loss on sale and impairment of residential lease assets

In fiscal 2018 and 2019, in an effort to sell all the residential lease assets owned by us, we sold membership units representing a 49% membership interest in majority of our residential lease business and retained a 51% membership interest. We record an impairment charge based on the expected fair value for a portion of residential lease assets portfolio that was retained. Any charges or credits on these remaining unsold residential lease assets, as well as corresponding depreciation savings, are excluded from our non-GAAP results as they are not reflective of ongoing operating results.

Stock-based compensation

Stock-based compensation relates primarily to our equity incentive awards. Stock-based compensation is a non-cash expense that is dependent on market forces that are difficult to predict. We believe that this adjustment for stock-based compensation provides investors with a basis to measure our core performance, including the ability to compare our performance with the performance of other companies, without the period-to-period variability created by stock-based compensation.

Gain or Loss on business divestitures, net

In the second quarter of fiscal 2021, we sold a portion of our residential lease business and certain commercial projects recognizing a gain and a loss, respectively relating to these business divestitures. We believe that it is appropriate to exclude this gain and loss from our segment results as they are not reflective of ongoing operating results.

Transaction-related costs

In connection with material transactions such as acquisition or divestiture of a business, we incur transaction costs including legal and accounting fees. We believe that it is appropriate to exclude these costs from our segment results as they would not have otherwise been incurred as part of our business operations and are therefore not reflective of ongoing operating results.

Executive transition costs

We incur non-recurring charges related to the hiring and transition of new executive officers. During the second quarter of fiscal 2021, we appointed a new chief executive officer and chief legal officer, and are investing resources in those executive transitions and in developing new members of management as we complete our restructuring transformation. We believe that it is appropriate to exclude these from our non-GAAP results as they are not reflective of ongoing operating results.

Business reorganization costs

In connection with the Spin-Off of Maxeon Solar in fiscal 2020, we incurred, and expect to continue to incur in upcoming quarters, non-recurring charges on third-party consulting expenses, primarily to enable the separation of shared information technology systems and applications. We believe that it is appropriate to exclude these from our non-GAAP results as they are not reflective of ongoing operating results.

Restructuring charges or credits

We incur restructuring expenses related to reorganization plans aimed towards realigning resources consistent with our global strategy and improving our overall operating efficiency and cost structure. Although we have engaged in restructuring activities in the past, each has been a discrete event based on a unique set of business objectives. We believe that it is appropriate to exclude these from our non-GAAP results as they are not reflective of ongoing operating results.

Results of operations of legacy business to be exited

We excluded the first quarter 2021 results of operations of our Hillsboro, Oregon, facility from our non-GAAP results given that the Hillsboro, Oregon, facility ceased revenue generation in the first fiscal quarter of 2021 and all subsequent activities are focused on the wind-down of operations. As such, they are not reflective of ongoing operating results.

Litigation

We may be involved in various litigation, claims, and proceedings that result in payments or recoveries. We exclude gains or losses associated with such events because the gains or losses do not reflect our underlying financial results in the period incurred. We believe that it is appropriate to exclude these from our non-GAAP results as they are not reflective of ongoing operating results.

Segment and Geographical Information

The following tables present segment results for the three and nine months ended October 3, 2021 for revenues, gross margin, and adjusted EBITDA, each as reviewed by the CODM, and their reconciliation to our unaudited condensed consolidated results under U.S. GAAP, as well as information about significant customers and revenues by geography based on the destination of the shipments, and property, plant and equipment, net by segment.

(In thousands):	Three Months Ended					
	October 3, 2021			September 27, 2020		
	Residential, Light Commercial	Commercial and Industrial Solutions	Others	Residential, Light Commercial	Commercial and Industrial Solutions	Others
Revenues from external customers:						
Dev Co	\$ 274,747	\$ 36,596	\$ 980	\$ 190,480	\$ 73,790	\$ 2,688
Power Co	6,888	3,728	697	7,230	544	75
Intersegment revenue	—	—	—	—	—	7,293
Total segment revenues as reviewed by CODM	\$ 281,635	\$ 40,324	\$ 1,677	\$ 197,710	\$ 74,334	\$ 10,056
Segment gross profit as reviewed by CODM	\$ 63,108	\$ (2,387)	\$ (19)	\$ 34,779	\$ 5,120	\$ (3,168)
Adjusted EBITDA	\$ 30,825	\$ (8,133)	\$ (649)	\$ 15,521	\$ 1,228	\$ (3,192)

(In thousands):	Nine Months Ended					
	October 3, 2021			September 27, 2020		
	Residential, Light Commercial	Commercial and Industrial Solutions	Others	Residential, Light Commercial	Commercial and Industrial Solutions	Others
Revenues from external customers:						
Dev Co	\$ 753,429	\$ 139,486	\$ 7,320	\$ 571,236	\$ 167,544	\$ 2,954
Power Co	20,262	15,277	2,562	18,904	7,721	19,846
Intersegment revenue	—	—	(11)	—	—	32,815
Total segment revenues as reviewed by CODM	\$ 773,691	\$ 154,763	\$ 9,871	\$ 590,140	\$ 175,265	\$ 55,615
Segment gross profit as reviewed by CODM	\$ 173,239	\$ 2,527	\$ 5,013	\$ 94,501	\$ 14,533	\$ (18,906)
Adjusted EBITDA	\$ 83,771	\$ (13,125)	\$ 3,615	\$ 31,346	\$ (1,244)	\$ (19,278)

Reconciliation of Segment Revenues to Unaudited Condensed Consolidated GAAP Revenues

(In thousands):	Three Months Ended		Nine Months Ended	
	October 3, 2021	September 27, 2020	October 3, 2021	September 27, 2020
Total segment revenues as reviewed by CODM	\$ 323,636	\$ 282,100	\$ 938,325	\$ 821,020
Adjustments to segment revenues:				
Intersegment elimination	—	(7,294)	11	(32,816)
Legacy utility and power plant projects	—	—	—	207
Construction revenue on solar services contracts	—	—	—	(5,392)
Results of operations of legacy business to be exited	—	—	625	—
Unaudited Condensed consolidated GAAP revenues	\$ 323,636	\$ 274,806	\$ 938,961	\$ 783,019

Reconciliation of Segment Gross Profit to Unaudited Condensed Consolidated GAAP Gross Profit
(In thousands):

	Three Months Ended		Nine Months Ended	
	October 3, 2021	September 27, 2020	October 3, 2021	September 27, 2020
Segment gross profit	\$ 60,702	\$ 36,731	\$ 180,779	\$ 90,128
Adjustments to segment gross profit:				
Intersegment elimination	(83)	1,752	785	11,604
Legacy utility and power plant projects	—	—	—	34
Legacy sale-leaseback transactions	—	—	—	(20)
Gain (loss) on sale and impairment of residential lease assets	249	469	1,262	1,375
Construction revenue on solar services contracts	—	—	—	(4,735)
Stock-based compensation expense	(1,055)	(623)	(3,011)	(1,653)
Amortization of intangible assets	—	(1,189)	—	(4,757)
Gain (loss) on business divestitures, net	(81)	—	(81)	—
Results of operations of legacy business to be exited	(82)	—	(9,179)	—
Unaudited Condensed consolidated GAAP gross profit	<u>\$ 59,650</u>	<u>\$ 37,140</u>	<u>\$ 170,555</u>	<u>\$ 91,976</u>

Reconciliation of Segments EBITDA to Loss before income taxes and equity in losses of unconsolidated investees

(In thousands):	Three Months Ended		Nine Months Ended	
	October 3, 2021	September 27, 2020	October 3, 2021	September 27, 2020
Segment adjusted EBITDA	\$ 22,043	\$ 13,557	\$ 74,261	\$ 10,824
Adjustments to segment adjusted EBITDA:				
Legacy utility and power plant projects	—	—	—	34
Legacy sale-leaseback transactions	—	—	—	(20)
Mark-to-market gain (loss) on equity investments	(86,254)	155,431	(47,238)	274,362
Gain (loss) on sale and impairment of residential lease assets	249	83	6,219	1,122
Construction revenue on solar services contracts	—	—	—	(4,734)
Stock-based compensation expense	(4,726)	(4,454)	(19,776)	(13,387)
Amortization of intangible assets	—	(1,189)	—	(4,759)
Gain (loss) on business divestitures, net	(81)	—	143	10,529
Transaction-related costs	(1,328)	—	(1,683)	(1,862)
Executive transition costs	(827)	—	(1,329)	—
Business reorganization costs	(1,045)	—	(2,903)	—
Restructuring credits (charges)	230	97	(4,344)	(2,738)
Results of operations of legacy business to be exited	(82)	—	(9,179)	—
Litigation	(1,623)	(395)	(10,326)	(880)
Gain on convertible debt repurchased	—	104	—	3,060
Net loss (income) attributable to noncontrolling interests	69	230	(1,482)	(2,512)
Cash interest expense, net of interest income	(6,628)	(6,918)	(22,149)	(24,102)
Depreciation and amortization	(1,929)	(5,156)	(8,757)	(12,589)
Corporate	(4,569)	(4,985)	(15,486)	(9,264)
(Loss) Income before income taxes and equity in loss of unconsolidated investees	\$ (86,501)	\$ 146,405	\$ (64,029)	\$ 223,084

Note 16. SUBSEQUENT EVENTS
Acquisition of Blue Raven Solar Holdings, LLC ("Blue Raven")

On October 4, 2021, we acquired all of the issued and outstanding membership interests of Blue Raven, a Delaware limited liability company, and thirty-five percent (35%) of the issued and outstanding membership interests in Albatross Software LLC, also a Delaware limited liability company and an affiliate of Blue Raven, pursuant to a Securities Purchase Agreement ("Purchase Agreement") dated as of October 4, 2021.

Pursuant to the Purchase Agreement, we agreed to pay up to \$145 million in cash consideration, subject to a customary working capital adjustment. While a majority of the cash consideration was paid upon closing, a portion was deferred and is payable at a later date, and is subject to continued employment of certain sellers as well as Blue Raven employees and service providers, in accordance with the terms of the Purchase Agreement as well as employment and retention agreements entered into with such individuals. The Company has also agreed to make an additional cash payment of up to \$20 million based on Blue Raven's revenue for the period beginning on September 13, 2021 and ending June 19, 2022 by meeting certain quantitative thresholds.

We are currently in the process of evaluating the business combination accounting considerations, including the consideration transferred and the initial purchase price allocation in accordance with the guidance in ASC 805, *Business Combinations*.

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

Cautionary Statement Regarding Forward-Looking Statements

You should read the following discussion of our financial condition and results of operations in conjunction with the unaudited condensed consolidated financial statements and the notes thereto included elsewhere in this Quarterly Report on Form 10-Q and the consolidated financial statements and the notes thereto included in our Annual Report on Form 10-K for the fiscal year ended January 3, 2021 filed with the Securities and Exchange Commission ("SEC") pursuant to the Securities Exchange Act of 1934, as amended (the "Exchange Act").

This Quarterly Report on Form 10-Q contains forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995. Forward-looking statements are statements that do not represent historical facts and may be based on underlying assumptions. We use words such as "anticipate," "believe," "continue," "could," "estimate," "expect," "intend," "may," "plan," "predict," "project," "potential," "seek," "should," "will," "would," 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 future financial results, expected operating results, business strategies, the sufficiency of our cash and our liquidity, projected costs and cost reduction measures, development and ramp of new products and improvements to our existing products, the impact of recently adopted accounting pronouncements, the adequacy of our agreements with our suppliers, our ability to monetize our solar projects, legislative actions and regulatory compliance, competitive positions, management's plans and objectives for future operations, including our plan to explore strategic alternatives for our C&I Solutions business, our ability to obtain financing, our plans regarding our senior convertible debentures, our ability to comply with debt covenants or cure any defaults, our ability to repay our obligations as they come due, our ability to continue as a going concern, trends in average selling prices, the success of our joint ventures and acquisitions, warranty matters, outcomes of litigation, interest and credit risk, general business and economic conditions in our markets, industry trends, the impact of changes in government incentives, expected restructuring charges, statements regarding the anticipated impact on our business of the COVID-19 pandemic and related public health measures, macroeconomic trends and uncertainties, and the likelihood of any impairment of project assets, long-lived assets, and investments. 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. Factors that could cause or contribute to such differences include, but are not limited to, those identified above, those discussed in the section titled "Risk Factors" included in this Quarterly Report on Form 10-Q and our Annual Report on Form 10-K for the fiscal year ended January 3, 2021, and our other filings with the SEC. These forward-looking statements should not be relied upon as representing our views as of any subsequent date, and we are under no obligation to, and expressly disclaim any responsibility to, update or alter our forward-looking statements, whether as a result of new information, future events or otherwise, except as required by applicable law.

Our fiscal year ends on the Sunday closest to the end of the applicable calendar year. All references to fiscal periods apply to our fiscal quarter or year, which end on the Sunday closest to the calendar month end. Unless the context otherwise requires, all references to "SunPower," the "Company," "we," "us," or "our" refer to SunPower Corporation and its subsidiaries.

Overview

SunPower is a leading solar technology and energy services provider that offers fully integrated solar, storage and home energy solutions to customers primarily in the United States and Canada through an array of hardware, software, and financing options and "Smart Energy" solutions. Our Smart Energy initiative is designed to add layers of intelligent control to homes, buildings, and grids—all personalized through easy-to-use customer interfaces. We are a leader in the U.S. Distributed Generation ("DG") storage and energy services market, providing customers control over electricity consumption and resiliency during power outages while providing cost savings to homeowners, businesses, governments, schools, and utilities through multiple offerings. Our sales channels include a strong network of both installing and non-installing dealers and resellers that operate in both residential and commercial markets as well as a group of talented and driven in-house sales teams within each segment engaged in direct sales to end customers. For more information about our business, please refer to the section titled "Part I. Item 1. Business" in our Annual Report on Form 10-K for the fiscal year ended January 3, 2021.

Results of Operations

Results of operations in dollars and as a percentage of total revenues were as follows:

	Three Months Ended			
	October 3, 2021		September 27, 2020	
	in thousands	% of Revenues	in thousands	% of Revenues
Total revenues	\$ 323,636	100	\$ 274,806	100
Total cost of revenues	263,986	82	237,666	87
Gross profit	59,650	18	37,140	13
Research and development	2,979	—	5,344	2
Sales, general, and administrative	51,169	16	35,462	13
Restructuring charges (credits)	(230)	—	(97)	—
Loss (gain) on sale and impairment of residential lease assets	—	—	386	—
Income from transition services agreement, net	(468)	—	(1,889)	(1)
Operating income (loss)	6,200	2	(2,066)	(1)
Other (expense) income, net	(92,701)	(29)	148,471	54
(Loss) income from continuing operations before income taxes and equity in earnings of unconsolidated investees	(86,501)	(27)	146,405	53
Benefits from (provision for) income taxes	2,194	1	(36,725)	(13)
Net (loss) income from continuing operations	(84,307)	(26)	109,680	40
Net (loss) income from discontinued operations, net of taxes	—	—	(64,566)	(24)
Net (loss) income	(84,307)	(26)	45,114	16
Net loss (income) from continuing operations attributable to noncontrolling interests	(69)	—	(230)	—
Net (income) loss from discontinued operations attributable to noncontrolling interests	—	—	(258)	—
Net loss (income) attributable to noncontrolling interests	(69)	—	(488)	—
Net (loss) income from continuing operations attributable to stockholders	(84,376)	(26)	109,450	40
Net (loss) income from discontinued operations attributable to stockholders	—	—	(64,824)	(24)
Net (loss) income attributable to stockholders	\$ (84,376)	(26)	\$ 44,626	16

	Nine Months Ended			
	October 3, 2021		September 27, 2020	
	in thousands	% of Revenues	in thousands	% of Revenues
Total revenues	\$ 938,961	100	\$ 783,019	100
Total cost of revenues	768,406	82	691,043	88
Gross profit	170,555	18	91,976	12
Research and development	12,705	1	19,106	2
Sales, general, and administrative	155,643	17	112,193	14
Restructuring charges (credits)	4,344	—	2,738	—
(Gain) loss on sale and impairment of residential lease assets	(294)	—	253	—
(Gain) loss on business divestitures, net	(224)	—	(10,458)	(1)
Income from transition services agreement, net	(5,211)	—	(1,889)	—
Operating income (loss)	3,592	—	(29,967)	(3)
Other (expense) income, net	(67,621)	(7)	253,051	32
(Loss) income from continuing operations before income taxes and equity in earnings of unconsolidated investees	(64,029)	(7)	223,084	29
Benefits from (provision for) income taxes	4,993	1	(38,716)	(5)
Net (loss) income from continuing operations	(59,036)	(6)	184,368	24
Net (loss) income from discontinued operations, net of taxes	—	—	(122,994)	(16)
Net (loss) income	(59,036)	(6)	61,374	8
Net loss (income) from continuing operations attributable to noncontrolling interests	1,482	—	2,512	—
Net (income) loss from discontinued operations attributable to noncontrolling interests	—	—	(1,313)	—
Net loss (income) attributable to noncontrolling interests	1,482	—	1,199	—
Net (loss) income from continuing operations attributable to stockholders	(57,554)	(6)	186,880	24
Net (loss) income from discontinued operations attributable to stockholders	—	—	(124,307)	(16)
Net (loss) income attributable to stockholders	\$ (57,554)	(6)	\$ 62,573	8

Total Revenues

Our total revenues during the three and nine months ended October 3, 2021 increased by 18% and 20%, as compared to the three and nine months ended September 27, 2020, respectively, due to an increase in revenue from our RLC segment. Changes by segments are discussed below in detail.

One customer in our RLC segment accounted for approximately 19% and 17% of total revenues for the three and nine months ended October 3, 2021, respectively.

One customer in our RLC segment accounted for approximately 17% and 19% of total revenues for the three and nine months ended September 27, 2020, respectively.

Revenues - by Segment

A description of our segments, along with other required information, can be found in Note 15, "Segment and Geographical Information" of the consolidated financial statements in Item 1. *Financial Statements*, which is incorporated herein by reference. Below, we have further discussed changes in revenue for each segment.

(In thousands, except percentages)	Three Months Ended			Nine Months Ended		
	October 3, 2021	September 27, 2020	% Change	October 3, 2021	September 27, 2020	% Change
Residential, Light Commercial	\$ 281,635	\$ 197,710	42 %	\$ 773,691	\$ 590,140	31 %
Commercial and Industrial Solutions	40,324	74,334	(46)%	154,763	175,265	(12)%
Others	1,677	10,056	(83)%	9,871	55,615	(82)%
Intersegment and GAAP adjustments ¹	—	(7,294)	100 %	636	(38,001)	102 %
Total revenues	\$ 323,636	\$ 274,806	18 %	\$ 938,961	\$ 783,019	20 %

¹ Represents intersegment eliminations and adjustments to segment revenues to determine consolidated GAAP revenues. Refer to details of reconciling items in Note 15. *Segment and Geographical Information* of the consolidated financial statements.

Residential, Light Commercial

Revenue for the segment increased by 42% and 31% during the three and nine months ended October 3, 2021, respectively, as compared to the three and nine months ended September 27, 2020, primarily due to a higher volume in residential cash and loan channel, and higher volume of residential new home lease channel.

Commercial and Industrial Solutions

Revenue for the segment decreased by 46% during the three months ended October 3, 2021 as compared to the three months ended September 27, 2020, primarily due to a decrease in the number of development projects and cash sales, as well as lower EPC revenue.

Revenue for the segment decreased by 12% during the nine months ended October 3, 2021 as compared to the nine months ended September 27, 2020, primarily due to a decrease in the number of development projects and cash sales and EPC revenue, partially offset by a one-time incentive revenue on completion of the sale of a development project.

Others

Revenue for the segment decreased by 83% and 82% during the three and nine months ended October 3, 2021, respectively, as compared to the three and nine months ended September 27, 2020, primarily due to the discontinuation of manufacturing in our Hillsboro, Oregon facility in the first and second quarters of fiscal 2021, as well as lower O&M revenue as a result of the sale of our O&M services contracts and related assets and liabilities during the second quarter of fiscal 2020.

Total Cost of Revenues and Gross Margin

Our total cost of revenues increased by 11% during the three months ended October 3, 2021 as compared to the three months ended September 27, 2020, primarily due to higher volume in residential cash, loan, and new home lease channels, in the RLC segment.

Our total cost of revenues increased by 11% during the nine months ended October 3, 2021 as compared to the nine months ended September 27, 2020, primarily due to higher volume in residential cash, loan, and new home lease channels, higher digital and consulting spending during fiscal 2021 in our RLC and C&I Solutions segments, as well as an increase in cost of sales for development projects due to higher installation costs. This was offset by a decrease in cost of revenues in our Others segment due to the discontinuation of manufacturing in Hillsboro, Oregon facility, in the first quarter of fiscal 2021.

Our gross margin increased by 4 percentage points and 6 percentage points during the three and nine months ended October 3, 2021, respectively, as compared to the three and nine months ended September 27, 2020, due to a strong contribution from our RLC segment. Changes by segments are discussed below in detail.

Total Cost of Revenues and Gross Margin - by Segment

(In thousands, except percentages)	Three Months Ended			Nine Months Ended		
	October 3, 2021	September 27, 2020	% Change	October 3, 2021	September 27, 2020	% Change
Cost of Revenues						
Residential, Light Commercial	\$ 218,527	\$ 162,931	34 %	\$ 600,452	\$ 495,639	21 %
Commercial and Industrial Solutions	42,711	69,214	(38)%	152,236	160,732	(5)%
Others	1,696	13,224	(87)%	4,858	74,521	(93)%
Intersegment and GAAP adjustments ¹	1,052	(7,703)	114 %	10,860	(39,849)	127 %
Total cost of revenues	<u>\$ 263,986</u>	<u>\$ 237,666</u>	11 %	<u>\$ 768,406</u>	<u>\$ 691,043</u>	11 %
Gross Margin						
Residential, Light Commercial	22 %	18 %		22 %	16 %	
Commercial and Industrial Solutions	(6)%	7 %		2 %	8 %	
Others	(1)%	(32)%		51 %	(34)%	
Intersegment and GAAP adjustments ¹	— %	(6)%		(1,608)%	(5)%	
Total gross margin percentage	18 %	14 %		18 %	12 %	

¹ Represents intersegment eliminations and adjustments to segment revenue to determine consolidated GAAP revenue. Refer to details of reconciling items in Note 15. *Segment and Geographical Information* of the consolidated financial statements.

Residential, Light Commercial

Gross margin for the segment increased by 4 percentage points and 6 percentage points during the three and nine months ended October 3, 2021, respectively, as compared to the three and nine months ended September 27, 2020, primarily due to a higher volume of residential cash, loan and new home lease channels.

Commercial and Industrial Solutions

Gross margin for the segment decreased by 13 percentage points and 6 percentage points during the three and nine months ended October 3, 2021, respectively, as compared to the three and nine months ended September 27, 2020, primarily due to a decrease in the number of sales of development projects and lower EPC revenue.

Others

Gross margin for the segment increased by 31 percentage points and 85 percentage points during the three and nine months ended October 3, 2021, respectively, as compared to the three and nine months ended September 27, 2020, primarily due to recognition of revenue upon reaching of a milestone on the sale of one legacy power plant project, that resulted in 100% margin, discontinuation of manufacturing at our Hillsboro, Oregon facility, in the first quarter of fiscal 2021, and lower O&M cost of revenue due to the sale of our O&M service contracts and related assets and liabilities during the second quarter of fiscal 2020.

Research and Development ("R&D")

(In thousands, except percentages)	Three Months Ended			Nine Months Ended		
	October 3, 2021	September 27, 2020	% Change	October 3, 2021	September 27, 2020	% Change
R&D	\$ 2,979	\$ 5,344	(44)%	\$ 12,705	\$ 19,106	(34)%
As a percentage of revenues	— %	2 %		1 %	2 %	

R&D expense decreased by \$2.4 million, or 44%, during the three months ended October 3, 2021, as compared to the three months ended September 27, 2020, primarily due to higher capitalization of labor costs on software development after reaching technological feasibility under ASC 985-20 in the last quarter of fiscal 2020.

R&D expense decreased by \$6.4 million, or 34%, during the nine months ended October 3, 2021, as compared to the nine months ended September 27, 2020, primarily due to higher capitalization of labor costs on software development after reaching technological feasibility under ASC 985-20 in the last quarter of fiscal 2020, as well as a one-time credit received from Department of Energy for qualified expenses in the second quarter of fiscal 2021.

Sales, General, and Administrative ("SG&A")

(In thousands, except percentages)	Three Months Ended			Nine Months Ended		
	October 3, 2021	September 27, 2020	% Change	October 3, 2021	September 27, 2020	% Change
SG&A	\$ 51,169	\$ 35,462	44 %	\$ 155,643	\$ 112,193	39 %
As a percentage of revenues	16 %	13 %		17 %	14 %	

SG&A expenses increased by \$15.7 million, or 44%, during the three months ended October 3, 2021 as compared to the three months ended September 27, 2020, primarily due to higher labor costs from incremental hires, higher marketing costs and customer acquisition charges, increase in accounting and legal consulting charges related to strategic transactions, and higher commissions provided in fiscal 2021 compared to fiscal 2020.

SG&A expenses increased by \$43.5 million, or 39%, during the nine months ended October 3, 2021 as compared to the nine months ended September 27, 2020, primarily due to higher costs on litigation, increased labor from incremental hires as well as higher third-party consulting costs, accelerated vesting of stock held by former CEO, as well as cost saving actions related to the COVID-19 pandemic in the second quarter of fiscal 2020, primarily being reduction in salaries of executive officers.

Restructuring (credits) charges

(In thousands, except percentages)	Three Months Ended			Nine Months Ended		
	October 3, 2021	September 27, 2020	% Change	October 3, 2021	September 27, 2020	% Change
Restructuring (credits) charges	\$ (230)	\$ (97)	137 %	\$ 4,344	\$ 2,738	59 %
As a percentage of revenues	— %	— %		— %	— %	

Restructuring credits increased by \$0.1 million, or 137%, during the three months ended October 3, 2021 as compared to the three months ended September 27, 2020, primarily due to recoveries of restructuring expenses previously accrued for retention payments.

Restructuring charges increased by \$1.6 million, or 59%, during the nine months ended October 3, 2021 as compared to the nine months ended September 27, 2020, primarily due to charges incurred during the first and second quarters of fiscal 2021 related to the restructuring plan adopted in connection with the closure of our Hillsboro, Oregon manufacturing facility during the first quarter of fiscal 2021.

See "Item 1. Financial Statements-Note 7. *Restructuring*" in the Notes to the unaudited condensed consolidated financial statements in this Quarterly Report on Form 10-Q for further information regarding our restructuring plans.

(Gain) loss on sale and impairment of residential lease assets

(In thousands, except percentages)	Three Months Ended			Nine Months Ended		
	October 3, 2021	September 27, 2020	% Change	October 3, 2021	September 27, 2020	% Change
(Gain) loss on sale and impairment of residential lease assets	\$ —	\$ 386	(100)%	\$ (294)	\$ 253	(216)%
As a percentage of revenues	— %	— %		— %	— %	

(Gain) loss on sale and impairment of residential lease assets decreased by \$0.4 million during the three months ended October 3, 2021, as compared to the three months ended September 27, 2020, primarily due to the sale of a portion of on-balance sheet residential lease portfolio in the second quarter of fiscal 2021, and no impairment deemed necessary in the current quarter on the remaining portfolio.

(Gain) loss on sale and impairment of residential lease assets increased by \$0.5 million during the nine months ended October 3, 2021, as compared to the nine months ended September 27, 2020, primarily due to gain on sale of a portion of on-balance sheet residential lease portfolio in the second quarter of fiscal 2021.

(Gain) loss on business divestitures, net

(In thousands, except percentages)	Three Months Ended			Nine Months Ended		
	October 3, 2021	September 27, 2020	% Change	October 3, 2021	September 27, 2020	% Change
(Gain) loss on business divestitures, net	\$ —	\$ —	100 %	\$ (224)	\$ (10,458)	(98)%
As a percentage of revenues	— %	— %		— %	(1)%	

(Gain) loss on business divestitures, net declined by \$10.2 million during the nine months ended October 3, 2021 as compared to the nine months ended September 27, 2020, primarily due to the gain on sale of \$10.5 million of our O&M business recorded in the quarter ended September 27, 2020 compared to the aggregate net gain on sale of \$0.2 million of our commercial projects and residential leases recorded in the second quarter of fiscal 2021.

Income from transition services agreement, net

(In thousands, except percentages)	Three Months Ended			Nine Months Ended		
	October 3, 2021	September 27, 2020	% Change	October 3, 2021	September 27, 2020	% Change
Income from transition services agreement, net	\$ (468)	\$ (1,889)	(75)%	\$ (5,211)	\$ (1,889)	176 %
As a percentage of revenues	— %	(1)%		— %	— %	

In connection with the Spin-Off, we and Maxeon Solar entered into a transition services agreement under which we are providing certain labor and non-labor services to Maxeon Solar and received limited services with respect to certain shared processes following the Spin-Off. The term of the transition services agreement was 12 months, extendable for up to an additional 180 days, and the services are billed at cost plus a standard mark-up. While most services under the agreement have ended, we extended the term of certain services mainly relating to the transition of technology and software applications currently shared by the two companies. We recorded \$0.5 million and \$5.2 million of income for services provided under the transition services agreement, net of services provided by Maxeon Solar, resulting in a reduction to operating expenses on the consolidated statement of operations during the three and nine months ended October 3, 2021, respectively.

Other (Expense) Income, Net

(In thousands, except percentages)	Three Months Ended			Nine Months Ended		
	October 3, 2021	September 27, 2020	% Change	October 3, 2021	September 27, 2020	% Change
Interest income	\$ 83	\$ 104	(20)%	\$ 249	\$ 682	(63)%
Interest expense	(6,710)	(7,090)	(5)%	(22,396)	(24,731)	(9)%
Other income (expense):						
Other, net	(86,074)	155,457	(155)%	(45,474)	277,100	(116)%
Other (expense) income, net	\$ (92,701)	\$ 148,471	(162)%	\$ (67,621)	\$ 253,051	(127)%
As a percentage of revenues	(29)%	54 %		(7)%	32 %	

Interest expense decreased by \$0.4 million and \$2.3 million during the three and nine months ended October 3, 2021, respectively, primarily due to the repayment of our convertible debentures during the second quarter of fiscal 2021, as well as the repurchase of our convertible debentures during the first and third quarters of fiscal 2020.

Other income decreased year over year by \$241.5 million and \$322.6 million in the three and nine months ended October 3, 2021, respectively, primarily due to a loss of \$86.3 million and \$48.0 million on equity investments with a readily determinable fair value, in the three and nine months ended October 3, 2021, as compared to a gain of \$155.4 million and \$274.4 million in the three and nine months ended September 27, 2020, respectively.

Income Taxes

(In thousands, except percentages)	Three Months Ended			Nine Months Ended		
	October 3, 2021	September 27, 2020	% Change	October 3, 2021	September 27, 2020	% Change
Benefits from (provision for) income taxes	\$ 2,194	\$ (36,725)	(106)%	\$ 4,993	\$ (38,716)	(113)%
As a percentage of revenues	1 %	(13)%		1 %	(5)%	

In the three months ended October 3, 2021, our income tax benefit of \$2.2 million on a loss from continuing operations before income taxes and equity in earnings of unconsolidated investees of \$86.5 million was primarily due to the deferred taxes on mark-to-market unrealized losses on equity investments. Our income tax provision of \$36.7 million in the three months ended September 27, 2020 on a profit from continuing operations before income taxes and equity in earnings of unconsolidated investees of \$146.4 million was primarily due to associated domestic tax expenses arising from the taxable gain related to the Spin-Off, and foreign withholding taxes from foreign dividend distributions.

In the nine months ended October 3, 2021, our income tax benefit of \$5.0 million on a loss from continuing operations before income taxes and equity in earnings of unconsolidated investees of \$64.0 million was primarily due to windfall benefits from stock-based compensation deduction and the true-up of estimated state tax liability. Our income tax provision of \$38.7 million in the nine months ended September 27, 2020 on a profit from continuing operations before income taxes and equity in earnings of unconsolidated investees of \$223.1 million was primarily due to domestic tax expense arising from the taxable gain related to the Spin-Off, and foreign withholding taxes from foreign dividend distributions.

As of the end of the third quarter of fiscal 2021, as part of our continuing operations, an insignificant amount of the accumulated foreign earnings was located outside of the United States and may be subjected to foreign income tax or withholding tax liability upon repatriations. However, the accumulated foreign earnings are intended to be indefinitely reinvested in our foreign subsidiaries; therefore, no such foreign taxes have been provided. Determination of the amount of unrecognized deferred tax liability related to these earnings is not practicable.

We record a valuation allowance to reduce our deferred tax assets in the United States and Mexico to the amount that is more likely than not to be realized. 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 tax in the period of adjustment.

Net (Income) Loss Attributable to Noncontrolling Interests

(In thousands, except percentages)	Three Months Ended			Nine Months Ended		
	October 3, 2021	September 27, 2020	% Change	October 3, 2021	September 27, 2020	% Change
Net (income) loss attributable to noncontrolling interests	\$ (69)	\$ (230)	(70)%	\$ 1,482	\$ 2,512	(41)%

In September 2019, we entered the Solar Sail LLC ("Solar Sail") and Solar Sail Commercial Holdings, LLC ("Solar Sail Commercial") joint ventures with Hannon Armstrong Sustainable Infrastructure Capital, Inc. ("Hannon Armstrong"), to finance the purchase of 200 megawatts of panel inventory in accordance with IRS safe harbor guidance, to preserve the 30% federal ITC for third-party owned commercial and residential systems. We determined that we hold controlling interests in Solar Sail and Solar Sail Commercial and therefore we have fully consolidated these entities. We apply the hypothetical liquidation at book value ("HLBV") method in allocating recorded net income (loss) to each investor based on the change in the reporting period, of the amount of net assets of the entity to which each investor would be entitled to under the governing contractual arrangements in a liquidation scenario.

The net (income) loss attributable to noncontrolling interests decreased by \$0.2 million for the three months ended October 3, 2021 as compared to the three months ended September 27, 2020, primarily due to lower allocation of net income including tax credits and accelerated tax depreciation benefits, using the HLBV method, to noncontrolling interests in Solar Sail and Solar Sail Commercial.

The net (income) loss attributable to noncontrolling interests decreased by \$1.0 million for the nine months ended October 3, 2021, compared to the nine months ended September 27, 2020, primarily due to higher allocation of net loss including tax credits and accelerated tax depreciation benefits, using the HLBV method, to noncontrolling interests in Solar Sail and Solar Sail Commercial.

Critical Accounting Estimates

We prepare our unaudited condensed consolidated financial statements in conformity with U.S. GAAP, which requires management to make estimates and assumptions that affect the amounts of assets, liabilities, revenues, and expenses recorded in our financial statements. We base our estimates on historical experience and on various other assumptions that we believe to be reasonable under the circumstances, the results of which form the basis for making judgments about the carrying values of assets and liabilities that are not readily apparent from other sources.

These estimates may change as new events occur and additional information is obtained. Actual results may differ from these estimates under different assumptions and conditions.

There were no significant changes in our critical accounting estimates during the fiscal quarter ended October 3, 2021 compared to those previously disclosed in "Critical Accounting Estimates" in "Management's Discussion and Analysis of Financial Condition and Results of Operations" included in our Annual Report on Form 10-K for the fiscal year ended January 3, 2021.

Liquidity and Capital Resources

Liquidity

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

(In thousands)	Nine Months Ended	
	October 3, 2021	September 27, 2020
Net cash used in operating activities	\$ (42,065)	\$ (202,513)
Net cash provided by (used in) investing activities	\$ 185,635	\$ (10,869)
Net cash provided by (used in) financing activities	\$ (109,536)	\$ 104,268

Operating Activities

Net cash used in operating activities for the nine months ended October 3, 2021 of \$42.1 million consisted of net income adjusted for certain non-cash items and changes in operating assets and liabilities.

The \$160.4 million decrease in cash used in operations in the nine months ended October 3, 2021 compared to the corresponding nine months ended September 27, 2020, was primarily due a lower net loss in the current fiscal year compared to the prior fiscal year, after excluding non-cash items, most significantly, the Enphase mark-to-market adjustment, as well as lower outflow on contract assets resulting from a collection of payment upon a milestone accomplishment in the current fiscal year.

Investing Activities

Net cash provided by investing activities for the nine months ended October 3, 2021 of \$185.6 million primarily consisted of proceeds from business divestitures, net of cash, and proceeds from sale of equity investments, partially offset by purchases of property, plant, and equipment and investments in intangible assets.

The \$196.5 million increase in net cash provided by investing activities in the nine months ended October 3, 2021 compared to the corresponding nine months ended September 27, 2020, primarily resulted from higher cash outflow during the nine months ended September 27, 2020, due to cash outflow upon the Maxeon Solar Spin-Off, net of proceeds, as well as lower proceeds from sale of equity investments in the third quarter of fiscal 2020.

Financing Activities

Net cash used in financing activities for the nine months ended October 3, 2021 of \$109.5 million primarily consisted of cash paid for repurchase and retirement of convertible debt, net repayment of other debt and purchase of stock for tax withholding obligations on vested restricted stock.

The \$213.8 million increase in net cash used in financing activities in the nine months ended October 3, 2021 compared to the corresponding nine months ended September 27, 2020, primarily resulted from proceeds of Maxeon Solar convertible debt in the third quarter of fiscal 2020 prior to the spin-off, and higher net repayment of all other debt.

Capital Resources

As of October 3, 2021, we had unrestricted cash and cash equivalents of \$268.6 million as compared to \$232.8 million as of January 3, 2021. These cash balances were held primarily in the United States; however, we had approximately \$1.2 million held outside of the United States. This offshore cash is used to fund our business operations in Mexico, Canada, and the Asia Pacific region, which require local payment for payroll, materials, and other expenses. We use our available cash on-hand and short term equity investment, as well as various types of recourse and non-recourse debt as a primary source of funding for our operations, capital expenditure and mergers and acquisitions.

Our C&I Solutions segment requires capital investment on development of large commercial solar power projects over a longer periods of time. While we will move towards a less capital-intensive business model in the near-term, we will continue to need capital in order to grow our business, including investment in customer acquisition costs as well as product and digital investments. We will seek to raise additional required capital through various cost-effective sources, including restructuring or refinancing the 2023 convertible debt, as well as potential debt and equity financing.

Overall, we maintain working capital and debt levels that we establish through consideration of a number of factors, including cash flow expectations, cash requirements for operations, our cost of capital, and targeted capital structure.

We believe that our total cash and cash equivalents will be sufficient to meet our obligations over the next 12 months from the date of issuance of these financial statements. In addition, we have historically been successful in generating liquidity by divesting certain investments and businesses, such as our shares of Enphase common stock, as well as non-core assets; securing other sources of financing, such as accessing the capital markets; and implementing other cost reduction initiatives such as restructuring, to address our liquidity needs. Although we have historically been able to generate liquidity, we cannot assure that we will be able to continue to do so.

For information about the terms of debt instruments and changes thereof in the period, see "Item 1. Financial Statements-Note 10. *Debt and Credit Sources*" in the Notes to the unaudited condensed consolidated financial statements in this Quarterly Report on Form 10-Q.

Contractual Obligations

The following table summarizes our material contractual obligations and cash requirements for future periods as of October 3, 2021:

(In thousands)	Total	Payments Due by Fiscal Period			
		2021	2022-2023	2024-2025	Beyond 2025
Convertible debt, including interest ¹	442,703	\$ —	\$ 442,703	\$ —	\$ —
Other debt, including interest ²	113,431	68,842	2,389	42,002	198
Operating lease commitments ³	63,627	3,920	28,738	14,563	16,406
Non-cancellable purchase orders ⁴	25,832	25,832	—	—	—
Supply agreement commitments ⁵	224,171	58,056	158,323	2,485	5,307
Total	\$ 869,764	\$ 156,650	\$ 632,153	\$ 59,050	\$ 21,911

¹ Convertible debt, including interest, relates to the aggregate of \$425.0 million in outstanding principal amount of our senior convertible debentures due 2023. For the purpose of the table above, we assume that all holders of our convertible debt will continue to hold through the date of maturity, and will not convert.

² Other debt, including interest, primarily relates to our non-recourse financing and other debt arrangements as described in Note 10. Debt and Credit Sources.

³ Operating lease commitments primarily relate to various facility lease agreements including leases entered into that have not yet commenced.

⁴ Non-cancellable purchase orders relate to purchases of tools and construction equipment.

⁵ Supply agreement commitments primarily relate to arrangements entered into with several suppliers, including Maxeon Solar, for purchase of photovoltaic solar modules, as well as with a supplier for module-level power electronics and alternating current cables. These agreements specify future quantities and pricing of products to be supplied by the vendors for periods of two years and five years, respectively, and there are certain consequences, such as forfeiture of advanced deposits and liquidated damages relating to previous purchases, in the event we terminate these arrangements.

Liabilities Associated with Uncertain Tax Positions

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. As of October 3, 2021 and January 3, 2021, total liabilities associated with uncertain tax positions were \$15.0 million and \$12.6 million, respectively, and are included within "Other long-term liabilities" in our unaudited condensed consolidated balance sheets as they are not expected to be paid within the next twelve months.

ITEM 3: QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

For quantitative and qualitative disclosures about market risk affecting SunPower, see "Quantitative and Qualitative Disclosures About Market Risk" in Item 7A of Part II of our Annual Report on Form 10-K for the fiscal year ended January 3, 2021. There have been no material changes in our market risk exposures since January 3, 2021.

ITEM 4: CONTROLS AND PROCEDURES

Evaluation of Disclosure Controls and Procedures

We maintain "disclosure controls and procedures," as defined in Rule 13a-15(e) and 15d-15(e) under the Exchange Act, that are designed to provide reasonable assurance that information required to be disclosed in reports that we file or submit under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in SEC 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 recognizes 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 is required to apply its judgment in evaluating the cost-benefit relationship of possible disclosure controls and procedures. The design of any disclosure control and procedure 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, our chief executive officer and chief financial officer have concluded that our disclosure controls and procedures were effective as of October 3, 2021 at a reasonable assurance level.

Changes in Internal Control over Financial Reporting

We regularly review our system of internal control over financial reporting and make changes to our processes and systems to improve controls and increase efficiency, while ensuring that we maintain an effective internal control environment. Changes may include such activities as implementing new, more efficient systems, consolidating activities, and migrating processes.

There were no changes in our internal control over financial reporting that occurred during our most recent fiscal quarter that materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

PART II. OTHER INFORMATION

ITEM 1. LEGAL PROCEEDINGS

The disclosure under "Item 1. Financial Statements—Note 8. *Commitments and Contingencies—Legal Matters*" in the Notes to the unaudited condensed consolidated financial statements in this Quarterly Report on Form 10-Q is incorporated herein by reference.

ITEM 1A. RISK FACTORS

The following information updates, and should be read in conjunction with, the risk factors we previously disclosed in our Annual Report on Form 10-K for the fiscal year ended January 3, 2021 and our Quarterly Reports on Form 10-Q for the fiscal quarters ended April 4, 2021 and July 4, 2021. There have been no material changes to the risk factors previously disclosed in our Annual Report on Form 10-K for the fiscal year ended January 3, 2021 and our Quarterly Reports on Form 10-Q for the fiscal quarters ended April 4, 2021 and July 4, 2021, except as disclosed below.

Acquisitions of other companies, project development pipelines and other assets, or investments in or joint ventures with other companies, as well as divestitures and other significant transactions, could materially and adversely affect our results of operations, cash flows, and financial condition, and dilute our stockholders' equity.

To further our business strategy and maintain our competitive position, we have acquired a number of other companies and entered into joint ventures in past years, including our acquisition of Solaire Generation, Inc. in fiscal 2015, our SunStrong and Solar Sail joint ventures with Hannon Armstrong, our acquisition of SolarWorld Americas in fiscal 2018, and our acquisition of Blue Raven Solar in the fourth quarter of fiscal 2021. In the future, we may acquire additional companies, project pipelines, products, or technologies, make strategic investments, and enter into additional joint ventures or other strategic initiatives.

Acquisitions, joint ventures, and divestitures involve a number of risks that could harm our business and performance, including:

- insufficient experience with technologies and markets in which an acquired business or joint venture is involved, which may be necessary to successfully operate and/or integrate the business or the joint venture;
- problems integrating the acquired operations, personnel, IT infrastructure, technologies, or products with the existing business and products;
- diversion of management time and attention from the core business to an acquired business or joint venture or in connection with a strategic transaction;
- potential failure to retain or hire key technical, management, sales, and other personnel of the acquired business or joint venture;
- difficulties in retaining or building relationships with suppliers and customers of the acquired business or joint venture, particularly where such customers or suppliers compete with us;
- potential failure of the due diligence processes to identify significant issues with product quality and development or legal and financial liabilities, among other things;
- potential inability to obtain, or obtain in a timely manner, approvals from governmental authorities or work councils, which could delay or prevent acquisitions, delay our ability to achieve synergies, or adversely impact our successful operation of acquired companies or joint ventures;
- potential necessity to re-apply for permits as a result of acquired or divested projects;
- problems managing joint ventures with our partners, meeting capital requirements for expansion, potential litigation with joint venture partners and reliance upon joint ventures which we do not control;
- differences in philosophy, strategy, or goals with our joint venture partners;
- subsequent impairment of the acquired assets, including intangible assets; and
- assumption of liabilities including, but not limited to, lawsuits, tax examinations, warranty issues, environmental matters, and liabilities associated with compliance with laws (for example, the FCPA).

Additionally, 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 or cash flow as a whole in the short to medium term. In an effort to reduce our cost of revenues, we have and may continue to enter into acquisitions or joint ventures involving suppliers or manufacturing

partners, which would expose us to additional supply chain risks. Acquisitions or joint ventures could also 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. Such equity or debt financing may not be available on terms acceptable to us, or at all. In addition, we could in the future make additional investments in our joint ventures or guarantee certain financial obligations of our joint ventures, which could reduce our cash flows, increase our indebtedness, and expose us to the credit risk of our joint ventures.

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.

Acquisitions could also result in dilutive issuances of equity securities, the use of our available cash, or the incurrence of debt, which could harm our financial results. Further, we may not realize some or all of the anticipated strategic, financial, operational, marketing or other benefits from the acquisitions or joint ventures. We cannot predict with certainty when the benefits expected from these transactions will occur or the extent to which they will be achieved.

We depend on a limited number of suppliers, including Maxeon Solar, for certain critical raw materials, components and finished products, including our solar cells and modules. Any supply interruption or delay could adversely affect our business, prevent us from delivering products to our customers within required timeframes, and could in turn result in sales and installation delays, cancellations, penalty payments, or loss of market share.

In connection with the Spin-Off, we entered into a supply agreement pursuant to which Maxeon Solar will exclusively supply us with certain products (the "Supply Agreement"), including solar cells and panels, for use in residential and commercial solar applications in the Domestic Territory (as defined in the Supply Agreement). The Supply Agreement has a two-year term, subject to customary early termination provisions triggered by a breach of the other party (with or without the right to cure depending on the breach) and insolvency events affecting the other party. Under the Supply Agreement, we are required to purchase, and Maxeon Solar is required to supply, certain minimum volumes of products during each calendar quarter of the term. The Supply Agreement also includes reciprocal exclusivity provisions that, subject to certain exceptions, will prohibit us from purchasing the products (or competing products) from anyone other than Maxeon Solar for the Domestic Territory. For products designated for installation on a residence or by a third party for the exclusive use of a specific customer, the exclusivity provisions will last until August 26, 2022 (or the entire initial term). For products procured for direct installation by SunPower and including applications where solar panels are installed for the benefit and use of multiple customers, such as community solar projects, the exclusivity provisions terminated on June 30, 2021. The exclusivity provisions do not apply to off-grid applications, certain portable or mobile small-scale applications (including applications where solar cells are integrated into consumer products), or power plant, front-of-the-meter applications where the electricity generated is sold to a utility or other reseller. Because Maxeon Solar is our sole supplier of such critical products, any delay or failure of Maxeon Solar to supply the necessary products, or supply such products in a manner that meets our quality and quantity requirements, could have a material adverse effect on our business, results of operations, cash flows, and financial condition.

To the extent the processes and technologies that our suppliers, including Maxeon Solar, use to manufacture components are proprietary, we may be unable to obtain comparable components from alternative suppliers, and the exclusivity provisions of the supply agreement may prevent us from seeking alternative suppliers except in certain very limited circumstances. In addition, the financial 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 products, raw materials, inventory, and capital equipment which we would require to support our planned sales operations to us, which would in turn negatively impact our sales volume, profitability, and cash flows. The failure of a supplier to supply raw materials or components in a timely manner, or to supply raw materials or components that meet our quality, quantity, and cost requirements, could impair our ability to manufacture our products or could increase our cost of production. If we cannot obtain substitute materials or components on a timely basis or on acceptable terms, we could be prevented from delivering our products to our customers within required time frames.

In addition, our supply chain is subject to natural disasters and other events beyond our control, such as raw material, component, and labor shortages, global and regional shipping and logistics constraints, work stoppages, epidemics or pandemics, including effects experienced as a result of COVID-19, earthquakes, floods, fires, volcanic eruptions, power outages, or other natural disasters, and the physical effects of climate change, including changes in weather patterns (including floods, fires, tsunamis, drought, and rainfall levels), water availability, storm patterns and intensities, and temperature levels. Human rights concerns, including forced labor and human trafficking, in foreign countries and associated governmental responses have the potential to disrupt our supply chain and our operations could be adversely impacted. For example, the U.S.

Department of Homeland Security issued a withhold release order on June 24, 2021 applicable to silica-based products made by a major producer of polysilicon used by manufacturers of solar panels in China's Xinjiang Uygur autonomous region, over allegations of widespread, state-backed forced labor in the region. Although we do not believe that raw materials used in the products we sell are sourced from this or other regions with forced labor concerns, any delays or other supply chain disruption resulting from these concerns or any of the supply chain risks articulated above, associated governmental responses, or a desire to source products, components or materials from other manufacturers or regions could result in shipping, sales and installation delays, cancellations, penalty payments, or loss of revenue and market share, or may cause our key suppliers to seek to re-negotiate terms and pricing with us, any of which could have a material adverse effect on our business, results of operations, cash flows, and financial condition.

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

Issuer Purchases of Equity Securities

The following table sets forth all purchases made by or on behalf of us or any "affiliated purchaser," as defined in Rule 10b-18(a)(3) under the Exchange Act, of shares of our common stock during each of the indicated periods.

Period	Total Number of Shares Purchased ¹	Average Price Paid Per Share	Total Number of Shares Purchased as Part of Publicly Announced Plans or Programs	Maximum Number of Shares That May Yet Be Purchased Under the Publicly Announced Plans or Programs
July 5, 2021 through August 1, 2021	7,175	\$ 28.81	—	—
August 2, 2021 through August 29, 2021	13,610	\$ 23.50	—	—
August 30, 2021 through October 3, 2021	12,923	\$ 21.83	—	—
	<u>33,708</u>		<u>—</u>	<u>—</u>

¹ The shares purchased represent shares surrendered to satisfy tax withholding obligations in connection with the vesting of restricted stock issued to employees.

ITEM 6: EXHIBITS**Index to Exhibits**

<u>Exhibit Number</u>	<u>Description</u>
10.1*	Securities Purchase Agreement, dated October 4, 2021, by and among SunPower Corporation, Falcon Acquisition HoldCo, Inc., Peterson Partners VII, L.P., Jenny Lynn Lee, as Trustee of The Keyhole Canyon Trust, dated July 28, 2021, Michael R. Cahill, as Trustee of The Skein Trust, dated July 13, 2021, Michael R. Cahill, as Trustee of The Gosling Trust, dated July 13, 2021, Jeffrey Lee, Benjamin Peterson, Michael Rands, The Church of Jesus Christ of Latter-day Saints, and Peterson Partners VII, L.P., solely in its capacity as Sellers' representative
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.
101.SCH*	Inline XBRL Taxonomy Schema Document.
101.CAL*	Inline XBRL Taxonomy Calculation Linkbase Document.
101.LAB*	Inline XBRL Taxonomy Label Linkbase Document.
101.PRE*	Inline XBRL Taxonomy Presentation Linkbase Document.
101.DEF*	Inline XBRL Taxonomy Definition Linkbase Document.
104	Cover Page Interactive Data File (formatted as Inline XBRL and contained in Exhibit 101)

Exhibits marked with an asterisk (*) are filed herewith.

SIGNATURES

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

SUNPOWER CORPORATION

Dated: November 3, 2021

By: _____ /S/ MANAVENDRA S. SIAL

Manavendra S. Sial
Executive Vice President and
Chief Financial Officer

SECURITIES PURCHASE AGREEMENT

This Securities Purchase Agreement (this “Agreement”), dated as of October 4, 2021, is entered into by and among SunPower Corporation, a Delaware corporation (together with its successors, “SunPower”), Falcon Acquisition HoldCo, Inc., a Delaware corporation (together with its successors, “AcquisitionCo,” and collectively with SunPower, “Purchaser”), Peterson Partners VII, L.P., a Delaware limited partnership, Jenny Lynn Lee, as Trustee of The Keyhole Canyon Trust, dated July 28, 2021, Michael R. Cahill, as Trustee of The Skein Trust, dated July 13, 2021, Michael R. Cahill, as Trustee of The Gosling Trust, dated July 13, 2021, Jeffrey Lee, Benjamin Peterson and Michael Rands (collectively, “Principal Sellers”), The Church of Jesus Christ of Latter-day Saints, a Utah corporation sole (the “Charitable Seller,” and collectively with Principal Sellers, “Sellers”), and Peterson Partners VII, L.P., a Delaware limited partnership, solely in its capacity as Sellers’ representative (“Seller Representative”). Purchaser, Sellers and Seller Representative are each referred to individually as a “Party” and collectively as the “Parties.”

WHEREAS, Sellers collectively own all of the issued and outstanding membership interests (collectively, the “Blue Raven Interests”), of Blue Raven Solar Holdings, LLC, a Delaware limited liability company (“Blue Raven”), and each Seller owns that number of Blue Raven Interests set forth opposite such Seller’s name on Exhibit A;

WHEREAS, Peterson Partners VII, L.P., Benjamin Peterson, and Michael Rands collectively own all of the issued and outstanding membership interests of Albatross Software, LLC, a Delaware limited liability company (“Albatross” and together with Blue Raven and each of the subsidiaries of Blue Raven, the “Company”), and each such Seller desires to sell that number of membership interests of Albatross set forth opposite such Seller’s name on Exhibit A, such interests representing thirty-five percent (35%) of the issued and outstanding membership interests of Albatross (collectively, the “Albatross Interests” and together with the Blue Raven Interests, the “Interests”); and

WHEREAS, subject to the terms and conditions set forth herein, Sellers desire to sell and transfer to Purchaser all of the Interests in exchange for the consideration described herein, and Purchaser desires to acquire the Interests from Sellers.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

ARTICLE 1 CERTAIN INTERPRETIVE MATTERS

Section 1.1 Certain Definitions. In addition to the terms defined elsewhere herein, the following capitalized terms have the meanings specified or referred to in this Section 1.1:

“**2022 Contingent Payment**” has the meaning set forth in Section 2.5(b).

“**Closing Statement**” has the meaning set forth in Section 2.4(b).

“**Accounting Principles**” means the accounting principles, practices, policies, methodologies and illustrative calculations of Closing Net Working Capital and revenue set forth on Exhibit B hereto.

“**Adjusted Closing Escrow Amount**” means the Escrow Amount less the pro rata portions of the Escrow Account attributable to each of The Skein Trust, the Gosling Trust, and Michael Rands, as set forth in the Funds Flow Memorandum.

“**Adjustment Escrow Amount**” means \$1,000,000.

“**Affiliate**” means (a) with respect to any specified Person, any other Person that directly or indirectly controls, is controlled by, or is under common control with, such specified Person, or (b) as to any Person that is a natural Person, any such Person’s spouse, parents, children and siblings, whether by blood, adoption or marriage, or any trust or similar entity for the benefit of any of the foregoing Persons. For purposes of this definition, “control” of a Person means the power, directly or indirectly, to direct or cause the direction of the management and policies of such Person, whether by contract or otherwise.

“**Affordable Care Act**” has the meaning set forth in Section 3.14(j).

“**Agreement**” has the meaning set forth in the Preamble.

“**Albatross**” has the meaning set forth in the Recitals.

“**Albatross Interests**” has the meaning set forth in the Recitals.

“**Albatross IP License Agreement**” means that certain intellectual property agreement to be entered into between Albatross and Purchaser in the form attached hereto as Exhibit C.

“**Amended and Restated Albatross LLC Agreement**” means that certain Amended and Restated Limited Liability Company Agreement to be entered into by and among Peterson Partners, Ben, Michael Rands and the Purchaser, in the form attached hereto as Exhibit J.

“**Ancillary Agreements**” means all Interest Assignments, the Escrow Agreement, the Escrow Contribution Agreements, the Albatross IP License Agreement and the Amended and Restated Albatross LLC Agreement.

“**Anti-Corruption Laws**” has the meaning set forth in Section 3.20(a).

“**Ben**” means Benjamin Peterson, an individual residing in Lehi, Utah.

“**Blue Raven**” has the meaning set forth in the Recitals.

“Blue Raven Interests” has the meaning set forth in the Recitals.

“BTJD” has the meaning set forth in Section 10.20(a).

“Business” means the distribution of photovoltaic power generation through the sale and/or installation of residential rooftop photovoltaic solar systems.

“Business Day” means any day that is not a Saturday, a Sunday or a day on which banks are required or permitted to be closed in Salt Lake City, Utah.

“Cash” means the aggregate amount of all cash and cash equivalents of Blue Raven determined in accordance with the Accounting Principles, which shall be net of the aggregate amount of all issued but uncleared checks and drafts issued by Blue Raven to the extent such amounts are not included as current liabilities in the calculation of Closing Net Working Capital, whether or not historically accounted for in Cash in accordance with the Accounting Principles.

“Cause” will be deemed to exist, as to each of Ben or Michael Rands, respectively, upon: (i) any misuse or misappropriation by him of the funds, assets or property of SunPower, Blue Raven or its Affiliate for any personal or other improper purpose; (ii) any act of fraud, material dishonesty, theft or embezzlement by him in connection with the business of the Company; (iii) any act of moral turpitude, material dishonesty, fraud by or felony conviction of him whether or not such acts were committed in connection with the business of SunPower or Blue Raven or any of their Affiliates that would reasonably be expected to be materially injurious to the financial condition or business reputation of SunPower or Blue Raven or any of their Affiliates; (iv) any willful failure by him to substantially perform the lawful instructions of the person(s) to whom he reports that are consistent with and appropriate for his position (other than as a result of total or partial incapacity due to physical or mental illness) following written notice by SunPower or Blue Raven to him of such failure; (v) any willful or gross misconduct in connection with his duties to SunPower or Blue Raven which, in the reasonable good faith judgment of the SunPower Board, would reasonably be expected to be materially injurious to the financial condition or business reputation of SunPower or Blue Raven or any of their Affiliates; (vi) his failure to cooperate in any audit or investigation of the business or financial practices of SunPower or Blue Raven or any of their subsidiaries; (vii) any willful failure to follow any material policy of Blue Raven or SunPower; or (viii) any willful and material breach of any other agreement with SunPower or Blue Raven, or a willful and material violation of SunPower’s code of conduct or other written policy; provided that no termination shall be for “Cause” under subsections (iii), (iv), (v), (vi), (vii) or (viii) unless the employee to which it relates has been provided with written notice of the circumstances alleged to constitute “Cause” and fails to cure such circumstances within 10 days of receiving such written notice. No act or failure to act will be considered willful (A) unless it is done or omitted to be done based on the applicable employee’s reasonable belief that his action or omission was in the best interest of SunPower or (B) if done or omitted to be done based on advice of counsel or at the direction of, or with the written consent or approval of, the SunPower Board.

“Change in Control” means (i) a sale of all or substantially all of the assets of a Person, (ii) any merger, consolidation, or other business combination transaction of a Person 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 such Person 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 or a parent thereof) a majority of the total voting power represented by the shares of voting capital stock of such Person (or the respective surviving entity or parent thereof) 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 a Person, (iv) one or more contested elections of members of the board of directors of a Person during a period of twenty-four (24) consecutive months, as a result of which or in connection with which the persons who were members of the board before the first of such elections or their nominees cease to constitute a majority of the board of directors of such Person, or (v) a dissolution or liquidation of a Person.

“Charitable Seller” has the meaning set forth in the Preamble.

“Charitable Transfer Agreement” means that certain Assignment of Membership Units, dated October 1, 2021, in which the Charitable Seller acquired membership units in Blue Raven.

“Closing” has the meaning set forth in Section 2.3.

“Closing Cash Payment” has the meaning set forth in Section 2.2(a).

“Closing Date” has the meaning set forth in Section 2.3.

“Closing Net Working Capital” means (a) the aggregate amount of current assets of Blue Raven (excluding intercompany receivables and deferred Tax assets, but including Cash), minus (b) the aggregate amount of current liabilities of Blue Raven (excluding intercompany payables, deferred Tax liabilities, the Deferred Service Provider Payments, the Contingent Purchase Consideration, and Transaction Expenses to the extent reducing the Initial Cash Payment). The current assets and current liabilities of Blue Raven, and all inclusions and exclusions with respect thereto, shall be determined as of the Reference Time in accordance with the Accounting Principles. Further, Closing Net Working Capital shall be adjusted in accordance with the Accounting Principles.

“Closing Statement” has the meaning set forth in Section 2.4(b).

“Code” means the Internal Revenue Code of 1986, as amended.

“Collective Bargaining Agreement” has the meaning set forth in Section 3.15(c).

“Company” has the meaning set forth in the Recitals.

“Company Intellectual Property” means all Owned Intellectual Property and all Company Licensed IP.

“Company Licensed IP” means all Intellectual Property licensed to the Company pursuant to an IP License including the Albatross IP License Agreement.

“Company Products” means all products and services that have been or are currently offered, distributed, sold, leased, installed or under development in any material respect by the Company.

“Competition Authorities” means Governmental Authorities responsible for enforcing Competition Laws.

“Competition Laws” means the HSR Act and all other Laws regarding competition.

“Confidential Information” means, with respect to a Person, any information of a confidential or proprietary nature (whether or not specifically labeled or identified as “confidential”) that relates to such Person’s business, including any trade secrets or confidential business or technical information of such Person or its products, customers, licensees, suppliers or development or alliance partners or vendors, regardless of when or how such Person may have acquired such information, product development methods and business techniques, work plans, formulas, test results and information, applications, algorithms, technical information, manufacturing information, design information, cost or pricing information, know-how, technology, prototypes, ideas, inventions, improvements, training, sales volume service and business manuals, unpublished promotional materials, development partnerships and other alliances, customer lists, prospective customer lists and other business information, materials and property; provided, however, that Confidential Information will not include information

that (a) has become generally available and publicly known through no wrongful act or breach of any obligation of confidentiality by any of the Parties or any of their Affiliates or any of their respective employees, officers, directors, managers, representatives or agents or (b) was approved in writing for release by the Person whose Confidential Information it otherwise would be.

“Confidentiality Agreement” means the Confidentiality Agreement, dated as of October 8, 2020, by and between SunPower and Blue Raven.

“Consent” means any notice to, any filing, registration, designation or declaration with, or any authorization, consent, waiver or approval of, any Governmental Authority or other Person.

“Contest” has the meaning set forth in [Section 7.6](#).

“Contingent Purchase Consideration” means the payments to be made to The Skein Trust, The Gosling Trust, and Michael Rands, respectively, in accordance with the terms of this Agreement and in the amounts set forth on [Exhibit E](#) attached hereto.

“Contracts” means any agreement, contract, lease, license, commitment, obligation, mortgage, note, bond, guaranty, loan or credit agreement, promise, or undertaking (whether written or oral and whether express or implied) that is legally binding.

“Copyrights” has the meaning set forth in the definition of Intellectual Property.

“COVID-19 Measures” means (i) any Law, directive, guidelines or recommendations promulgated by any industry group or any Governmental Authority related to or in response to the COVID- 19 Pandemic, including any quarantine, “shelter in place,” “stay at home,” workforce reduction, social distancing, shut down, closure, sequester, safety or similar directives, guidelines or recommendations, and (ii) the reversal or discontinuation of any of the foregoing.

“COVID-19 Pandemic” means the novel strain of coronavirus (SARS-Cov-2) (including all additional variations and strains thereof) and its disease commonly known as COVID-19, which was declared to be a global pandemic by the World Health Organization on March 11, 2020.

“D&O Indemnified Persons” has the meaning set forth in [Section 6.4](#).

“Data Protection Laws” means all applicable Laws pertaining to data protection, data privacy, data security, data breach notification, and cross-border data transfer in the United States of America, and elsewhere in the world, including but not limited to the Telephone Consumer Protection Act (“TCPA”), Gramm-Leach-Bliley Act (GLBA), and the Fair Credit Reporting Act (FCRA).

“Data Protection Requirements” means all applicable (i) Data Protection Laws; (ii) Privacy Policies; (iii) terms of any Contracts relating to the Company’s collection, use, storage, disclosure, or crossborder transfer of Personal Data; (iv) frameworks or obligations voluntarily adopted by the Company; and (v) industry standards and/or codes-of-conduct to which the Company is bound or apply in the respective industries in which Company operates, and which govern the collection, use, storage, disclosure, or crossborder transfer of Personal Data.

“Deal Communications” has the meaning set forth in [Section 10.20\(d\)](#).

“Deferred Service Provider Payments” means the payments to be made to individuals pursuant to the Retention Bonus Agreements in accordance with the terms of such agreement and in the amounts set forth on Exhibit D attached hereto. Deferred Service Provider Payments shall not be considered part of the Purchase Price except to the extent forfeited amounts are paid to Sellers pursuant to [Section 2.5\(a\)](#).

“Direct Claim” has the meaning set forth in [Section 9.6](#).

“Disclosure Schedules” means the disclosure schedules attached hereto corresponding to the applicable sections hereof. References herein to “Schedule __” (with the applicable section number inserted in place of the “__”) refer to sections of the Disclosure Schedules.

“Dispute Notice” has the meaning set forth in [Section 2.4\(d\)](#).

“Environmental Claim” means (a) any claim, action, cause of action, suit, proceeding, investigation, order, demand or notice by any Governmental Authority or other Person alleging Environmental Liabilities, and (b) any written request for information by any Governmental Authority issued under the authority of an Environmental Law.

“Environmental Laws” means all Laws relating in any way to pollution or protection of the environment (including, without limitation, ambient air, vapor, surface water, ground water, land surface or subsurface strata), management, use, preservation or reclamation of natural resources, the presence, management or Release or threatened Releases of, or exposure to, Hazardous Materials, or to human health and safety, including the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. § 9601 [et seq.](#)), the Hazardous Materials Transportation Act (49 U.S.C. § 5101 [et seq.](#)), the Resource Conservation and Recovery Act (42 U.S.C. § 6901 [et seq.](#)), the Clean Water Act (33 U.S.C. § 1251 [et seq.](#)), the Clean Air Act (42 U.S.C. § 7401 [et seq.](#)), the Safe Drinking Water Act (42 U.S.C. § 300f [et seq.](#)), the Toxic Substances Control Act (15 U.S.C. § 2601 [et seq.](#)), the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. § 136 [et seq.](#)), and the Occupational Safety and Health Act (29 U.S.C. § 651 [et seq.](#)) (but only as such Law relates to or regulates

workplace exposures to Hazardous Materials), each of their state and local counterparts or equivalents, each of their foreign and international equivalents, and any environmental transfer of ownership notification or approval statute, as each has been amended and the regulations promulgated pursuant thereto.

“Environmental Liabilities” means, with respect to any Person, all liabilities, obligations, responsibilities, remedial actions, losses, damages, punitive damages, consequential damages, treble damages, costs and expenses (including all reasonable fees, disbursements and expenses of counsel, experts and consultants and costs of investigation and feasibility studies, cleanup costs, governmental response costs, natural resources damages, property damages, or personal injuries), fines, penalties, sanctions and interest incurred as a result of any claim or demand by any other Person or in response to any violation of Environmental Law, whether known or unknown, accrued or contingent, whether based in contract, tort, implied or express warranty, strict liability, criminal or civil statute, to the extent based upon, related to, or arising under or pursuant to any Environmental Law, environmental permit, order or agreement with any Governmental Authority or other Person, which relates to any environmental, health or safety condition, violation of Environmental Law or a Release or threatened Release of or exposure to Hazardous Materials.

“Equity Securities” means any (a) shares of capital stock, membership interests, equity interests or other securities of a Person, (b) securities of a Person convertible into, exchangeable or exercisable for, shares of capital stock, membership interests, equity interests or other securities, or (c) options, warrants or other rights to purchase or acquire from a Person, or obligations of a Person to issue, any equity securities referred to in clauses (a) and (b).

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended.

“ERISA Affiliate” means any trade or business (whether or not incorporated) that together with the Company or any of its subsidiaries is treated as a single employer under Section 414 of the Code.

“Escrow Account” means a bank account designated in writing by the Escrow Agent, into which the Escrow Amount will be deposited at the Closing.

“Escrow Agent” means JPMorgan Chase Bank, N.A., as the Escrow Agent under the Escrow Agreement.

“Escrow Agreement” means the Escrow Agreement, substantially in the form attached hereto as Exhibit F, between the Parties and Escrow Agent.

“Escrow Amount” means an amount equal to the Adjustment Escrow Amount plus the Indemnification Escrow Amount.

“Escrow Contribution Agreements” means the Escrow Contribution Agreements, substantially in the form attached hereto as Exhibit K-1 and Exhibit K-2.

“Estimated Closing Statement” has the meaning set forth in Section 2.4(a).

“Estimated Closing Cash Payment” has the meaning set forth in Section 2.4(a).

“Estimated Net Working Capital” has the meaning set forth in Section 2.4(a).

“Estimated Transaction Expenses” has the meaning set forth in Section 2.4(a).

“Excess” has the meaning set forth in Section 2.4(f).

“Exported Control Laws” has the meaning set forth in Section 3.22(b).

“FCPA” has the meaning set forth in Section 3.20(a).

“Financial Statements” means (a) the audited consolidated financial statements (balance sheet, statement of operations and statement of cash flows) of Blue Raven and its subsidiaries for the fiscal years ended December 29, 2019 and January 3, 2021, and (b) the unaudited consolidated financial statements (balance sheet, statement of operations and statement of cash flows) of Blue Raven and its subsidiaries for the period beginning January 4, 2021 and ended on the Latest Balance Sheet Date (the financial statements described in clause (b), the **“Unaudited Financial Statements”**).

“FLSA” means the Fair Labor Standards Act of 1938, as amended.

“Fundamental Representations” means the representations and warranties contained in Section 3.1 (Existence and Power; Limited Liability Company Records), Section 3.3 (Capitalization; Subsidiaries), Section 3.5 (Taxes), Section 3.24 (Finders’ Fees), Section 4.1 (Representations of Principal Sellers) (other than Section 4.1(b)(ii), Section 4.1(d) and Section 4.1(f)), and Section 4.2 (Representations of Chartable Seller) (other than Section 4.2(b)(ii) and Section 4.2(d)).

“Funds Flow Memorandum” has the meaning set forth in Section 2.2.

“GAAP” means generally accepted accounting principles in the United States of America, applied on a consistent basis.

“Good Reason” shall mean, in the absence of the prior written consent of Ben or Michael Rands, as applicable, (i) a material diminution in such person’s position, duties, authority, or responsibilities (other than temporarily while physically or mentally incapacitated, while being investigated by Blue Raven or SunPower, or as required by applicable law); (ii) a material reduction of base salary or bonus opportunity, excluding a reduction that is applied to substantially all of SunPower’s other similarly situated employees; provided however that for purposes of this clause (ii) whether a reduction in a bonus opportunity has occurred shall be determined without regard to any actual bonus payments made to such person; (iii) relocation of such person’s primary workplace (A) beyond a 25-mile radius from such workplace, and (B) no closer to their permanent residence immediately prior to such workplace relocation; provided however that being required to work from home or at another primary workplace due to a government mandated order shall not constitute a relocation for these purposes; or (iv) any material breach by SunPower of this Agreement or its offer letter with Ben or Michael Rands, as applicable; provided, however, that such person’s termination of employment shall not be deemed to be for Good Reason unless (A) he has notified SunPower in writing describing the occurrence of one or more Good Reason events within thirty (30) days of such occurrence, (B) SunPower fails to cure such Good Reason event within thirty (30) days after its receipt of such written notice and (C) the termination of employment occurs within twenty (20) days following the expiration of SunPower’s cure period described above. Otherwise, any claim of such circumstances as “Good Reason” shall be deemed irrevocably waived.

“Governmental Authority” means any (a) federal, state, local, municipal, foreign, international, multinational or other government or government body (including any political and any governmental or quasi governmental authority of any nature (including any political subdivision, department, commission, board, agency, bureau, governmental agency, branch, department, official or entity, any court or other tribunal or any other regulatory, administrative or judicial authority thereof); (b) any public international organization (e.g. United Nations, World Bank or International Monetary Fund, (c) mediator, arbitrator or arbitral body; or (d) body exercising, or entitled to exercise, any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power of any nature. For the purposes of Section 3.20, the definition of Governmental Authority includes any corporation, legal entity, or commercial enterprise owned or controlled (in whole or in part) by any Governmental Authority as defined above.

“Government Official” means: (i) any officer, director, or employee (elected, appointed, or career) of any Governmental Authority, or any person acting in an official capacity for or on behalf of any Governmental Authority, or any Close Family Member thereof; and (ii) any political party, party official, or candidate for political office, or any Close Family Member thereof. The term **“Close Family Member”** refers to any immediate relative (any spouse, civil union partner, parent, child, sibling, grandparent, or grandchild).

“Hazardous Materials” means any chemical, material, substance or waste that is regulated, classified, or otherwise characterized under or pursuant to any Environmental Law as “hazardous,” “toxic,” a “pollutant,” a “contaminant,” “radioactive,” “harmful” or words of similar meaning or effect, including petroleum and its by-products, asbestos or materials containing same, polychlorinated biphenyls or materials containing same, radon, mold, urea formaldehyde insulation, chlorofluorocarbons and all other ozone-depleting substances.

“HSR Act” means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended.

“Indebtedness” means, without duplication, the following obligations of the Company (a) the principal, accrued interest and other payment obligations (including any prepayment premiums, penalties or termination fees payable as a result of the consummation of the transactions contemplated herein) in respect of (i) indebtedness of the Company for borrowed money and (ii) any indebtedness evidenced by notes, debentures, bonds or other similar instruments for the payment of which the Company is responsible or liable, (b) all obligations of the Company for the reimbursement of any obligor on any letter of credit, surety bond, performance bond, banker’s acceptance or similar credit transaction that has been drawn and not paid, (c) all obligations of the Company to pay the deferred purchase price of property, assets or services, except trade accounts payable in the Ordinary Course, (d) all liabilities arising out of interest rate and currency swaps, caps, collars and similar agreements or hedging devices under which payments are obligated to be made by the Company, (e) all indebtedness created or arising under any conditional sale or other title retention agreement with respect to property acquired by the Company, (f) all obligations of the Company under leases which have been or should be, in accordance with GAAP, recorded as capital leases, and (g) all guarantees by the Company of any indebtedness of any other Person of the type described in the foregoing clauses (a) through (f); *provided* that none of the following shall be deemed to be Indebtedness: (v) the amount of any item to the extent included in Closing Net Working Capital as a current liability, (w) trade payables and accrued expenses incurred in the Ordinary Course, (x) Transaction Expenses with respect to which the Closing Cash Payment has been correspondingly reduced, and (y) the amount of any item actually paid by Sellers under ARTICLE 7 and (z) any indebtedness of the type described in the foregoing clauses (a) through (g) owed between or among Blue Raven and any of its subsidiaries.

“Indemnification Escrow Amount” means the amount set forth on Schedule 9.2(a)(v).

“Indemnified Party” means a Person seeking indemnity under ARTICLE 9.

“Indemnifying Party” means a Person against whom claims are asserted under ARTICLE 9.

“Independent Accountant” has the meaning set forth in Section 2.4(e).

“Independent Contractor” means any Person who is not an employee of the Company and who performs services for Blue Raven, including but not limited to “setter,” “closer” or related services for the Company; provided, however, Independent Contractor shall not include the Company’s accountants, lawyers, financial advisors or other similar professional service providers.

“Initial Cash Payment” means an amount equal to (a) \$145,000,000, plus, (i) the amount, if any, by which the Closing Net Working Capital exceeds the NWC Target, minus (ii) the amount, if any, by which the NWC Target exceeds the Closing Net Working Capital, and (b) decreased by (i) the amount of the Deferred Service Provider Payments that are not part of the 2022 Contingent Payment, (ii) the amount of the Contingent Purchase Consideration, and (iii) the amount of the Transaction Expenses to be paid at the Closing by Purchaser pursuant to Section 2.2(c) or unpaid by the Company prior to or at the Closing.

“Initial Press Release” has the meaning set forth in Section 10.5.

“Intellectual Property” means all worldwide rights, title and interests associated with or arising out of any intellectual property, including the following: (a) all domestic and foreign issued patents and patent applications, together with all reissuances, divisionals, continuations, continuations-in-part, revisions, renewals, extensions, and reexaminations thereof, and any identified invention disclosures (collectively **“Patents”**); (b) all trade secret rights and corresponding rights in Confidential Information and other non-public information or proprietary information (whether or not patentable), including ideas, formulas, compositions, inventor’s notes, discoveries and improvements, know-how, manufacturing and production processes and techniques, testing information, research and development information, inventions, invention disclosures, unpatented blueprints, drawings, specifications, designs, plans, proposals and technical data, business and marketing plans, market surveys, market know-how and customer lists and information (**“Trade Secrets”**); (c) all copyrights, whether in published or unpublished works, copyrightable works, rights in databases, data collections, “moral” rights, mask works, copyright registrations and applications therefore and corresponding rights in works of authorship (**“Copyrights”**); (d) all trademarks, service marks, logos, trade dress, brand names, corporate names, trade styles, trade names indicating the source of goods or services, and other indicia of commercial source or origin (whether registered, common law, statutory or otherwise), all registrations and applications to register the foregoing anywhere in the world and all goodwill associated therewith (**“Trademarks”**); (e) all internet domain names, electronic addresses, uniform resource locators and alphanumeric designations associated therewith registered with or assigned by any domain name registrar, domain name registry or other domain name registration authority as part of an electronic address on the internet and all applications for any of the foregoing, internet blogs, social media pages and accounts and identifiers, usernames, registrations and passwords related to any of the foregoing (collectively, **“Internet Resources”**); (f) all other intellectual property rights arising from Software and Technology; (g) all rights of privacy and publicity; and (h) any and all similar, corresponding or equivalent intellectual or proprietary rights anywhere in the world (including but not limited to rights to limit the use or disclosure thereof by any Person and the right to bring suit, pursue past, current and future violations, infringements, or misappropriations, and collections).

“Interest Assignment” means a Membership Interest Assignment to be executed by each Seller in favor of Purchaser, substantially in the form attached hereto as Exhibit G.

“Interests” has the meaning set forth in the Recitals.

“Internet Resources” has the meaning set forth in the definition of Intellectual Property.

“IP License” means (a) any grant (or covenant not to assert) by the Company to another Person of or regarding any right relating to or under the Owned Intellectual Property, and (b) any grant (or covenant not to assert) by another Person to the Company of or regarding any right relating to or under any third Person’s Intellectual Property rights.

“IRS” means the U.S. Internal Revenue Service.

“Key Employee” means Ben, Joshua Neves, Michael Rands, Trevor Weed, Kent Shumway and Dane Nielsen.

“Latest Balance Sheet Date” means August 15, 2021.

“Law” means any federal, state, county, city, municipal, foreign or other governmental statute, law, rule, regulation, ordinance, order, code or requirement (including pursuant to any settlement agreement or consent decree) and any permit or license granted under any of the foregoing, or any requirement under the common law.

“Leased Real Property” has the meaning set forth in Section 3.12.

“Legal Proceeding” means any judicial, administrative, arbitration or other action, suit, proceeding (public, private, civil or criminal), demand, hearing, claim, charge, complaint, dispute, examination, inquiry, audit, investigation, injunction, hearing, Order, settlement, or enforcement proceeding, by or before any Governmental Authority.

“Liability” means any debt, liability, Tax or obligation of any kind whatsoever, whether known or unknown, asserted or unasserted, matured or unmatured, conditional or unconditional, patent or latent, liquidated or unliquidated, determined or determinable, absolute or contingent, accrued or unaccrued and whether due or to become due, including those arising under any Law, Contract or undertaking, whether written or oral.

“Lien” means, with respect to any property or asset, any mortgage, deed of trust, lien, pledge, hypothecation, charge, option, preemptive purchase right, easement, encumbrance, encroachment, right of way or other title defect, security interest, voting agreement or other adverse claim of any kind in respect of such property or asset.

“LLC Agreement” means (i) with respect to Blue Raven, the Fourth Amended and Restated Limited Liability Company Agreement of Blue Raven dated October 1, 2020, as amended and/or restated from time to time, and (ii) with respect to Albatross, the Amended and Restated Limited Liability Company Agreement of Albatross dated April 29, 2020, as amended and/or restated from time to time.

“Losses” means any and all out-of-pocket losses, reasonable costs, settlement payments, Liabilities, deficiencies, awards, judgments, fines, penalties, damages, reasonable expenses, deficiencies or other charges and amounts paid in settlement; *provided* that Losses shall not include any punitive damages, except to the extent a third party is awarded such damages (in respect of any third-party claim for which indemnification hereunder is otherwise required).

“Material Adverse Effect” means any event, change, circumstance, effect, development or state of facts (collectively, **“Effects”**) that has had or would reasonably be expected to have, individually or in the aggregate, (a) a material adverse effect on the financial condition or business, assets, liabilities or results of operations of the business of the Company, taken as a whole, or (b) a material adverse effect on the ability of Sellers to perform their respective obligations under the Agreement, other than such Effects reasonably attributable to (i) to the extent that such conditions or changes do not disproportionately adversely affect the business of the Company relative to other participants in the industries and geographic locations in which the Company participate: (A) economic conditions generally in the United States, conditions in the financial or securities markets in general or conditions in general in the industries or markets in which the Company operate; (B) changes in Laws of general applicability or interpretations thereof by courts or Governmental Authorities; (C) changes in GAAP; (D) changes in global or national political conditions, including the outbreak or escalation of war, acts of terrorism or natural disasters; or (E) the COVID-19 Pandemic or any Law, directive or guidance issued by a Governmental Authority or industry group related thereto or any change in such Law, directive or guidance or interpretation thereof following the date hereof or the Company’s compliance therewith; (ii) the announcement of this Agreement, or the consummation of the transactions contemplated by this Agreement, including the impact thereof on relationships, contractual or otherwise, with customers, suppliers, licensors, distributors, partners, providers or employees; (iii) any failure to meet projected financial performance for any period (*provided* that the underlying causes of such failure may be considered in determining whether there has been, or is reasonably likely to be, a Material Adverse Effect); or (iv) any action taken by (or at the request of) Purchaser or any of its Affiliates.

“Material Contracts” has the meaning set forth in Section 3.7(a).

“Material Permits” has the meaning set forth in Section 3.10(b).

“Material Suppliers” has the meaning set forth in Section 3.17.

“NWC Target” means negative Fifteen Million Four Hundred Forty-Four Thousand Six Hundred Eighty-Three and 77/100 Dollars (-\$15,444,683.77).

“OFAC” has the meaning set forth in Section 3.22(a).

“Open Source Software” means any Software that contains, or is derived in whole or in part from, any Software that is generally available in source code form and that is distributed under a license which, by its terms, (a) does not prohibit licensees of such Software from licensing or otherwise distributing such Software in source code form, (b) does not prohibit licensees of such Software from making modifications thereto, and (c) does not require a royalty or other payment for the licensing or other distribution, or the modification, of such Software (other than a reasonable charge to compensate the provider for the cost of providing a copy thereof), including but not limited to Software distributed under such licenses as the GNU General Public License, the GNU Lesser General Public License, the BSD License, the MIT License, the Mozilla Public License, the Apache License, the Common Public License and any other licenses approved as Open Source licenses under the Open Source Definition of the Open Source Initiative (see <https://opensource.org/osd> and <http://opensource.org/licenses/alphabetical>).

“Order” means any judgment, injunction, award, order, ruling, charge, writ, settlement (including any Assurance of Voluntary Compliance), stipulation, penalty, determination, assessment or decree (including a consent decree) that is issued by or involves a Governmental Authority.

“Ordinary Course” means the ordinary course of the business of the Company, as applicable, consistent with past practices and customs, and shall be deemed to include reasonable actions (or inactions) taken by the Company in response to conditions arising from the COVID-19 Pandemic, including in response to any COVID-19 Measures.

“Organizational Documents” means the certificate of incorporation and the bylaws of a corporation, the certificate of formation and the limited liability company agreement of a limited liability company or any charter or similar organizational or formation document adopted or filed in connection with the creation, formation or organization of a Person and any amendment to any of the foregoing.

“Owned Intellectual Property” means all Intellectual Property that is owned or purported to be owned by, or exclusively licensed to, the Company.

“Party(ies)” has the meaning set forth in the Preamble.

“Patents” has the meaning set forth in the definition of Intellectual Property.

“Permit” means any permit, license, approval, order, concession, clearance, registration, certificate, franchise, qualification, consent or authorization issued by a Governmental Authority or accrediting organization.

“Permitted Liens” means (a) Liens for Taxes, assessments or other similar governmental charges that are not yet due or that are being contested in good faith by appropriate proceedings by the Company and, in each case, for which adequate reserves have been established in the Financial Statements in accordance with GAAP, consistent with past practice (b) any mechanics’, workmen’s, repairmen’s and other similar statutory Liens arising or incurred in the Ordinary Course in respect of obligations that are not overdue, (c) Liens affecting the Leased Real Property arising from easements, easement agreements, rightsof- way, restrictions, or minor title defects (whether or not recorded) that do not detract materially from the value of the property subject thereto or materially impair the use of the property subject thereto, (d) Liens, trusts or deposits under worker’s compensation, unemployment insurance and other similar statutory obligations; (e) Liens or deposits to secure the performance of bids, trade contracts, leases, statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature incurred in the Ordinary Course, and (f) Liens set forth on Schedule 1.1.

“Person” means an individual, a corporation, a partnership, a limited liability company, an association, a trust, a joint stock company, a joint venture, an unincorporated organization, any Governmental Authority or other entity or organization.

“Personal Data” has the same meaning as the terms “personal data,” “personal information,” or the equivalent under the applicable Data Protection Requirement.

“Peterson Partners” means Peterson Partners VII, L.P., a Delaware limited partnership, and its Affiliates, employees, officers, directors, co-investors, managers, general partners, limited partners, operating partners, financing sources or lenders (each a **“Peterson Representative”**).

“Plans” has the meaning set forth in Section 3.14(a).

“Post-Closing Tax Period” means any Tax period (or portion thereof) that is not a Pre- Closing Tax Period or a Straddle Period.

“PPP Loan” means that certain Promissory Note, dated April 15, 2020, by and between JP Morgan Chase Bank, N.A. and Blue Raven, pursuant to which Blue Raven borrowed \$3,166,330 through the U.S. Small Business Administration’s Paycheck Protection Program.

“Pre-Closing Tax Period” means any Tax period ending before the Closing Date (and the portion of any Straddle Period ending before the Closing Date).

“Principal Sellers” has the meaning set forth in the Preamble.

“Privacy Policies” means all published, posted and internal policies, procedures, agreements and notices relating to the Company’s collection, use, storage, disclosure, or cross-border transfer of Personal Data.

“Privileged Deal Communications” has the meaning set forth in Section 10.20(d).

“Purchase Price” means an amount equal to (a) the Initial Cash Payment, plus (b) the forfeited amount of the Deferred Service Provider Payments paid to Sellers pursuant to Section 2.5(a), plus (c) the Contingent Purchase Consideration, plus (d) the 2022 Contingent Payment, if any.

“Purchaser Material Adverse Effect” means any Effects that has had or would reasonably be expected to have, individually or in the aggregate, (a) a material adverse effect on the financial condition or business, assets, liabilities or results of operations of the business of Purchaser, taken as a whole, or (b) a material adverse effect on the ability of Purchaser to perform its obligations under the Agreement, other than such Effects reasonably attributable to (i) to the extent that such conditions or changes do not disproportionately adversely affect the business of Purchaser relative to other participants in the industries and geographic locations in which Purchaser participate: (A) economic conditions generally in the United States, conditions in the financial or securities markets in general or conditions in general in the industries or markets in which Purchaser operate; (B) changes in Laws of general applicability or interpretations thereof by courts or Governmental Authorities; (C) changes in GAAP; (D) changes in global or national political conditions, including the outbreak or escalation of war, acts of terrorism or natural disasters; or (E) the COVID-19 Pandemic or any Law, directive or guidance issued by a Governmental Authority or industry group related thereto or any change in such Law, directive or guidance or interpretation thereof following the date hereof or Purchaser’s compliance therewith; (ii) the announcement of this Agreement, or the consummation of the transactions contemplated by this Agreement, including the impact thereof on relationships, contractual or otherwise, with customers, suppliers, licensors, distributors, partners, providers or employees; (iii) any failure to meet projected financial performance for any period (*provided* that the underlying causes of such failure may be considered in determining whether there has been, or is reasonably likely to be, a Purchaser Material Adverse Effect); or (iv) any action taken by (or at the request of) Principal Sellers.

“Purchaser” has the meaning set forth in the Preamble.

“Purchaser Indemnified Parties” has the meaning set forth in Section 9.2(a).

“Purchaser Return” has the meaning set forth in Section 7.2(b).

“Real Property Leases” has the meaning set forth in Section 3.12.

“Reference Date” has the meaning set forth in Section 2.3.

“Registered Intellectual Property” means all of the following Intellectual Property, which is included in the Owned Intellectual Property: (a) issued Patents and pending applications for Patents, (b) domain names and social media accounts, (c) registered Trademarks and pending applications for registration of Trademarks, and material unregistered Trademarks, and (d) registered Copyrights and pending applications for registration of Copyrights.

“Release” means any releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, disposing of or migrating into or through the environment (including, without limitation, ambient air, vapor, surface water, groundwater and surface or subsurface strata) or any natural or man-made structure or into or out of any property, including the movement of Hazardous Materials through or in the air, soil, surface water, groundwater or property.

“Representative Losses” has the meaning set forth in Section 10.1(e).

“R&W Insurance Policy” means the representations and warranties insurance policy (together with all incremental layers and policies, as applicable) obtained by Purchaser in connection with the transactions contemplated hereby, substantially in the form attached hereto as Exhibit I.

“Retention Bonus Agreements” means those certain Retention Bonus Agreements provided to the Blue Raven employees and service providers listed on Exhibit D providing for payments in the amounts set forth next to such individuals’ names on Exhibit D.

“Returns” means any report, return, document, declaration or other information or filing, including any amendments thereto, supplied or required to be supplied to any Taxing Authority with respect to Taxes, including information returns, claims for refund and any documents with respect to or accompanying payments of estimated Taxes, or with respect to or accompanying requests for the extension of time in which to file any such report, return, document, declaration or other information.

“Revenue Statement” has the meaning set forth in Section 2.5(b).

“Review Period” has the meaning set forth in Section 2.4(c).

“Sanctioned Country” has the meaning set forth in Section 3.22(a).

“Sanctioned Persons” has the meaning set forth in Section 3.22(a).

“Sanctions” means economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by (a) the U.S. government, including those administered by OFAC or the U.S. Department of State, (b) the United Nations Security Council, the European Union or Her Majesty’s Treasury of the United Kingdom, or (c) any successor Governmental Authority to the Governmental Authorities described in clauses (a) and (b) of this definition or any other relevant sanctions authority.

“Sarbanes-Oxley Act” means the Sarbanes-Oxley Act of 2002, as amended.

“Scheduled Intellectual Property” has the meaning set forth in Section 3.13(a).

“Securities Act” means the Securities Act of 1933, as amended.

“Seller Indemnified Parties” has the meaning set forth in Section 9.3.

“Seller Representative” has the meaning set forth in the Preamble.

“Seller Representative Expense Fund” has the meaning set forth in Section 10.1(d).

“Seller Representative Expense Fund Amount” means an amount in cash equal to \$250,000.

“Seller Tax Obligations” means (a) the Taxes of Sellers and (b) the Taxes of Blue Raven and its subsidiaries for any Pre-Closing Tax Period, including any Taxes of Blue Raven and its subsidiaries as a result of the transactions contemplated by this Agreement (other than Taxes described in Section 7.7(a)); provided that Seller Tax Obligations shall not include any such Taxes that were taken into account in the final determination of the Closing Net Working Capital.

“Sellers” has the meaning set forth in the Preamble.

“Shortfall” has the meaning set forth in Section 2.4(f).

“Software” means any and all (a) computer programs, including any and all software implementations of algorithms, models and methodologies, whether in source or object code; (b) databases and compilations in any form, including any and all data and collections of data, whether machine readable or otherwise; (c) descriptions, flow-charts and other work product used to design, plan, organize and develop any of the foregoing, including Internet web sites, web content and links, source code, object code, operating systems and specifications, data, databases, database management code, utilities, graphical user interfaces, menus, images, icons, forms, methods of processing, software engines, platforms, development tools, library functions, compilers, and data formats, all versions, updates, corrections, enhancements and modifications thereof, and (d) all related documentation, user manuals, training materials, developer notes, comments and annotations related to any of the foregoing.

“Straddle Period” means any taxable year or period beginning before the Closing Date and ending on or after the Closing Date.

“SunPower” has the meaning set forth in the Preamble.

“SunPower Board” means the Board of Directors of SunPower.

“**Tax**” means (a) any and all federal, state, local, or foreign income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, environmental (including taxes under Section 59A of the Code), customs duties, tariffs, capital, capital stock, franchise, profits, withholding, social security (or similar), unemployment, disability, real property, gross margins, personal property, payment in lieu of or other tax of any kind whatsoever (including any fee or penalty for the failure to file or timely file any Return), and sales, use, transfer, ad valorem, registration, value added, alternative or add-on minimum, goods and services, municipal, estimated, or other tax, import duty, fee, levy or other assessment of any kind whatsoever imposed by any Governmental Authority, including any interest, penalty, or addition thereto, (b) liability for the payment of any amounts of the type described in clause (a) of this sentence as a result of being a member of an affiliated, consolidated, combined, unitary or aggregate group for any taxable period, (c) Liability under any state abandonment or unclaimed property, escheat or similar Law, and (d) Liability for the payment of any amounts of the type described in clause (a), (b) or (c) of this sentence as a result of being a transferee of or successor to any person, as a result of any express or implied obligation to indemnify any other person, as a result of the operation of applicable Law or otherwise.

“**Tax Statement**” has the meaning set forth in Section 7.2(b).

“**Taxing Authority**” means any Governmental Authority responsible for the imposition of any Tax.

“**Technology**” means, collectively, all Software, information, designs, formulae, algorithms, procedures, methods, techniques, ideas, know-how, research and development, technical data, programs, subroutines, tools, materials, specifications, processes, inventions (whether patentable or unpatentable and whether or not reduced to practice), apparatus, creations, improvements, works of authorship and other similar materials, and all recordings, graphs, drawings, reports, analyses, and other writings, and other tangible embodiments of the foregoing, in any form whether or not specifically listed herein, and all related technology, that are used in, incorporated in, embodied in, displayed by or relate to, or are used in connection with the foregoing.

“**Third Party Claims**” has the meaning set forth in Section 9.5(a).

“**Trademarks**” has the meaning set forth in the definition of Intellectual Property.

“**Transaction Expenses**” means any and all (whether or not disclosed) of the following: (a) unpaid costs, fees, charges and expenses incurred by the Company in connection with or related to the authorization, preparation, negotiation, execution, consummation and performance of this Agreement and the transactions contemplated hereby or the auction or similar process that resulted in or preceded the execution and delivery of this Agreement, including all legal fees, accounting, management, professional or other similar fees and investment banking fees and expenses, (b) sale, transaction, retention, change in control or similar bonuses, severance payments and other employee-related change in control payments payable by the Company as of or after the Closing Date (including the employer portion of any withholding, payroll, employment or similar Taxes associated therewith) as a result of, or in connection with, the consummation of the transactions contemplated by this Agreement, other than the Deferred Service Provider Payments, (c) one half of any fee of the Escrow Agent, (d) the Transaction Insurance Premiums and (e) the Seller Representative Expense Fund Amount.

“**Transaction Insurance Premiums**” means \$534,005.00.

“**Treasury Regulations**” means the Treasury Regulations promulgated under the Code, as such regulations may be amended from time to time.

“**WARN**” has the meaning set forth in Section 3.15(a).

Section 1.2 Certain Interpretive Matters.

(a) Unless the context requires otherwise, (i) all references to Sections, Articles, Exhibits, or Schedules are to the Sections, Articles, Exhibits, or Schedules of or to this Agreement, (ii) each accounting term not otherwise defined in this Agreement has the meaning commonly applied to it in accordance with GAAP, (iii) words in the singular include the plural and vice versa, (iv) all references to \$ or dollar amounts will be to lawful currency of the United States, (v) to the extent the term “**day**” or “**days**” is used, it will mean calendar days unless Business Days are specified, (vi) the pronoun “**his**” refers to the masculine, feminine and neuter (and vice versa), the words “**herein**,” “**hereby**,” “**hereof**,” “**hereunder**” and other words of similar import refer to this Agreement as a whole and not to any particular Section, Article, or other subdivision, (vii) the term “**including**” means “**including without limitation**,” and (viii) any reference to any Law is a reference to it as amended, modified and supplemented from time to time and to (A) any successor provision and (B) the rules and regulations promulgated thereunder).

(b) All references to the “**Knowledge of Sellers**” or to words of similar import will be deemed to mean the actual knowledge of the Persons listed on Schedule 1.2(b), and the knowledge such Person would reasonably be expected to have had after reasonable investigation.

(c) All references to the “**Knowledge of Purchaser**” or to words of similar import will be deemed to mean the actual knowledge of the Persons listed on Schedule 1.2(c), and the knowledge such Person would reasonably be expected to have had after reasonable investigation.

ARTICLE 2 **SALE AND PURCHASE; CLOSING**

Section 2.1 Purchase and Sale of Interests. In reliance upon the representations and warranties contained herein, and subject to the terms and conditions hereof, at the Closing each Seller shall sell, assign, transfer, convey and deliver to AcquisitionCo the Interests owned by such Seller, and Purchaser shall purchase from each Seller the Interests owned by such Seller.

Section 2.2 Purchase Price; Closing Payments. In consideration of the sale of the Interests to Purchaser, on the Closing Date, Purchaser shall pay the following:

(a) pay or deliver (or cause to be paid or delivered) to Sellers the Estimated Closing Cash Payment (as defined below) less the Adjusted Closing Escrow Amount (the “**Closing Cash Payment**”), by wire transfer of immediately available funds in accordance with the wiring instructions provided by Sellers at least one (1) Business Day prior to the Closing Date. The Closing Cash Payment shall be allocated among Sellers and Transaction Expenses shall be paid as set forth in the Funds Flow Memorandum attached hereto as Exhibit H (the “**Funds Flow Memorandum**”);

(b) deposit (or cause to be deposited) the Adjusted Closing Escrow Amount with the Escrow Agent to be held in escrow in accordance with the terms of the Escrow Agreement; and

(c) pay or deliver (or cause to be paid or delivered) all Transaction Expenses, to be paid by Purchaser as specified in the Estimated Closing Statement.

Section 2.3 Closing. The closing of the transactions contemplated by this Agreement (the “**Closing**”) will take place at the offices of Bennett Tueller Johnson & Deere in Salt Lake City, Utah or at such other location (or virtually through electronic transfer) as the parties hereto may agree on the date of this Agreement (the “**Closing Date**”) simultaneously with the execution of this Agreement. The Closing shall be deemed to have occurred at 12:01 a.m. Mountain Time on the Closing Date (the “**Reference Time**”).

Section 2.4 Initial Cash Payment Adjustment.

(a) Seller Representative shall prepare and deliver to Purchaser an estimated closing statement of the Company as of the Closing Date (the “**Estimated Closing Statement**”), which Estimated Closing Statement sets forth Principal Sellers’ good faith calculation, together with all schedules and data as may be appropriate to support such calculation of its good faith estimate of: (i) the Closing Net Working Capital (the “**Estimated Net Working Capital**”), prepared in accordance with the Accounting Principles and in the same manner as was used to prepare the illustrative calculation set forth thereon, and (ii) the Transaction Expenses to be paid by Purchaser pursuant to Section 2.2(c) or unpaid by the Company prior to or at the Closing (the “**Estimated Transaction Expenses**”); and, based on such estimates, a calculation of the Initial Cash Payment (the “**Estimated Closing Cash Payment**”).

(b) No later than sixty (60) days following the Closing Date, Purchaser will prepare and deliver, or cause to be prepared and delivered, to Seller Representative a statement (the “**Closing Statement**”) showing, in reasonable detail, its good faith calculation of: (i) the actual Closing Net Working Capital, prepared in accordance with the Accounting Principles, and (ii) actual Transaction Expenses.

(c) Following receipt of the Closing Statement, Seller Representative and his accountants will be afforded a period of thirty (30) days to review the Closing Statement and related calculations of the items set forth therein (the “**Review Period**”). Purchaser will provide Seller Representative and his accountants reasonable access, at reasonable times during normal business hours and following reasonable notice to Purchaser, to all books, records, work papers, written procedures and applicable personnel used to prepare the Closing Statement to the extent reasonably necessary to enable Seller Representative to conduct a sufficient review of the Closing Statement and verify Purchaser’s calculations of the items set forth on the Closing Statement.

(d) If Seller Representative disagrees with Purchaser’s calculation of any items set forth in the Closing Statement, Seller Representative may, within the Review Period, deliver a written notice (the “**Dispute Notice**”) to Purchaser providing reasonable detail of the reason for any disagreement, and setting forth Seller Representative’s calculation of such amount. If no Dispute Notice is received by Purchaser on or prior to the expiration of the Review Period, then the Closing Statement (and the items set forth therein) as originally delivered by Purchaser will be deemed to have been accepted by Seller Representative and will become final and binding upon the Parties.

(e) If a Dispute Notice has been properly and timely delivered pursuant to Section 2.4(d), Seller Representative and Purchaser will, during the thirty (30) calendar days following such delivery, use their commercially reasonable efforts to reach an agreement on the disputed items or amounts in order to resolve any disputed items in the Dispute Notice. If during such period, Seller Representative and Purchaser are unable to reach such an agreement, they will promptly thereafter cause a nationally recognized, mutually acceptable third-party accounting firm (the “**Independent Accountant**”) to review the relevant portions of this Agreement and the disputed items or amounts set forth in the Dispute Notice. Such calculation will be made by the Independent Accountant in accordance with this Agreement. The Independent Accountant will deliver to Seller Representative and Purchaser, as promptly as practicable (and Seller Representative and Purchaser will use their respective reasonable efforts to cause the Independent Accountant to deliver such report no later than thirty (30) calendar days from the date of engagement of the Independent Accountant), a report setting forth its calculation of the items in dispute; *provided* that the Independent Accountant may not assign a value to any item greater than the greatest value for such item claimed by either Party or less than the smallest value for such item claimed by either Party. Such report will be final and binding upon the Parties, absent manifest error. The cost of any such review and report by the Independent Accountant will be paid on a proportionate basis by Seller Representative, on the one hand, and Purchaser on the other hand, based on the percentage which the portion of the contested amount not awarded to such Party bears to the amount contested by such Party, as finally determined by the Independent Accountant.

(f) If, after the final determination of all of the items set forth in the Closing Statement pursuant to the terms of this Section 2.4, the actual Closing Cash Payment calculated using the actual Closing Net Working Capital and the actual Transaction Expenses as so finally determined is less than the Estimated Closing Cash Payment (the amount equal to such difference, the “**Shortfall**”), Purchaser shall be entitled to a payment from the Escrow Account in an amount equal to the Shortfall. Purchaser and Seller Representative shall promptly execute joint written instructions to the Escrow Agent instructing the Escrow Agent to pay such amount to Purchaser out of the Escrow Account and to release the remainder of the funds held in the Escrow Account, if any, to Sellers in accordance with their respective pro rata share as set forth in the Funds Flow Memorandum pursuant to the joint written instructions. To the extent the Shortfall is in excess of the funds held in the Escrow Account, Principal Sellers, in accordance with their respective pro rata shares as set forth in the Funds Flow Memorandum, shall promptly pay the difference to Purchaser in immediately available funds to an account designated by Purchaser at such time. If, after the final determination pursuant to the foregoing, the actual Closing Cash Payment calculated using the actual Closing Net Working Capital and actual Transaction Expenses as so finally determined is greater than or equal to the Estimated Closing Cash Payment (the amount equal to such difference, the “**Excess**”), (i) Purchaser and Seller Representative shall promptly execute joint written instructions to the Escrow Agent instructing the Escrow Agent to release the entire Adjustment Escrow Amount to Sellers in accordance with their respective pro rata shares as set forth in the Funds Flow Memorandum and (ii) Purchaser shall promptly pay the Excess to Sellers in immediately available funds in accordance with their respective pro rata shares as set forth in the Funds Flow Memorandum. Any amounts paid to any Party pursuant to this Section 2.4(f) will be deemed adjustments to the Purchase Price.

(g) Any payment pursuant to this Section 2.4 will be made as soon as practicable, but in no event more than five (5) Business Days after the amounts in respect of such payments have been finally determined.

Section 2.5 Deferred Service Provider Payments; Contingent Purchase Consideration; 2022 Contingent Payment. In addition to the Closing Cash Payment, Purchaser agrees to pay the Deferred Service Provider Payments, the Contingent Purchase Consideration, and the 2022 Contingent Payment in accordance with this Section 2.5, as follows:

(a) Deferred Service Provider Payments. Purchaser shall pay to Blue Raven and Blue Raven shall pay or cause to be paid the Deferred Service Provider Payments to each individual entitled to payment thereof in the amounts, on the dates and subject to the terms set forth in the respective Retention Bonus Agreements. In the event that any such individual is no longer providing services to Blue Raven such individual shall forfeit the right to receive any payments that otherwise would have been made subsequent to the date such individual ceased being employed by Blue Raven. All such forfeited amounts shall be owed to Sellers (and treated as part of the Purchase Price) and paid by Blue Raven on behalf of Purchaser (with funds provided by Purchaser) to Sellers Representative (for distribution to Sellers in their respective pro rata shares as set forth in the Funds Flow Memorandum) within five (5)

days after the date such amounts would have otherwise been payable to such individuals, if any. Notwithstanding the foregoing, Purchaser agrees that Blue Raven may accelerate payment of the Deferred Service Provider Payments to one or more individuals upon the prior written approval of Purchaser.

(b) Contingent Purchase Consideration. Purchaser shall pay to The Skein Trust, The Gosling Trust, and Michael Rands, respectively, the Contingent Purchase Consideration subject to the terms set forth on Exhibit E. Interest shall accrue at a rate of eight and one-half percent (8.5%) per annum on the unpaid amount of the Contingent Purchase Consideration until the full amount of the Contingent Purchase Consideration has been paid to The Skein Trust, The Gosling Trust, and Michael Rands, respectively. Interest shall begin to accrue on the Closing Date, subject to the last sentence of this Section 2.5(b). If the full amount of the Contingent Purchase Consideration is not paid on or before the eighteen (18) month anniversary of the Closing Date, default interest shall accrue on the unpaid amount of the Contingent Purchase Consideration at a rate of eighteen percent (18%) per annum and shall compound on the first day of each month beginning immediately after the eighteen (18) month anniversary of the Closing Date until the full amount of the Contingent Purchase Consideration has been paid in full in accordance herewith. Payments of the Contingent Purchase Consideration will be applied first to accrued and unpaid interest and second to the amount of the unpaid Contingent Purchase Consideration. Subject to Section 2.5(d), in the event that the employment of any such executive by Blue Raven ends on or prior to the eighteen (18) month anniversary of the Closing Date, such executive shall forfeit any payments (including any accrued, but unpaid interest) that otherwise would be made on or subsequent to the date such executive ceased being employed by Blue Raven and such payment shall be retained by Purchaser.

(c) 2022 Contingent Payment.

(i) Purchaser shall pay, and Sellers shall be entitled to receive, an additional cash payment of up to \$20,000,000 (the “**2022 Contingent Payment**”) based on Blue Raven’s revenue for the period beginning on September 13, 2021 and ending June 19, 2022 (the “**Contingent Payment Period**”). The 2022 Contingent Payment will increase linearly from \$0 up to a maximum of \$20,000,000 upon Blue Raven’s achievement of a minimum of 75% of the aggregate revenue amount set forth on Schedule 2.5(c) for the Contingent Payment Period in the same manner as the illustrative calculation set forth on Schedule 2.5(c). Not later than July 31, 2022, Purchaser will deliver a report (the “**Revenue Statement**”) to the Seller Representative of the revenue of Blue Raven during the Contingent Payment Period, including a calculation of the 2022 Contingent Payment (or a calculation that the 2022 Contingent Payment is not due) prepared in accordance with Blue Raven’s historical accounting policies and practices as described in the Accounting Principles. The Parties shall use the same procedures set forth in Section 2.4(c) through (g) to review and finalize the calculations set forth in the Revenue Statement. Purchaser shall pay to the Sellers Representative (for distribution to Sellers in their respective pro rata shares as set forth in the Funds Flow Memorandum) an amount equal to the difference of (i) the 2022 Contingent Payment minus (ii) the amount of the 2022 Contingent Payment allocated to employees and service providers pursuant to the Retention Bonus Agreements (the “**Sellers 2022 Contingent Payment Amount**”) within two (2) Business Days following the final determination of the amount of the 2022 Contingent Payment in accordance with this Section 2.5.

(ii) It is expressly acknowledged and understood by the Parties that the inclusion of the 2022 Contingent Payment as part of this Agreement is a principal term hereof and the opportunity to achieve the same constitutes substantial consideration for Sellers’ willingness to execute this Agreement and consummate the transactions contemplated herein. In light of the foregoing, during the Contingent Payment Period, Purchaser shall use commercially reasonable efforts to operate Blue Raven in good faith and in the Ordinary Course, in compliance with applicable laws and in accordance with Purchaser’s reasonable business judgment; provided, that during the Contingent Payment Period, so long as he remains employed by Blue Raven or SunPower or any of their Affiliates, Ben shall operate the Company’s business in the Ordinary Course and in accordance with applicable Law. Sellers acknowledge and agree that after the Closing, Purchaser shall have discretion with regard to matters relating to the operation of Blue Raven and its business, including, but not limited to, the changes set forth on Schedule 2.5(c)(ii); provided, that Purchaser shall not act in an arbitrary or commercially unreasonable manner with respect to Blue Raven’s business if any such action would be reasonably likely to materially and adversely interfere with the achievement of the full amount of the 2022 Contingent Payment. For purposes of calculating the 2022 Contingent Payment, Purchaser shall maintain separate books and records and have a separate statement of revenue for Blue Raven. Notwithstanding the foregoing, if as a direct result of actions outside the ordinary course of business taken by Purchaser the 2022 Contingent Payment is reduced or avoided, the Purchaser and Sellers agree to negotiate in good faith potential adjustments to the calculation of the 2022 Contingent Payment.

(d) Acceleration.

(i) Without limiting the foregoing in this Section 2.5 and notwithstanding anything to the contrary herein, the maximum 2022 Contingent Payment of \$20,000,000 shall be accelerated upon any of the following events: (A) the consummation of a Change in Control of SunPower or Blue Raven (or the subsidiary or division of SunPower that operates Blue Raven’s business following the Closing) during the Contingent Payment Period (other than the Change in Control of Blue Raven pursuant to this Agreement); or (B) the termination by SunPower or Blue Raven of Ben’s employment with SunPower or Blue Raven without Cause or by Ben for Good Reason. Within five (5) Business Days following the effectiveness of either of such events, (1) SunPower shall pay Sellers’ 2022 Contingent Payment Amount to Sellers Representative (for distribution to Sellers in their respective pro rata shares as set forth in the Funds Flow Memorandum) by wire transfer of immediately available funds to the account designated by Sellers Representative, and (2) Purchaser shall cause Blue Raven to deliver the amount of the Deferred Service Provider Payments that are part of the 2022 Contingent Payment to each individual entitled to payment thereof and, with respect to any forfeited amounts, to Sellers Representative (for distribution to Sellers in their respective pro rata shares as set forth in the Funds Flow Memorandum).

(ii) Without limiting the foregoing in this Section 2.5 and notwithstanding anything to the contrary herein, all of the Deferred Service Provider Payments shall be accelerated upon the consummation of a Change in Control of SunPower or Blue Raven (or the subsidiary or division of SunPower that operates Blue Raven’s business following the Closing) during the period beginning on the Closing and ending on the date on which the Deferred Service Provider Payments would be otherwise due and payable (other than the Change in Control of Blue Raven pursuant to this Agreement). Within five (5) Business Day following the effectiveness of such event, SunPower shall cause Blue Raven to deliver the Deferred Service Provider Payments to each individual entitled to payment thereof and, with respect to any forfeited amounts, to Sellers Representative (for distribution to Sellers in their respective pro rata shares as set forth in the Funds Flow Memorandum).

(iii) Without limiting the foregoing in this Section 2.5 and notwithstanding anything to the contrary herein, all of the Contingent Purchase Consideration shall be accelerated upon the consummation of a Change in Control of SunPower or Blue Raven (or the division of Purchaser that operates Blue Raven’s business following the Closing) during the period beginning on the Closing and ending on the date on which the Contingent Purchase Consideration is paid or forfeited pursuant to Section 2.5(b) (other than the Change in Control of Blue Raven pursuant to this Agreement). Within five (5) Business Days following the effectiveness of such event, Purchaser shall deliver the Contingent Purchase Consideration to each of The Skein Trust, The Gosling Trust, and Michael Rands by wire transfer of immediately available funds to the accounts designated in writing by The Skein Trust, The Gosling Trust, and Michael Rands, respectively.

(iv) Without limiting the foregoing in this Section 2.5 and notwithstanding anything to the contrary herein, the Contingent Purchase Consideration owed to The Skein Trust and The Gosling Trust shall be accelerated upon the termination by the board of directors (or similar governing body) of Purchaser or Blue Raven of Ben’s employment with Purchaser or Blue Raven without Cause or by Ben for Good Reason. Within five (5) Business

Days following the effectiveness of such event, Purchaser shall deliver the applicable Contingent Purchase Consideration to each of The Skein Trust and The Gosling Trust by wire transfer of immediately available funds to the account designated in writing by The Skein Trust and The Gosling Trust, respectively.

(v) Without limiting the foregoing in this Section 2.5 and notwithstanding anything to the contrary herein, the Contingent Purchase Consideration owed to Michael Rands shall be accelerated upon the termination by the board of directors (or similar governing body) of Purchaser or Blue Raven of Michael Rands' employment with Purchaser or Blue Raven without Cause or by Michael Rands for Good Reason. Within five (5) Business Days following the effectiveness of such event, Purchaser shall deliver the applicable Contingent Purchase Consideration to Michael Rands by wire transfer of immediately available funds to the account designated in writing by Michael Rands.

(vi) Without limiting the foregoing in this Section 2.5(d), Sellers expressly confirm and agree that nothing herein shall give Sellers any rights to prevent a Change in Control of Purchaser, any Affiliate of Purchaser (including Blue Raven) or any third Person.

Section 2.6 Withholding. As between Purchaser and Sellers, Purchaser agrees to pay the employer portion of payroll taxes associated with the Deferred Service Provider Payments made to individuals (that are not Sellers) pursuant to Retention Bonus Agreements. Purchaser acknowledges that it does not intend, based on applicable legal requirements as of the date of this Agreement, to withhold any amounts required to be deducted and withheld under the Code, or any provision of any U.S. federal, state, local or foreign Tax Law, from any consideration payable pursuant to this Agreement other than the Deferred Service Provider Payments made to individuals (that are not Sellers) pursuant to Retention Bonus Agreements. Notwithstanding the foregoing, Purchaser shall be entitled to deduct and withhold from the Purchase Price payable hereunder, or other payment otherwise payable pursuant to this Agreement, the amounts required to be deducted and withheld under the Code, or any provision of any U.S. federal, state, local or foreign Tax Law. Any amounts so withheld shall be paid over to the appropriate Taxing Authority. To the extent that amounts are so deducted and withheld, such deducted and withheld amounts shall be treated for all purposes of this Agreement as having been paid to Sellers, employees and/or executives, as applicable. Except as described above with respect to the Deferred Service Provider Payments, if Purchaser becomes aware of any withholding requirement which shall become applicable to any payment of consideration hereunder, it shall promptly give notice of the same to Seller Representative.

ARTICLE 3 **REPRESENTATIONS AND WARRANTIES RELATING TO THE COMPANY**

Except as set forth in the Disclosure Schedules, Principal Sellers, severally and not jointly, hereby represent and warrant to Purchaser as follows as of the Closing Date (except for representations and warranties made as of a specific date, which shall be made as of such date only):

Section 3.1 Existence and Power; Limited Liability Company Records. The Company is an entity duly organized, validly existing and in good standing under the Laws of its jurisdiction of organization and has all requisite power and authority to own, lease and operate its properties and assets and to carry on its business as now being conducted. The Company is duly qualified to do business and is in good standing in each jurisdiction in which such qualification is necessary, except where the failure to be so qualified has not had, and would not reasonably be expected to have, a Material Adverse Effect. Principal Sellers have made available to Purchaser true, correct and complete copies of the Company's Organizational Documents. As of the Closing Date, all such Organizational Documents will be in full force and effect, and each Company will not be in violation of any material provisions therein.

Section 3.2 No Conflicts; Consents. The execution, delivery and performance of this Agreement by Sellers does not, and the execution, delivery and performance by Sellers of each Ancillary Agreement and the Charitable Transfer Agreements, will not: (a) contravene, conflict with or result in a violation of or default (with or without notice or lapse of time, or both) under any provision of: (i) the Organizational Documents of the Company; (ii) any material provision of applicable Law or any Order to which the Company or any of the properties or assets owned or used by the Company may be subject; (iii) the material terms or requirements of any Permit that is held by the Company; or (iv) any Material Contract; or (b) result in the imposition or creation of any Lien upon or with respect to any of the assets owned or used by the Company, except in the case of clauses (a)(ii) through (a)(iv) above where such contraventions, conflicts, violations or defaults would not reasonably be expected to affect the ability of the Sellers or the Company to consummate the transactions contemplated by this Agreement in any material way. Except with respect to filings that may be required under the HSR Act or as set forth in Schedule 3.2, the Company is not and will not be required to obtain any Consent from any Person (other than Sellers and the Company) in connection with (a) the execution, delivery and performance of this Agreement or any Ancillary Agreement by Sellers or the consummation of the transactions contemplated hereby or thereby, or (b) the continuing validity and effectiveness immediately following the Closing of any Material Contract or Material Permit (as defined below).

Section 3.3 Capitalization; Subsidiaries. All of the issued and outstanding Equity Securities of Blue Raven and Albatross are held of record by Sellers, free and clear of all Liens other than transfer restrictions imposed by securities Laws or set forth in the Organizational Documents of Blue Raven or Albatross, as applicable, with the number of Equity Securities held by each Seller set forth across from such Seller's name on Exhibit A, and upon the consummation of the transactions contemplated hereby, such Equity Securities (or portion thereof with respect to the Albatross Interests) will be transferred to Purchaser as set forth on Exhibit A, free and clear of all Liens other than transfer restrictions imposed by securities Laws. All of the issued and outstanding Equity Securities of Blue Raven and Albatross are duly authorized, validly issued, fully paid and non-assessable, and such Equity Securities have not been issued in violation of any preemptive rights or similar rights. Except as set forth in the Organization Documents of Blue Raven or Albatross or on Schedule 3.3, there are no voting trust agreements or other Contracts, options, equity appreciation, incentive equity awards, phantom equity rights, equity equivalents, profit participation rights, proxies, pledges, rights of first refusal, or understandings, including any Contracts restricting or otherwise relating to the ownership, voting rights, distribution rights or disposition of the Equity Securities of Blue Raven or Albatross. There are no subscription rights, conversion rights, exchange rights or other Contracts or commitments that could require Blue Raven or Albatross to issue, sell or otherwise cause to become outstanding any Equity Security except as set forth herein. Except as set forth on Schedule 3.3, Blue Raven and Albatross do not have any subsidiaries or, directly or indirectly, own or hold any equity or other interest or right to any Equity Securities in any other Person.

Section 3.4 Financial Statements; Liabilities; Indebtedness.

(a) True, correct and complete copies of the Financial Statements have been made available to Purchaser, which Financial Statements have been prepared from, and are in accordance with, the books and records of Blue Raven and its subsidiaries, and each balance sheet included in the Financial Statements fairly presents, in all material respects, the financial position of Blue Raven and its subsidiaries as of the respective dates thereof, and the statements of operations and statements of cash flows included in the Financial Statements fairly present, in all material respects, the results of operations and cash flows of Blue Raven and its subsidiaries for the respective periods indicated therein. The Financial Statements were prepared in accordance with GAAP applied on a consistent basis throughout the period involved, except (i) as may be disclosed therein, or (ii) with respect to the Unaudited Financial Statements, (A) for normal year-end adjustments (none of which will be (1), individually or in the aggregate, material to Blue Raven or its subsidiaries or (2) outside the Ordinary Course), and (B) for the omission of notes and schedules permitted by GAAP. Blue Raven maintains a system of internal accounting controls sufficient to (i) comply with all material legal and accounting requirements applicable to Blue Raven and (ii) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in conformity with the Blue Raven's historical practices and to maintain asset accountability. Albatross does not maintain books and records or prepare financial statements and has not assets other than the Software.

(b) Blue Raven has not identified or become aware of (i) any significant deficiency or material weakness in the internal accounting controls utilized by Blue Raven or its subsidiaries, or (ii) any fraud or material theft or misuse of corporate assets that involves the management of Blue Raven or its subsidiaries or any other current or former employee, consultant, contractor or manager of Blue Raven or its subsidiaries.

(c) Schedule 3.4(c) sets forth a correct and complete list of all outstanding Indebtedness of Blue Raven and its subsidiaries in an amount over \$50,000, individually, as of the Closing Date.

(d) Blue Raven and its subsidiaries have no Liabilities other than Liabilities (i) set forth in the Financial Statements, (ii) incurred in the Ordinary Course subsequent to the Latest Balance Sheet Date; or (iii) of a type or nature not required under GAAP to be reflected in the Financial Statements. Neither Blue Raven nor any of its subsidiaries is a guarantor of or otherwise liable for any Liability of any other Person.

(e) Albatross has no Liabilities and is not a guarantor of or otherwise liable for any Liability of any other Person.

Section 3.5 Taxes. Except as disclosed on Schedule 3.5:

(a) all Returns filed or required to be filed with any Taxing Authority by or on behalf of the Company prior to the Closing Date have been filed when due (taking into account all applicable extensions) in accordance with all applicable Laws and all such Returns are true, complete, and correct in all material respects;

(b) all Taxes due and payable by or on behalf of the Company as of the Closing (whether or not shown as due and payable on the Returns that have been filed) have been timely paid in accordance with applicable Law;

(c) all required estimated Tax payments sufficient to avoid any underpayment penalties have been made by or on behalf the Company and the Company has made full and adequate provision in its books and records and Financial Statements for all Taxes related to Pre-Closing Tax Periods which are not yet due and payable;

(d) there are no Tax audits or Tax examinations by any Taxing Authority in connection with assessing additional Taxes against or in respect of the Company for any past period, nor has the Company received any notice from any Governmental Authority that it intends to conduct any such audit or examination with respect to Taxes;

(e) all deficiencies asserted or assessments for Taxes made as a result of any audits or examinations by any Taxing Authority with respect to the Company have been fully paid or settled;

(f) the Company (i) is not currently the beneficiary of any extension of time within which to file any Return and (ii) has not waived any statute of limitations in respect of Taxes or agreed to any extension of time with respect to a Tax assessment or deficiency;

(g) there are no Liens, other than Permitted Liens, for Taxes upon the assets of the Company;

(h) to the Knowledge of Sellers, no written claim has ever been made by a Governmental Authority in a jurisdiction where the Company does not file Returns that the Company is or may be subject to taxation by, or required to file any Return in, that jurisdiction;

(i) the Company (i) is not subject to any private letter ruling of the IRS or comparable rulings of any other Taxing Authority, (ii) does not have and has never had a permanent establishment in any country other than the country of its organization, nor is it or has it ever been subject to Tax in a foreign jurisdiction outside the country of its organization, (iii) has not granted to any Person any power of attorney that is currently in force with respect to any Tax matter, (iv) has never been a member of an affiliated, consolidated, combined, unitary or similar Tax group, (v) has no Liability for any unpaid Taxes of any other Person pursuant to Treasury Regulations Section 1.1502-6 (or any similar provision of Law), as a transferee or successor, by assumption, by Contract, by operation of Law or otherwise, (vi) is not and has not been a party to or a promoter of a “reportable transaction” within the meaning of Section 6707A(c)(1) of the Code and Treasury Regulations Section 1.6011-4(b), or (vii) has not constituted either a “distributing corporation” or a “controlled corporation” (within the meaning of Section 355(a)(1)(A) of the Code) in a distribution of stock intended to qualify for tax-free treatment under Section 355 or Section 361 of the Code;

(j) the Company has not entered into any agreement or arrangement with any Taxing Authority that requires it to take any action or to refrain from taking any action, and the Company is not a party to any agreement with any Taxing Authority that would be terminated or adversely affected as a result of the transactions contemplated by this Agreement;

(k) the Company is not a party to or bound by any Tax-indemnity, Tax sharing, or Tax-allocation agreement other than customary commercial Contracts not primarily related to Taxes;

(l) the Company will not be required to include any item of income in, or exclude any item of deduction from, taxable income for any Post-Closing Tax Period which taxable income was realized (and reflects economic income arising) prior to the Closing Date as a result of any: (i) change in method of accounting for a Pre-Closing Tax Period, including by reason of the application of Section 481 of the Code (or any analogous provision of state, local or foreign Law), (ii) “closing agreement” as described in Section 7121 of the Code (or any corresponding or similar provision of state, local or foreign Law) executed prior to the Closing Date, (iii) installment sale or open transaction disposition made prior to the Closing Date, (iv) prepaid amount received, or deferred revenue realized, prior to the Closing Date, or (v) election under Section 108(i) of the Code;

(m) Effective on the date of its formation, the Company was treated as a partnership for U.S. federal income tax purposes and has been so treated in all Tax years since the date of formation. The Company has never made an election to be treated as a corporation for U.S. federal, state, local or foreign tax purposes;

(n) Principal Sellers have made available to Purchaser copies of all federal, state, local, and foreign income, franchise and similar Tax Returns, information returns, examination reports, and statements of deficiencies assessed against, or agreed to by, the Company for all Tax periods ending after December 31, 2017; and

(o) The Company has withheld and paid each Tax required to have been withheld and paid in connection with amounts paid or owing to any employee, independent contractor, creditor, customer, member or other party, and complied with all information reporting and backup withholding

provisions of applicable Law.

Section 3.6 Absence of Certain Changes.

(a) Subject to Section 3.6(b), since January 3, 2021, the business of the Company has been conducted in the Ordinary Course and there has not been any event, occurrence, development, circumstance, or state of facts that has had or would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

(b) Without limiting the generality of Section 3.6(a), and except as set forth on Schedule 3.6, since the January 3, 2021, the Company has not:

(i) made any change in financial or Tax accounting methods or practices, except as required by a concurrent change in applicable Law or GAAP;

(ii) issued, sold or redeemed any Equity Securities, bonds or debt securities of the Company or made any other changes in the capital structure of the Company;

(iii) acquired (by merger, consolidation, or acquisition of stock or assets) any business, corporation, partnership or other business organization or division thereof;

(iv) made any capital expenditures or capital commitments in excess of \$50,000 individually, other than in the Ordinary Course;

(v) issued, incurred, assumed or guaranteed any Indebtedness in excess of \$50,000 individually;

(vi) sold, assigned, transferred, conveyed, covenanted not to assert, abandoned, allowed to lapse, leased or otherwise disposed of any Company Intellectual Property, other than in the Ordinary Course;

(vii) adopted, amended or terminated any Plan, or made any material change to the benefits of any managers, officers or employees pursuant to any Plan;

(viii) entered into any Collective Bargaining Agreement (as defined below), except as required by applicable Law or Order;

(ix) amended, modified, or waived any provision of its Organizational Documents;

(x) mortgaged, pledged or subjected any material portion of its assets or any material asset to any Lien, except Permitted Liens;

(xi) sold, assigned or transferred any material portion of any of its assets and has maintained the assets of the Company in good repair, order and condition, except in the Ordinary Course;

(xii) authorized, declared, set aside or paid any dividend on, or made any other distributions with respect to, the Company's Equity Securities;

(xiii) abandoned, modified, waived, terminated, failed to renew, let lapse or otherwise changed any Material Permit;

(xiv) failed to maintain its insurance policies, and in the event of casualty, loss or damages to any material assets of the Company, failed to have repaired or replaced such assets with assets of comparable quality, as the case may be;

(xv) adopted any plan of complete or partial liquidation or dissolution or otherwise failed to maintain its existence;

(xvi) waived any material claim or right of payment, discharge, compromise or satisfaction of any material liabilities, other than the payment, discharge, compromise or satisfaction of liabilities in the Ordinary Course;

(xvii) entered into or amended any employment, severance, bonus, retirement, loan, or other Contract with any manager, officer or employee of the Company other than in the Ordinary Course;

(xviii) other than as required under applicable Law, adopted, amended, increased or decreased the payments to or benefits provided under, any Plans;

(xix) increased any compensation, benefits or fringe benefits payable or to become payable to any current or former employee, officer, or manager;

(xx) entered into or amended any Material Contracts; or

(xxi) committed to do any of the actions set forth in this Section 3.6(b) above.

Section 3.7 Contracts.

(a) Except for this Agreement, the Ancillary Agreements, or as disclosed on Schedule 3.7, each Company is neither a party to nor has its material assets or properties bound by any of the following Contracts (the "**Material Contracts**");

(i) other than as set forth in Schedule 3.7(a)(i), any employment or consulting Contract (other than those terminable by the applicable Company upon no more than thirty (30) days' prior notice without liability to the Company) with any employee, Independent Contractor or

consultant;

(ii) (A) loan or credit agreements, indentures, notes or other Contracts or instruments evidencing Indebtedness by the Company, (B) any mortgages, pledges, security agreements, deeds of trust or other Contracts imposing a Lien on the Company's assets, (C) any guaranties by the Company of the performance or payment obligation of any third party, or (D) any Contracts under which the Company has made advances or loans to any other Person (other than advances of reasonable business expenses up to \$15,000 per Person at any given time);

(iii) any Contract pursuant to which a Company has agreed to provide indemnification to any third party or to any officers or managers;

(iv) any Real Property Lease (as defined below);

(v) any lease, license or use agreement for tangible personal property under which the aggregate payments thereunder during the twelve (12) month period ended on the Latest Balance Sheet Date are in excess of \$250,000;

(vi) any IP License, excluding licenses to off-the-shelf Software commercially available on standard, non-discriminatory terms;

(vii) any Contract or series of related Contracts with a vendor or supplier for the purchase of products or services by a Company under which the aggregate payments thereunder during the twelve (12) month period ended on the Latest Balance Sheet Date are in excess of \$1,000,000;

(viii) any Contract with any customer, dealer, sales representative or distributor for the sale, distribution, marketing or advertising of the Company's products and services under which the aggregate payments thereunder during the twelve (12) month period ended on the Latest Balance Sheet Date are in excess of \$250,000;

(ix) any Contract under which the aggregate payments by or to the Company during the twelve (12) month period ended on the Latest Balance Sheet Date are in excess of \$250,000 and that is not terminable by the Company on notice of sixty (60) days or less without penalty;

(x) any Contract relating to capital expenditures by the Company pursuant to which the Company has in excess of \$250,000 in financial obligations following the Closing;

(xi) any Contract relating to the (A) disposition of any material portion of the properties or assets of the Company or (B) acquisition by the Company of any operating business, properties or assets, whether by merger, purchase or sale of stock or assets or otherwise (other than Contracts for the purchase of inventory or supplies entered into in the Ordinary Course);

(xii) any Contract that (A) restricts the ability of the Company to freely engage in the Business anywhere in the world or (B) grants to any Person other than the Company any (1) "most favored nation" rights, (2) rights of first refusal or similar rights or (3) exclusive rights to purchase or supply the Company's products or services;

(xiii) Contracts for joint ventures, strategic alliances, partnerships or similar arrangements;

(xiv) any settlement agreement regarding any Legal Proceeding, whether filed or threatened (other than a separation and release agreement entered into with a departing employee or consultant) which contains any ongoing obligations of the Company;

(xv) any Contract with any Governmental Authority;

(xvi) any Contract under which the Company has made advances or loans to any other Person;

(xvii) any Contract with an Affiliate (other than another Company), shareholder, member, manager, employee, officer or director of the Company or any Seller other than Contracts governing an employee's services to the Company and employee benefits; and

(xviii) any Collective Bargaining Agreement.

(b) Each Material Contract to which the Company is a party or is bound or to which any of its assets or properties is subject is a legal, valid and binding Contract of the Company and is in full force and effect, and neither of the Company nor, to the Knowledge of Sellers, any other party thereto, is in default or breach in any material respect under the terms of any such Material Contract. To the Knowledge of Sellers, there is no event, occurrence, condition, or act (including the consummation of the transactions contemplated hereby) that, with the giving of notice or the passage of time (or both), could reasonably be expected to become a material default or breach under any Material Contract. Principal Sellers have made available to Purchaser true, correct and complete copies of each Material Contract. Neither the Company nor any Principal Seller has received any written notice of termination or cancellation under any Material Contract, received any written notice alleging any breach or default in any material respect of any Material Contract, or granted to any third party any rights, adverse or otherwise, that would constitute a breach of any Material Contract.

Section 3.8 Insurance Coverage. Principal Sellers have made available to Purchaser true, correct and complete copies of all insurance policies covering the assets, operations, employees, officers and managers, as applicable, of the Company, a list of which is set forth on Schedule 3.8. There is no material claim by the Company pending under any such policies as to which coverage has been questioned, denied, or disputed by the issuers or underwriters of such policies. Such policies of insurance are in full force and effect. Such policies of insurance are of a scope and coverage consistent with customary practice in the Business in which the Company operate. No written notice of cancellation, termination or non-renewal has been received by the Company with respect to any of such insurance policies.

Section 3.9 Litigation. Except as set forth on Schedule 3.9, (a) there are no pending or, to the Knowledge of Sellers, threatened Legal Proceedings against the Company or any of its properties or assets, or managers, officers or employees of the Company arising from or relating to (i) their actions, (ii) or the actions of those acting or purporting to act on their behalf or with their authority, (iii) or the Company's obligations, or liabilities as such, and, to the Knowledge of Sellers, no facts exist that would reasonably be expected to form the basis for any such Legal Proceeding, (b) there are no pending or, to the Knowledge of Sellers, threatened Legal Proceedings by any Governmental Authority against the Company or any of its properties or assets, or any of the managers or officers

of the Company with regard to their actions, or the actions of those acting or purporting to act on their behalf or with their authority, or the Company's obligations, or liabilities, as such, and, to the Knowledge of Sellers, no facts exist that would reasonably be expected to form the basis for any such Legal Proceeding, (c) there is no Order imposed, or, to the Knowledge of Sellers, threatened to be imposed upon the Company or any of its properties or assets, or any of the managers or officers of the Company with regard to their actions, obligations, or liabilities, as such, and (d) Company has in all respects complied with all settlement agreements and Assurances of Voluntary Compliance entered into by the Company as a means of resolving any previously filed or threatened litigations or governmental actions such that an actual or alleged breach of such agreements cannot, to the Knowledge of the Sellers, reasonably be expected to form the basis for any future Legal Proceeding.

Section 3.10 Compliance with Laws; Permits.

(a) The Company is in compliance in all material respects with all Laws and Orders applicable to the Company, its operations, or its properties or assets. The Company has not received any written notice to the effect that a Governmental Authority claimed or alleged that the Company was not in compliance in all material respects with all Laws or Orders applicable to the Company and any of its properties or assets. In the last twenty-four months, the Company has not commissioned, nor has it conducted, or is it in the process of conducting, and is not aware of, any assessments, whether conducted internally or by a third party, finding any material non-compliance by the Company with any Laws or Orders applicable to the Company, its operations, or its properties or assets.

(b) The Company has been granted and has maintained in effect all Permits necessary for the conduct of the business of the Company, except for such Permits as to which the failure to so own, hold or possess would not, individually or in the aggregate, be material to the Company (collectively, the "**Material Permits**"). Each Material Permit is valid and in full force and effect, and the Company is not in breach of or default under any material requirement of any such applicable Material Permit. To the extent required by applicable Laws, applications for renewal of the Material Permits have been timely submitted. Schedule 3.10 sets forth a true, complete and accurate list of the Material Permits.

Section 3.11 Tangible Personal Property. The Company has good and marketable title to, or, in the case of leased properties and assets, valid leasehold interests in, all of the material items of tangible personal property used or held for use in the business of the Company, free and clear of any and all Liens, other than the Permitted Liens and such imperfections of title, if any, that do not materially interfere with the present value of such property (and, with respect to leases and licenses, the right of the other parties specified therein). All such items of tangible personal property that are necessary for or used in the operation of the business of the Company are in good condition and in a state of good maintenance and repair (ordinary wear and tear excepted) and are suitable for the purposes used and to be used following the consummation of the transactions contemplated herein. The tangible assets owned or leased by the Company constitute all of the tangible assets necessary for or used by the Company to carry on its business in the Ordinary Course.

Section 3.12 Real Property. The Company does not own any real property nor has the Company ever owned any real property, and the Company is not a party to any Contract to purchase any real property or any interest therein. The real property demised by the leases, subleases, licenses, occupancy agreements, or other agreements (including all modifications, amendments, supplements, waivers, side letters, and guaranties thereto, collectively, the "**Real Property Leases**") described on Schedule 3.12 (the "**Leased Real Property**") (which Schedule 3.12 also sets forth the street address of each Leased Real Property) constitutes all of the real property leased, licensed, occupied, used or held for use by the Company in the operation of its business (in each case whether as landlord, tenant, sublandlord, subtenant, or by other occupancy arrangement). Each Real Property Lease conveys a valid and enforceable leasehold interest in the respective Leased Real Property, free and clear of all Liens, except Permitted Liens. With respect to each Real Property Lease: (i) such Real Property Lease is valid, binding, enforceable and in full force and effect; (ii) the Company is not in material breach or default under such Real Property Lease and the Company has paid all rent and other amounts due and payable under such Real Property Lease; and (iii) the Company has not received nor given any notice of any default under such Real Property Lease.

Section 3.13 Intellectual Property.

(a) Schedule 3.13(a) sets forth a true, complete and accurate list of all Registered Intellectual Property of the Company, including, as applicable, the application number, application date, registration/issue number, registration/issue date, title or mark, country or other jurisdiction and record owner(s) thereof if other than the Company (the "**Scheduled Intellectual Property**"). All Scheduled Intellectual Property is valid, subsisting and enforceable, and all necessary documents and certificates in connection therewith have been timely filed with the relevant Patent, Trademark, Copyright, domain name, or other authorities in the United States or foreign jurisdictions, as the case may be, for the purposes of maintaining the Scheduled Intellectual Property in full force and effect.

(b) To the Knowledge of Sellers (without having conducted any special investigation or patent search), the Company is the sole and exclusive owner of the Owned Intellectual Property, free and clear of all Liens other than Permitted Liens, and the Company has valid and continuing rights pursuant to a valid written IP License to use, sell, and license (as the case may be) all other Intellectual Property used in or necessary for the conduct of its business. The Owned Intellectual Property, along with the Company Licensed IP (when used within the scope of the applicable IP License), constitutes all of the Intellectual Property necessary and sufficient for the conduct and operation of the business of the Company, and the transactions contemplated by this Agreement will not have an adverse effect on the Company's right, title or interest in and to the Owned Intellectual Property (other than to transfer it to Purchaser) or the Company's valid and continuing rights pursuant to a valid written IP License to use, sell, and license (as the case may be) all other Intellectual Property used in or necessary for the conduct of its business (other than to transfer such rights to Purchaser), and all such Owned Intellectual Property shall continue to be owned by the Company immediately following the Closing. To the Knowledge of Sellers, neither the use, possession, nor practice of the Owned Intellectual Property nor the business and operations of the Company infringe upon, misappropriate, or otherwise violate any Intellectual Property rights of any Person. Notwithstanding anything herein to the contrary, this Section 3.13(b) contains the only representations or warranties made by Principal Sellers with respect to infringement, misappropriation or other violation by the Company of the Intellectual Property of any third Person.

(c) To the Knowledge of Sellers, no Person is currently infringing upon, misappropriating or otherwise violating any Owned Intellectual Property. The Company has not made any such claims or allegations against any Person alleging any of the foregoing, and no such claims or Legal Proceedings are pending against a third Person. The Company has not received notice of, and to the Knowledge of Sellers, there are not, any facts or circumstances that would constitute grounds for any such claims or allegations.

(d) Blue Raven or its applicable subsidiary has executed valid and enforceable written agreements with each Key Employee pursuant to which each such Person has agreed to (i) hold all confidential and proprietary information and/or Trade Secrets of Blue Raven or its applicable subsidiary in confidence both during and after such Person's employment, (ii) assign all intellectual property created during the scope of their employment to Blue Raven or its applicable subsidiary. Principal Sellers have made available to Purchaser true and complete copies of all such agreements (or all standard Blue Raven forms thereof), and to the Knowledge of Sellers, no party thereto is in default, violation, or breach of any such agreements. To the Knowledge of Sellers, no Key Employee has claimed in writing to have an ownership interest in any Owned Intellectual Property.

(e) The Company has taken commercially reasonable measures to protect the confidentiality of all material trade secrets owned by the Company which are primarily used in or held for use in the conduct of its business. The Company maintains administrative, technical, and physical safeguards to protect the privacy and security of personally identifiable information and the conduct of its business as currently conducted complies in all material respects with applicable Laws pertaining to privacy and security of personally identifiable information.

(f) All Software and any Technology owned or purported to be owned by the Company was created solely by employees of the Company within the scope of their employment, or consultants or other third Persons under valid written agreements assigning all ownership right in and to such Software and Technology to the applicable Company.

(g) The Company has not incorporated any Open Source Software in, or used any Open Source Software in connection with, any Software developed, licensed, distributed, used or otherwise exploited by the Company in a manner that requires the contribution, licensing, attribution or disclosure to any third Person of any portion of the source code of any Software developed, licensed, distributed, used or otherwise exploited by or for the Company or that would otherwise diminish or transfer the rights of ownership in any Intellectual Property rights or Software of the Company to any third Person.

The Company is in compliance in all material respects with the terms and conditions of all relevant licenses for Open Source Software used in the business of the Company.

Section 3.14 Employee Benefit Plans.

(a) Schedule 3.14(a) sets forth a correct and complete list of all of the Company's "employee benefit plans" (as defined in Section 3(3) of ERISA), and any other retirement, supplemental retirement, deferred compensation, executive compensation, employment, consulting, bonus, incentive compensation, stock purchase, employee stock ownership, equity or equity-based, severance, retention, salary continuation, vacation or sick pay policy, termination, change in control, employee loan, medical, welfare, retiree medical or life insurance, disability, death benefit, group insurance, hospitalization, Code Section 125 "cafeteria" or "flexible" benefit, educational, employee assistance, fringe benefit or other employee benefit plan, policy, agreement, program or arrangement, whether or not subject to ERISA, that the Company sponsors, maintains, contributes to or is required to contribute to, or in which the Company has any current, contingent or potential Liability (collectively, the "**Plans**").

(b) With respect to each Plan, Principal Sellers have made available to Purchaser a true, correct and complete copy of the following documents, to the extent applicable: (i) all Plans and all sub-plans and trust documents, insurance contracts or other funding arrangements, and all amendments thereto, (ii) for the three most recent plan years, (A) the IRS Form 5500 and all schedules thereto, (B) actuarial or other valuation reports, and (C) material communications with any Governmental Authority (other than routine communications), (iii) the most recent IRS determination letters or opinion letters, as applicable, and (iv) the most recent summary plan descriptions and other material communications to employees regarding the Plans.

(c) The Plans have been established and administered, funded and maintained, in all material respects, in accordance with their terms and with all applicable provisions of ERISA, the Code and other applicable Laws. Neither the Company nor any of its ERISA Affiliates has at any time maintained, sponsored, contributed to or had an obligation to contribute to, or had any Liability in respect of, a (i) "defined benefit plan" as defined in Section 3(35) of ERISA, (ii) a pension plan subject to the funding standards of Section 302 of ERISA or Section 412 of the Code, (iii) a "multiemployer plan" as defined in Section 3(37) of ERISA or Section 414(f) of the Code, (iv) a "multiple employer plan" within the meaning of Section 210(a) of ERISA or Section 413(c) of the Code, or (v) a "multiple employer welfare arrangement" within the meaning of Section 3(40) of ERISA. There are no pending or, to the Knowledge of Sellers, threatened actions, claims or lawsuits against or relating to the Plans, the assets of any of the trusts under such plans or the plan sponsor or the plan administrator, or against any fiduciary of the Plans with respect to the operation of such plans (other than routine benefits claims). No Plan is presently under audit or examination (nor has written notice been received of a potential audit or examination) by any Governmental Authority.

(d) All contributions required to be made to any Plan by applicable Law, any plan document or other contractual undertaking, and all premiums due or payable with respect to insurance policies funding any Plan as of the Business Day prior to the Closing Date have been timely made or paid in full or, to the extent not required to be made or paid on or before the Business Day prior to the Closing Date, have been fully reflected on the Financial Statements.

(e) Neither the Company, any Plan, nor, to the Knowledge of Sellers, any trustee, administrator or other fiduciary and/or party-in-interest thereof has engaged in any material breach of fiduciary responsibility or any "prohibited transaction" (as such term is defined in Section 406 of ERISA or Section 4975 of the Code) to which Section 406 of ERISA or Section 4975 of the Code applies and which would reasonably be expected to subject the Company, any ERISA Affiliate or any Plan to any Tax or penalty on prohibited transactions imposed by Section 4975 of the Code (or any corresponding provisions of Law).

(f) None of the Plans provide for post-employment health, welfare or life insurance benefits or coverage for any participant or any beneficiary of a participant, except as may be required under the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended, or similar state Law and at the sole expense of such participant or the participant's beneficiary.

(g) With respect to each Plan that is intended to qualify under Section 401(a) of the Code, such plan, and its related trust, has received a determination letter (or opinion letters in the case of any prototype plans) from the IRS that it is so qualified and that its trust is exempt from tax under Section 501(a) of the Code, and, nothing has occurred with respect to the operation of any such plan which could cause the loss of such qualification or exemption or the imposition of any material penalty, Tax, or other Liability under ERISA or the Code. No stock or other security issued by the Company forms or has formed any part of the assets of any Plan that is intended to qualify under Section 401(a) of the Code.

(h) Except as set forth on Schedule 3.14(h), neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated hereby shall (i) result in any payment or benefit becoming due to any current or former employee, officer, manager or independent contractor of the Company under any Plan, (ii) result in the acceleration of the time of payment, funding or vesting of any benefits to any current or former employee, officer, manager or independent contractor of the Company under any Plan, or (iii) create any limitation or restriction on the right of the Company to merge, amend or terminate any Plan (except any limitations imposed by applicable Law, if any).

(i) Each Plan that is a "nonqualified deferred compensation plan" (as defined in Section 409A(d)(1) of the Code) that is subject to Section 409A of the Code is in compliance in all material respects with Section 409A of the Code.

(j) Each Plan that is a "group health plan" for purposes of the Patient Protection and Affordable Care Act and the Health Care and Education Reconciliation Act, as amended (the "**Affordable Care Act**"), has been maintained and administered in compliance, in all material respects, with the

(k) (i) Each Plan and its related trust, insurance contract or other funding vehicle has been established, registered, amended, funded, invested, maintained and administered in accordance with its terms and is, in all material respects, in compliance with ERISA (if applicable), the Code and all other Laws applicable to such Plan; and (ii) the Company is, in all material respects, in compliance in all material respects with ERISA, the Code and all other Laws applicable to the Plans.

Section 3.15 Employee Matters.

(a) The Company is in compliance, in all material respects, with all applicable Laws with respect to employment and employment practices in the jurisdictions within which the Company operate, as applicable, including, without limitation, the Age Discrimination in Employment Act of 1967, the Americans with Disabilities Act of 1990, ERISA, state fair employment practices laws, with respect to applicable Laws regarding wage and hour requirements, immigration status, civil rights, discrimination in employment, employee health and safety, collective bargaining, workers' compensation and the collection and payment of withholding and/or social security taxes. There are no complaints, charges or claims against the Company pending or, to the Knowledge of Sellers, threatened by any Governmental Authority based on, arising out of, in connection with or otherwise relating to the employment or termination of employment or failure to employ by the Company, of any individual. The Company has complied with the Worker Adjustment and Retraining Notification Act ("**WARN**") and any similar state or local "mass layoff" or "plant closing," and there has been no "mass layoff" or "plant closing" (as defined by WARN) with respect to the Company within the six (6) months prior to the Closing Date. The Company has withheld all amounts required by applicable Law to be withheld from the wages, salaries and other payments to employees, and are not, to the Knowledge of Sellers, liable for any arrears of wages or any taxes or penalty for failure to comply with any of the foregoing. The Company is not liable for any outstanding payment to any trust or other fund or to any Governmental Authority, with respect to unemployment compensation benefits, social security or other benefits for employees (other than routine payments to be made in the Ordinary Course).

(b) All individuals in the United States who perform or have performed services for the Company has been properly classified under applicable Law as (i) employees or independent contractors and (ii) for employees, as an "exempt" employee or a "non-exempt" employee (within the meaning of the FLSA and state Law), and no such individual has been improperly included or excluded from any Plan, except for non-compliance or exclusions which would not reasonably be expected to result in material liability to the Company, and the Company is not in notice of any pending or, to the Knowledge of Sellers, threatened inquiry or audit from any Governmental Authority concerning any such classifications.

(c) Except as set forth in Schedule 3.7(a)(xviii), the Company is not party to any collective bargaining agreement, labor union contract, or trade union (each a "**Collective Bargaining Agreement**") which pertains to employees of the Company, and there are no (i) labor strikes, disputes, arbitrations, grievances, slowdowns, stoppages, lockouts, picketing organizational efforts, or unfair labor practice charges or proceedings by or with any employee or former employee of the Company or any labor union pending or, to the Knowledge of Sellers, threatened against the Company, or (ii) Collective Bargaining Agreements being negotiated by the Company.

(d) Schedule 3.15 sets forth a true, correct and complete list of all employees and sales representatives of Blue Raven and its subsidiaries as of a recent date (as identified on such schedule) showing date of hire, hourly rate or salary or other basis of compensation, full-time or part-time status, exempt or non-exempt status, paid-time-off accrued as of a recent date and job function. To the Knowledge of Sellers, no manager, officer, or Key Employee of Blue Raven or any of its subsidiaries presently intends to terminate his or her employment relationship with Blue Raven or its subsidiaries. Schedule 3.15 sets forth a true, correct and complete list of all employees who were terminated in the six month period preceding a recent date (as identified on such schedule). Albatross does not have and has never had any employees, sales representatives or independent contractors.

(e) The Company is not delinquent in payment to any of its current or former managers, officers, employees, consultants or other service providers for any wages, fees, salaries, commissions, bonuses, or other direct compensation for service performed by them or amounts required to be reimbursed to such managers, officers, employees, consultants and other service providers or in payments owed upon any termination of such person's employment or service.

(f) Since January 1, 2019, no allegations of sexual harassment have been made to the Company against any Key Employee or manager of the Company.

(g) No Key Employee is bound by any Contract or subject to any judgment, decree or order of any Governmental Authority that would materially interfere with the use of such Key Employee's best efforts to promote the interest of the Company or that would materially conflict with the Company's business as currently conducted.

(h) Notwithstanding anything to the contrary herein, the representations and warranties set forth in this Section 3.15 are the sole and exclusive representations in this Agreement regarding matters relating to employee matters.

Section 3.16 Environmental Matters. The Company is, and since January 1, 2017, has been, in compliance in all material respects with all applicable Environmental Laws. There is no Environmental Claim pending or, to the Knowledge of Sellers, threatened against, affecting or relating to the Company or, to the Knowledge of Sellers, any real property formerly leased or operated by the Company, and all past Environmental Claims have been finally and fully resolved. The Company has not received any notice of or entered into or assumed by Contract or operation of Law or otherwise, any obligation, Liability, order, settlement, judgment, injunction or decree relating to or arising under Environmental Laws, and no facts, circumstances or conditions exist with respect to the Company or any property currently (or, to the Knowledge of Sellers, formerly) leased by the Company that would reasonably be expected to result in the Company incurring Environmental Liabilities. There (a) has been no Release at the Leased Real Property and (b) was no Release at any real property formerly leased or operated by the Company during the time that the Company leased or operated such real property. There are no underground storage tanks located at any of the Leased Real Property. Principal Sellers have made available to Purchaser complete and correct copies of all existing environmental reports, reviews, assessments, surveys, claims and audits and all written information in its possession or control pertaining to (i) environmental conditions of the real properties and operations of the Company, and (ii) actual or potential Environmental Liabilities asserted against the Company. Notwithstanding anything to the contrary herein, the representations and warranties set forth in this Section 3.16 and in Section 3.10(b) are the sole and exclusive representations in this Agreement regarding matters relating to environmental matters.

Section 3.17 Material Suppliers. Schedule 3.17 lists the names of the five largest suppliers (by dollar volume) of the Company (the "**Material Suppliers**") during the twelve months ended on the Latest Balance Sheet Date. Since the Latest Balance Sheet Date, (a) no Material Supplier has notified the Company, in writing, of the cancellation, termination or material modification of its business relationship with the Company or materially modified the commercial terms of its relationship with the Company and (b) to the Knowledge of Sellers, no Material Supplier has threatened, in writing, to cancel, terminate, not renew, materially modify or otherwise reduce the volume of business that it is presently conducting with the Company or the commercial terms of its

relationship with the Company. There is no material dispute between the Company and any Material Supplier. Since the Latest Balance Sheet Date, to the Knowledge of Sellers, no Material Supplier has provided written notice of such Material Supplier's intent to increase the price charged to the Company for goods or services.

Section 3.18 Interests in Counterparties and Others.

(a) Except as set forth on Schedule 3.18, other than investments constituting less than one (1%) percent of the outstanding voting stock of a publicly traded company, no Principal Seller nor any officer or manager of the Company or any of their respective Affiliates (i) possesses, directly or indirectly, any ownership interest in any Person that is a seller to, or customer, supplier, lessor, lessee, licensor, distributor, landlord, tenant, creditor, debtor or direct competitor of the Company, including any counterparty to any Material Contract, or (ii) is party to any Material Contract.

(b) There are no loans, advances or Indebtedness incurred by the Company from any Affiliate (other than another Company), shareholder, member, manager, employee, officer or director of the Company or any Principal Seller. None of Principal Sellers or any Affiliate, shareholder, member, manager, employee, officer or director of the Company or Principal Sellers (i) owns any material asset, property or right, tangible or intangible, which is used or held for use by the Company in connection with the business of the Company or (ii) provides, or has provided, within the last 12 months, material services to the Company, other than in the capacity of a manager, officer or employee of the Company.

Section 3.19 Bank Accounts. Set forth in Schedule 3.19 is a true, correct and complete list of each bank account or safe deposit box of the Company and the names and locations of all banks in which the Company has accounts or safe deposit boxes.

Section 3.20 Anti-Corruption Compliance.

(a) The Company, and all of its managers, officers, employees, and agents, and, to the Knowledge of Sellers, all other Persons acting on behalf of the Company, are and have been in compliance with the U.S. Foreign Corrupt Practices Act of 1977, as amended (the "**FCPA**"), any other applicable U.S., including state and local, or non-U.S. anti-corruption or anti-bribery laws, and all rules and regulations promulgated thereunder (the "**Anti-Corruption Laws**").

(b) The Company has in place a system of policies, procedures, and internal controls, including trainings and financial controls, designed to prevent and detect fraud and corruption.

(c) Neither the Company, nor any of its managers, officers, employees, or agents, nor, to the Knowledge of Sellers, any other Person acting on behalf of the Company, has: (i) been charged with or convicted of violating any Anti-Corruption Laws; (ii) received any notice, request, or citation, or been made aware of any allegation, investigation (formal or informal), inquiry, action, charge, or proceeding with regard to a potential violation of any Anti-Corruption Law; (iii) established or maintained any unrecorded or improperly recorded fund of corporate monies or other properties or assets or made any false entries on any books of account or other record for any purpose; (iv) directly or indirectly, offered, paid, promised, authorized, or given a financial or other advantage to any Person (A) while intending the advantage to induce a Person to perform improperly a relevant function or activity, or to reward a Person for the improper performance of such a function or activity, or (B) while knowing or believing that the acceptance of the advantage would itself constitute the improper performance of a relevant function or activity; or (v) directly or indirectly, offered, paid, promised, or authorized, or caused to be offered, paid, promised, or authorized, any money, offer, gift, or other thing of value, regardless of form, to any Government Official, or to any Person while knowing or having reason to know that such Person has or will offer, pay, promise, or authorize, or cause to be offered, paid, promised, or authorized, any money, offer, gift, or other thing of value to any Government Official, in furtherance of, or with the intent or purpose of, (A) corruptly influencing any act or decision of such Government Official in his or her official capacity, (B) inducing such Government Official to do or omit to do any act in violation of a lawful duty, (C) securing any improper advantage, or (D) inducing such Government Official to use his or her influence with a Governmental Authority, or instrumentality thereof, to affect or influence any act or decision of such Governmental Authority or instrumentality thereof.

Section 3.21 Company Products; Warranties.

(a) Each Company Product sold, licensed, distributed or installed by the Company has been in conformity in all material respects with all applicable standards for quality, product safety and workmanship prescribed by Law and Contracts. The Company has not provided any guaranty, warranty or other indemnity with respect to a Company Product beyond the applicable standard terms and conditions of sale in any material respect. Copies of the Company's standard terms and conditions for each such Company Product (containing applicable guaranty, warranty, return policy and indemnity provisions) have been made available to Purchaser. All Company Product held by the Company as inventory (whether or not reflected on the consolidated balance sheet of Blue Raven and irrespective of its geographic location) (i) consists of a quality and quantity usable and salable in the Ordinary Course (including with respect to any requirements of Law (including product safety) in any jurisdiction in which the Company sells, licenses, distributes or delivers Company Product), and (ii) is in good and merchantable condition, except for slow moving, obsolete, damaged or defective items for which adequate reserves have been established in the Financial Statements. All inventory is owned by the Company free and clear of all Liens other than Permitted Liens and has not been pledged as collateral. Schedule 3.21(a) sets forth a list of all inventory held on a consignment basis by a third party for the benefit of the Company (including the identity of such third party, the location where such inventory is held and the nature of such inventory) as of the Latest Balance Sheet Date.

(b) Since January 1, 2020, there has been no material Liability of the Company, or incident that could reasonably lead to a material Liability of the Company, for bodily injury to any person, death, property damages as a result of the ownership, possession or use of any Company Product.

(c) No Governmental Authority has alleged to the Company in writing or, to the Knowledge of the Sellers, otherwise, that any Company Product designed, manufactured, held in inventory, marketed, distributed, or delivered by the Company is defective or unsafe or fails to meet any product warranty or any standards promulgated by any such Governmental Authority. None of the Company's Company Products is, or has been since January 1, 2020, subject to any product recall, withdrawal, seizure, sequestration or quarantine, whether voluntarily or at the discretion or order of any Governmental Authority or otherwise (and to the Knowledge of Sellers, there is no reasonable basis for any recall, withdrawal, seizure, sequestration or quarantine).

Section 3.22 Export Controls.

(a) Neither the Company, nor to the Knowledge of Sellers, any representative of the Company, is (i) a Person listed in any Sanctions-related list of designated Persons maintained by the Office of Foreign Assets Control of the U.S. Treasury Department ("**OFAC**"), the U.S. Department of State, the United Nations Security Council, the European Union or Her Majesty's Treasury of the United Kingdom, (ii) a Person operating, organized or resident in a country or region which is itself the subject of any Sanctions ("**Sanctioned Country**") (including Cuba, Iran, North Korea, Syria and the Crimea region of Ukraine), or (iii) any Person owned or controlled by any Person or Persons specified in (i) or (ii) above ((i) – (iii) together "**Sanctioned Persons**"). The Company, and to the Knowledge of Sellers, any representative of the Company when acting on behalf of the Company, are in compliance with applicable

Sanctions in all material respects and are not knowingly engaged in any activity that would reasonably be expected to result in the Company or any representative of the Company being designated as a Sanctioned Person. Neither the Company, nor any representative of the Company when acting on behalf of the Company, are, or have since January 1, 2019, engaged directly in any business or transactions with any Sanctioned Person or in any Sanctioned Country, or knowingly engaged in any indirect business or transactions with any Sanctioned Person or in any Sanctioned Country in any manner that would result in the violation of Sanctions by the Company. There are no pending or, to the Knowledge of Sellers, threatened claims against the Company with respect to Sanctions.

(b) The Company and representatives of the Company are, and have been since January 1, 2019, in compliance in all material respects with applicable export and reexport control laws, regulations, permits, licenses, agreements, and orders, including the Export Administration Act of 1979; the Arms Export Control Act; the Export Administration Regulations maintained by the U.S. Department of Commerce; the International Traffic in Arms Regulations maintained by the U.S. Department of State; regulations, orders and restrictions administered by OFAC (collectively “**Export Control Laws**”); and any other Export Control Laws administered by a U.S. Governmental Authority, or by any foreign Governmental Authority to the extent applicable and to the extent compliance with such laws is not prohibited or penalized by applicable U.S. Laws. To the Knowledge of Sellers, there are no inquiries or investigations pending or threatened against the Company or its representatives by any Governmental Authority with respect to Export Control Laws. To the Knowledge of Sellers, the Company and their representatives have not been subject to any such inquiries or investigations since January 1, 2019 and since then have not made and do not intend to make any disclosure (voluntary or otherwise) to any Governmental Authority with respect to any violation, potential violation, or Liability arising under or relating to any Export Control Laws.

Section 3.23 Privacy and Data Security.

(a) The Company is in compliance in all material respects with all Data Protection Requirements, including any regulatory and consumer reporting or notification obligations. The Company has not received any subpoenas, demands, or other written notices from any person or Governmental Authority investigating, inquiring into, or otherwise relating to any actual or potential violation of any Data Protection Law and, to the Knowledge of Sellers, the Company is not under investigation by any Governmental Authority for any actual or potential violation of any Data Protection Requirements. No written notice, complaint, claim, enforcement action, or litigation of any kind has been served on, or initiated against, the Company under any Data Protection Requirement. There are no past, pending or, to the Knowledge of Sellers, threatened, complaints, actions, fines, or other penalties facing the Company in connection with any Data Protection Requirements.

(b) The Company has taken commercially reasonable steps, compliant with applicable Data Protection Requirements, to (i) develop, implement, and maintain a comprehensive, written information security program that includes administrative, technical, and physical safeguards to protect the operation, confidentiality, integrity, and security of Personal Data and other sensitive data held by the Company, the Company’s Software, systems, applications, code, including any applications it develops or has developed on its behalf, and websites that are involved in the collection and/or processing of Personal Data, sufficient to insure the security and confidentiality of Personal Data, protected against any anticipated threats or hazards to the security or integrity of such information, and protect against unauthorized access to or use of such information that could result in substantial harm or inconvenience to any customer, consumer or employee; and (ii) protect Personal Data in the Company’s possession and/or control from unauthorized use, access, disclosure, and modification.

(c) The Company has taken commercially reasonable steps to ensure that third parties from which it receives Personal Data comply with applicable Data Protection Requirements, including any Laws around notice and consent before sharing or selling Personal Data to the Company. The Company has taken commercially reasonable steps to ensure that third parties to which it discloses the Personal Data of consumers, customers or employees comply with applicable Data Protection Requirements, including having in place contracts with adequate data protection undertakings to ensure that such third parties have in place adequate or appropriate administrative, technical and physical safeguards to protect the confidentiality, integrity and security of Personal Data disclosed by the Company.

(d) The Company has not experienced any failures, crashes, security breaches, unauthorized access, use, or disclosure, or other adverse events or incidents related to Personal Data maintained by or on behalf of the Company, including any that would require notification of individuals, law enforcement, or any Governmental Authority, any remedial action under any applicable Data Protection Requirement, or that have caused any substantial disruption of or interruption in the use of the Company’s Software, equipment or systems. There are no past, pending or, to the Knowledge of Sellers, threatened, complaints, actions, government investigations, fines, or other penalties facing the Company in connection with any such failures, crashes, security breaches, unauthorized access, use, or disclosure, or other adverse events or incidents. The Company has not experienced any material financial losses associated with a data security attack, incident or breach, e.g., ransomware, phishing, whaling, spear phishing, false president schemes, false payment instruction schemes.

Section 3.24 Finders’ Fees. Except as set forth on Schedule 3.24, there is no investment banker, broker, finder or other intermediary that has been retained by or is authorized to act on behalf of any Seller, the Company, or any of their respective Affiliates, who would be entitled to any fee or commission in connection with the transactions contemplated by this Agreement or any of the Ancillary Agreements.

Section 3.25 PPP Loan. Blue Raven was eligible to participate in the PPP loan program, the certifications made by Blue Raven in applying for the PPP Loan were true and correct and made in good faith, and Blue Raven is in compliance with all conditions and other applicable requirements under the terms of the CARES Act and related guidance, including, but not limited to, the use of the PPP Loan proceeds. Blue Raven has applied for and has been granted forgiveness of the PPP Loan. Such application for forgiveness was true and correct and made in good faith, and Blue Raven is in compliance with all conditions and other applicable requirements under the terms of the CARES Act and related guidance.

ARTICLE 4

REPRESENTATIONS AND WARRANTIES RELATING TO SELLERS

Section 4.1 Representations of Principal Sellers. Except as set forth in the Disclosure Schedules, each Principal Seller, severally and not jointly, hereby represents and warrants to Purchaser as follows as of the Closing Date (except for representations and warranties made as of a specific date, which shall be made as of such date only):

(a) Existence and Power. If such Principal Seller is an entity, such Principal Seller is an entity duly organized, validly existing and in good standing under the laws of its jurisdiction of organization and has all requisite power and authority to own, lease and operate its properties and assets and to carry on its business as now being conducted. If such Principal Seller is an entity, such Principal Seller is duly qualified to do business and is in good standing in each jurisdiction in which such qualification is necessary because of the property owned, leased or operated by it or because of the nature of its business as now being conducted, except for any failure to so qualify or be in good standing that, individually or in the aggregate, would not reasonably be expected to have a material and adverse effect on such Principal Seller’s ability to perform its obligations under this Agreement.

(b) Authority; No Conflict.

(i) This Agreement and each Ancillary Agreement to which such Principal Seller is a party constitute legal, valid, and binding obligations of such Principal Seller, enforceable against such Principal Seller in accordance with their respective terms, subject, in each case, to (A) the due authorization and execution and delivery by the other parties to such agreements and (B) bankruptcy, insolvency, reorganization, moratorium and similar Laws of general application relating to or affecting creditors' rights and to general principles of equity. Such Principal Seller has the right, power and authority and capacity to execute and deliver this Agreement and each Ancillary Agreement to which it is a party and to perform its obligations under this Agreement and such other documents. To the extent such Principal Seller is an entity, the execution and delivery by such Principal Seller of this Agreement and each Ancillary Agreement to which it is a party and the performance by such Principal Seller of its obligations hereunder and thereunder have been duly authorized by all requisite corporate or other organizational action.

(ii) The execution and delivery by such Principal Seller of this Agreement and each Ancillary Agreement to which it will be a party do not and the performance by such Principal Seller of its obligations hereunder and thereunder will not (with or without notice or passage of time, or both) contravene, conflict with or result in a violation of (with or without notice or passage of time, or both) contravene, conflict with or result in a violation of (A) if such Principal Seller is an entity, the Organizational Documents of such Principal Seller, (B) any material provision of applicable Law or any Order to which such Principal Seller or any of its assets relevant to the Company may be subject, or (C) any Contract to which such Principal Seller is a party.

(c) Title to Interests. As of the Closing Date, such Principal Seller is the record and beneficial owner of the number of Interests as set forth opposite such Principal Seller's name on Exhibit A, which number of Interests represents such Principal Seller's entire equity interest in the Company and the Charitable Seller is the record and beneficial owner of the number of Interests as set forth opposite its name on Exhibit A. Except as set forth in the LLC Agreement or on Schedule 3.3, such Principal Seller is not a party to any shareholder agreement, investors' rights agreement, voting agreement, voting trust, right of first refusal and co-sale agreement, management rights agreement or other similar Contract with respect to the voting, registration, redemption, sale, transfer or other disposition of Equity Securities of the Company. Upon delivery of and payment for such Interests and the Interests to be sold by the Charitable Seller as herein provided, Purchaser will acquire good and valid title thereto, free and clear of any Liens, other than transfer restrictions imposed by the LLC Agreement or securities Laws.

(d) Litigation. There are no Legal Proceedings pending or, to the knowledge of such Principal Seller, threatened relating to or involving such Principal Seller (i) seeking to restrain, enjoin or prevent the consummation of or otherwise challenge this Agreement or any of the transactions contemplated hereby or (ii) that would reasonably be expected to have a material and adverse effect on such Principal Seller's ability to perform its obligations under this Agreement.

(e) Finder's Fees. Except as set forth on Schedule 3.24, there is no investment banker, broker, finder, or other intermediary that has been retained by or is authorized on behalf of such Principal Seller or any Affiliate thereof, who would be entitled to any fee or commission in connection with the transactions contemplated by this Agreement or any of the Ancillary Agreements.

(f) Foreign Person. Principal Seller is not a "foreign person" as that term is used in Treasury Regulations Section 1.1445-2.

Section 4.2 Representations of Charitable Seller. Except as set forth in the Disclosure Schedules, the Charitable Seller hereby represents and warrants to Purchaser as follows as of the Closing Date (except for representations and warranties made as of a specific date, which shall be made as of such date only):

(a) Existence and Power. The Charitable Seller is an entity duly organized, validly existing and in good standing under the laws of its jurisdiction of organization and has all requisite power and authority to own, lease and operate its properties and assets and to conduct its affairs as now being conducted. The Charitable Seller is duly qualified to do business and is in good standing in each jurisdiction in which such qualification is necessary because of the property owned, leased or operated by it or because of the nature of its activities as now being conducted, except for any failure to so qualify or be in good standing that, individually or in the aggregate, would not reasonably be expected to have a material and adverse effect on the Charitable Seller's ability to perform its obligations under this Agreement.

(b) Authority; No Conflict.

(i) This Agreement and each Ancillary Agreement to which the Charitable Seller is a party constitute legal, valid, and binding obligations of the Charitable Seller, enforceable against the Charitable Seller in accordance with their respective terms, subject, in each case, to (A) the due authorization and execution and delivery by the other parties to such agreements and (B) bankruptcy, insolvency, reorganization, moratorium and similar Laws of general application relating to or affecting creditors' rights and to general principles of equity. The Charitable Seller has the right, power and authority and capacity to execute and deliver this Agreement and each Ancillary Agreement to which it is a party and to perform its obligations under this Agreement and such other documents. The execution and delivery by the Charitable Seller of this Agreement and each Ancillary Agreement to which it is a party and the performance by the Charitable Seller of its obligations hereunder and thereunder have been duly authorized by all requisite corporate or other organizational action.

(ii) The execution and delivery by the Charitable Seller of this Agreement and each Ancillary Agreement to which it will be a party do not, and the performance by the Charitable Seller of its obligations hereunder and thereunder will not (with or without notice or passage of time, or both), contravene, conflict with or result in a violation of (A) the Organizational Documents of the Charitable Seller, (B) any material provision of applicable Law or any Order to which the Charitable Seller or any of its assets may be subject, or (C) any Contract to which the Charitable Seller is a party.

(c) Title to Interests. To the best of its knowledge, as of the Closing Date, the Charitable Seller is the record and beneficial owner of the number of Interests set forth opposite the Charitable Seller's name on Exhibit A, which number of Interests represents the Charitable Seller's entire equity interest in the Company. Except as set forth in the LLC Agreement, the Charitable Transfer Agreements, or on Schedule 3.3, the Charitable Seller is not a party to any shareholder agreement, investors' rights agreement, voting agreement, voting trust, right of first refusal and co-sale agreement, management rights agreement or other similar Contract with respect to the voting, registration, redemption, sale, transfer or other disposition of Equity Securities of the Company. The Charitable Seller has not taken any action that would cause or permit its Interests to be subject to any Liens or transfer restrictions of any kind, other than transfer restrictions imposed by the LLC Agreement or securities Laws.

(d) Foreign Person. The Charitable Seller is not a "foreign person" as that term is used in Treasury Regulations Section 1.1445-2.

ARTICLE 5

REPRESENTATIONS AND WARRANTIES RELATING TO PURCHASER

Purchaser represents and warrants to each Seller as follows as of the Closing Date:

Section 5.1 Organization and Existence. Each of SunPower and AcquisitionCo is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware and has all requisite power and authority to own, lease and operate its properties and assets and to carry on its business as now being conducted. Each of SunPower and AcquisitionCo is duly qualified to do business and is in good standing in each jurisdiction in which such qualification is necessary, except for any failure to so qualify or be in good standing that would not reasonably be expected to have a material and adverse effect on such Purchaser's ability to perform its obligations under this Agreement.

Section 5.2 Authority; No Conflict.

(a) This Agreement and each Ancillary Agreement to which each of SunPower and AcquisitionCo is a party constitute legal, valid, and binding obligations of such Purchaser, enforceable against such Purchaser in accordance with their respective terms, subject, in each case, to (A) the due authorization and execution and delivery by the other parties to such agreements and (B) bankruptcy, insolvency, reorganization, moratorium and similar Laws of general application relating to or affecting creditors' rights and to general principles of equity. Each of SunPower and AcquisitionCo has the right, power and authority and capacity to execute and deliver this Agreement and each Ancillary Agreement to which it is a party and to perform its obligations under this Agreement and such other documents. The execution and delivery by each of SunPower and AcquisitionCo of this Agreement and each Ancillary Agreement to which it is a party and the performance by such Purchaser of its obligations hereunder and thereunder have been duly authorized by all requisite corporate or other organizational action. Neither SunPower nor AcquisitionCo is required to obtain any consent or approval from any of its stockholders that has not previously obtained in order to consummate any of the transactions contemplated herein.

(b) The execution and delivery by each of SunPower and AcquisitionCo of this Agreement and each Ancillary Agreement to which it will be a party do not, and the performance by such Purchaser of its obligations hereunder and thereunder will not (with or without notice or passage of time, or both), contravene, conflict with or result in a violation of (i) the Organizational Documents of such Purchaser, or (ii) any material provision of applicable Law or any Contract to which such Purchaser or any of its assets may be subject. Except with respect to filings that may be required under the HSR Act, neither SunPower nor AcquisitionCo is or will be required to obtain any Consent from any Person in connection with the execution, delivery and performance of this Agreement or any Ancillary Agreement by such Purchaser or the consummation of the transactions contemplated hereby or thereby.

Section 5.3 Litigation. Except as disclosed in SunPower's public filings with the Securities and Exchange Commission, there is no Legal Proceeding pending or, to the Knowledge of Purchaser, threatened against or affecting SunPower or AcquisitionCo. Neither SunPower nor AcquisitionCo is subject to or bound by any Order that would prevent or otherwise interfere with the ability of such Purchaser to consummate the transactions contemplated by this Agreement or to otherwise perform its obligations under this Agreement or any of the Ancillary Agreements to which it is a party.

Section 5.4 Securities Laws Compliance. Each of SunPower and AcquisitionCo (a) is acquiring the Interests for its own account and not with a view to distribution, (b) is an "accredited investor" as such term is defined in Rule 501(a) under the Securities Act, (c) has sufficient knowledge and experience in financial and business matters so as to be able to evaluate the merits and risk of an investment in the Interests and is able financially to bear the risks thereof, and (d) understands that the Interests will, upon purchase, be characterized as "restricted securities" under state and federal securities Laws and that under such Laws and applicable regulations, the Interests may be resold without registration under such laws only in certain limited circumstances.

Section 5.5 Solvency. After giving effect to the consummation of all of the transactions contemplated in this Agreement, and assuming the accuracy of the representations and warranties of Sellers in this Agreement, each of SunPower and AcquisitionCo and their respective subsidiaries (including after the Closing, Blue Raven), taken as a whole, (a) will be able to pay their debts as they become due, (b) will have funds and capital sufficient to carry on their business, and (c) will own property having a value both at fair valuation and at fair saleable value in the ordinary course of business greater than the amount required to pay their debts as they become due. Neither SunPower nor AcquisitionCo will be rendered insolvent by the execution and delivery of this Agreement and/or the consummation of any transactions contemplated herein.

Section 5.6 Sufficient Funds. On the Closing Date, Purchaser will have sufficient unrestricted cash on hand and available assets and credit facilities to pay the Closing Cash Payment and all other amounts required to be paid by Purchaser at and following the Closing pursuant to the terms of this Agreement, and all of its and its representatives' fees and expenses incurred in connection with the transactions contemplated by this Agreement and each of the Ancillary Agreements. Purchaser has no reason to believe that such cash shall not be available or that the debt under such credit facilities shall not be funded. In no event shall the receipt by, or the availability of any funds or financing to, Purchaser or any of its Affiliates or any other financing be a condition to Purchaser's obligation to consummate the transactions contemplated hereunder.

Section 5.7 Finders' Fees. Except as set forth on Schedule 5.6, there is no investment banker, broker, finder, or other intermediary that has been retained by or is authorized to act on behalf of SunPower or AcquisitionCo or any of their respective Affiliates, who would be entitled to any fee or commission in connection with the transactions contemplated by this Agreement or any of the Ancillary Agreements.

Section 5.8 No Other Representations. Each of SunPower and AcquisitionCo acknowledges that neither the Company nor Sellers has made or is making any representations or warranties whatsoever regarding the subject matter of this Agreement, express or implied, except as provided in this Agreement or any Ancillary Agreement, and that it is not relying and has not relied on any representations or warranties whatsoever regarding the subject matter of this Agreement, express or implied, except for the representations and warranties of Sellers in this Agreement or any Ancillary Agreement. Each of SunPower and AcquisitionCo confirms that it has made such further investigation of the business of the Company as was deemed appropriate to evaluate the merits and risks of this acquisition. Each of SunPower and AcquisitionCo further acknowledges that it has had the opportunity to ask questions of, and receive answers from, Principal Sellers, the officers and principals of the Company, and Persons acting on Principal Sellers' behalf concerning the business of the Company and terms and conditions of the acquisition of the Interests.

ARTICLE 6

CERTAIN COVENANTS

Section 6.1 Further Assurances. Following the Closing, as and when requested by any Party to this Agreement, the other Parties will execute and deliver, or cause to be executed and delivered, all such documents and instruments, and will take, or cause to be taken, all such further or other actions, as the requesting Party may reasonably deem necessary or desirable to consummate the transactions contemplated by this Agreement.

Section 6.2 Non-Competition; Non-Solicitation.

(a) Each Principal Seller on behalf of itself and its Affiliates covenants and agrees that for a period of three (3) years from and after the Closing, such Principal Seller will not and will cause its Affiliates not to, alone or in association with any other Person, directly or indirectly, own, manage,

operate, control, participate in, provide advice or services to, invest in, or carry on a business which engages in the Business or a portion of the Business anywhere in the United States. Notwithstanding the foregoing or anything else herein to the contrary, each Principal Seller and its Affiliates may (i) hold less than three percent (3%) of the outstanding voting stock of a publicly traded company engaged in the Business, (ii) own a passive equity interest representing less than thirty-five percent (35%) of a private debt or equity investment fund in which such Principal Seller does not have the ability to control or exercise any managerial influence of such fund; (iii) serve on a governing board of, or otherwise act an advisory capacity to, any Person who does not engage in the Business; and (iv) engage in any other activity that would otherwise be prohibited under this Section 6.2(a) for which Purchaser provides prior written consent. For purposes of this Section 6.2(a), Principal Sellers shall not be considered Affiliates of each other. Notwithstanding the foregoing or anything else herein to the contrary, this Section 6.2(a) shall not apply to any portfolio company or other business in which Peterson Partners has a debt, equity or other economic interest, so long as such portfolio company or other business does not consult with or take direction from Peterson Partners VII, L.P., or any of its employees, officers, directors, managers or general partners with respect to any of the abovementioned prohibited forms of participation in a business which engages in the Business or a portion of the Business.

(b) Each Principal Seller covenants and agrees that for a period of three (3) years from and after the Closing, such Principal Seller will not, whether for its own account or for the account of any Person, directly or indirectly, solicit, offer employment to or hire any individual that is employed by the Company on the Closing Date. Notwithstanding the foregoing or anything else herein to the contrary, (i) each Principal Seller may solicit, offer employment to or hire any such individual (A) through public advertising or general solicitations (including via print, broadcast media or Internet postings) that are not specifically targeted at employees of the Company, or (B) who voluntarily, on her or her own initiative, seeks employment or contracted engagement with such Principal Seller without solicitation by such Principal Seller (except as permitted herein); provided that, such individual was not employed by the Company during the three (3) months preceding their employment under clause (B); and (ii) this Section 6.2(b) shall not apply to the hiring or solicitation of any individual that is employed by the Company on the Closing Date by any portfolio company or other business in which Peterson Partners has a debt, equity or other economic interest, so long as such portfolio company or other business does not consult with or take direction from Peterson Partners VII, L.P., or any of its employees, officers, directors, managers or general partners with respect to such hiring or solicitation.

(c) Each Principal Seller covenants and agrees that for a period of three (3) years from and after the Closing, such Principal Seller will not, whether for its own account or for the account of any Person, directly or indirectly, induce or attempt to induce any Person that is a customer or supplier of a Company on the Closing Date to cease doing business, reduce the volume of its business or otherwise change its relationship with the Company. Notwithstanding the foregoing or anything else herein to the contrary, this Section 6.2(c) shall not apply to the solicitation of any customer or supplier by any portfolio company or other business in which Peterson Partners has a debt, equity or other economic interest, so long as such portfolio company or other business does not consult with or take direction from Peterson Partners VII, L.P., or any of its employees, officers, directors, managers or general partners with respect to such inducement or solicitation.

(d) Each Principal Seller acknowledges and agrees that the remedy at law for any breach, or threatened breach, of any of the covenants contained in this Section 6.2 would be inadequate and, accordingly, such Principal Seller agrees that Purchaser will, in addition to any other rights and remedies which Purchaser may have at law, be entitled to seek equitable relief, including injunctive relief, and to the remedy of specific performance with respect to any breach or threatened breach of any such covenant, as may be available from any court of competent jurisdiction. In addition, such Principal Seller agrees that the terms of the covenants contained in this Section 6.2 are fair, reasonable and necessary to protect the legitimate interests of Purchaser and constitute a material inducement to Purchaser to enter into this Agreement and consummate the transactions contemplated by this Agreement. In the event that any of the covenants contained in this Section 6.2 are determined by any court of competent jurisdiction to be unenforceable for any reason whatsoever, then such covenant will not be deemed void, and the Parties agree that the scope of such covenant may be modified by the court and that such covenant will be amended in accordance with such modification, it being specifically agreed by the Parties that it is their continuing desire that each covenant contained in this Section 6.2 be enforced to the full extent of its terms and conditions or if a court finds the scope of such covenant unenforceable, the court should redefine such covenant so as to comply with applicable Law.

Section 6.3 Confidentiality. Each Principal Seller covenants and agrees that for a period of three (3) years from and after the Closing, such Principal Seller shall not, and shall cause its Affiliates, agents and other representatives not to, directly or indirectly, disclose, divulge or make use of any Confidential Information related to the business of the Company except (a) to the extent required by Law or legal process (but only after such Principal Seller has provided Purchaser with reasonable notice and opportunity to take action against any legally required disclosure), (b) in connection with such Principal Seller's compliance with the terms of this Agreement, the enforcement or exercise of such Principal Seller's rights hereunder or the fulfillment of such Principal Seller's obligations under this Agreement, (c) to the extent such Principal Seller or any Affiliate of such Principal Seller determines that such use or disclosure is reasonably necessary for the defense of any Legal Proceeding against such Principal Seller or any Affiliate of such Principal Seller, including in connection with challenging or defending any claim for indemnification under this Agreement, and (d) to the extent required by accounting requirements, including in connection with any accounting, audit, Tax or regulatory compliance of such Principal Seller or any Affiliate thereof. Notwithstanding the foregoing, following the Closing, Peterson Partners will be allowed to disclose the principal terms of this Agreement and the transactions contemplated hereby without the prior written consent of Purchaser to Peterson Partners' agents, advisors, attorneys, consultants, auditors, limited partners, general partners, financing sources, potential investors, and any Peterson Representative so long as such persons have entered into a confidentiality agreement containing terms similar to this Section 6.3 or are subject to a similar obligation or duty; provided that Peterson Partners may disclose the acquisition of the Company by Purchaser, the Purchase Price, and other principal terms of this Agreement customarily included in investment teasers and similar investment marketing materials to any of the foregoing Persons without such Persons having entered into a confidentiality agreement containing terms similar to this Section 6.3 or being subject to a similar obligation or duty, provided, however, that such terms must have been publicly disclosed in SunPower's public filings with the Securities and Exchange Commission.

Section 6.4 Indemnification of Officers and Managers. From the Closing until the sixth (6th) anniversary of the Closing Date, all rights to indemnification by the Company existing in favor of those Persons who were immediately prior to Closing, or at any time prior to the Closing Date, managers or officers of the Company (the "***D&O Indemnified Persons***") for their acts and omissions occurring prior to the Closing, as provided in the Organizational Documents of the Company, as applicable, shall be observed by the Company, as applicable, to the fullest extent available pursuant to the Organizational Documents of the Company under applicable Law, and any claim made requesting indemnification pursuant to such indemnification rights shall continue to be subject to this Section 6.4 until disposition of such claim; provided, however, that no Principal Seller shall be entitled to any such indemnification in connection with any claim arising from or relating to the same facts and circumstances giving rise to a claim by Purchaser under Article 9. The provisions of this Section 6.4 are intended to be for the benefit of, and will be enforceable in accordance with their terms by, each of the D&O Indemnified Persons and their successors, assigns and heirs.

Section 6.5 Efforts and Cooperation Regarding Competition Law Filings.

(a) Subject to the terms and conditions herein provided, if not made prior to the Closing, each of Purchaser and Principal Sellers will use, and Principal Sellers shall cause the Company to use, their respective commercially reasonable efforts and will cooperate fully with one another to comply as promptly as practicable with all governmental requirements applicable to the transactions contemplated by this Agreement and to obtain promptly all approvals, orders, permits or other consents of any applicable Competition Authorities necessary for the consummation of the transactions contemplated by this Agreement, including any notifications and expiration or termination of any waiting periods under the HSR Act and the satisfaction, but not the waiver, of the

closing conditions set forth in Sections 8.1(d) and (e) and 8.2(d) and (e). Without limiting the generality of the foregoing, each of the Purchaser and Principal Sellers shall use, and Principal Sellers shall cause the Company to use, commercially reasonable efforts to obtain consents of all Competition Authorities necessary to consummate the transactions contemplated by this Agreement.

(b) Each Party shall cooperate and promptly provide information to other Parties necessary to prepare filings and make appropriate filings, if necessary, pursuant to the Competition Laws with respect to the transactions contemplated by this Agreement, and shall supply as promptly as practicable to the appropriate Competition Authorities any additional information and documentary material that may be requested pursuant to the HSR Act or other Competition Laws.

(c) Each Party shall keep the other Parties reasonably informed with respect to the status of any such submissions and filings to such Competition Authorities and reasonably cooperate with each other, including with respect to: (A) the receipt of any non-action, action, clearance, consent, approval or waiver; (B) the expiration or termination of any waiting period; (C) the utilization of any pull and refiling procedure; (D) communications and meetings with Competition Authorities; (E) any timing agreement with any Competition Authority; (F) the commencement or proposed or threatened commencement of any investigation, litigation or administrative or judicial action or Legal Proceeding under the Competition Laws or other applicable Laws; and (G) the nature and status of any objections raised or proposed or threatened to be raised under the Competition Laws or other applicable Laws with respect to the transactions contemplated under this Agreement.

(d) Purchaser and Principal Sellers shall, subject to applicable Law relating to the exchange of information, do the following: (i) promptly notify the other Parties of (and if in writing, furnish the other Parties with copies of) any request, inquiry, objection, charge or other claim, actual or threatened, or other communication to such person from a third-person or any Competition Authority, including, without limitation, the Federal Trade Commission and the U.S. Department of Justice, regarding the filings and submissions described in this Section 6.5, or in connection with the transactions contemplated by this Agreement, and, to the extent reasonably feasible permit the others to review and discuss in advance (and to consider in good faith any comments made by the others in relation to) any proposed substantive written response to any communication from a Competition Authority regarding the filings and submissions described in this Section 6.5; (ii) keep the other Parties reasonably informed of any developments, meetings or discussions with any Competition Authority in respect of any filings, investigation or inquiry concerning the transactions contemplated by this Agreement, including, without limitation, the status of any request, inquiry, objection, or other claim by the Federal Trade Commission and the U.S. Department of Justice; and (iii) not independently participate in any meeting or discussions with a Competition Authority in respect of any filings, investigation or inquiry concerning the transactions contemplated by this Agreement without giving the other Parties prior notice of such meeting or discussions and, unless prohibited by such Competition Authority, the opportunity to attend or participate; provided, that the Parties shall be permitted to reasonably redact any correspondence, filing, submission or communication to the extent such correspondence, filing, submission or communication contains competitively or commercially sensitive information, including information relating to the valuation of the transactions, and, provided that all such sensitive information and documents pertinent to any competitive review, investigation or Legal Proceeding is provided to antitrust counsel for Purchaser, which may be designated as limited for "Outside Counsel Only" to the extent it includes competitively sensitive information.

(e) Notwithstanding the foregoing, nothing in this Section 6.5 or otherwise in this Agreement including exercise of reasonable best efforts or any commercially reasonable efforts shall require any Party to propose, negotiate, effect or agree to, the sale, divestiture, license or other disposition of any assets or businesses of such Party or of the Company or any Affiliate of either, or otherwise take any action that limits the freedom of action with respect to, or its ability to retain any of the businesses, product lines or assets of such Party or the Company or any Affiliate of either.

(f) In the event any claim, action, suit, investigation or other Legal Proceeding by any Competition Authority or other Person is commenced which questions the validity or legality of the transactions contemplated hereby or seeks damages in connection therewith, the Parties, at the expense of Purchaser, agree to cooperate and use commercially reasonable efforts to defend against such claim, action, suit, investigation or other Legal Proceeding and, if an injunction or other order is issued in any such action, suit or other Legal Proceeding, to use commercially reasonable efforts to have such injunction or other order lifted, and to cooperate reasonably regarding any other impediment to the consummation of the transactions contemplated hereby. Purchaser, at its expense, shall be entitled to direct the antitrust defense of transactions contemplated by this Agreement, or negotiations with, any Competition Authority or other third party relating to the transactions or regulatory filings under applicable Competition Laws, subject to the provisions of this Section 6.5. No Party shall make any offer, acceptance or counter-offer to or otherwise engage in negotiations or discussions with any Competition Authority with respect to any proposed settlement, consent decree, commitment or remedy, or, in the event of litigation, discovery, admissibility of evidence, timing or scheduling, except as Purchaser and Principal Sellers mutually agree.

ARTICLE 7

CERTAIN TAX MATTERS

Section 7.1 Consistent Tax Reporting. The Parties agree that unless otherwise required by applicable Law, for U.S. federal income tax purposes, the purchase and sale of the Interests shall be treated, from the perspective of the Sellers, as a sale of partnership interests and, from Purchaser's perspective, as an asset acquisition, as provided for in Situation 1 of IRS Revenue Ruling 99-6, 1999-1 C.B. 432. The Parties further agree to (a) report the transactions contemplated by this Agreement in all respects consistently with this Section 7.1 and the other provisions of this Agreement for purposes of any federal, state, local or foreign Tax Return and (b) not take any actions or positions inconsistent with the obligations of the Parties set forth herein. The Parties also agree (x) that the Contingent Purchase Consideration paid (or to be paid) to The Skein Trust, The Gosling Trust, and Michael Rands constitutes a portion of the purchase consideration payable to them (in accordance with the provisions of this Agreement) in exchange for their Interests and not as compensation for services, (y) that the forfeited Deferred Service Provider Payments that are paid (or to be paid) to the Sellers pursuant to Section 2.5(a) constitute a portion of the purchase consideration payable to them (in accordance with the provisions of this Agreement) in exchange for their Interests and not as compensation for services, and (z) to report any and all payments of the Contingent Purchase Consideration and forfeited Deferred Service Provider Payments paid to Sellers as part of the Purchase Price and that Purchaser will not deduct or otherwise treat such payments as compensation.

Section 7.2 Returns; Payment of Taxes.

(a) Principal Sellers shall prepare and file, or cause to be prepared and filed, in accordance with past practice, all Returns of Sellers and the Company that are required to be filed before the Closing Date and pay or cause to be paid any Taxes due in respect of such Returns.

(b) Purchaser shall prepare and file, or cause to be prepared and filed, all Returns of Blue Raven and its subsidiaries that are required to be filed after the Closing Date and timely remit any Taxes shown to be due on such Returns to the applicable Taxing Authorities, subject to Principal Sellers' obligation to pay Purchaser the Seller Tax Obligations, if any. Before filing any income Tax Return with respect to a Pre-Closing Tax Period or Straddle Period (a "**Purchaser Return**"), Purchaser shall deliver, or cause to be delivered, to Seller Representative for review and comment, at least forty-five (45) days prior to the due date thereof (giving effect to any extensions thereto) a completed copy of such Purchaser Return along with a statement (the "**Tax Statement**") identifying and summarizing the methodology used to calculate the amount of Seller Tax Obligations. If Seller Representative agrees with such Purchaser Return and the Tax Statement, then Seller Representative shall so notify Purchaser and Principal Sellers shall pay to (or as directed by) Purchaser the amount of Taxes shown on the Tax Statement as

being Seller Tax Obligations, and such payments shall be made in each case no later than five (5) Business Days prior to the due date for paying such Taxes to the relevant Taxing Authority. If, however, within twenty (20) days after receipt of a Purchaser Return and Tax Statement, Seller Representative (i) notifies Purchaser that it disputes the accuracy of the Purchaser Return or amount of Taxes shown on the Tax Statement as being Seller Tax Obligations and (ii) provides Purchaser with a statement setting forth in reasonable detail its computation of the amount of Taxes that should be Seller Tax Obligations and/or any errors in such Purchaser Return, then Purchaser and Seller Representative shall attempt to resolve their disagreement within five (5) days following Seller Representative's notification of Purchaser of such disagreement. If Purchaser and Seller Representative are not able to resolve their disagreement, the dispute shall be submitted to the Independent Accountant for resolution in accordance with the principles of Section 2.4(e). If the Independent Accountant is unable to resolve all objections before the due date for filing such Purchaser Tax Return, the Tax Return shall be filed as initially prepared by Purchaser and then amended, if necessary, to reflect the decision of the Independent Accountant. The determination of the Independent Accountant shall be binding on the Parties. The cost of the services of the Independent Accountant will be shared equally by Principal Sellers, on the one hand, and Purchaser, on the other hand. Notwithstanding the foregoing, Principal Sellers shall not be required to pay Seller Tax Obligations or any other Taxes pursuant to this Section 7.2(b) to the extent that such Seller Tax Obligations or other Taxes are taken into account in the final determination of the Closing Net Working Capital and result in a reduction to the final Purchase Price.

Section 7.3 Straddle Period Allocation; Refunds.

(a) In the case of any Taxes that are imposed on a periodic basis and are payable for a Straddle Period, the portion of such Tax that relates to the Pre-Closing Tax Period shall (a) in the case of any property or ad valorem Taxes, be deemed to be the amount of such Tax for the entire taxable period multiplied by a fraction the numerator of which is the number of days in the taxable period ending on the Closing Date and the denominator of which is the number of days in the entire taxable period, and (b) in the case of any other Taxes, be deemed equal to the amount which would be payable if the relevant taxable period ended on the Closing Date; *provided, however*, that exemptions, allowances or deductions that are calculated on an annual basis (including depreciation and amortization deductions) shall be allocated between the period ending on the Closing Date and the period after the Closing Date in proportion to the number of days in each such period. Any credits relating to a Straddle Period shall be allocated on a basis consistent with the allocations made pursuant to the preceding sentence.

(b) Except to the extent taken into account in the final determination of the Closing Net Working Capital, Principal Sellers are entitled to receive any Tax refunds for Pre-Closing Tax Periods. Purchaser shall promptly deliver to Seller Representative the amount of any refund it receives to which Principal Sellers are entitled hereunder, without interest (other than interest received from the applicable Taxing Authority), net of reasonable expenses (including Taxes) with respect thereto or incurred in connection therewith.

Section 7.4 Allocation of Purchase Price. Purchaser shall prepare an allocation of the Final Purchase Price and liabilities that are amounts realized for U.S. federal income tax purposes among the assets of Blue Raven and its subsidiaries in accordance with Section 1060 of the Code and the Treasury Regulations thereunder (and any similar provisions of state, local or non-U.S. Law, as appropriate), which allocation shall be made in accordance with the allocation set forth in Schedule 7.4 and be binding on Purchaser, Sellers, and Blue Raven and its subsidiaries. Purchaser shall deliver such allocation to Seller Representative within ninety (90) days after the Closing for review. The Principal Sellers shall have ten (10) days from receipt of Purchaser's allocation to notify Purchaser of an objection thereto. If the Principal Sellers timely object to such allocation and Purchaser agrees, Purchaser shall change such allocation and notify the Seller Representative thereof. If the Parties fail to resolve a timely objection, they shall submit the dispute to the Independent Accountant in accordance with the principles of Section 2.4(e). Purchaser, Sellers, and Blue Raven and its subsidiaries agree to make all appropriate Tax filings on a basis consistent with the agreed allocation and to provide a draft of any required information Return to the other Parties, if requested, at least ten (10) days prior to the filing of any such Return. None of Sellers, Purchaser, or Blue Raven or its subsidiaries shall take any position (whether in audits, Tax Returns or otherwise) that is inconsistent with such allocation unless required to do so by applicable Law. The Parties shall timely file any required IRS Forms 8594 in a manner consistent with such asset allocation.

Section 7.5 Cooperation on Tax Matters. Purchaser and Sellers shall cooperate fully, to the extent reasonably requested by the other Parties, in connection with the filing of Returns and any audit or Legal Proceeding with respect to Taxes. Such cooperation shall include the retention and (upon another Party's request) the provision of records and information which are reasonably relevant to any such Return filing, audit, litigation, or other proceeding and making employees available on a mutually convenient basis to provide additional information and explanation of any material provided hereunder. After the Closing, Purchaser shall make available to Sellers all of the books and records of Blue Raven and its subsidiaries to the extent reasonably necessary for Seller's filing of Returns pursuant to Section 7.2(a) or for any other reasonable purpose related to Seller's ownership of Blue Raven and its subsidiaries prior to the Closing.

Section 7.6 Control of Audits. After the Closing Date, except as set forth in the next sentence, Purchaser shall control the conduct, through counsel of its own choosing, of any audit, claim for refund, or administrative or judicial proceeding involving any asserted Tax liability or refund with respect to Blue Raven and its subsidiaries (each, a "**Contest**"), but Seller Representative shall have the right to participate in such Contest with respect to any Straddle Period at Principal Sellers' expense, and Purchaser shall not settle, compromise and/or concede any portion of such Contest that could materially affect the Tax liability of Principal Sellers for any Straddle Period without the written consent of Seller Representative (which shall not be unreasonably withheld, conditioned or delayed). In the case of a Contest after the Closing Date that relates solely to Pre-Closing Tax Periods, Seller Representative, at Principal Sellers' expense, shall control the conduct of such Contest, using counsel reasonably satisfactory to Purchaser, but Purchaser shall have the right to participate in such Contest at its own expense, and Seller Representative shall not settle, compromise and/or concede any portion of such Contest that could materially affect the Tax liability of Blue Raven or its subsidiaries for any taxable year (or portion thereof) after the Closing Date without the written consent of Purchaser (which shall not be unreasonably withheld, conditioned or delayed); *provided that*, if Seller Representative fails to assume control of the conduct of any such Contest within thirty (30) days following the receipt by Seller Representative of notice of such Contest, Purchaser shall have the right to assume control of such Contest and shall be entitled to settle, compromise and/or concede any portion of such Contest. Purchaser shall promptly notify Seller Representative of the commencement of any audit or examination by any Taxing Authority of Blue Raven and its subsidiaries that includes a Pre-Closing Tax Period or a Straddle Period. Seller Representative shall promptly notify Purchaser if he becomes aware of the commencement of any audit or examination by any Taxing Authority of Blue Raven and its subsidiaries for any taxable period. To the extent of any conflict between this Section 7.6 and Section 9.5, this Section 7.6 shall control.

Section 7.7 Transfer Taxes; Tax Sharing Agreements.

(a) All transfer, documentary, sales, use, real property gains, stamp, registration, and other such Taxes and fees incurred in connection with this Agreement shall be paid by Purchaser when due, and Purchaser shall timely file or cause to be filed all necessary Tax Returns and other documentation with respect to all such transfer, documentary, sales, use, real property gains, stamp, registration, and other Taxes, fees and charges, as required to be filed by it under applicable Law, and Principal Sellers will reasonably cooperate with respect thereto as necessary and, if required by applicable Law, join in the execution of any such Returns and other documentation.

(b) Principal Sellers shall cause any Tax allocation agreement, Tax indemnity agreement, Tax sharing agreement or similar Contract between Blue Raven and any other Person to be terminated as of the Closing Date such that, from and after the Closing Date, Blue Raven shall not be obligated to make any payment pursuant to any such agreement for any Tax period.

ARTICLE 8
OBLIGATIONS TO CLOSE; CLOSING DELIVERABLES

Section 8.1 Conditions Precedent to Purchaser's Obligation to Close. Purchaser's obligation to purchase the Interests and to take the other actions required to be taken by Purchaser at the Closing is subject to the satisfaction, at or prior to the Closing, of each of the following conditions (any of which may be waived by Purchaser, in whole or in part):

- (a) Each of the representations and warranties contained in ARTICLE 3 and ARTICLE 4 shall be true and correct in all respects as of the Closing Date (except to the extent any representation or warranty expressly relates to a specific date, in which case as of that specific date);
- (b) Sellers shall have performed in all material respects and complied in all material respects with all agreements and covenants contained in this Agreement that are required to be performed or complied with by them prior to or at the Closing;
- (c) The provisions of Section 8.3 shall have been complied with in all respects;
- (d) All filings required pursuant to the HSR Act, if any, shall have been made and the applicable waiting period and any extensions thereof have expired or been terminated; and
- (e) None of the parties shall be subject to any Order of a court of competent jurisdiction that prohibits the consummation of the transactions contemplated by this Agreement.

Section 8.2 Conditions Precedent to Sellers' Obligation to Close. Sellers' obligation to sell the Interests and to take the other actions required to be taken by Sellers' at the Closing is subject to the satisfaction, at or prior to the Closing, of each of the following conditions (any of which may be waived by Seller Representative, in whole or in part):

- (a) Each of the representations and warranties contained in ARTICLE 5 shall be true and correct in all respects as of the Closing Date (except to the extent any representation or warranty expressly relates to a specific date, in which case as of that specific date);
- (b) Purchaser shall have performed in all material respects and complied in all material respects with all agreements and covenants contained in this Agreement that are required to be performed or complied with by Purchaser prior to or at the Closing;
- (c) The provisions of Section 8.4 shall have been complied with in all respects;
- (d) All filings required pursuant to the HSR Act, if any, shall have been made and the applicable waiting period and any extensions thereof have expired or been terminated; and
- (e) None of the parties shall be subject to any Order of a court of competent jurisdiction that prohibits the consummation of the transactions contemplated by this Agreement.

Section 8.3 Closing Deliverables of Sellers. On the Closing Date, Sellers will deliver or cause to be delivered to Purchaser (or to such other Person indicated below) the following:

- (a) Each of the Ancillary Agreements to which any Seller or the Company is a party, duly executed by such Seller or Company, as applicable;
- (b) All Consents set forth on Schedule 8.3(b), which Consents will be in full force and effect and not subject to any condition or waiver that has not been satisfied;
- (c) Evidence satisfactory to Purchaser, including payoff letters, evidencing the repayment in full of all Indebtedness;
- (d) Evidence satisfactory to Purchase, that the PPP Loan has been forgiven;
- (e) Evidence that the execution, delivery and performance by Sellers of this Agreement and the transactions contemplated hereby have been duly authorized and approved by all necessary action on the part of Sellers and the Company, and any vote, approval or consent required to be received or obtained in connection therewith has been received or obtained;
- (f) A good standing certificate (or equivalent) for the Company from the Governmental Authorities of its jurisdiction of formation, each as of a date within fifteen (15) days of the Closing Date;
- (g) A certificate from each Seller pursuant to Treasury Regulations Section 1.1445-2(b) certifying that such Seller is not a foreign person within the meaning of Section 1445 of the Code, in form and substance reasonably satisfactory to Purchaser;
- (h) Resignations, effective as of the Closing, of each manager and officer of Blue Raven and its subsidiaries set forth on Schedule 8.3(h); and
- (i) Such other agreements, consents, documents, instruments and writings as are reasonably requested by Purchaser to be delivered by Sellers in order to consummate the transactions contemplated by this Agreement and the Ancillary Agreements.

Section 8.4 Closing Deliverables of Purchaser. On the Closing Date, Purchaser will deliver or cause to be delivered to Seller Representative (or to such other Person indicated below) the following:

- (a) The Estimated Closing Cash Payment in accordance with Section 2.2;
- (b) Each of the Ancillary Agreements to which Purchaser is a party, duly executed by Purchaser;

(c) Evidence that the execution, delivery and performance by Purchaser of this Agreement and the transactions contemplated hereby have been duly authorized and approved by all necessary action on the part of Purchaser, and any vote, approval or consent required to be received or obtained in connection therewith has been received or obtained;

(d) The R&W Insurance Policy, which shall be bound at or prior to the Closing; and

(e) Such other agreements, consents, documents, instruments and writings as are reasonably requested by Seller Representative to be delivered by Purchaser in order to consummate the transactions contemplated by this Agreement and the Ancillary Agreements.

ARTICLE 9

SURVIVAL; INDEMNIFICATION

Section 9.1 Survival. The Fundamental Representations will survive until the later of the date that is six (6) years following the Closing Date or sixty (60) days following the expiration of the applicable statute of limitations. All other representations and warranties in this Agreement shall not survive the Closing. All covenants will survive until the date they otherwise expire, whether by their express terms or as a matter of applicable Law. Notwithstanding anything contained herein to the contrary, if, prior to the close of business on the last day a claim for indemnification may be asserted hereunder, an Indemnifying Party has been notified of a claim for indemnification in accordance with the terms of this ARTICLE 9 and such claim has not been finally resolved or disposed of as of such date, such claim for indemnification will continue to survive and will remain a basis for indemnification hereunder until such claim is finally resolved or disposed of in accordance with the terms hereof.

Section 9.2 Indemnification of Purchaser.

(a) Subject to the limitations set forth in this ARTICLE 9, from and after the Closing, Principal Sellers, severally and not jointly, will indemnify and hold harmless and defend Purchaser, its Affiliates (including, following the Closing, Blue Raven and its subsidiaries) and its and their respective shareholders, officers, directors, members, managers, partners, employees, representatives and agents, and their respective successors and assigns of the foregoing (the “**Purchaser Indemnified Parties**”), from and against any and all Losses suffered or incurred by any such Purchaser Indemnified Party arising out of, relating to or resulting from:

(i) any breach or inaccuracy of any Fundamental Representation set forth in ARTICLE 3;

(ii) any breach of any of the covenants or agreements made by Sellers collectively (and not individually) in this Agreement or any Ancillary Agreement, other than breaches of Section 6.2 and Section 6.3;

(iii) any Indebtedness with respect to a pre-Closing period, to the extent outstanding at the Closing and not included as a current liability in Closing Net Working Capital;

(iv) any Transaction Expenses with respect to a pre-Closing period, to the extent unpaid at the Closing; or

(v) the items set forth on Schedule 9.2(a)(v).

(b) Subject to the limitations set forth in this ARTICLE 9, from and after the Closing, each Seller, severally for itself and not jointly, will indemnify and hold harmless and defend each Purchaser Indemnified Parties from and against any and all Losses suffered or incurred by any such Purchaser Indemnified Party arising out of, relating to or resulting from:

(i) any breach or inaccuracy of any Fundamental Representation of such Seller set forth in ARTICLE 4; or

(ii) any breach of any of the covenants or agreements made by such Seller individually (and not collectively) in this Agreement or any Ancillary Agreement, including breaches of Section 6.2 and Section 6.3.

Section 9.3 Indemnification of Sellers. From and after the Closing, Purchaser will indemnify and hold harmless and defend Sellers and their respective shareholders, directors, members, managers, partners, employees, trustees, representatives, agents, heirs, successors, and assigns (as applicable, the “**Seller Indemnified Parties**”) from and against any and all Losses suffered or incurred by or any such Seller Indemnified Party arising out of, relating to or resulting from (i) any breach or inaccuracy of any representation or warranty of Purchaser contained in ARTICLE 5 and (ii) any breach of any of the covenants or agreements of Purchaser contained in this Agreement.

Section 9.4 Certain Limitations.

(a) Notwithstanding anything herein to the contrary, the maximum liability of each Principal Seller under Section 9.2(a)(i) shall be the pro rata share of the Purchase Price (ignoring for purposes of this Section 9.4, the pro rata share of the Charitable Seller) of such Principal Seller as set forth in the Funds Flow Memorandum; provided, however, that this Section 9.4(a) shall not apply to any Losses attributable to the breach of covenants or involving fraud.

(b) No Principal Seller shall be liable to any Purchaser Indemnified Party for (i) breach or non-performance by any other Seller (other than the Charitable Seller) of the representations, warranties, covenants and agreements of such other Seller (other than the Charitable Seller) set forth in this Agreement or any Ancillary Agreement, or (ii) fraud by any other Person (in which case a claim for fraud may be asserted by any Purchaser Indemnified Party solely against the Seller (other than the Charitable Seller) who committed such fraud and no other Seller shall be liable for the fraud committed by any other Seller (other than the Charitable Seller)).

(c) Notwithstanding anything herein to the contrary, the maximum liability of the Charitable Seller under this Agreement, including this ARTICLE 9, shall be the actual proceeds received hereunder by the Charitable Seller.

(d) For purposes of the indemnity contained in this ARTICLE 9, all qualifications and limitations set forth in the parties’ representations and warranties as to “materiality,” “Material Adverse Effect” and words of similar import shall be disregarded in determining whether there shall have been any inaccuracy in or breach of any representations and warranties in this Agreement and the Losses arising therefrom.

(a) If any third party notifies any Indemnified Party with respect to any matter (a “**Third Party Claim**”) which may give rise to a claim for indemnification against the Indemnifying Party under this ARTICLE 9, then the Indemnified Party must promptly, and in any event within thirty (30) days after receiving notice of such Third Party Claim, notify the Indemnifying Party thereof in writing; *provided, however*, that no delay on the part of the Indemnified Party in notifying the Indemnifying Party will relieve the Indemnifying Party from any obligation hereunder unless (and then solely to the extent) the Indemnifying Party is actually and materially prejudiced thereby. Such notice by the Indemnified Party shall describe the Third Party Claim in reasonable detail, shall include copies of all material written evidence thereof and shall indicate the estimated amount, if reasonably practicable, of the Losses that have been or may be sustained by the Indemnified Party.

(b) The Indemnifying Party will have the right to defend the Indemnified Party against the Third Party Claim with counsel of the Indemnifying Party’s choice, reasonably satisfactory to the Indemnified Party, so long as the Indemnifying Party notifies the Indemnified Party, within 30 days after the Indemnified Party has given notice of the Third Party Claim to the Indemnifying Party (or, if earlier, 10 days before an answer is due in the applicable Legal Proceeding), that the Indemnifying Party is assuming the defense of such Third Party Claim and acknowledging that the Losses relating to such claim are the responsibility of the Indemnifying Party, *provided, however*, that, the Indemnifying Party shall not be entitled to defend the Indemnified Party if (i) such Third Party Claim (A) seeks injunctive relief, (B) seeks other equitable relief that, if such Third Party were to prevail on such equity claims, would result in material restrictions on the operation of the business of Blue Raven and its subsidiaries, or (C) is brought by a Governmental Authority, or (ii) the Indemnified Party has been advised by counsel that there is an actual conflict of interest between the Indemnifying Party and the indemnified Party. In the event that the Indemnifying Party fails to assume the defense of any Third Party Claim within the period required by this Section 9.5(b), the Indemnified Party will have the right to undertake the defense of such Third Party Claim at the expense and for the account of the Indemnifying Party. In the event the Indemnified Party undertakes defense of such Third Party Claim pursuant to this Section 9.5(b), (1) the Indemnifying Party may retain separate co-counsel at its sole cost and expense, (2) the Indemnified Party will not, without the prior written consent of the Indemnifying Party (which consent may not be unreasonably withheld or delayed), consent to any admission or the entry of any judgment with respect to the matter, or enter into any settlement.

(c) So long as the conditions set forth in Section 9.5(b) are and remain satisfied, then (i) the Indemnifying Party may conduct the defense of the Third Party Claim in accordance with Section 9.5(b), (ii) the Indemnified Party may retain separate co-counsel at its sole cost and expense, and (iii) the Indemnifying Party will not, without the prior written consent of the Indemnified Party (which consent may not be unreasonably withheld or delayed), consent to any admission or the entry of any judgment with respect to the matter, or enter into any settlement which (A) imposes an injunction or other equitable relief upon the Indemnified Party, (B) does not include an unconditional provision whereby the plaintiff or claimant in the matter releases the Indemnified Party from all liability with respect thereto, (C) includes any statement as to or an admission of fact, culpability or failure to act by or on behalf of the Indemnified Party or any of its Affiliates or (D) requires any monetary payment by the Indemnified Party and (iv) with respect to any Third Party Claim where indemnification is being sought under the R&W Insurance Policy, the Indemnifying Party will not, without, the prior written consent of the insurer(s) under the R&W Insurance Policy, consent to any admission or the entry of any judgment with respect to the matter, or enter into any settlement, to the extent Purchaser would be required to obtain such consent under the R&W Insurance Policy.

Section 9.6 Notice of Direct Claims. Any claim for indemnification of Losses under this ARTICLE 9 that is not a Third Party Claim (a “**Direct Claim**”) by an Indemnified Party will be asserted by giving prompt written notice thereof to the Indemnifying Party; *provided, however*, that any delay in providing, or the failure to provide such notification, will not affect the right of the Indemnified Party to indemnification hereunder except in the event that such delay or failure extends past the applicable survival expiration date set forth in Section 9.1 or to the extent that the Indemnifying Party is materially prejudiced by the delay or failure. Such notice will describe the Direct Claim in reasonable detail, including (to the extent practicable) copies of any written evidence thereof and will indicate the estimated amount of Losses, if reasonably determinable, that has been sustained by the Indemnified Party. The Indemnifying Party will have until 5:00 p.m., Mountain Time, on the date that is twenty (20) days after the Direct Claim is asserted to respond in writing to such Direct Claim. If the Indemnifying Party does not so respond within such twenty (20) day period, the Indemnifying Party will be deemed to have accepted such claim. If the Indemnifying Party does respond within such twenty (20) day period to reject the Direct Claim, however, the Indemnified Party will be free to pursue such remedies as may be available to the Indemnified Party on the terms and subject to the provisions of this ARTICLE 9.

Section 9.7 Payment of Losses. No later than ten (10) Business Days following the final determination of the amount of any Losses payable by Principal Sellers to any Purchaser Indemnified Party in accordance with this ARTICLE 9, Principal Sellers, severally and not jointly, shall pay the amount of such Losses to Purchaser (i) in accordance with their respective pro rata shares as set forth on the Funds Flow Memorandum (ignoring for purposes of this Section 9.7, the pro rata share of the Charitable Seller), in cash, by wire transfer of immediately available funds to an account designated in writing by Purchaser, or (ii) to the extent applicable, from the Escrow Account in the amounts and on the terms set forth on Schedule 9.2(a)(v). No later than ten (10) Business Days following the final determination of the amount of any Losses payable to any Seller Indemnified Party in accordance with this ARTICLE 9, Purchaser shall pay to Seller Representative, in cash, by wire transfer of immediately available funds to an account designated in writing by Seller Representative, the amount of such Losses.

Section 9.8 R&W Insurance Policy.

(a) The Parties acknowledge that Purchaser is obtaining the R&W Insurance Policy and that the fees, costs and expenses (including any premium) associated with purchasing the R&W Insurance Policy that are required to be paid to the insurer providing the R&W Insurance Policy shall be borne and paid by Purchaser (except that the Sellers shall pay a portion of the R&W Insurance Policy by payment of the Transaction Insurance Premiums). Except with respect to Fundamental Representations and any items set forth on Schedule 9.2(a)(v), the R&W Insurance Policy is Purchaser’s sole recourse with respect to any breach or inaccuracy of any representation or warranty in this Agreement, any Ancillary Agreement or any certificate or instrument delivered pursuant hereto. Additionally, except as set forth in the following sentence, any retention or deductible associated with the R&W Insurance Policy shall be borne and paid solely by Purchaser. With respect to Losses indemnifiable pursuant to Section 9.2(a)(i), the Purchaser Indemnified Parties shall recover (i) first, from Principal Sellers, severally and not jointly in accordance with their respective pro rata shares as set forth on the Funds Flow Memorandum (ignoring for purposes of this Section 9.8, the pro rata share of the Charitable Seller), to the extent of any unpaid retention or deductible under the R&W Insurance Policy, (ii) second, from the R&W Insurance Policy and (iii) thereafter, if coverage under the R&W Insurance Policy is insufficient to satisfy such Losses, directly from Principal Sellers, severally and not jointly in accordance with their respective pro rata shares as set forth on the Funds Flow Memorandum (ignoring for purposes of this Section 9.8, the pro rata share of the Charitable Seller); provided that the foregoing limitations shall not apply to Losses based upon or resulting from fraud.

(b) From and after the Closing Date, Purchaser shall not (and shall cause its Affiliates to not) amend the R&W Insurance Policy in a manner which would prejudice Sellers without Seller Representative’s prior written consent.

(c) The R&W Insurance Policy shall expressly provide that (i) the insurer(s) have no subrogation rights and may not and will not pursue any claim against Sellers or any of their respective Affiliates, as a result of any alleged breach of any representation or warranty or of the indemnification obligations of Sellers under this ARTICLE 9, other than as a result of any such breach involving fraud by a Seller; (ii) Sellers and their respective Affiliates are third party beneficiaries of the promise of the insurer(s) to not pursue claims against Sellers, except in the event of fraud pursuant to clause (i) above; and (iii)

without limiting the generality of Section 9.9(b), following the Closing, Purchaser may not modify the limitations on subrogation against Sellers in the R&W Insurance Policy without Seller Representative's express written consent.

(d) The limitations on indemnification set forth in Section 9.9 shall not apply to restrict Purchaser's rights under the R&W Insurance Policy, but will apply in all other cases.

(e) Following the Closing, except for the remedies described in Section 10.11, Purchaser shall have no remedy against Principal Sellers for any breach or inaccuracy of any representation or warranty in this Agreement, any Ancillary Agreement or any certificate or instrument delivered pursuant hereto other than with respect to Fundamental Representations pursuant to Sections 9.2(a)(i) and 9.8(a) (provided that the foregoing will not limit or apply in any manner to Purchaser's rights to recover from any insurer in respect of the R&W Insurance Policy for any such breach or inaccuracy under the R&W Insurance Policy).

Section 9.9 Additional Limitations. Notwithstanding the foregoing, the Parties expressly intend and agree as follows:

(a) From and after the Closing, the indemnification provisions provided for in this ARTICLE 9 will be the exclusive remedy for any breach of any representation, warranty, covenant, agreement, or obligation set forth herein or any other claims relating to the subject matter of this Agreement or any Ancillary Agreement, except in the case of fraud (in which case a claim may be asserted by an Indemnified Party solely against the Person who committed such fraud, and no other Person) or with respect to matters for which the remedy of specific performance, injunctive relief or other non-monetary equitable remedies are available pursuant to Section 6.2 and Section 10.11. For the avoidance of doubt, any adjustments made to the Purchase Price pursuant to Section 2.4 shall not be considered "remedies" for purposes of this Section 9.9(a) and shall not be limited by the terms of this Section 9.9(a).

(b) The amount of any Loss subject to indemnification hereunder and recoverable against Principal Sellers will be calculated net of any insurance proceeds actually received by the Indemnified Party from any insurer on account of such Loss or from any indemnity, contribution or other similar payment (as reduced by any related retrospective or prospective increase in premiums and taking into account all costs and expenses reasonably incurred in procuring such proceeds and any Taxes paid or payable as a result of the receipt of such proceeds). The Indemnified Party shall use its commercially reasonable efforts to seek recovery under insurance policies (including the R&W Insurance Policy and any insurance policy covering the items of special indemnification set forth in Schedule 9.2(a)(v)) or other indemnity, contribution or other similar agreements for any Losses prior to seeking recovery for such Losses from the Indemnifying Party pursuant to, and subject to the limitations of, this ARTICLE 9; except that the Indemnified Party shall not be required to seek recovery under the R&W Insurance Policy with respect to the items of special indemnification set forth in Schedule 9.2(a)(v).

(c) Notwithstanding anything to the contrary in this Agreement, it is intended that the provisions of this Agreement will not result in any duplicative payment of any amount required to be paid under this Agreement (and Principal Sellers shall not be required to indemnify any Purchaser Indemnified Party in respect of any matter to the extent such matter can be shown by Principal Sellers to have been taken into account in the final computation of the Closing Net Working Capital), and this Agreement shall be construed accordingly.

(d) Any indemnity payment made pursuant to this ARTICLE 9 shall be treated as an adjustment to the Purchase Price for federal, state, local provincial or foreign Tax purposes unless a contrary treatment is required under applicable Law.

Section 9.10 Liability of Charitable Seller. Notwithstanding anything to the contrary in this Agreement or any Ancillary Agreement, each Party acknowledges that the Charitable Seller is a public charity and agrees that the Charitable Seller is not (a) making any of the representations and warranties set forth in this Agreement or any Ancillary Agreement (including those set forth in ARTICLE 3 and ARTICLE 4), other than those set forth in Section 4.2, and, in such case, solely as to the Charitable Seller and not as to any of the other Parties or (b) agreeing to any covenants set forth in this Agreement, including those set forth in ARTICLE 6 other than Section 6.1. In no event shall Purchaser, any Principal Seller, or any Purchaser Indemnified Party be entitled to bring any claims for indemnification or pursue any other recourse, at law or in equity, from or against the Charitable Seller through the terms of this Agreement or through state, federal, or local Laws, except with respect to fraud by the Charitable Seller or a breach by the Charitable Seller of its representations and warranties set forth in Section 4.2.

ARTICLE 10 **MISCELLANEOUS**

Section 10.1 Seller Representative.

(a) By the execution and delivery of this Agreement, Sellers hereby irrevocably constitute and appoint Seller Representative as the true and lawful agent and attorney-in-fact of Sellers with full powers of substitution to act in the name, place and stead of Sellers with respect to the performance on behalf of Sellers under the terms and provisions of this Agreement, as the same may be from time to time amended, and to do or refrain from doing all such further acts and things, and to execute all such documents, as Seller Representative shall deem necessary or appropriate in connection with any of the transactions contemplated under this Agreement, including the power to:

(i) act for Sellers with respect to all indemnification matters referred to in this Agreement, including the right to compromise or settle any such claims on behalf of Sellers;

(ii) act for Sellers with respect to all matters referred to in Section 2.4;

(iii) amend or waive any provision of this Agreement in any manner that does not differentiate among Sellers;

(iv) receive and receipt for any portion of the Purchase Price or any other payment due from Purchaser to Sellers pursuant to this Agreement;

(v) receive all notices, communications, and deliveries hereunder on behalf of Sellers under this Agreement; and

(vi) do or refrain from doing any further act or deed on behalf of Sellers which Seller Representative deems necessary or appropriate, in the sole discretion of the Seller Representative, relating to the subject matter of this Agreement as fully and completely as Sellers could do if personally present and acting and as though any reference to Sellers in this Agreement was a reference to Seller Representative.

(b) The appointment of Seller Representative shall be deemed coupled with an interest and shall be irrevocable, and any other Person may conclusively and absolutely rely, without inquiry, upon any action of Seller Representative as the act of Sellers in all matters referred to in this Agreement. Sellers hereby ratify and confirm all that Seller Representative shall do or cause to be done by virtue of Seller Representative's appointment as

Seller Representative of Sellers. Seller Representative shall act for Sellers on all of the matters set forth in this Agreement in the manner Seller Representative believes to be in the best interest of Sellers, but Seller Representative shall not be responsible to Sellers for any Loss or damage Sellers may suffer by reason of the performance by Seller Representative of such Seller Representative's duties under this Agreement, other than loss or damage arising from fraud or willful misconduct in the performance of Seller Representative's duties under this Agreement.

(c) In the event Seller Representative resigns or ceases to function in such capacity for any reason whatsoever, then the successor Seller Representative shall be the Person appointed by Peterson Partners VII, L.P.; *provided, however*, that if for any reason no successor has been appointed within thirty (30) days of such resignation or cessation, then any of Purchaser and/or Principal Sellers shall have the right to petition a court of competent jurisdiction for appointment of a successor Seller Representative.

(d) Seller Representative Expense Fund Amount will be used solely to pay costs, fees and expenses incurred by the Seller Representative for the benefit of Sellers pursuant to this Agreement on or after the Closing Date, and will be paid or distributed at the direction of the Seller Representative (the "***Seller Representative Expense Fund***"). Seller Representative Expense Fund will be held by the Seller Representative as agent and for the benefit of the Sellers in a segregated account. Seller Representative (on behalf of Sellers) will hold these funds in trust. Promptly following sixty (60) days after the date on which the Seller Representative determines, in its reasonable sole discretion, that all matters for which the Seller Representative Expense Fund may need to be used have been resolved, Seller Representative will distribute the then-remaining balance of the Seller Representative Expense Fund (if any) by wire transfer of immediately available funds to the Sellers, based on their respective pro rata shares as set forth in the Funds Flow Memorandum. For Tax purposes, the Sellers' Representative Expense Fund shall be treated as having been received and voluntarily set aside by the Sellers at the time of Closing.

(e) Principal Sellers shall severally and not jointly (in accordance with their respective pro rata shares as set forth in the Funds Flow Memorandum), indemnify and hold harmless Seller Representative from and against, compensate Seller Representative for, reimburse Seller Representative for and pay any and all Losses arising out of and in connection with its activities as Seller Representative under this Agreement (the "***Representative Losses***"), in each case as such Representative Loss is suffered or incurred; provided that in the event it is finally adjudicated that a Representative Loss or any portion thereof was primarily caused by the gross negligence, fraud, or willful misconduct of Seller Representative, Seller Representative shall reimburse Principal Sellers the amount of such indemnified Representative Loss attributable to such gross negligence, fraud, intentional misconduct or bad faith.

(f) Sellers agree that: (i) Purchaser shall be able to rely conclusively on the instructions and decisions of the Seller Representative or any other actions taken (or not taken) by the Seller Representative pursuant to the terms hereof, and no party hereunder shall have any cause of action against Purchaser for any action taken by Purchaser in reliance upon the instructions of the Seller Representative pursuant to the terms of this Agreement, and (ii) amounts paid to the Seller Representative by or on behalf of Purchaser in accordance with the terms of this Agreement or at the direction of the Seller Representative shall be treated as having been paid to Sellers, employees and/or executives, as applicable.

Section 10.2 **Schedules**. Any information disclosed pursuant to the Disclosure Schedules or any other Schedule shall be deemed to be disclosed in all sections of the Disclosure Schedules to the extent that it is readily apparent on the face of such disclosure that such disclosure is applicable to such other section notwithstanding the omission of a reference or a cross reference thereto. Neither the specification of any dollar amount or any item or matter in any provision of this Agreement nor the inclusion of any specific item or matter in the Disclosure Schedules or any Schedule hereto is intended to imply that such amount, or higher or lower amounts, or the item or matter so specified or included, or other items or matters, are or are not material, and no Party shall use the fact of the specification of any such amount or the specification or inclusion of any such item or matter in any dispute or controversy between the Parties as to whether any item or matter is or is not material for purposes of this Agreement. Neither the specification of any item or matter in any provision of this Agreement nor the inclusion of any specific item or matter in the Disclosure Schedules or any other Schedule is intended to imply that such item or matter, or other items or matters, are or are not in the Ordinary Course, and no Party shall use the fact of the specification or the inclusion of any such item or matter in any dispute or controversy between the Parties as to whether any item or matter is or is not in the Ordinary Course for purposes of this Agreement.

Section 10.3 **Notices**. Any notice, request, instruction or other document required or permitted to be given under this Agreement by any Party to another Party will be in writing and will be given to such Party at its address set forth in below or to such other address as the Party to whom notice is to be given may provide in a written notice to the Party giving such notice. Each such notice, request or other communication will be effective (i) if given by certified mail, seventy-two (72) hours after such communication is deposited in the mail with certified postage prepaid addressed as aforesaid, (ii) one (1) Business Day after being furnished to a nationally recognized overnight courier for next Business Day delivery, or (iii) one (1) Business Day after the date sent if sent by electronic mail or facsimile transmission, receipt confirmed in each case.

To Principal Sellers:

Peterson Partners VII, L.P., as Seller Representative
Attention: Eric Noble
2755 East Cottonwood Parkway, Suite 400
Salt Lake City, Utah 84121
Fax: 801.365.7212
Email: enoble@petersonpartners.com,

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

Bennett Tueller Johnson & Deere, LLC
Attention: J. Reed Rawson
3165 East Millrock Drive, Suite 500
Salt Lake City, Utah 84121
Fax: (801) 438-2050
Email: rrawson@btjd.com

To the Charitable Seller:

The Church of Jesus Christ of Latter-day Saints
Attention: Greg N. Tarbet
Donations Room 1514
50 E. North Temple
Salt Lake City, Utah 84150
Fax: None
Email: donationsinkind@churchofjesuschrist.org

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

Kirton & McConkie
Attention: Michael Durham
50 E. South Temple, Suite 400
Salt Lake City, Utah 84111
Fax: None
Email: mdurham@kmclaw.com

To Purchaser:

SunPower Corporation
Attention: General Counsel
51 Rio Robles
San Jose, California 95134
Fax: None
Email: legalnoticesunpower@sunpower.com

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

Duane Morris LLP
865 South Figueroa Street, Suite 3100
Los Angeles, California 90017
Attention: Robert W. Kadlec
Fax: (213) 403-5453
Email: RWKadlec@duanemorris.com

Section 10.4 Amendments and Waivers. This Agreement can be amended, supplemented or changed, and any provision hereof can be waived, only by means of a written instrument duly executed and delivered on behalf of Purchaser and Seller Representative; *provided* that this Agreement may not be amended, supplemented or changed or waived in a manner that is adverse to the Charitable Seller, without the prior written consent of the Charitable Seller. No action taken pursuant to this Agreement, including any investigation by or on behalf of any Party, will be deemed to constitute a waiver by the Party taking such action of compliance with any representation, warranty, covenant or agreement contained herein. The waiver by any Party of a breach of any provision of this Agreement will not operate or be construed as a further or continuing waiver of such breach or as a waiver of any other or subsequent breach. No failure on the part of any Party to exercise, and no delay in exercising, any right, power or remedy hereunder will operate as a waiver thereof, nor will any single or partial exercise of such right, power or remedy by such Party preclude any other or further exercise thereof or the exercise of any other right, power or remedy.

Section 10.5 Public Announcements. Purchaser shall provide Seller Representative with a reasonable opportunity to comment on the initial press release announcing this Agreement and the transactions contemplated hereby (the “**Initial Press Release**”) prior to its release. Following the Initial Press Release, any Party may make press releases with respect to the closing of the transactions contemplated hereby; *provided* that any such press release shall be factually accurate, shall be limited to the information contained in the Initial Press Release and shall comply with the Confidentiality Agreement, Section 6.3 of this Agreement, and the other terms of this Agreement. Notwithstanding the foregoing, no such approval shall be necessary to the extent disclosure may be required by the Securities and Exchange Commission or the rules and regulations of The Nasdaq Stock Market; *provided* further that, in the event that Purchaser determines that disclosure is required pursuant to the preceding proviso, Purchaser shall use their reasonable commercial efforts to consult with Seller Representative prior to making the disclosure.

Section 10.6 Interpretation. No provision of this Agreement will be interpreted in favor of, or against, any of the Parties by reason of the extent to which any such Party or its counsel participated in the drafting of this Agreement or by reason of the extent to which any such provision is inconsistent with any prior draft of this Agreement or any provision of this Agreement.

Section 10.7 Expenses. Except as expressly set forth herein, each Party will be responsible for any costs and expenses (including attorneys’ fees) incurred by such Party in connection with the transactions contemplated hereby; *provided* that Purchaser shall be responsible for all filing and similar fees (if any) payable in connection with any filings or submissions under the HSR Act.

Section 10.8 Attorneys’ Fees. In the event of any litigation brought to enforce or interpret this Agreement, or arising out of its negotiation, performance, or subject matter, the Party who prevails will be entitled, in addition to any other damages or relief awarded, to recover its reasonable and documented attorneys’ fees, costs and other out-of-pocket costs incurred by such Party, including those incurred at trial, in any bankruptcy or other proceeding, on appeal, and in enforcing any judgment, as determined by the court, from the losing Party.

Section 10.9 Successors and Assigns. This Agreement will be binding upon and inure to the benefit of the Parties and their respective successors, legal representatives and permitted assigns. No Party to this Agreement may assign any of its rights or delegate any of its obligations under this Agreement, by operation of Law or otherwise, without the prior written consent of the other Party, and any such purported assignment in violation of this Agreement will be null and void *provided, however*, Purchaser may assign this Agreement for collateral security purposes to any lenders, potential lenders and other customary secured parties providing financing, hedging or cash management arrangements to purchaser, without the prior written consent of any other Party.

Section 10.10 No Third-Party Beneficiaries. This Agreement, the Disclosure Schedules and the Ancillary Agreements (including the schedules and exhibits hereto and thereto) are for the sole benefit of the Parties and their permitted assigns and nothing herein expressed or implied will give or be construed to give to any Person, other than the Parties and such permitted assigns, any legal or equitable rights under this Agreement, except that each Purchaser Indemnified Party and each Seller Indemnified Party will be a third party beneficiary with respect to ARTICLE 9.

Section 10.11 Specific Performance. Each of the Parties acknowledges and agrees that a violation of any of the terms of this Agreement will cause the other Parties irreparable injury for which adequate remedy at law is not available. Accordingly, it is agreed that each of the Parties will be entitled to seek specific performance, injunction, restraining Order or other equitable relief, without the posting of any bond, to prevent breaches of the provisions of this Agreement and to enforce specifically the terms and provisions hereof in any court of competent jurisdiction, in addition to any other remedy to which they may be entitled at law or equity.

Section 10.12 Governing Law. This Agreement, and all Legal Proceedings (whether in contract or tort) that may be based upon, arise out of or relate to this Agreement or the negotiation, execution or performance of this Agreement (including any Legal Proceedings based upon, arising out of or related to any representation or warranty made in or in connection with this Agreement), will be governed by and construed in accordance with the Laws of the State of Delaware without giving effect to principles or rules of conflict of laws to the extent such principles or rules would require or permit the application of Laws of another jurisdiction.

Section 10.13 Consent to Jurisdiction. Any Legal Proceeding seeking to enforce any provision of, or based on any matter arising out of or in connection with, this Agreement or the transactions contemplated hereby shall be brought and maintained exclusively in any state or federal court located in the State of Utah and each of the Parties hereby consents to the jurisdiction of such courts (and of the appropriate appellate courts therefrom) in any such Legal Proceeding and irrevocably waives, to the full extent permitted by Law, any objection which it may now or hereafter have to the laying of the venue of any such suit, action or proceeding in any such court or that any such Legal Proceeding which is brought in any such court has been brought in an inconvenient forum. To the extent not prohibited by Law, process in any such suit, action or proceeding may be served on any Party anywhere in the world, whether within or without the jurisdiction of any such court. Without limiting the foregoing, each Party agrees that service of process on such Party as provided in Section 10.3 will be deemed effective service of process on such Party.

Section 10.14 Counterparts. This Agreement may be executed in any number of counterparts, each of which will be deemed an original, but all of which, taken together, will constitute one and the same Agreement, binding on the Parties. The signature of any Party to any counterpart hereof will be deemed a signature to, and may be appended to, any other counterpart hereof. In the event that any signature to this Agreement or any Ancillary Agreement is delivered by facsimile transmission or by e-mail delivery of a “.pdf” format data file (or any other electronic signature complying with the U.S. federal ESIGN Act of 2000, e.g. www.docusign.com), such signature will create a valid and binding obligation of the Party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or “.pdf” signature page were an original thereof. Once signed, this Agreement may be delivered by facsimile or “.pdf” format, and any reproduction of this Agreement made by reliable means (e.g., photocopy, facsimile or portable document format) is considered an original.

Section 10.15 Headings. The headings in this Agreement are for convenience of reference only and will not control or affect the meaning or construction of any provisions of this Agreement.

Section 10.16 Entire Agreement. This Agreement, the Confidentiality Agreement, the Disclosure Schedules and the Ancillary Agreements (including the Schedules and Exhibits attached hereto and thereto) constitute the entire agreement among the Parties with respect to the subject matter hereto and thereto, and supersede all prior agreements and understandings, both oral and written, between the Parties with respect to the subject matter hereto and thereto.

Section 10.17 Severability. If any term or provision of this Agreement or the application of any such term or provision to any Person or circumstance is held invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, such invalidity, illegality or unenforceability will not affect, impair or invalidate any other term, provision or condition of this Agreement so long as the economic and legal substance of the transactions contemplated by this Agreement is not affected in any manner adverse to any Party. Upon such determination that any term or other provision is invalid, illegal or unenforceable, the Parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible to the fullest extent permitted by applicable Law in an acceptable manner to the end that the transactions contemplated by this Agreement are fulfilled to the extent possible.

Section 10.18 Waiver of Jury Trial. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE CONFIDENTIALITY AGREEMENT OR BY THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY.

Section 10.19 No Other Representations.

(a) NONE OF SELLERS NOR ANY OF THEIR RESPECTIVE REPRESENTATIVES, AGENTS, EMPLOYEES, OFFICERS, DIRECTORS, MANAGERS, TRUSTEES OR EQUITY HOLDERS, HAS MADE ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, OF ANY NATURE WHATSOEVER RELATING TO ANY SELLER, THE COMPANY, THE BUSINESS OF THE COMPANY OR OTHERWISE IN CONNECTION WITH THE TRANSACTIONS CONTEMPLATED HEREBY, OTHER THAN THOSE REPRESENTATIONS AND WARRANTIES EXPRESSLY SET FORTH IN ARTICLE 3 OR ARTICLE 4, IN EACH CASE, AS MODIFIED BY THE DISCLOSURE SCHEDULES OR ANY OTHER CERTIFICATE OR OTHER INSTRUMENT DELIVERED BY SELLERS PURSUANT TO THIS AGREEMENT. NEITHER PURCHASER NOR ANY OF ITS REPRESENTATIVES, AGENTS, EMPLOYEES, OFFICERS, DIRECTORS, MANAGERS, TRUSTEES OR EQUITY HOLDERS HAS MADE ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, OF ANY NATURE WHATSOEVER RELATING TO PURCHASER OR OTHERWISE IN CONNECTION WITH THE TRANSACTIONS CONTEMPLATED HEREBY, OTHER THAN THOSE REPRESENTATIONS AND WARRANTIES EXPRESSLY SET FORTH IN ARTICLE 5, IN EACH CASE, AS MODIFIED BY ANY CERTIFICATE OR INSTRUMENT DELIVERED BY PURCHASER PURSUANT TO THIS AGREEMENT.

(b) It is understood that any cost estimates, projections or other predictions, any data, any financial information or any memoranda or offering materials or presentations, including but not limited to, any offering memorandum or similar materials made available to Purchaser or its Affiliates or their respective representatives by the Company, Sellers or their respective representatives, agents, employees, officers, directors, managers, trustees or equity holders are not and shall not be deemed to be or to include representations or warranties of the Company or Sellers, and are not and shall not be deemed to be relied upon by Purchaser in executing, delivering and performing this Agreement and the transactions contemplated hereby, in each case except for the representations and warranties set forth in ARTICLE 3 and ARTICLE 4, in each case as modified by the Disclosure Schedules. Except for the specific representations and warranties expressly made by Sellers in ARTICLE 3 and ARTICLE 4, in each case as modified by the Disclosure Schedules: (i) Purchaser acknowledges and agrees that Sellers are not making and have not made any representation or warranty, express or implied, at law or in equity, in respect of (A) Sellers, the Company or the business of the Company; (B) the business, assets, liabilities, operations, prospects or condition (financial or otherwise) of Sellers or the Company; (C) the nature or extent of any Liabilities of Sellers, the Company or the business of the Company; (D) the effectiveness or the success of any operations; or (E) the accuracy or completeness of any confidential information memoranda, projections, forecasts or estimates of earnings or other information (financial or otherwise) regarding Sellers, the Company or the business of the Company furnished to Purchaser or its representatives or made available to Purchaser and its representatives in any “data rooms,” “virtual data rooms,” management presentations or any other form in expectation of, or in connection with, the transactions contemplated hereby, or in respect of any other matter or thing whatsoever; and (ii) Purchaser specifically disclaims that it is relying upon or has relied upon any such other representations or warranties that may have been made by any Person, and acknowledges and agrees that Sellers have specifically disclaimed and do hereby specifically disclaim any such other representation or warranty made by any Person. Notwithstanding the foregoing, nothing in this Section 10.19 shall limit or restrict, or shall be construed or deemed to limit or restrict, or be used as a defense against, or waive or limit in any manner Purchaser’s rights or remedies in the event of fraud.

Section 10.20 Waiver of Conflicts; Privilege.

(a) Each of the parties hereto acknowledges and agrees that Bennett Tueller Johnson & Deere, LLC (“**BTJD**”) has acted as counsel to Sellers in connection with the negotiation of this Agreement and consummation of the transactions contemplated hereby.

(b) Purchaser hereby consents and agrees to, and agrees to cause the Company to consent and agree to, BTJD representing any of Sellers after the Closing with respect to disputes concerning the transactions contemplated hereby, including with respect to such disputes in which the interests of a Seller may be directly adverse to Purchaser and its Affiliates (including the Company).

(c) In connection with the foregoing, Purchaser hereby irrevocably waives and agrees not to assert, and agrees to cause the Company to irrevocably waive and not to assert, any conflict of interest arising from or in connection with BTJD’s representation of Sellers after the Closing with respect to such disputes.

(d) Purchaser agrees, on behalf of itself, its Affiliates and, after the Closing, on behalf of the Company, that all communications in any form or format whatsoever between or among any of BTJD, the Company, any of Sellers, or any of their respective directors, managers, officers, employees, equity holders, agents or other representatives that directly relate to the negotiation, documentation and consummation of the transactions contemplated hereby or any dispute arising under this Agreement (collectively, the “**Deal Communications**”) shall be deemed to be retained and owned by Sellers and shall not pass to or be claimed by Purchaser or the Company. All Deal Communications that are attorney-client privileged (the “**Privileged Deal Communications**”) shall remain privileged after the Closing and the privilege and the expectation of client confidence relating thereto shall belong solely to Sellers and shall not pass to or be claimed by Purchaser or the Company.

(e) Notwithstanding the foregoing, in the event that a dispute arises between Purchaser or the Company on the one hand, and a third party other than any Seller, on the other hand, Purchaser or the Company may assert the attorney-client privilege to prevent the disclosure of the Privileged Deal Communications to such third party; *provided, however*, that none of Purchaser or the Company may waive such privilege without the prior written consent of Seller Representative. In the event that Purchaser or the Company is legally required by a Governmental Authority to access or obtain a copy of all or a portion of the Deal Communications, Purchaser (i) shall, to the extent legally permissible, reasonably promptly notify Seller Representative in writing (including by making specific reference to this Section 10.20), (ii) agrees that Seller Representative can seek a protective order, and (iii) agrees to use, at Principal Seller’s sole cost and expense, commercially reasonable efforts to assist therewith.

(f) To the extent that files or other materials maintained by BTJD in relation hereto constitute property of its clients, only Sellers shall hold such property rights and BTJD shall have no duty to reveal or disclose any such files or other materials or any Deal Communications by reason of any attorney-client relationship between BTJD, on the one hand, and the Company, on the other hand.

(g) It shall not be a breach of any provision of this Agreement if prior to the Closing, Sellers or the Company, or any of their respective directors, managers, officers, employees, agents or other representatives take any action to protect from access or remove from the premises of the Company (or any offsite back-up or other facilities) any Deal Communications, including by segregating, encrypting, copying, deleting, erasing, exporting or otherwise taking possession of any Deal Communications.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed by their respective authorized persons as of the day and year first above written.

PURCHASER:

SUNPOWER CORPORATION

By: /S/ Peter Faricy
Name: Peter Faricy
Title: Chief Executive Officer

FALCON ACQUISITION HOLDCO, INC

By: /S/ Manavendra Sial
Name: Manavendra Sial
Title: President

[Signature page to Securities Purchase Agreement]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed by their respective authorized persons as of the day and year first above written.

PRINCIPAL SELLERS:

PETERSON PARTNERS VII, L.P.

By: Peterson Partners VII, LLC
Its: General Partner

By: Peterson Partners, Inc.
Its: Manager

By: /S/ Eric Noble
Eric Noble, Chief Financial Officer
and Authorized Signatory

THE KEY HOLE CANYON TRUST

By: /S/ Jenny Lynn Lee
Jenny Lynn Lee, Trustee

THE SKEIN TRUST

By: /S/ Michael R. Cahill
Michael R. Cahill, Trustee

THE GOSLING TRUST

By: /S/ Michael R. Cahill
Michael R. Cahill, Trustee

/S/ Benjamin Peterson
BENJAMIN PETERSON

/S/ Jeffrey Lee
JEFFREY LEE

/S/ Michael Rands
MICHAEL RANDS

CHARITABLE SELLER:

THE CHURCH OF JESUS CHRIST OF
LATTER-DAY SAINTS

By: /S/ Greg N. Tarbet
Name: Greg N. Tarbet
Title: Authorized Representative

SELLER REPRESENTATIVE:

PETERSON PARTNERS VII, L.P.

By: Peterson Partners VII, LLC
Its: General Partner

By: Peterson Partners, Inc.
Its: Manager

By: /S/ Eric Noble
Eric Noble, Chief Financial Officer
and Authorized Signatory

[Signature page to Securities Purchase Agreement]

CERTIFICATIONS

I, Peter Faricy, certify that:

- 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 3, 2021

/s/ PETER FARICY

Peter Faricy
Chief Executive Officer
(Principal Executive Officer)

CERTIFICATIONS

I, Manavendra S. Sial, certify that:

- 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 3, 2021

/s/ MANAVENDRA S. SIAL

Manavendra S. Sial
Executive Vice President and Chief Financial Officer
(Principal Financial Officer)

**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 October 3, 2021 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), each of Peter Faricy and Manavendra S. Sial 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 results of operations of the Company.

Date: November 3, 2021

/s/ PETER FARICY

Peter Faricy
Chief Executive Officer
(Principal Executive Officer)

/s/ MANAVENDRA S. SIAL

Manavendra S. Sial
Executive Vice President and Chief Financial Officer
(Principal Financial 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.
