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

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**FORM 10-Q**

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☐ **QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**  
**For the quarterly period ended September 30, 2012**

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 Corporation**

(Exact Name of Registrant as Specified in Its Charter)

**Delaware**

(State or Other Jurisdiction of Incorporation or Organization)

**94-3008969**

(I.R.S. Employer Identification No.)

**77 Rio Robles, San Jose, California 95134**

(Address of Principal Executive Offices and Zip Code)

**(408) 240-5500**

(Registrant's Telephone Number, Including Area Code)

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

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

Large accelerated filer ☒

Accelerated filer ☐

Non-accelerated filer ☐

Smaller reporting company ☐

(Do not check if a smaller reporting company)

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

The total number of outstanding shares of the registrant's common stock as of October 26, 2012 was 119,047,078.

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## INDEX TO FORM 10-Q

	<u>Page</u>
<u>PART I. FINANCIAL INFORMATION</u>	<u>3</u>
<u>Item 1.</u> <u>Financial Statements (unaudited)</u>	<u>3</u>
<u>Condensed Consolidated Balance Sheets</u>	<u>3</u>
<u>Condensed Consolidated Statements of Operations</u>	<u>4</u>
<u>Condensed Consolidated Statements of Comprehensive Loss</u>	<u>5</u>
<u>Condensed Consolidated Statements of Cash Flows</u>	<u>6</u>
<u>Notes to Condensed Consolidated Financial Statements</u>	<u>7</u>
<u>Item 2.</u> <u>Management's Discussion and Analysis of Financial Condition and Results of Operations</u>	<u>42</u>
<u>Item 3.</u> <u>Quantitative and Qualitative Disclosure About Market Risks</u>	<u>59</u>
<u>Item 4.</u> <u>Controls and Procedures</u>	<u>61</u>
<u>PART II. OTHER INFORMATION</u>	<u>62</u>
<u>Item 1.</u> <u>Legal Proceedings</u>	<u>62</u>
<u>Item 1A.</u> <u>Risk Factors</u>	<u>63</u>
<u>Item 2.</u> <u>Unregistered Sales of Equity Securities and Use of Proceeds</u>	<u>64</u>
<u>Item 6.</u> <u>Exhibits</u>	<u>65</u>
<u>Signatures</u>	<u>66</u>
<u>Index to Exhibits</u>	<u>67</u>

# PART I. FINANCIAL INFORMATION

## ITEM 1: FINANCIAL STATEMENTS

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

	September 30, 2012	January 1, 2012 (1)
<b>Assets</b>		
Current assets:		
Cash and cash equivalents	\$ 377,126	\$ 725,618
Restricted cash and cash equivalents, current portion	11,275	52,279
Accounts receivable, net	297,696	438,633
Costs and estimated earnings in excess of billings	65,562	54,854
Inventories	407,210	445,501
Advances to suppliers, current portion	54,937	43,143
Project assets - plants and land, current portion	142,771	24,243
Prepaid expenses and other current assets (2)	584,669	502,879
Total current assets	1,941,246	2,287,150
Restricted cash and cash equivalents, net of current portion	13,939	27,276
Restricted long-term marketable securities	10,764	9,145
Property, plant and equipment, net	659,234	628,769
Project assets - plants and land, net of current portion	18,720	34,614
Goodwill	—	47,077
Other intangible assets, net	1,759	23,900
Advances to suppliers, net of current portion	302,577	284,378
Other long-term assets (2)	244,823	176,821
Total assets	\$ 3,193,062	\$ 3,519,130
<b>Liabilities and Stockholders' Equity</b>		
Current liabilities:		
Accounts payable (2)	\$ 417,896	\$ 441,655
Accrued liabilities	160,520	249,404
Billings in excess of costs and estimated earnings	139,625	170,828
Short-term debt	292,075	2,122
Convertible debt, current portion	—	196,710
Customer advances, current portion (2)	29,813	48,073
Total current liabilities	1,039,929	1,108,792
Long-term debt	100,952	364,273
Convertible debt, net of current portion	434,415	423,268
Customer advances, net of current portion (2)	240,254	181,946
Other long-term liabilities	257,236	166,126
Total liabilities	2,072,786	2,244,405
Commitments and contingencies (Note 8)		
Stockholders' equity:		
Preferred stock, \$0.001 par value; 10,000,000 shares authorized; none issued and outstanding as of both September 30, 2012 and January 1, 2012	—	—
Common stock, \$0.001 par value, 367,500,000 shares authorized; 123,064,117 shares issued, and 119,046,999 outstanding as of September 30, 2012; 101,851,290 shares issued, and 100,475,533 shares outstanding as of January 1, 2012	119	100
Additional paid-in capital	1,914,697	1,845,964
Accumulated deficit	(757,312)	(550,064)
Accumulated other comprehensive income (loss)	(3,382)	7,142
Treasury stock, at cost; 4,017,118 shares of common stock as of September 30, 2012; 1,375,757 shares of common stock as of January 1, 2012	(33,846)	(28,417)
Total stockholders' equity	1,120,276	1,274,725

Total liabilities and stockholders' equity	\$	3,193,062	\$	3,519,130
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- (1) As adjusted to reflect the balances of Tenesol S.A. ("Tenesol") beginning October 10, 2011, as required under the accounting guidelines for a transfer of an entity under common control (see Note 3).
- (2) The Company has related party balances in connection with transactions made with unconsolidated entities in which the Company has a direct equity investment. These related party balances are recorded within the "Prepaid expenses and other current assets," "Other long-term assets," "Accounts payable," "Customer advances, current portion," and "Customer advances, net of current portion" financial statement line items in the Condensed Consolidated Balance Sheets (see Note 5, Note 8, and Note 9).

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

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

	<b>Three Months Ended</b>		<b>Nine Months Ended</b>	
	<b>September 30, 2012</b>	<b>October 2, 2011</b>	<b>September 30, 2012</b>	<b>October 2, 2011</b>
Revenue	\$ 648,948	\$ 705,427	\$ 1,738,976	\$ 1,749,100
Cost of revenue	568,175	629,303	1,539,455	1,565,160
Gross margin	80,773	76,124	199,521	183,940
Operating expenses:				
Research and development	14,956	12,664	45,786	41,565
Sales, general and administrative	69,714	76,329	208,388	243,364
Goodwill impairment	46,734	309,457	46,734	309,457
Other intangible asset impairment	12,847	40,301	12,847	40,301
Restructuring charges	10,544	637	61,189	13,945
Total operating expenses	154,795	439,388	374,944	648,632
Operating loss	(74,022)	(363,264)	(175,423)	(464,692)
Other income (expense), net:				
Interest income	94	206	762	1,437
Interest expense	(25,834)	(17,096)	(63,935)	(48,414)
Gain on sale of equity interest in unconsolidated investee	—	10,989	—	10,989
Gain on share lending arrangement	50,645	—	50,645	—
Other, net	594	8,487	(4,984)	(10,066)
Other income (expense), net	25,499	2,586	(17,512)	(46,054)
Loss before income taxes and equity in earnings (loss) of unconsolidated investees	(48,523)	(360,678)	(192,935)	(510,746)
Provision for income taxes	(593)	(11,077)	(12,542)	(17,963)
Equity in earnings (loss) of unconsolidated investees	578	971	(1,772)	7,932
Net loss	\$ (48,538)	\$ (370,784)	\$ (207,249)	\$ (520,777)
Net loss per share of common stock:				
Basic and diluted	\$ (0.41)	\$ (3.77)	\$ (1.78)	\$ (5.34)
Weighted-average shares:				
Basic and diluted	118,952	98,259	116,408	97,456

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

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

<b>(In thousands)</b>	<b>Three Months Ended</b>		<b>Nine Months Ended</b>	
	<b>September 30, 2012</b>	<b>October 2, 2011</b>	<b>September 30, 2012</b>	<b>October 2, 2011</b>
Net loss	\$ (48,538)	\$ (370,784)	\$ (207,249)	\$ (520,777)
Components of comprehensive loss:				
Translation adjustment	148	5,211	(1,802)	4,067
Net unrealized gain (loss) on derivatives (Note 11)	(2,611)	38,987	(10,738)	(2,008)
Income taxes	490	(4,483)	2,016	3,251
Net change in accumulated other comprehensive income (loss)	(1,973)	39,715	(10,524)	5,310
Total comprehensive loss	<u>\$ (50,511)</u>	<u>\$ (331,069)</u>	<u>\$ (217,773)</u>	<u>\$ (515,467)</u>

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

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

	Nine Months Ended	
	September 30, 2012	October 2, 2011
<b>Cash flows from operating activities:</b>		
Net loss	\$ (207,249)	\$ (520,777)
Adjustments to reconcile net income to net cash used in operating activities:		
Stock-based compensation	33,179	37,829
Depreciation	82,747	83,979
Loss on retirement of property, plant and equipment	56,399	—
Amortization of other intangible assets	8,099	20,614
Goodwill impairment	46,734	309,457
Other intangible asset impairment	12,847	40,301
Loss on sale of investments	—	191
Loss (gain) on mark-to-market derivatives	(4)	(331)
Non-cash interest expense	29,336	21,112
Amortization of debt issuance costs	2,899	4,196
Amortization of promissory notes	—	3,486
Gain on change in equity interest in unconsolidated investee	—	(322)
Third-party inventories write-down	8,869	16,399
Gain on sale of equity interest in unconsolidated investee	—	(10,989)
Project assets write-down related to change in European government incentives	—	16,053
Equity in (earnings) loss of unconsolidated investees	1,772	(7,932)
Gain on share lending arrangement	(50,645)	—
Deferred income taxes and other tax liabilities	110	(860)
Changes in operating assets and liabilities, net of effect of acquisition:		
Accounts receivable	124,865	(48,587)
Costs and estimated earnings in excess of billings	(10,709)	(3,304)
Inventories	29,992	(120,753)
Project assets	(101,917)	(43,242)
Prepaid expenses and other assets	(221,069)	(123,044)
Advances to suppliers	(29,993)	(9,535)
Accounts payable and other accrued liabilities	(38,063)	64,432
Billings in excess of costs and estimated earnings	(31,203)	14,345
Customer advances	40,048	(1,698)
Net cash used in operating activities	(212,956)	(258,980)
<b>Cash flows from investing activities:</b>		
Decrease in restricted cash and cash equivalents	54,341	29,789
Purchase of property, plant and equipment	(79,033)	(85,528)
Proceeds from sale of equipment to third-party	419	501
Purchase of marketable securities	(1,436)	(8,962)
Proceeds from sales or maturities of available-for-sale securities	—	43,759
Cash received for sale of investment in unconsolidated investees	17,403	24,043
Cash paid for investments in unconsolidated investees	(10,000)	(80,000)
Net cash used in investing activities	(18,306)	(76,398)
<b>Cash flows from financing activities:</b>		
Proceeds from issuance of bank loans, net of issuance costs	125,000	489,221
Proceeds from issuance of project loans, net of issuance costs	27,617	—
Proceeds from residential lease financing	26,809	—
Proceeds from recovery of claim in connection with share lending arrangement	50,645	—
Repayment of bank loans and other debt	(126,427)	(377,124)
Cash paid for repurchase of convertible debt	(198,608)	—
Proceeds from private offering of common stock, net of issuance costs	163,616	—
Cash distributions to Parent in connection with the transfer of entities under common control	(178,290)	—
Proceeds from warrant transactions	—	2,261
Proceeds from exercise of stock options	51	4,013
Purchases of stock for tax withholding obligations on vested restricted stock	(5,430)	(10,550)

Net cash provided by (used in) financing activities	(115,017)	107,821
Effect of exchange rate changes on cash and cash equivalents	(2,213)	(3,301)
Net decrease in cash and cash equivalents	(348,492)	(230,858)
Cash and cash equivalents at beginning of period	725,618	605,420
Cash and cash equivalents, end of period	<u>\$ 377,126</u>	<u>\$ 374,562</u>

**Non-cash transactions:**

Assignment of residential lease receivables to a third party financial institution	\$ 10,259	\$ —
Property, plant and equipment acquisitions funded by liabilities	13,243	11,781
Non-cash interest expense capitalized and added to the cost of qualified assets	1,161	2,096
Issuance of warrants in connection with the Liquidity Support Agreement	50,327	—

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



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

### **The Company**

SunPower Corporation (together with its subsidiaries, the "Company" or "SunPower") is a vertically integrated solar products and services company that designs, manufactures and delivers high-performance solar electric systems worldwide for residential, commercial, and utility-scale power plant customers.

In December 2011, the Company announced a reorganization to align its business and cost structure with a regional focus in order to support the needs of its customers and improve the speed of decision-making processes. As a result, in the first quarter of fiscal 2012, the Company changed its segment reporting from its Utility and Power Plants ("UPP") Segment and Residential and Commercial ("R&C") Segment to three regional segments: (i) the Americas Segment, (ii) the EMEA Segment, and (iii) the APAC Segment. The Americas Segment includes both North and South America. The EMEA Segment includes European countries, as well as the Middle East and Africa. The APAC segment includes all Asia-Pacific countries. The Company's President and Chief Executive Officer, as the chief operating decision maker ("CODM"), has organized the Company, manages resource allocations and measures performance of the Company's activities among these three regional segments.

Historically, the UPP Segment referred to the Company's large-scale solar products and systems business, which included power plant project development and project sales, turn-key engineering, procurement and construction ("EPC") services for power plant construction, and power plant operations and maintenance ("O&M") services. The UPP Segment also sold components, including large volume sales of solar panels and mounting systems, to third parties, sometimes on a multi-year, firm commitment basis. The Company's former R&C Segment focused on solar equipment sales into the residential and small commercial market through its third-party global dealer network, as well as direct sales and EPC and O&M services in the United States and Europe for rooftop and ground-mounted solar power systems for the new homes, commercial, and public sectors.

On June 21, 2011, the Company became a majority owned subsidiary of Total Gas & Power USA, SAS, a French *société par actions simplifiée* ("Total"), a subsidiary of Total S.A., a French *société anonyme* ("Total S.A."), through a tender offer and Total's purchase of 60% of the outstanding former class A common stock and former class B common stock of the Company as of June 13, 2011. On January 31, 2012, Total purchased an additional 18.6 million shares of the Company's common stock in a private placement, thereby increasing Total's ownership to approximately 66% of the Company's outstanding common stock as of that date (see Note 2).

### **Basis of Presentation and Preparation**

#### *Principles of Consolidation*

The Condensed Consolidated Financial Statements are prepared in accordance with accounting principles generally accepted in the United States of America ("United States" or "U.S.") and include the accounts of the Company, all of its subsidiaries and special purpose entities, as appropriate under consolidation accounting guidelines. Intercompany transactions and balances have been eliminated in consolidation. The assets of the special purpose entities that the Company sets up related to project financing for customers are not designed to be available to service the general liabilities and obligations of the Company in certain circumstances.

#### *Reclassifications*

Certain prior period balances have been reclassified to conform to the current period presentation in the Company's Condensed Consolidated Financial Statements and the accompanying notes. Such reclassifications had no effect on previously reported results of operations or accumulated deficit.

#### *Fiscal Years*

The Company reports on a fiscal-year basis and ends its quarters on the Sunday closest to the end of the applicable calendar quarter, except in a 53-week fiscal year, in which case the additional week falls into the fourth quarter of that fiscal year. Both fiscal 2012 and 2011 consist of 52 weeks. The third quarter of fiscal 2012 ended on September 30, 2012, while the third quarter in fiscal 2011 ended on October 2, 2011.

## *Management Estimates*

The preparation of the condensed consolidated financial statements in conformity with U.S. generally accepted accounting principles ("U.S. GAAP") requires management to make estimates and assumptions that affect the amounts reported in the condensed consolidated financial statements and accompanying notes. Significant estimates in these condensed consolidated financial statements include percentage-of-completion for construction projects, allowances for doubtful accounts receivable and sales returns, inventory and project asset write-downs, stock-based compensation, estimates for future cash flows and economic useful lives of property, plant and equipment, goodwill, valuations for business combinations, other intangible assets and other long-term assets, asset impairments, fair value of financial instruments, certain accrued liabilities including accrued warranty, restructuring, and termination of supply contracts reserves, valuation of debt without the conversion feature, valuation of share lending arrangements, income taxes, and tax valuation allowances. Actual results could materially differ from those estimates.

## **Summary of Significant Accounting Policies**

In May 2011, the Financial Accounting Standards Board ("FASB") amended its fair value principles and disclosure requirements. The amended fair value guidance states that the concepts of highest and best use and valuation premise are only relevant when measuring the fair value of nonfinancial assets and prohibits the grouping of financial instruments for purposes of determining their fair values when the unit of account is specified in other guidance. The amendment became effective for the Company on January 2, 2012 and did not have a material impact on its financial statements.

In June 2011, the FASB amended its disclosure guidance related to the presentation of comprehensive income. This amendment eliminates the option to report other comprehensive income and its components in the statement of changes in equity and requires presentation and reclassification adjustments on the face of the income statement. In December, 2011, the FASB further amended its guidance to defer changes related to the presentation of reclassification adjustments indefinitely as a result of concerns raised by stakeholders that the new presentation requirements would be difficult for preparers and add unnecessary complexity to financial statements. The amendment (other than the portion regarding the presentation of reclassification adjustments which, as noted above, has been deferred indefinitely) became effective for the Company on January 2, 2012 and did not have any impact on its financial position. However, the Company now reports other comprehensive income and its components in a separate statement of comprehensive income for all presented periods.

In September 2011, the FASB amended its goodwill guidance by providing entities an option to use a qualitative approach to test goodwill for impairment. An entity will be able to first perform a qualitative assessment to determine whether it is more likely than not that the fair value of a reporting unit is less than its carrying value. If it is concluded that the fair value is less than the carrying value, it is necessary to perform the currently prescribed two step goodwill impairment test. Otherwise, the two-step goodwill impairment test is not required. The amendment became effective for the Company on January 2, 2012 and did not have a material impact on its financial statements.

There have been no significant changes in the Company's significant accounting policies for the three and nine months ended September 30, 2012, as compared to the significant accounting policies described in the Company's Annual Report on Form 10-K for the fiscal year ended January 1, 2012 ("2011 Form 10-K"). Further, there has been no issued accounting guidance not yet adopted by the Company that it believes is material or potentially material to its condensed consolidated financial statements.

## **Note 2. TRANSACTIONS WITH TOTAL AND TOTAL S.A.**

On April 28, 2011, the Company and Total entered into a Tender Offer Agreement (the "Tender Offer Agreement"), pursuant to which, on May 3, 2011, Total commenced a cash tender offer to acquire up to 60% of the Company's outstanding shares of former class A common stock and up to 60% of the Company's outstanding shares of former class B common stock (the "Tender Offer") at a price of \$23.25 per share for each class. The offer expired on June 14, 2011 and Total accepted for payment on June 21, 2011 a total of 34,756,682 shares of the Company's former class A common stock and 25,220,000 shares of the Company's former class B common stock, representing 60% of each class of its outstanding common stock as of June 13, 2011, for a total cost of approximately \$1.4 billion.

On December 23, 2011, the Company entered into a Stock Purchase Agreement with Total, under which it agreed to acquire 100% of the equity interest of Tenesol from Total for \$165.4 million in cash. The Tenesol acquisition was consummated on January 31, 2012 (see Note 3). Contemporaneously with the execution of the Tenesol Stock Purchase Agreement, the Company entered into a Private Placement Agreement with Total, under which Total agreed to purchase, and the Company

agreed to issue and sell 18.6 million shares of the Company's common stock for a purchase price of \$8.80 per share, thereby increasing Total's ownership to approximately 66% of the Company's outstanding common stock as of that date. The sale was completed contemporaneously with the closing of the Tenesol acquisition.

### *Credit Support Agreement*

In connection with the Tender Offer, the Company and Total S.A. entered into a Credit Support Agreement (the "Credit Support Agreement") under which Total S.A. agreed to enter into one or more guarantee agreements (each a "Guaranty") with banks providing letter of credit facilities to the Company in support of certain Company businesses and other permitted purposes. Total S.A. will guarantee the payment to the applicable issuing bank of the Company's obligation to reimburse a draw on a letter of credit and pay interest thereon in accordance with the letter of credit facility between such bank and the Company. The Credit Support Agreement became effective on June 28, 2011 (the "CSA Effective Date"). Under the Credit Support Agreement, at any time from the CSA Effective Date until the fifth anniversary of the CSA Effective Date, the Company may request that Total S.A. provide a Guaranty in support of the Company's payment obligations with respect to a letter of credit facility. Total S.A. is required to issue and enter into the Guaranty requested by the Company, subject to certain terms and conditions that may be waived by Total S.A., and subject to certain other conditions.

In consideration for the commitments of Total S.A., under the Credit Support Agreement, the Company is required to pay Total S.A. a guarantee fee for each letter of credit that is the subject of a Guaranty and was outstanding for all or part of the preceding calendar quarter. The Company is also required to reimburse Total S.A. for payments made under any Guaranty and certain expenses of Total S.A., plus interest on both. In the three and nine months ended September 30, 2012, the Company incurred guaranty fees of \$1.7 million and \$5.2 million, respectively, to Total S.A.

The Company has agreed to undertake certain actions, including, but not limited to, ensuring that the payment obligations of the Company to Total S.A. rank at least equal in right of payment with all of the Company's other present and future indebtedness, other than certain permitted secured indebtedness. The Company has also agreed to refrain from taking certain actions, including refraining from making any equity distributions so long as it has any outstanding repayment obligation to Total S.A. resulting from a draw on a guaranteed letter of credit.

The Credit Support Agreement will terminate following the fifth anniversary of the CSA Effective Date, after the later of the payment in full of all obligations thereunder and the termination or expiration of each Guaranty provided thereunder.

### *Affiliation Agreement*

In connection with the Tender Offer, the Company and Total entered into an Affiliation Agreement that governs the relationship between Total and the Company following the close of the Tender Offer (the "Affiliation Agreement"). Until the expiration of a standstill period (the "Standstill Period"), Total, Total S.A., any of their respective affiliates and certain other related parties (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 shares of the Company in excess of certain thresholds, or request the Company or the Company's independent directors, officers or employees, to amend or waive any of the standstill restrictions applicable to the Total Group. The standstill provisions of the Affiliation Agreement do not apply to securities issued in connection with the Liquidity Support Agreement described below.

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 the outstanding voting power of the Company and imposes certain limitations on the Total Group's ability to transfer 40% or more of outstanding shares or voting power of the Company to a single person or group that is not a direct or indirect subsidiary of Total S.A. 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 the Company's Board of Directors.

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

In accordance with the terms of the Affiliation Agreement, on July 1, 2011, the Company's Board of Directors expanded the size of the Board of Directors to eleven members and elected six nominees from Total as directors, following which the Board of Directors was composed of the Chief Executive Officer of the Company (who also serves as the chairman of the Company's Board of Directors), four existing non-Total designated members of the Company's Board of Directors, and six directors designated by Total. Directors designated by Total also serve on certain committees of the Company's Board of

Directors. On the first anniversary of the consummation of the Tender Offer on June 21, 2012, the size of the Company's Board of Directors was reduced to nine members and one non-Total designated director and one director designated by Total resigned from the Company's Board of Directors. If the Total Group's ownership percentage of Company common stock declines, the number of members of the Company's Board of Directors that Total is entitled to nominate to the Company's Board of Directors will be reduced as set forth in the Affiliation Agreement.

The Affiliation Agreement also imposes certain restrictions with respect to the Company's and the Company's Board of Directors' 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.

#### *Affiliation Agreement Guaranty*

Total S.A. has entered into a guaranty (the "Affiliation Agreement Guaranty") pursuant to which Total S.A. unconditionally guarantees the full and prompt payment of Total S.A.'s, Total's and each of Total S.A.'s direct and indirect subsidiaries' payment obligations under the Affiliation Agreement and the full and prompt performance of Total S.A.'s, Total's and each of Total S.A.'s direct and indirect subsidiaries' representations, warranties, covenants, duties, and agreements contained in the Affiliation Agreement.

#### *Research & Collaboration Agreement*

In connection with the Tender Offer, Total and the Company have entered into a Research & Collaboration Agreement (the "R&D Agreement") that establishes a framework under which the parties engage in long-term research and development collaboration ("R&D Collaboration"). The R&D Collaboration encompasses a number of different projects ("R&D Projects"), with a focus on advancing technology in the area of photovoltaics. The primary purpose of the R&D Collaboration is to: (i) maintain and expand the Company's technology position in the crystalline silicon domain; (ii) ensure the Company's industrial competitiveness; and (iii) guarantee a sustainable position for both the Company and Total to be best-in-class industry players.

The R&D Agreement enables a joint committee (the "R&D Strategic Committee") to identify, plan and manage the R&D Collaboration. Due to the impracticability of anticipating and establishing all of the legal and business terms that are and will be applicable to the R&D Collaboration or to each R&D Project, the R&D Agreement sets forth broad principles applicable to the parties' potential R&D Collaboration, and the R&D Collaboration Committee establishes the particular terms governing each particular R&D Project consistent with the terms set forth in the R&D Agreement.

#### *Registration Rights Agreement*

In connection with the Tender Offer, Total and the Company entered into a customary registration rights agreement (the "Registration Rights Agreement") related to Total's ownership of Company shares. The Registration Rights Agreement provides Total with shelf registration rights, subject to certain customary exceptions, and up to two demand registration rights in any 12-month period, also subject to certain customary exceptions. Total also has certain rights to participate in any registrations of securities initiated by the Company. The Company will generally pay all costs and expenses incurred by the Company and Total in connection with any shelf or demand registration (other than selling expenses incurred by Total). The Company and Total have also agreed to certain indemnification rights. The Registration Rights Agreement terminates on the first date on which: (i) the shares held by Total constitute less than 5% of the then-outstanding common stock; (ii) all securities held by Total may be immediately resold pursuant to Rule 144 promulgated under the Securities and Exchange Act of 1934 (the "Exchange Act") during any 90-day period without any volume limitation or other restriction; or (iii) the Company ceases to be subject to the reporting requirements of the Exchange Act.

#### *Stockholder Rights Plan*

On April 28, 2011, prior to the execution of the Tender Offer Agreement, the Company entered into an amendment (the "Rights Agreement Amendment") to the Rights Agreement, dated August 12, 2008, by and between the Company and Computershare Trust Company, N.A., as Rights Agent (the "Rights Agreement"), in order to, among other things, render the rights therein inapplicable to each of: (i) the approval, execution or delivery of the Tender Offer Agreement; (ii) the commencement or consummation of the Tender Offer; (iii) the consummation of the other transactions contemplated by the Tender Offer Agreement and the related agreements; and (iv) the public or other announcement of any of the foregoing.

On June 14, 2011, the Company entered into a second amendment to the Rights Agreement (the "Second Rights Agreement Amendment"), in order to, among other things, exempt Total, Total S.A. and certain of their affiliates and certain members of a group of which they may become members from the definition of "Acquiring Person" such that the rights

issuable pursuant to the Rights Agreement will not become issuable in connection with the completion of the Tender Offer.

#### *By-laws Amendment*

On June 14, 2011, the Board of Directors approved the amendment of the Company's By-laws (the "By-laws"). The changes are required under the Affiliation Agreement. The amendments: (i) allow any member of the Total Group to call a meeting of stockholders for the sole purpose of considering and voting on a proposal to effect a Terra Merger (as defined in the Affiliation Agreement) or a Transferee Merger (as defined in the Affiliation Agreement); (ii) provide that the number of directors of the Board shall be determined from time to time by resolution adopted by the affirmative vote of a majority of the entire Board at any regular or special meeting; (iii) require, prior to the termination of the Affiliation Agreement, a majority of independent directors' approval to amend the By-laws so long as Total, together with Total S.A.'s subsidiaries collectively own at least 30% of the voting securities of the Company as well as require, prior to the termination of the Affiliation Agreement, Total's written consent during the Terra Stockholder Approval Period (as defined in the Affiliation Agreement) to amend the By-laws; and (iv) make certain other conforming changes to the By-laws. In addition, in November 2011, the By-laws were amended to remove restrictions prohibiting stockholder consents in writing.

#### *Liquidity Support Agreement with Total S.A.*

The Company is party to an agreement with a customer to construct the California Valley Solar Ranch, a solar park. Part of the debt financing necessary for the customer to pay for the construction of this solar park is being provided by Federal Financing Bank in reliance on a guarantee of repayment provided by the Department of Energy (the "DOE") under a loan guarantee program. On February 28, 2012, the Company entered into a Liquidity Support Agreement with Total S.A. and the DOE, and a series of related agreements with Total S.A. and Total, under which Total S.A. has agreed to provide the Company, or cause to be provided, additional liquidity under certain circumstances to a maximum amount of \$600.0 million ("Liquidity Support Facility"). Total S.A. is required to provide liquidity support to the Company under the facility, and the Company is required to accept such liquidity support from Total S.A., if either the Company's actual or projected unrestricted cash, cash equivalents, and unused borrowing capacity are reduced below \$100.0 million, or the Company fails to satisfy any financial covenant under its indebtedness. In either such event, subject to a \$600.0 million aggregate limit, Total S.A. is required to provide the Company with sufficient liquidity support to increase the amount of its unrestricted cash, cash equivalents and unused borrowing capacity to above \$100.0 million, and to restore compliance with its financial covenants. The Liquidity Support Facility is available until the completion of the solar park, expected to be operational in 2013 and completed before the end of fiscal 2014, and, under certain conditions, up to December 31, 2016, at which time all outstanding guarantees will expire and all outstanding debt under the facility will become due. The use of the Liquidity Support Facility is not limited to direct obligations related to the solar park, and is available for general corporate purposes, but the Company has agreed to conduct its operations, and use any proceeds from such facility in ways, that minimize the likelihood of Total S.A. being required to provide further support. In connection with the Liquidity Support Agreement, the Company also entered into a Compensation and Funding Agreement with Total S.A., and a Private Placement Agreement and a Revolving Credit and Convertible Loan Agreement with Total, which implement the terms of the Liquidity Support Agreement and Compensation Funding Agreement.

#### *Compensation and Funding Agreement*

In connection with the Liquidity Support Agreement, on February 28, 2012, the Company entered into a Compensation and Funding Agreement (the "Compensation and Funding Agreement") with Total S.A., pursuant to which, among other things, the Company and Total S.A. established the parameters for the terms of the Liquidity Support Facility and any liquidity injections that may be required to be provided by Total S.A. to the Company pursuant to the Liquidity Support Agreement. The Company has agreed in the Compensation and Funding Agreement to use commercially reasonable efforts to assist Total S.A. in the performance of its obligations under the Liquidity Support Agreement and to conduct, and to act in good faith in conducting, its affairs in a manner such that Total S.A.'s obligation under the Liquidity Support Agreement to provide Liquidity Injections will not be triggered or, if triggered, will be minimized. The Company has also agreed to use any cash provided under the facility in such a way as to minimize the need for further liquidity support. The Compensation and Funding Agreement required the Company to issue, in consideration for Total S.A.'s agreement to provide the Liquidity Support Facility, a warrant ("the Upfront Warrant") to Total that is exercisable to purchase a number of shares of the Company's common stock equal to \$75.0 million, divided by the volume-weighted average price for the Company's common stock for the 30 trading-day period ending on the trading day immediately preceding the date of the calculation. The Upfront Warrant will be exercisable at any time for seven years after its issuance, provided that, so long as at least \$25 million of the Company's convertible debt remains outstanding, such exercise will not cause "any person," including Total S.A., to, directly or indirectly, including through one or more wholly-owned subsidiaries, become the "beneficial owner" (as such terms are defined in Rule 13d-3 and Rule 13d-5 under the Securities and Exchange Act of 1934, as amended), of more than 74.99% of the voting power of the Company's common stock at such time, because "any person" becoming such "beneficial owner" would trigger the

repurchase or conversion of the Company's existing convertible debt. On February 28, 2012, the Company issued to Total the Upfront Warrant to purchase 9,531,677 shares of the Company's common stock with an exercise price of \$7.8685, subject to adjustment for customary anti-dilution and other events.

Liquidity support may be provided by Total S.A. or through its affiliates in the form of revolving non-convertible debt, convertible debt, equity, guarantees of Company indebtedness or other forms of liquidity support agreed to by the Company, depending on the amount outstanding under the facility immediately prior to provision of the applicable support among other factors. The Company is required to compensate Total S.A. for any liquidity support actually provided, and the form and amount of such compensation depends on the form and amount of support provided, with the amount of compensation generally increasing with the amount of support provided over time. Such compensation is to be provided in a variety of forms including guarantee fees, warrants to purchase common stock, interest on amounts borrowed, and discounts on equity issued.

During the term of the Compensation and Funding Agreement, the Company will make certain cash payments to Total S.A. within 30 days after the end of each calendar quarter during for the term of the agreement as follow: (i) quarterly payment of a commitment fee in an amount equal to 0.25% of the unused portion of the \$600 million Liquidity Support Facility as of the end of such quarter; and (ii) quarterly payment of a guarantee fee in an amount equal to 2.75% per annum of the average amount of the Company's indebtedness that is guaranteed by Total S.A. pursuant to any guaranty issued in accordance with the terms of the Compensation and Funding Agreement during such quarter. Any payment obligations of the Company to Total S.A. under the Compensation and Funding Agreement that are not paid when due shall accrue interest until paid in full at a rate equal to 6-month U.S. LIBOR as in effect from time to time plus 5.00% per annum. In the three and nine months ended September 30, 2012, the Company incurred commitment fees of \$1.4 million and \$3.5 million, respectively, to Total S.A.

The Liquidity Support Agreement, the Compensation and Funding Agreement, the Private Placement Agreement, and the Revolving Credit and Convertible Loan Agreement are further described in the fiscal 2011 Form 10-K.

### **Note 3. *TRANSFER OF ENTITIES UNDER COMMON CONTROL***

#### **Tenesol**

On January 31, 2012, the Company completed its acquisition of Tenesol, a global solar provider headquartered in La Tour de Salvagny, France, and formerly wholly-owned subsidiary of Total, for \$165.4 million in cash in exchange for 100% of the equity of Tenesol from Total pursuant to a stock purchase agreement entered into on December 23, 2011. Tenesol is engaged in the business of devising, designing, manufacturing, installing, and managing solar power production and consumption systems for farms, industrial and service sector buildings, solar power plants and private homes.

As Tenesol and the Company were under the common control of Total as of the January 31, 2012 acquisition date, the acquisition is treated as a transfer of an entity under common control and represents a change in the reporting entity. As a result, the Company has retrospectively adjusted its historical financial statements to reflect the transfer beginning on October 10, 2011, the first date in which Total had common control of both the Company and Tenesol, and to include the results of operations in the Company's Condensed Consolidated Statement of Operations since October 10, 2011. The Company recorded the transfer of Tenesol's assets and liabilities at their historical carrying value in Total's financial statements in accordance with U.S. GAAP, and the net assets transferred were recorded as an equity contribution from Total to the Company as of October 10, 2011. The subsequent cash payment on January 31, 2012 as described above was treated as a cash distribution to Total. In addition, a transaction between Total and Tenesol on January 23, 2012 resulted in an additional equity contribution from Total to the Company in the fiscal quarter ending January 1, 2012, and an additional cash distribution to Total totaling \$12.9 million in the fiscal quarter ending April 1, 2012.

The Condensed Consolidated Balance Sheets and Condensed Consolidated Statements of Operations of the Company as of and for the twelve months ended January 1, 2012 as reported previously and as adjusted in this report are as follows:

	As of	
	January 1, 2012	
	As Adjusted for the Change in Reporting Entity	As Previously Reported in the 2011 Annual Report on Form 10- K
<b>Assets</b>		
Current assets:		
Cash and cash equivalents	\$ 725,618	\$ 657,934
Restricted cash and cash equivalents, current portion	52,279	52,279
Accounts receivable, net	438,633	390,262
Costs and estimated earnings in excess of billings	54,854	54,854
Inventories	445,501	397,262
Advances to suppliers, current portion	43,143	43,143
Project assets - plants and land, current portion	24,243	24,243
Prepaid expenses and other current assets	502,879	482,691
Total current assets	2,287,150	2,102,668
Restricted cash and cash equivalents, net of current portion	27,276	27,276
Restricted long-term marketable securities	9,145	9,145
Property, plant and equipment, net	628,769	607,456
Project assets - plants and land, net of current portion	34,614	34,614
Goodwill	47,077	35,990
Other intangible assets, net	23,900	4,848
Advances to suppliers, net of current portion	284,378	278,996
Other long-term assets	176,821	174,204
Total assets	\$ 3,519,130	\$ 3,275,197
<b>Liabilities and Stockholders' Equity</b>		
Current liabilities:		
Accounts payable	\$ 441,655	\$ 416,615
Accrued liabilities	249,404	234,688
Billings in excess of costs and estimated earnings	170,828	170,828
Short-term debt	2,122	—
Convertible debt, current portion	196,710	196,710
Customer advances, current portion	48,073	46,139
Total current liabilities	1,108,792	1,064,980
Long-term debt	364,273	355,000
Convertible debt, net of current portion	423,268	423,268
Customer advances, net of current portion	181,946	181,947
Other long-term liabilities	166,126	152,492
Total liabilities	2,244,405	2,177,687
Commitments and contingencies		
Stockholders' equity:		
Preferred stock, \$0.001 par value; 10,000,000 shares authorized; none issued and outstanding as of January 1, 2012	—	—
Common stock, \$0.001 par value, 367,500,000 shares authorized; 101,851,290 shares issued, and 100,475,533 shares outstanding as of January 1, 2012	100	100
Additional paid-in capital	1,845,964	1,657,474
Accumulated deficit	(550,064)	(540,187)
Accumulated other comprehensive income	7,142	8,540
Treasury stock, at cost; 1,375,757 shares of common stock as of January 1, 2012	(28,417)	(28,417)
Total stockholders' equity	1,274,725	1,097,510
Total liabilities and stockholders' equity	\$ 3,519,130	\$ 3,275,197





	Year Ended	
	January 1, 2012	
	As Adjusted for the Change in Reporting Entity	As Previously Reported in the 2011 Annual Report on Form 10- K
Revenue	\$ 2,374,376	\$ 2,312,494
Cost of revenue	2,148,157	2,084,291
Gross margin	226,219	228,203
Operating expenses:		
Research and development	57,775	57,775
Sales, general and administrative	331,380	319,719
Goodwill impairment	309,457	309,457
Other intangible asset impairment	40,301	40,301
Restructuring charges	21,403	21,403
Total operating expenses	760,316	748,655
Operating loss	(534,098)	(520,452)
Other expense, net:		
Interest income	2,337	2,054
Interest expense	(67,253)	(67,022)
Gain on change in equity interest in unconsolidated investee	322	322
Gain on sale of equity interest in unconsolidated investee	5,937	5,937
Gain on mark-to-market derivatives	343	343
Other, net	(10,120)	(8,281)
Other expense, net	(68,434)	(66,647)
Loss before income taxes and equity in earnings of unconsolidated investees	(602,532)	(587,099)
Provision for income taxes	(17,208)	(22,099)
Equity in losses of unconsolidated investees	6,003	6,003
Net loss	\$ (613,737)	\$ (603,195)
Net loss per share of common stock:		
Basic and diluted	\$ (6.28)	\$ (6.18)
Weighted-average shares:		
Basic and diluted	97,724	97,724

#### Note 4. GOODWILL AND OTHER INTANGIBLE ASSETS

##### Goodwill

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

(In thousands)	Americas	EMEA	APAC	Total
As of January 1, 2012 (1)	\$ 35,990	\$ 11,087	\$ —	\$ 47,077
Goodwill impairment	(35,990)	(10,744)	—	(46,734)
Translation adjustment	—	(343)	—	(343)
As of September 30, 2012	\$ —	\$ —	\$ —	\$ —

- (1) As adjusted to reflect the balances of Tenesol beginning October 10, 2011, as required under the accounting guidelines for a transfer of an entity under common control (see Note 3).

Goodwill is tested for impairment at least annually, or more frequently if certain indicators are present. A two-step process is used to test for goodwill impairment. The first step is to determine if there is an indication of impairment by comparing the estimated fair value of each reporting unit to its carrying value, including existing goodwill. Goodwill is considered impaired if the carrying value of a reporting unit exceeds the estimated fair value. Upon an indication of impairment, a second step is performed to determine the amount of the impairment by comparing the implied fair value of the reporting unit's goodwill with its carrying value.

The Company conducts its annual impairment test of goodwill as of the Sunday closest to the end of the third fiscal quarter of each year. Impairment of goodwill is tested at the Company's reporting unit level. Management determined that the Americas Segment, the EMEA Segment, and the APAC Segment are also the reporting units. In estimating the fair value of the reporting units, the Company makes estimates and judgments about its future cash flows using an income approach defined as Level 3 inputs under fair value measurement standards. The income approach, specifically a discounted cash flow analysis, included assumptions for, among others, forecasted revenue, gross margin, operating income, working capital cash flow, perpetual growth rates and long-term discount rates, all of which require significant judgment by management. The sum of the



fair values of the Company's reporting units are also compared to its external market capitalization to determine the appropriateness of its assumptions and adjusted, if appropriate. These assumptions took into account the current industry environment and its impact on the Company's business.

Based on the impairment test as of September 30, 2012, the Company determined that the carrying value of the Americas and EMEA reporting units exceeded their fair value. As a result, the Company performed the second step of the impairment analysis for the two reporting units discussed above. The Company's calculation of the implied fair value of goodwill included significant assumptions for, among others, the fair values of recognized assets and liabilities and of unrecognized intangible assets, all of which require significant judgment by management. The Company calculated that the implied fair value of goodwill for the two reporting units was zero and therefore recorded a goodwill impairment loss of \$46.7 million, representing all of the goodwill associated with these reporting units. Based on the impairment test performed as of October 2, 2011, the Company recorded a goodwill impairment loss of \$309.5 million related to the EMEA reporting unit.

## Intangible Assets

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

(In thousands)	Gross	Accumulated Amortization	Net
<b>As of September 30, 2012</b>			
Patents, trade names and purchased technology	\$ 49,892	\$ (49,892)	\$ —
Purchased in-process research and development	1,000	(319)	681
Customer relationships and other	28,376	(27,298)	1,078
	<u>\$ 79,268</u>	<u>\$ (77,509)</u>	<u>\$ 1,759</u>
<b>As of January 1, 2012 (1)</b>			
Patents, trade names and purchased technology	\$ 52,992	\$ (50,280)	\$ 2,712
Purchased in-process research and development	1,000	(195)	805
Customer relationships and other	45,910	(25,527)	20,383
	<u>\$ 99,902</u>	<u>\$ (76,002)</u>	<u>\$ 23,900</u>

- (1) As adjusted to reflect the balances of Tenesol beginning October 10, 2011, as required under the accounting guidelines for a transfer of an entity under common control (see Note 3).

All of the Company's acquired other intangible assets are subject to amortization. Aggregate amortization expense for other intangible assets totaled \$2.6 million and \$8.1 million in the three and nine months ended September 30, 2012, respectively, and \$6.7 million and \$20.6 million in the three and nine months ended October 2, 2011, respectively.

The Company reviews intangible assets for impairment whenever events or changes in circumstances indicate that the carrying value of such assets may not be recoverable. During the third quarter of fiscal 2012, the Company determined that the carrying value of certain intangible assets in Europe were no longer recoverable based on a discrete evaluation of the nature of the intangible assets, incorporating the effect of declines in regional operating results. As a result, the Company recognized an impairment loss of \$12.8 million on its Condensed Consolidated Statement of Operations for the three and nine months ended September 30, 2012.

During the third quarter of fiscal 2011, the Company determined the carrying value of certain intangible assets related to strategic acquisitions of EPC and O&M project pipelines in Europe were no longer recoverable and recognized an impairment loss of \$40.3 million on its Condensed Consolidated Statement of Operations for the three and nine months ended October 2, 2011. The Company determined that the carrying value of the intangible assets was not recoverable as the carrying value of the asset group which contained the intangible assets exceeded the undiscounted cash flows of the asset group for a period of time commensurate with the remaining useful life of the primary asset of the group plus a salvage value of the asset group at the end of this period. The impairment loss was calculated by comparing the fair value of the intangible assets to their carrying value. In calculating the fair value of the intangible assets, the Company utilized discounted cash flow assumptions related to the acquired EPC and O&M project pipelines in Europe. The significant decline in fair value of the intangible assets was primarily attributable to the change in government incentives in Europe.

As of September 30, 2012, the estimated future amortization expense related to other intangible assets is as follows:

<b>(In thousands)</b>		<b>Amount</b>	
Year			
2012 (remaining three months)		\$	1,015
2013			272
2014			167
2015			166
2016			139
		\$	1,759

**Note 5. BALANCE SHEET COMPONENTS**

(In thousands)	As of	
	September 30, 2012	January 1, 2012
Accounts receivable, net:		
Accounts receivable, gross	\$ 326,011	\$ 468,320
Less: allowance for doubtful accounts	(22,687)	(21,039)
Less: allowance for sales returns	(5,628)	(8,648)
	<u>\$ 297,696</u>	<u>\$ 438,633</u>
Inventories:		
Raw materials	\$ 75,118	\$ 78,050
Work-in-process	74,621	79,397
Finished goods	257,471	288,054
	<u>\$ 407,210</u>	<u>\$ 445,501</u>
Prepaid expenses and other current assets:		
VAT receivables, current portion	\$ 98,918	\$ 68,993
Foreign currency derivatives	4,325	34,422
Income tax receivable	4,383	19,541
Deferred project costs	325,804	183,789
Other current assets	30,930	20,006
Other receivables (1)	86,435	146,135
Other prepaid expenses	33,874	29,993
	<u>\$ 584,669</u>	<u>\$ 502,879</u>
(1) Includes tolling agreements with suppliers in which the Company provides polysilicon required for silicon ingot manufacturing and procures the manufactured silicon ingots from the suppliers (see Notes 8 and 9).		
Project assets - plants and land:		
Project assets — plants	\$ 112,135	\$ 31,469
Project assets — land	49,356	27,388
	<u>\$ 161,491</u>	<u>\$ 58,857</u>
Project assets - plants and land, current portion	\$ 142,771	\$ 24,243
Project assets - plants and land, net of current portion	\$ 18,720	\$ 34,614
Property, plant and equipment, net:		
Land and buildings	\$ 20,082	\$ 13,912
Leasehold improvements	211,802	244,913
Manufacturing equipment (2)	568,765	625,019
Computer equipment	75,098	69,694
Solar power systems	119,534	18,631
Furniture and fixtures	7,569	7,172
Construction-in-process	25,307	46,762
	1,028,157	1,026,103
Less: accumulated depreciation (3)	(368,923)	(397,334)
	<u>\$ 659,234</u>	<u>\$ 628,769</u>

- (2) The Company's mortgage loan agreement with International Finance Corporation ("IFC") is collateralized by certain manufacturing equipment with a net book value of \$168.9 million and \$196.6 million as of September 30, 2012 and January 1, 2012, respectively. The Company also provided security for advance payments received from a third party in fiscal 2008 in the form of collateralized manufacturing equipment with a net book value of \$17.6 million and \$21.1 million as of September 30, 2012 and January 1, 2012, respectively.

- (3) Total depreciation expense was \$24.4 million and \$82.7 million for the three and nine months ended September 30, 2012, respectively and \$30.3 million and \$84.0 million for the three and nine months ended October 2, 2011, respectively.

(In thousands)	As of	
	September 30, 2012	January 1, 2012
Property, plant and equipment, net by geography (4):		
Philippines	\$ 401,027	\$ 490,074
United States	191,448	93,436
Mexico	34,452	21,686
Europe	30,070	20,830
Other	2,237	2,743
	<u>\$ 659,234</u>	<u>\$ 628,769</u>

- (4) Property, plant and equipment, net are based on the physical location of the assets.

The below table presents the cash and non-cash interest expense capitalized to property, plant and equipment and project assets during the three and nine months ended September 30, 2012 and October 2, 2011, respectively.

(In thousands)	Three Months Ended		Nine Months Ended	
	September 30, 2012	October 2, 2011	September 30, 2012	October 2, 2011
Interest expense:				
Interest cost incurred	\$ (26,912)	\$ (18,729)	\$ (66,899)	\$ (52,832)
Cash interest cost capitalized - property, plant and equipment	272	297	859	1,182
Non-cash interest cost capitalized - property, plant and equipment	142	113	444	834
Cash interest cost capitalized - project assets - plant and land	395	534	944	1,140
Non-cash interest cost capitalized - project assets - plant and land	269	689	717	1,262
Interest expense	<u>\$ (25,834)</u>	<u>\$ (17,096)</u>	<u>\$ (63,935)</u>	<u>\$ (48,414)</u>

(In thousands)	As of	
	September 30, 2012	January 1, 2012
Other long-term assets:		
Equity method investments	\$ 107,280	\$ 129,929
Bond hedge derivative	1,563	840
Cost method investments	14,918	4,918
VAT receivables, net of current portion	—	6,020
Long-term debt issuance costs	43,766	10,734
Other	77,296	24,380
	<u>\$ 244,823</u>	<u>\$ 176,821</u>

(In thousands)	As of	
	September 30, 2012	January 1, 2012
Accrued liabilities:		
VAT payables	\$ 3,333	\$ 47,034
Foreign currency derivatives	3,494	14,935
Short-term warranty reserves	10,751	15,034
Interest payable	8,933	7,288
Deferred revenue	13,005	48,115
Employee compensation and employee benefits	36,836	35,375
Other	84,168	81,623
	<u>\$ 160,520</u>	<u>\$ 249,404</u>
Other long-term liabilities:		
Embedded conversion option derivatives	\$ 1,563	\$ 844
Long-term warranty reserves	98,901	79,289
Deferred revenue	84,825	31,988
Unrecognized tax benefits	29,756	29,256
Other	42,191	24,749
	<u>\$ 257,236</u>	<u>\$ 166,126</u>
Accumulated other comprehensive income (loss):		
Cumulative translation adjustment	\$ (3,162)	\$ (1,360)
Net unrealized gain on derivatives	(265)	10,473
Deferred taxes	45	(1,971)
	<u>\$ (3,382)</u>	<u>\$ 7,142</u>

#### 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

The Company measures certain assets and liabilities at fair value on a recurring basis. There were no transfers between fair value measurement levels during the nine months ended September 30, 2012 or October 2, 2011, respectively. The Company did not have any assets or liabilities measured at fair value on a recurring basis requiring Level 3 inputs as of September 30, 2012 or January 1, 2012.

The following table summarizes the Company's assets and liabilities measured and recorded at fair value on a recurring basis as of September 30, 2012 and January 1, 2012, respectively:

(In thousands)	September 30, 2012			January 1, 2012		
	Total	Level 1	Level 2	Total	Level 1	Level 2
<b>Assets</b>						
Cash and cash equivalents:						
Money market funds (1)	\$ 160,000	\$ 160,000	\$ —	\$ 187,538	\$ 187,538	\$ —
Prepaid expenses and other current assets:						
Foreign currency derivatives (Note 11)	4,325	—	4,325	34,422	—	34,422
Other long-term assets:						
Debt derivatives (Note 10)	1,563	—	1,563	840	—	840
Total assets	<u>\$ 165,888</u>	<u>\$ 160,000</u>	<u>\$ 5,888</u>	<u>\$ 222,800</u>	<u>\$ 187,538</u>	<u>\$ 35,262</u>
<b>Liabilities</b>						
Accrued liabilities:						
Foreign currency derivatives (Note 11)	\$ 3,494	\$ —	\$ 3,494	\$ 14,935	\$ —	\$ 14,935
Other long-term liabilities:						
Debt derivatives (Note 10)	1,563	—	1,563	844	—	844
Total liabilities	<u>\$ 5,057</u>	<u>\$ —</u>	<u>\$ 5,057</u>	<u>\$ 15,779</u>	<u>\$ —</u>	<u>\$ 15,779</u>

- (1) The Company's cash equivalents consist of money market fund instruments which are classified as available-for-sale and within Level 1 of the fair value hierarchy because they are valued using quoted market prices for identical instruments in active markets.

Other financial instruments, including the Company's accounts receivable, accounts payable and accrued liabilities, are carried at cost, which generally approximates fair value due to the short-term nature of these instruments.

#### Debt Derivatives

The 4.50% Bond Hedge and the embedded cash conversion option within 4.50% debentures (as defined in Note 10) are classified as derivative instruments that require mark-to-market treatment with changes in fair value reported in the Company's Condensed Consolidated Statements of Operations. The fair value of these derivative instruments were determined utilizing the following Level 2 inputs:

	As of (1)	
	September 30, 2012	January 1, 2012
Stock price	\$ 4.51	\$ 6.23
Exercise price	\$ 22.53	\$ 22.53
Interest rate	0.39%	0.84%
Stock volatility	59.50%	44.00%
Credit risk adjustment	1.58%	1.93%
Maturity date	February 18, 2015	February 18, 2015

- (1) The valuation model utilizes these inputs to value the right but not the obligation to purchase one share at \$22.53. The Company utilized a Black-Scholes valuation model to value the 4.50% Bond Hedge and embedded cash conversion option. The underlying input assumptions were determined as follows:
- (i) Stock price. The closing price of the Company's common stock on the last trading day of the quarter.
  - (ii) Exercise price. The exercise price of the 4.50% Bond Hedge and the embedded cash conversion option.
  - (iii) Interest rate. The Treasury Strip rate associated with the life of the 4.50% Bond Hedge and the embedded cash conversion option.
  - (iv) Stock volatility. The volatility of the Company's common stock over the life of the 4.50% Bond Hedge and the embedded cash conversion option.



- (v) Credit risk adjustment. Represents the weighted average of the credit default swap rate of the counterparties.

### ***Assets and Liabilities Measured at Fair Value on a Non-Recurring Basis***

The Company measures certain investments and non-financial assets (including project assets, property, plant and equipment, and other intangible assets) at fair value on a non-recurring basis in periods after initial measurement in circumstances when the fair value of such asset is impaired below its recorded cost. Information regarding the Company's goodwill and other intangible asset balances are disclosed in Note 4.

#### ***Debt Securities***

The Company's debt securities consist of Philippine government bonds, classified as held-to-maturity, which are maintained as collateral for present and future business transactions within the country. These bonds have maturity dates of up to 5 years with a carrying value of \$10.8 million as of September 30, 2012 and \$9.1 million as of January 1, 2012, which are classified as "Restricted long-term marketable securities" on the Company's Condensed Consolidated Balance Sheets. The Company records such held-to-maturity investments at amortized cost based on its ability and intent to hold the securities until maturity. The Company monitors for changes in circumstances and events that would impact its ability and intent to hold such securities until the recorded amortized costs are recovered. The Company incurred no other-than-temporary impairment loss in the three and nine months ended September 30, 2012. The debt securities were categorized in Level 1 of the fair value hierarchy.

#### ***Equity and Cost Method Investments***

The Company's equity and cost method investments in non-consolidated entities are comprised of convertible promissory notes, common and preferred stock. The Company monitors these investments, which are included in "Other long-term assets" within its Condensed Consolidated Balance Sheets, for impairment and records reductions in the carrying values when necessary. Circumstances that indicate an other-than-temporary decline include Level 2 measurements such as the valuation ascribed to the issuing company in subsequent financing rounds, decreases in quoted market prices, and declines in operations of the issuer. As of September 30, 2012 and January 1, 2012, the Company had \$107.3 million and \$129.9 million, respectively, in investments accounted for under the equity method and \$14.9 million and \$4.9 million, respectively, in investments accounted for under the cost method (see Note 9).

## **Note 7. RESTRUCTURING**

### ***April 2012 Restructuring Plan***

As a result of the Company's continued cost reduction progress at its Fab 2 and its joint venture Fab 3 manufacturing facilities, on April 13, 2012, the Company's Board of Directors approved a restructuring plan (the "April 2012 Plan") to consolidate the Company's Philippine manufacturing operations into Fab 2 and begin repurposing Fab 1 in the second quarter of 2012. The Company expects to recognize restructuring charges up to \$69.0 million, related to all segments, in the twelve months following the approval and implementation of the April 2012 Plan. Total restructuring charges are expected to primarily be composed of non-cash charges of up to \$54.0 million, and other cash-based associated costs of up to \$15.0 million, for the closure of Fab 1.

### ***December 2011 Restructuring Plan***

To accelerate operating cost reduction and improve overall operating efficiency, in December 2011, the Company implemented a company-wide restructuring program (the "December 2011 Plan"). The December 2011 Plan eliminated approximately 2% of the Company's global workforce. The Company expects to recognize restructuring charges up to \$17.0 million, related to all segments, in the twelve months following the approval and implementation of the December 2011 Plan. The Company expects greater than 80% of these charges to be cash.

### ***June 2011 Restructuring Plan***

In response to reductions in European government incentives, which had a significant impact on the global solar market, on June 13, 2011, the Company's Board of Directors approved a restructuring plan (the "June 2011 Plan") to realign the Company's resources. The June 2011 Plan eliminated approximately 2% of the Company's global workforce, in addition to the consolidation or closure of certain facilities in Europe. Restructuring activities associated with the June 2011 Plan were

substantially completed as of September 30, 2012.

The following table summarizes the restructuring charges recognized in the Company's Condensed Consolidated Statements of Operations:

	Three Months Ended		Nine Months Ended		Cumulative To Date
	September 30, 2012	October 2, 2011	September 30, 2012	October 2, 2011	
April 2012 Plan:					
Non-cash impairment charges	\$ 6,155	\$ —	\$ 49,561	\$ —	\$ 49,561
Other costs	2,066	—	3,232	—	3,232
	8,221	—	52,793	—	52,793
December 2011 Plan:					
Non-cash impairment charges	3,810	—	3,810	—	3,810
Severance and benefits	(110)	—	1,505	—	8,810
Lease and related termination costs	(1,671)	—	2,402	—	2,402
Other costs	70	—	369	—	541
	2,099	—	8,086	—	15,563
June 2011 Plan:					
Severance and benefits	—	—	(160)	12,275	11,026
Lease and related termination costs	190	—	447	713	1,135
Other costs	34	637	23	957	2,075
	224	637	310	13,945	14,236
Total restructuring charges	\$ 10,544	\$ 637	\$ 61,189	\$ 13,945	\$ 82,592

The following table summarizes the restructuring reserve activity during the nine months ended September 30, 2012:

(In thousands)	Nine Months Ended			
	January 1, 2012	Charges (Benefits)	Payments	September 30, 2012
April 2012 Plan:				
Other costs (1) (2)	—	3,232	(3,091)	141
December 2011 Plan:				
Severance and benefits	3,344	1,505	(4,789)	60
Lease and related termination costs	—	2,402	(452)	1,950
Other costs (1) (2)	24	369	(265)	128
June 2011 Plan:				
Severance and benefits (3)	2,204	(160)	(2,044)	—
Lease and related termination costs	688	447	(347)	788
Other costs (1)	64	23	(87)	—
Total restructuring liabilities	\$ 6,324	\$ 7,818	\$ (11,075)	\$ 3,067

- (1) Other costs primarily represent associated legal services and costs associated with the decommissioning of Fab 1 assets.
- (2) The reserve balance excludes non-cash impairment charges incurred in connection with the April 2012 Plan and December 2011 Plan during the nine months ended September 30, 2012.
- (3) The June 2011 Plan reserve balance as of January 1, 2012 excludes \$1.4 million of charges associated with the accelerated vesting of promissory notes, in accordance with the terms of each agreement, previously issued as consideration for an acquisition completed in the first quarter of fiscal 2010. The \$1.4 million charge is separately recorded in "Accrued liabilities" on the Company's Condensed Consolidated Balance Sheet as of January 1, 2012, and was fully paid during the three months ended April 1, 2012.

## Note 8. COMMITMENTS AND CONTINGENCIES

### Lease Commitments

The Company leases its corporate headquarters in San Jose, California and its Richmond, California facility under non-cancellable operating leases from unaffiliated third parties. The Company also has various other lease arrangements, including its European headquarters located in Geneva, Switzerland as well as sales and support offices throughout the United States and Europe. In August 2011, the Company entered into a non-cancellable operating lease agreement for its solar module facility in Mexicali, Mexico from an unaffiliated third party.

The Company has additionally entered into sale-leaseback arrangements under which nine solar power systems have been sold to unaffiliated third parties and subsequently leased back under operating leases over minimum lease terms of up to 20 years. Separately, the Company entered into power purchase agreements ("PPAs") with end customers, who host the leased solar power systems and buy the electricity directly from the Company under PPAs with a duration of up to 20 years. At the end of each lease term, the Company has the option to purchase the systems at fair value or remove the systems. The deferred profit on the sale of the systems is recognized over the minimum term of the lease.

The Company additionally leases certain buildings, machinery and equipment under capital leases for terms up to 12 years.

Future minimum obligations under all non-cancellable leases as of September 30, 2012 are as follows:

(In thousands)	Capital Lease Amount	Operating Lease Amount
Year		
2012 (remaining three months)	\$ 477	\$ 5,434
2013	2,043	16,116
2014	1,387	14,025
2015	1,196	12,835
2016	951	11,738
Thereafter	3,252	55,905
	<u>\$ 9,306</u>	<u>\$ 116,053</u>

### Purchase Commitments

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

The Company also has agreements with several suppliers, including some of its non-consolidated joint ventures, for the procurement of polysilicon, ingots, wafers, solar cells, solar panels, and Solar Renewable Energy Credits ("SRECs") which specify future quantities and pricing of products to be supplied by the vendors for periods up to 10 years and provide for certain consequences, such as forfeiture of advanced deposits and liquidated damages relating to previous purchases, in the event that the Company terminates the arrangements. Where pricing is specified for future periods, with two of our ingot/wafer suppliers, the Company may reduce its purchase commitment under the contract if the Company obtains a bona fide third party offer at a price that is a certain percentage lower than the applicable purchase price in the existing contract. If market prices decrease, the Company intends to use such provisions to either move its purchasing to another supplier or to seek to force the initial supplier to reduce its price to remain competitive with market pricing. These two contracts constitute approximately 1% of the aggregate purchase commitments shown.

As of September 30, 2012, total obligations related to non-cancellable purchase orders totaled \$0.2 billion and long-term supply agreements with suppliers totaled \$2.2 billion. Of the total future purchase commitments of \$2.4 billion as of

September 30, 2012, \$90.8 million are for commitments to related parties. Future purchase obligations under non-cancellable purchase orders and long-term supply agreements as of September 30, 2012 are as follows:

(In thousands)	Amount
Year	
2012 (remaining three months)	\$ 466,497
2013	170,661
2014	359,228
2015	361,218
2016	327,268
Thereafter	711,412
	<u>\$ 2,396,284</u>

The Company has tolling agreements with suppliers in which the Company provides polysilicon required for silicon ingot manufacturing and procures the manufactured silicon ingots from the supplier. Annual future purchase commitments in the table above are calculated using the gross future purchase obligations of the Company and are not reduced by tolling agreements and non-cancellable SREC sales arrangements. Total future purchase commitments as of September 30, 2012 would be reduced by \$43.8 million had the Company's obligations under such agreements been disclosed using net cash outflows.

The Company expects that all obligations related to non-cancellable purchase orders for manufacturing equipment will be recovered through future cash flows of the solar cell manufacturing lines and solar panel assembly lines when such long-lived assets are placed in service. Factors considered important that could result in an impairment review include significant underperformance relative to expected historical or projected future operating results, significant changes in the manner of use of acquired assets, and significant negative industry or economic trends. Obligations related to non-cancellable purchase orders for inventories match current and forecasted sales orders that will consume these ordered materials and actual consumption of these ordered materials are compared to expected demand regularly. The Company anticipates total obligations related to long-term supply agreements for inventories will be recovered because quantities are less than management's expected demand for its solar power products. However, the terms of the long-term supply agreements are reviewed by management and the Company assesses the need for any accruals for estimated losses on adverse purchase commitments, such as lower of cost or market value adjustments that will not be recovered by future sales prices, forfeiture of advanced deposits and liquidated damages, as necessary.

### Advances to Suppliers

As noted above, the Company has entered into agreements with various polysilicon, ingot, wafer, solar cell, and solar panel vendors that specify future quantities and pricing of products to be supplied by the vendors for periods up to 10 years. Certain agreements also provide for penalties or forfeiture of advanced deposits in the event the Company terminates the arrangements. Under certain agreements, the Company is required to make prepayments to the vendors over the terms of the arrangements. During the three and nine months ended September 30, 2012, the Company paid advances totaling \$15.4 million and \$42.5 million, respectively, in accordance with the terms of existing long-term supply agreements. As of September 30, 2012 and January 1, 2012, advances to suppliers totaled \$357.5 million and \$327.5 million, respectively, the current portion of which is \$54.9 million and \$43.1 million, respectively. Two suppliers accounted for 74% and 23% of total advances to suppliers as of September 30, 2012, and 74% and 20% as of January 1, 2012.

The Company's future prepayment obligations related to these agreements as of September 30, 2012 are as follows:

(In thousands)	Amount
Year	
2012 (remaining three months)	\$ 9,648
2013	72,839
2014	65,791
	<u>\$ 148,278</u>

### Product Warranties

The Company generally warrants or guarantees the performance of the solar panels that it manufactures at certain levels

of power output for 25 years. In addition, the Company passes through to customers long-term warranties from OEMs of certain system components, such as inverters. Warranties of 25 years from solar panels suppliers are standard in the solar industry, while inverters typically carry warranty periods ranging from 5 to 10 years. In addition, the Company generally warrants its workmanship on installed systems for periods ranging up to 10 years. The Company maintains reserves to cover the expected costs that could result from these warranties. The Company's expected costs are generally in the form of product replacement or repair. Warranty reserves are based on the Company's best estimate of such costs and are recognized as a cost of revenue. The Company continuously monitors product returns for warranty failures and maintains a reserve for the related warranty expenses based on various factors including historical warranty claims, results of accelerated lab testing, field monitoring, vendor reliability estimates, and data on industry averages for similar products. Historically, warranty costs have been within management's expectations.

Provisions for warranty reserves charged to cost of revenue were \$7.4 million and \$20.7 million in the three and nine months ended September 30, 2012, respectively, and \$6.4 million and \$24.8 million in the three and nine months ended October 2, 2011, respectively:

(In thousands)	Three Months Ended		Nine Months Ended	
	September 30, 2012	October 2, 2011	September 30, 2012	October 2, 2011
Balance at the beginning of the period (1)	\$ 104,439	\$ 79,261	\$ 94,323	\$ 63,562
Accruals for warranties issued during the period	7,387	6,435	20,692	24,803
Settlements made during the period	(2,174)	(2,031)	(5,363)	(4,700)
Balance at the end of the period	<u>\$ 109,652</u>	<u>\$ 83,665</u>	<u>\$ 109,652</u>	<u>\$ 83,665</u>

- (1) As adjusted to reflect the balances of Tenesol beginning October 10, 2011, as required under the accounting guidelines for a transfer of an entity under common control (see Note 3).

### Contingent Obligations

Projects often require the Company to undertake customer obligations including: (i) system output performance guarantees; (ii) system maintenance; (iii) penalty payments or customer termination rights if the system the Company is constructing is not commissioned within specified timeframes or other milestones are not achieved; (iv) guarantees of certain minimum residual value of the system at specified future dates; and (v) system put-rights whereby the Company 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 periods of up to two years. Historically the systems have performed significantly above the performance guarantee thresholds, and there have been no cases in which the Company had to buy back a system.

### Future Financing Commitments

The Company is required to provide certain funding under the joint venture agreement with AU Optronics Singapore Pte. Ltd. ("AUO") and another financing agreement with a third party, subject to certain conditions (see Note 9).

The Company's future financing obligations related to these agreements as of September 30, 2012 are as follows:

(In thousands)	Amount
Year	
2012 (remaining three months)	\$ 47,770
2013	101,400
2014	96,770
	<u>\$ 245,940</u>

### Liabilities Associated with Uncertain Tax Positions

Total liabilities associated with uncertain tax positions were \$29.8 million and \$29.3 million as of September 30, 2012 and January 1, 2012, respectively, and are included in "Other long-term liabilities" in the Company's Condensed Consolidated Balance Sheets as they are not expected to be paid within the next twelve months. Due to the complexity and uncertainty associated with its tax positions, the Company cannot make a reasonably reliable estimate of the period in which cash settlement, if any, would be made for its liabilities associated with uncertain tax positions in other long-term liabilities (see Note 12).

## Indemnifications

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

## Legal Matters

Three securities class action lawsuits were filed against the Company and certain of its current and former officers and directors in the United States District Court for the Northern District of California on behalf of a class consisting of those who acquired the Company's securities from April 17, 2008 through November 16, 2009. The cases were consolidated as *In re SunPower Securities Litigation*, Case No. CV-09-5473-RS (N.D. Cal.), and lead plaintiffs and lead counsel were appointed on March 5, 2010. Lead plaintiffs filed a consolidated complaint on May 28, 2010. The actions arise from the Audit Committee's investigation announcement on November 16, 2009 regarding certain unsubstantiated accounting entries. The consolidated complaint alleges that the defendants made material misstatements and omissions concerning the Company's financial results for 2008 and 2009, seeks an unspecified amount of damages, and alleges violations of sections 10(b) and 20(a) of the Securities Exchange Act of 1934, and sections 11 and 15 of the Securities Act of 1933. The Company believes it has meritorious defenses to these allegations and will vigorously defend itself in these matters. The court held a hearing on the defendants' motions to dismiss the consolidated complaint on November 4, 2010. The court dismissed the consolidated complaint with leave to amend on March 1, 2011. An amended complaint was filed on April 18, 2011. The amended complaint added two former employees as defendants. Defendants filed motions to dismiss the amended complaint on May 23, 2011. The motions to dismiss the amended complaint were heard by the court on August 11, 2011. On December 19, 2011, the court granted in part and denied in part the motions to dismiss, dismissing the claims brought pursuant to sections 11 and 15 of the Securities Act of 1933 and the claims brought against the two newly added former employees. The Company is currently unable to determine if the resolution of these matters will have an adverse effect on the Company's financial position, liquidity or results of operations.

Derivative actions purporting to be brought on the Company's behalf have also been filed in state and federal courts against several of the Company's current and former officers and directors based on the same events alleged in the securities class action lawsuits described above. The California state derivative cases were consolidated as *In re SunPower Corp. S'holder Derivative Litig.*, Lead Case No. 1-09-CV-158522 (Santa Clara Sup. Ct.), and co-lead counsel for plaintiffs have been appointed. The complaints assert state-law claims for breach of fiduciary duty, abuse of control, unjust enrichment, gross mismanagement, and waste of corporate assets. Plaintiffs filed a consolidated amended complaint on March 5, 2012. The federal derivative complaints were consolidated as *In re SunPower Corp. S'holder Derivative Litig.*, Master File No. CV-09-05731-RS (N.D. Cal.), and lead plaintiffs and co-lead counsel were appointed on January 4, 2010. The federal complaints assert state-law claims for breach of fiduciary duty, waste of corporate assets, and unjust enrichment, and seek an unspecified amount of damages. Plaintiffs filed a consolidated complaint on May 13, 2011. A Delaware state derivative case, *Brenner v. Albrecht, et al.*, C.A. No. 6514-VCP (Del Ch.), was filed on May 23, 2011 in the Delaware Court of Chancery. The complaint asserts state-law claims for breach of fiduciary duty and contribution and indemnification, and seeks an unspecified amount of damages. The Company intends to oppose all the derivative plaintiffs' efforts to pursue this litigation on the Company's behalf. Defendants moved to stay or dismiss the Delaware derivative action on July 5, 2011. The motion to stay was heard by the court on October 27, 2011, and on January 27, 2012 the court granted the Company's motion and stayed the case indefinitely subject to plaintiff seeking to lift the stay under specified conditions. The Company is currently unable to determine if the resolution of these matters will have an adverse effect on the Company's financial position, liquidity or results of operations.

The Company is also a party to various other litigation matters and claims that arise from time to time in the ordinary course of its business. While the Company believes that the ultimate outcome of such matters will not have a material adverse effect on the Company, their outcomes are not determinable and negative outcomes may adversely affect the Company's financial position, liquidity or results of operations.

## Note 9. EQUITY METHOD INVESTMENTS

The Company accounts for its equity interests in the below unconsolidated investees under the equity method of accounting as it has the ability to exercise significant influence, but does not own a majority equity interest in, or otherwise control, the investees. As of September 30, 2012 and January 1, 2012, the Company's carrying value of its equity method investments totaled \$107.3 million and \$129.9 million, respectively, and is classified as "Other long-term assets" in its Condensed Consolidated Balance Sheets. The Company's share of the investees' results totaled earnings of \$0.6 million and losses of \$1.8 million in the three and nine months ended September 30, 2012, respectively, and earnings of \$1.0 million and \$7.9 million in the three and nine months ended October 2, 2011, respectively, which are included in "Equity in earnings (loss) of unconsolidated investees" in its Condensed Consolidated Statements of Operations.

The Company reviews its equity investments for events or other factors which may indicate an other-than-temporary decline in value. During the second quarter of fiscal 2012 the Company recorded a \$6.9 million impairment charge to "Other, net" in the Condensed Consolidated Statement of Operations as it determined current market and operating conditions indicated an inability to recover the carrying amount of one of its investments.

### Related Party Transactions with Equity Method Investees:

(In thousands)	As of	
	September 30, 2012	January 1, 2012
Accounts receivable	\$ 18,748	\$ 74,396
Accounts payable	35,995	109,700

(In thousands)	Three Months Ended		Nine Months Ended	
	September 30, 2012	October 2, 2011	September 30, 2012	October 2, 2011
Payments made to equity method investees for products/services	\$ 123,112	\$ 81,798	\$ 452,379	\$ 216,925

### Equity Investment and Joint Venture with AUOSP

The Company, through its subsidiary SunPower Technology, Ltd. ("SPTL") formed the joint venture AUOSP with AUO and AU Optronics Corporation, the ultimate parent company of AUO ("AUO Taiwan") in the third quarter of fiscal 2010. The Company and AUO each own 50% of the joint venture AUOSP. AUOSP owns a solar cell manufacturing facility ("FAB 3") in Malaysia and manufactures solar cells and sells them on a "cost-plus" basis to the Company and AUO.

In connection with the joint venture agreement, the Company and AUO also entered into licensing and joint development, supply, and other ancillary transaction agreements. Through the licensing agreement, SPTL and AUO licensed to AUOSP, on a non-exclusive, royalty-free basis, certain background intellectual property related to solar cell manufacturing (in the case of SPTL), and manufacturing processes (in the case of AUO). Under the seven-year supply agreement with AUOSP, renewable by the Company for one-year periods thereafter, the percentage of AUOSP's total annual output allocated on a monthly basis to the Company, which the Company is committed to purchase, ranges from 95% in the fourth quarter of fiscal 2010 to 80% in fiscal year 2013 and thereafter. The Company and AUO have the right to reallocate supplies from time to time under a written agreement. As required under the joint venture agreement, in fiscal 2010, the Company and AUOSP entered into an agreement under which the Company will resell to AUOSP polysilicon purchased from a third-party supplier and AUOSP will provide prepayments to the Company related to such polysilicon, which prepayment will then be made by the Company to the third-party supplier.

The Company and AUO are not permitted to transfer any of AUOSP's shares held by them, except to each other and to their direct or indirect wholly-owned subsidiaries. In the joint venture agreement, the Company and AUO agreed to each contribute additional amounts through 2014 amounting to \$241.0 million, or such lesser amount as the parties may mutually agree. In addition, if AUOSP, SPTL or AUO requests additional equity financing to AUOSP, then SPTL and AUO will each be required to make additional cash contributions of up to \$50.0 million in the aggregate (See Note 8).

The Company has concluded that it is not the primary beneficiary of AUOSP since, although the Company and AUO are both obligated to absorb losses or have the right to receive benefits, the Company alone does not have the power to direct the



activities of AUOSP that most significantly impact its economic performance. In making this determination the Company considered the shared power arrangement, including equal board governance for significant decisions, elective appointment, and the fact that both parties contribute to the activities that most significantly impact the joint venture's economic performance. The Company accounts for its investment in AUOSP using the equity method as a result of the shared power arrangement. As of September 30, 2012, the Company's maximum exposure to loss as a result of its involvement with AUOSP is limited to the carrying value of its investment.

#### **Equity Investment in First Philec Solar Corporation ("First Philec Solar")**

The Company and First Philippine Electric Corporation ("First Philec") formed First Philec Solar in fiscal 2007, a jointly owned entity to provide wafer slicing services of silicon ingots to the Company in the Philippines. The Company supplied to First Philec Solar silicon ingots and technology required for slicing silicon. Once manufactured, the Company purchased the completed silicon wafers from First Philec Solar under a six-year wafering supply and sales agreement, which the Company terminated in the third quarter of fiscal 2012. There is no obligation or expectation for the Company to provide additional funding to First Philec Solar.

The Company has concluded that it is not the primary beneficiary of First Philec Solar since, although the Company and First Philec are both obligated to absorb losses or have the right to receive benefits from First Philec Solar, such variable interests held by the Company do not empower it to direct the activities that most significantly impact First Philec Solar's economic performance. In reaching this determination, the Company considered the significant control exercised by First Philec over the joint venture's Board of Directors, management and daily operations. The Company accounts for its investment in First Philec Solar using the equity method since the Company is able to exercise significant influence over First Philec Solar due to its board positions.

#### **Equity Investment in Woongjin Energy Co., Ltd ("Woongjin Energy")**

The Company and Woongjin Holdings Co., Ltd. ("Woongjin") formed Woongjin Energy in fiscal 2006, a jointly owned entity to manufacture monocrystalline silicon ingots in Korea. The Company supplies polysilicon, services, and technical support required for silicon ingot manufacturing to Woongjin Energy. Once manufactured, the Company purchases the silicon ingots from Woongjin Energy under a nine-year agreement through 2016. There is no obligation or expectation for the Company to provide additional funding to Woongjin Energy.

On June 30, 2010, Woongjin Energy completed its initial public offering ("IPO") and the sale of 15.9 million new shares of common stock. As a result of the completion of the IPO, the Company concluded that Woongjin Energy is no longer a variable interest entity ("VIE"). During the second half of fiscal 2011, the Company sold 15.5 million shares of Woongjin Energy on the open market subsequently reducing the Company's percentage equity ownership in Woongjin Energy from 31% to 6%. As of January 1, 2012, the Company held 3.9 million shares of Woongjin Energy. During the first quarter of fiscal 2012, the Company sold its remaining shares of Woongjin Energy on the open market for total proceeds, net of tax, amounting to \$14.0 million, which equaled the remaining investment carrying balance. As a result, the Company's percentage equity ownership and investment carrying balance was reduced to zero. During the first quarter of fiscal 2012, the Company collected \$3.4 million of net proceeds associated with fiscal 2011 sales, the balance of which was included in "Prepaid expenses and other current assets" on the Company's Condensed Consolidated Balance Sheet as of January 1, 2012 due to timing of cash settlement for trades executed near year end.

The Company accounted for its former investment in Woongjin Energy using the equity method as the Company was able to exercise significant influence over Woongjin Energy due to its board position and its consumption of a significant portion of their output.

#### **Note 10. DEBT AND CREDIT SOURCES**

The following table summarizes the Company's outstanding debt as of September 30, 2012 and the related maturity dates:



(In thousands)	Face Value	Payments Due by Period					
		2012 (remaining three months)	2013	2014	2015	2016	Beyond 2016
Convertible debt:							
4.50% debentures	\$ 250,000	\$ —	\$ —	\$ —	\$ 250,000	\$ —	\$ —
4.75% debentures	230,000	—	—	230,000	—	—	—
0.75% debentures	79	—	—	—	79	—	—
IFC mortgage loan	75,000	—	12,500	15,000	15,000	15,000	17,500
CEDA loan	30,000	—	—	—	—	—	30,000
Credit Agricole revolving credit facility	250,000	—	250,000	—	—	—	—
Other debt (1)	28,720	27,659	—	—	—	—	1,061
	<u>\$ 863,799</u>	<u>\$ 27,659</u>	<u>\$ 262,500</u>	<u>\$ 245,000</u>	<u>\$ 265,079</u>	<u>\$ 15,000</u>	<u>\$ 48,561</u>

(1) The balance of Other debt excludes payments related to capital leases which are disclosed in Note 8. "Commitments and Contingencies" to these condensed consolidated financial statements.

### Convertible Debt

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

(In thousands)	September 30, 2012			January 1, 2012		
	Carrying Value	Face Value	Fair Value (1)	Carrying Value	Face Value	Fair Value (1)
Convertible debt:						
4.50% debentures	\$ 204,336	\$ 250,000	\$ 227,650	\$ 193,189	\$ 250,000	\$ 205,905
4.75% debentures	230,000	230,000	208,150	230,000	230,000	200,967
1.25% debentures	—	—	—	196,710	198,608	197,615
0.75% debentures	79	79	79	79	79	79
	<u>\$ 434,415</u>	<u>\$ 480,079</u>	<u>\$ 435,879</u>	<u>\$ 619,978</u>	<u>\$ 678,687</u>	<u>\$ 604,566</u>

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

### 4.50% Debentures

In fiscal 2010, the Company issued \$250.0 million in principal amount of its 4.50% senior cash convertible debentures ("4.50% debentures"). Interest is payable semi-annually, on March 15 and September 15 of each year, at a rate of 4.50% per annum which commenced on September 15, 2010. The 4.50% debentures mature on March 15, 2015 unless repurchased or converted in accordance with their terms prior to such date.

The 4.50% debentures are convertible only into cash, and not into shares of the Company's common stock (or any other securities). The conversion price will be subject to adjustment in certain events, such as distributions of dividends or stock splits. Upon conversion, the Company will deliver an amount of cash calculated by reference to the price of its common stock over the applicable observation period. The Company may not redeem the 4.50% debentures prior to maturity. Holders may also require the Company to repurchase all or a portion of their 4.50% debentures upon a fundamental change, as defined in the debenture agreement, at a cash repurchase price equal to 100% of the principal amount plus accrued and unpaid interest. In the event of certain events of default, such as the Company's failure to make certain payments or perform or observe certain obligations thereunder, Wells Fargo, the trustee, or holders of a specified amount of then-outstanding 4.50% debentures will have the right to declare all amounts then outstanding due and payable.

The embedded cash conversion option within the 4.50% debentures is a derivative instrument that is required to be separated from the 4.50% debentures and accounted for separately as a derivative instrument (derivative liability) with changes

in fair value reported in the Company's Condensed Consolidated Statements of Operations until such transactions settle or expire. The initial fair value liability of the embedded cash conversion option is classified within "Other long-term liabilities" and simultaneously reduces the carrying value of "Convertible debt, net of current portion" in the Company's Condensed Consolidated Balance Sheet.

During the three and nine months ended September 30, 2012, the Company recognized a non-cash gain of \$0.9 million and non-cash loss of \$0.8 million, respectively, recorded in "Other, net" in the Company's Condensed Consolidated Statement of Operations related to the change in fair value of the embedded cash conversion option. In the three and nine months ended October 2, 2011, the Company recognized a non-cash gain of \$65.8 million and \$34.2 million, respectively, recorded in "Other, net" in the Company's Condensed Consolidated Statement of Operations related to the change in fair value of the embedded cash conversion option.

#### ***Call Spread Overlay with Respect to 4.50% Debentures ("CSO2015")***

Concurrent with the issuance of the 4.50% debentures, the Company entered into privately negotiated convertible debenture hedge transactions (collectively, the "4.50% Bond Hedge") and warrant transactions (collectively, the "4.50% Warrants" and together with the 4.50% Bond Hedge, the "CSO2015"), with certain of the initial purchasers of the 4.50% cash convertible debentures or their affiliates. The CSO2015 transactions represent a call spread overlay with respect to the 4.50% debentures, whereby the cost of the 4.50% Bond Hedge purchased by the Company to cover the cash outlay upon conversion of the debentures is reduced by the sales prices of the 4.50% Warrants. Assuming full performance by the counterparties (and 4.50% Warrants strike prices in excess of the conversion price of the 4.50% debentures), the transactions effectively reduce the Company's potential payout over the principal amount on the 4.50% debentures upon conversion of the 4.50% debentures.

Under the terms of the 4.50% Bond Hedge, the Company bought from affiliates of certain of the initial purchasers options to acquire, at an exercise price of \$22.53 per share, subject to customary adjustments for anti-dilution and other events, cash in an amount equal to the market value of up to 11.1 million shares of the Company's common stock. Under the terms of the original 4.50% Warrants, as amended and restated on December 23, 2010, the Company sold to affiliates of certain of the initial purchasers of the 4.50% cash convertible debentures warrants to acquire, at an exercise price of \$27.03 per share, subject to customary adjustments for anti-dilution and other events, up to 11.1 million shares of the Company's common stock. Each 4.50% Bond Hedge and 4.50% Warrant transaction is a separate transaction, entered into by the Company with each counterparty, and is not part of the terms of the 4.50% debentures. According to the counterparties to the warrants, the consummation of the Total Tender Offer triggered their rights to make a downward adjustment to the strike price of the warrants. In the third quarter of fiscal 2011, the Company and the counter parties to the 4.50% Warrants agreed to reduce the exercise price of the 4.50% Warrants from \$27.03 to \$24.00.

The 4.50% Bond Hedge, which is indexed to the Company's common stock, is a derivative instrument that requires mark-to-market accounting treatment due to the cash settlement features until such transactions settle or expire. The initial fair value of the 4.50% Bond Hedge was classified as "Other long-term assets" in the Company's Condensed Consolidated Balance Sheets.

During the three and nine months ended September 30, 2012, the Company recognized a non-cash loss of \$0.9 million and a non-cash gain of \$0.8 million, respectively, in "Other, net" in the Company's Condensed Consolidated Statement of Operations related to the change in fair value of the 4.50% Bond Hedge. In the three and nine months ended October 2, 2011, the Company recognized a non-cash loss of \$65.3 million and \$33.8 million, respectively, in "Other, net" in the Company's Condensed Consolidated Statement of Operations related to the change in fair value of the 4.50% Bond Hedge.

#### ***4.75% Debentures***

In May 2009, the Company issued \$230.0 million in principal amount of its 4.75% senior convertible debentures ("4.75% debentures"). Interest on the 4.75% debentures is payable on April 15 and October 15 of each year. Holders of the 4.75% debentures are able to exercise their right to convert the debentures at any time into shares of the Company's common stock at a conversion price equal to \$26.40 per share. The applicable conversion rate may adjust in certain circumstances, including upon a fundamental change, as described in the indenture governing the 4.75% debentures. If not earlier converted, the 4.75% debentures mature on April 15, 2014. Holders may also require the Company to repurchase all or a portion of their 4.75% debentures upon a fundamental change at a cash repurchase price equal to 100% of the principal amount plus accrued and unpaid interest. In the event of certain events of default, such as the Company's failure to make certain payments or perform or observe certain obligations thereunder, Wells Fargo, the trustee, or holders of a specified amount of then-outstanding 4.75% debentures will have the right to declare all amounts then outstanding due and payable.

### ***Call Spread Overlay with Respect to the 4.75% Debentures ("CSO2014")***

Concurrent with the issuance of the 4.75% debentures, the Company entered into certain convertible debenture hedge transactions (the "4.75% Bond Hedge") and warrant transactions (the "4.75% Warrants") with affiliates of certain of the underwriters of the 4.75% debentures (the "CSO2014"), whereby the cost of the 4.75% Bond Hedges purchased by the Company to cover the potential share outlays upon conversion of the debentures is reduced by the sales prices of the 4.75% Warrants. The CSO2014 are not subject to mark-to-market accounting treatment since they may only be settled by issuance of the Company's common stock.

The 4.75% Bond Hedge allows the Company to purchase up to 8.7 million shares of the Company's common stock. The 4.75% Bond Hedge will be settled on a net share basis. Each 4.75% Bond Hedge and 4.75% Warrant is a separate transaction, entered into by the Company with each counterparty, and is not part of the terms of the 4.75% debentures. Holders of the 4.75% debentures do not have any rights with respect to the 4.75% Bond Hedges and 4.75% Warrants. The exercise prices of the 4.75% Bond Hedge are \$26.40 per share of the Company's common stock, subject to customary adjustment for anti-dilution and other events.

Under the 4.75% Warrants, the Company sold warrants to acquire up to 8.7 million shares of the Company's common stock at an exercise price of \$38.50 per share of the Company's common stock, subject to adjustment for certain anti-dilution and other events. The 4.75% Warrants expire in 2014. According to the counterparties to the warrants, the consummation of the Total Tender Offer triggered their rights to make a downward adjustment to the strike price of the warrants. In the third quarter of fiscal 2011, the Company and the counterparties to the 4.75% Warrants agreed to reduce the exercise price of the 4.75% Warrants from \$38.50 to \$26.40, which is no longer above the conversion price of the 4.75% debentures.

### ***1.25% Debentures***

In fiscal 2007, the Company issued \$200.0 million in principal amount of its 1.25% senior convertible debentures and received net proceeds of \$194.0 million. During the fourth quarter of fiscal 2008, the Company received notices for the conversion of \$1.4 million in principal amount of the 1.25% debentures which it settled for \$1.2 million in cash and 1,000 shares of common stock. As of January 1, 2012, an aggregate principal amount of \$198.6 million of the 1.25% debentures remained issued and outstanding. The 1.25% debentures had a maturity date of February 15, 2027 unless repurchased or converted in accordance with their terms prior to such date. Holders had the option to require the Company to repurchase all or a portion of their 1.25% debentures on each of February 15, 2012, February 15, 2017 and February 15, 2022, or if the Company experiences certain types of corporate transactions constituting a fundamental change, as defined in the indenture governing the 1.25% debentures. In addition, the Company could redeem some or all of the 1.25% debentures on or after February 15, 2012. Accordingly, the Company classified the 1.25% debentures as short-term liabilities in the Condensed Consolidated Balance Sheets as of January 1, 2012. On February 16, 2012, based upon the exercise of the holders' put rights, the Company repurchased \$198.6 million in principal amount of the 1.25% debentures at a cash price of \$199.8 million, representing 100% of the principal amount of the 1.25% debentures plus accrued and unpaid interest. None of the 1.25% debentures remained issued and outstanding after the repurchase.

### **Other Debt and Credit Sources**

#### ***Mortgage Loan Agreement with IFC***

On May 6, 2010, the Company entered into a mortgage loan agreement with IFC. Under the loan agreement, the Company may borrow up to \$75.0 million during the first two years, and shall repay the amount borrowed, starting 2 years after the date of borrowing, in 10 semiannual installments over the following 5 years. The Company shall pay interest of LIBOR plus 3% per annum on outstanding borrowings, and a front-end fee of 1% on the principal amount of borrowings at the time of borrowing, and a commitment fee of 0.5% per annum on funds available for borrowing and not borrowed. The Company may prepay all or a part of the outstanding principal, subject to a 1% prepayment premium. The loan agreement includes conditions to disbursements, representations, covenants, and events of default customary for financing transactions of this type. Covenants in the loan agreement include, but are not limited to, requirements that the Company maintain certain financial ratios including defined current ratios, restrictions on the Company's ability to issue dividends, incur indebtedness, create or incur liens on assets, and make loans to or investments in third parties. Conditions to disbursement include, but are not limited to, requirements that the Company pledge certain assets as collateral supporting repayment obligations (see Note 5). Additionally, in accordance with the terms of the agreement, the Company is required to establish a debt service reserve account which shall contain the amount, as determined by IFC, equal to the aggregate principal and interest due on the next succeeding interest payment date after such date. As of September 30, 2012 and January 1, 2012, the Company had restricted cash and cash equivalents of \$6.4 million and \$1.3 million, respectively, related to the IFC debt service reserve.

The Company's outstanding borrowings under the mortgage loan agreement with IFC on its Condensed Consolidated Balance Sheets is as follows:

(In thousands)	As of	
	September 30, 2012	January 1, 2012
Short-term debt	\$ 12,500	\$ —
Long-term debt	62,500	75,000
	<u>\$ 75,000</u>	<u>\$ 75,000</u>

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

On December 29, 2010, the Company 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") maturing April 1, 2031 under a loan agreement with CEDA. The Company's obligations under the loan agreement are contained in a promissory note dated December 29, 2010 issued by the Company to CEDA, which assigned the promissory note, along with all right, title and interest in the loan agreement, to Wells Fargo, as trustee, with respect to the Bonds for the benefit of the holders of the Bonds. The Bonds initially bore interest at a variable interest rate (determined weekly), but in June 2011, at the Company's option, were converted into fixed-rate bonds at 8.50% per annum (which include covenants of, and other restrictions on the Company). Additionally, in accordance with the terms of the loan agreement, the Company is required to keep all loan proceeds on deposit with Wells Fargo, the trustee, until funds are withdrawn by it for use in relation to the design and leasehold improvements of its new corporate headquarters in San Jose, California. As of September 30, 2012 and January 1, 2012, the Company had restricted cash and cash equivalents of \$3.0 million and \$10.0 million, respectively, for design and leasehold improvements and debt service reserves under the CEDA loan agreement.

The Company's outstanding borrowings under the loan agreement with CEDA on its Condensed Consolidated Balance Sheets is as follows:

(In thousands)	As of	
	September 30, 2012	January 1, 2012
Long-term debt	30,000	30,000

***September 2011 Revolving Credit Facility with Credit Agricole***

On September 27, 2011, the Company entered into a revolving credit agreement with Credit Agricole, as administrative agent, and certain financial institutions, under which the Company may borrow up to \$275.0 million until September 27, 2013. Amounts borrowed may be repaid and reborrowed until September 27, 2013.

The Company is required to pay interest on outstanding borrowings of (a) with respect to any LIBOR loan, 1.5% plus the LIBOR divided by a percentage equal to one minus the stated maximum rate of all reserves required to be maintained against "Eurocurrency liabilities" as specified in Regulation D; (b) with respect to any alternative base loan, 0.5% plus the greater of (1) the prime rate, (2) the Federal Funds rate plus 0.5%, and (3) the one month LIBOR plus 1%; (c) a commitment fee equal to 0.25% per annum on funds available for borrowing and not borrowed; (d) an upfront fee of 0.125% of the revolving loan commitment; and (e) arrangement fee customary for a transaction of this type.

The Company's outstanding borrowings under the revolving credit facility with Credit Agricole on its Condensed Consolidated Balance Sheets is as follows:

(In thousands)	As of	
	September 30, 2012	January 1, 2012
Short-term debt	\$ 250,000	\$ —
Long-term debt	—	250,000
	<u>\$ 250,000</u>	<u>\$ 250,000</u>

## Other Debt

On November 9, 2011, the Company entered into a short-term construction loan agreement with a third party financial institution under which the Company may obtain non-recourse financing up to \$34.1 million to facilitate the development of an 18 MW utility and power plant project under construction in California. The Company is required to pay interest of LIBOR plus 2.50% per annum. In the second and third quarters of fiscal 2012 the Company received funds under the construction loan agreement totaling \$27.6 million, which was fully repaid on October 23, 2012. Other debt is further comprised of non-recourse project loans related to Tenesol established in 2003 and 2008 which are scheduled to mature through 2028 and totaled \$1.1 million and \$1.2 million as of September 30, 2012 and January 1, 2012, respectively.

The Company's outstanding project loans on its Condensed Consolidated Balance Sheets are as follows:

(In thousands)	As of	
	September 30, 2012	January 1, 2012
Short-term debt	\$ 27,659	\$ —
Long-term debt	1,061	1,240
	<u>\$ 28,720</u>	<u>\$ 1,240</u>

## Liquidity Support Agreement with Total S.A.

On February 28, 2012, the Company entered into a Liquidity Support Agreement with Total S.A. and the DOE, and a series of related agreements with Total S.A. and Total, under which Total S.A. has agreed to provide the Company, or cause to be provided, additional liquidity under certain circumstances to a maximum amount of \$600.0 million. In return for Total S.A.'s agreement to provide the Liquidity Support Facility, on February 28, 2012, the Company issued to Total a seven-year warrant to purchase 9,531,677 shares of the Company's common stock at an exercise price of \$7.8685 per share. The fair value of the warrants upon issuance was \$50.3 million, which is recorded as capitalized financing costs on the Condensed Consolidated Balance Sheet and amortized as interest expense over the expected life of the agreement. In connection with the Liquidity Support Agreement, the Company also entered into a Compensation and Funding Agreement with Total S.A., and a Private Placement Agreement and a Revolving Credit and Convertible Loan Agreement with Total (see Note 2). As of September 30, 2012, there was no amount outstanding under this facility.

## August 2011 Letter of Credit Facility with Deutsche Bank

On August 9, 2011, the Company entered into a letter of credit facility agreement with Deutsche Bank, as issuing bank and as administrative agent, and certain financial institutions, which was amended on December 20, 2011. Payment of obligations under the letter of credit facility is guaranteed by Total S.A. pursuant to the Credit Support Agreement. The letter of credit facility provides for the issuance, upon request by the Company, of letters of credit by the issuing banks thereunder in order to support certain obligations of the Company, in an aggregate amount not to exceed (a) \$725.0 million until December 31, 2012; and (b) \$771.0 million for the period from January 1, 2013 through December 31, 2013. Aggregate letter of credit amounts may be increased upon the agreement of the parties but, otherwise, may not exceed (i) \$878.0 million for the period from January 1, 2014 through December 31, 2014; (ii) \$936.0 million for the period from January 1, 2015 through December 31, 2015; and (iii) \$1.0 billion for the period from January 1, 2016 through June 28, 2016.

As of September 30, 2012, letters of credit issued under the August 2011 letter of credit facility with Deutsche Bank totaled \$697.5 million.

## September 2011 Letter of Credit Facility with Deutsche Bank Trust

On September 27, 2011, the Company entered into a letter of credit facility with Deutsche Bank Trust which provides for the issuance, upon request by the Company, of letters of credit to support obligations of the Company in an aggregate amount not to exceed \$200.0 million. Each letter of credit issued under the facility is fully cash-collateralized and the Company has entered into a security agreement with Deutsche Bank Trust, granting them a security interest in a cash collateral account established for this purpose.

As of September 30, 2012 letters of credit issued under the Deutsche Bank Trust facility amounted to \$1.5 million which were fully collateralized with restricted cash on the Condensed Consolidated Balance Sheets.

**Note 11. FOREIGN CURRENCY DERIVATIVES**

The Company has non-U.S. subsidiaries that operate and sell the Company's products in various global markets, primarily in Europe. As a result, the Company is exposed to risks associated with changes in foreign currency exchange rates. It is the Company's policy to use various techniques, including entering into foreign currency derivative instruments, to manage the exposures associated with forecasted revenues, purchases of foreign sourced equipment and non-U.S. dollar denominated monetary assets and liabilities. The Company does not enter into foreign currency derivative financial instruments for speculative or trading purposes.

The Company is required to recognize derivative instruments as either assets or liabilities at fair value in its Balance Sheets. The Company utilizes mid-market pricing to calculate the fair value of its option and forward contracts based on market volatilities, spot and forward rates, interest rates, and credit default swaps rates from published sources. The following table presents information about the Company's hedge instruments measured at fair value on a recurring basis as of September 30, 2012 and January 1, 2012, all of which utilize Level 2 inputs under the fair value hierarchy:

(In thousands)	Balance Sheet Classification	September 30, 2012	January 1, 2012
Assets	Prepaid expenses and other current assets		
Derivatives designated as hedging instruments:			
Foreign currency option contracts		\$ 515	\$ 5,550
Foreign currency forward exchange contracts		20	47
		<u>\$ 535</u>	<u>\$ 5,597</u>
Derivatives not designated as hedging instruments:			
Foreign currency option contracts		\$ 125	\$ 5,080
Foreign currency forward exchange contracts		3,665	23,745
		<u>\$ 3,790</u>	<u>\$ 28,825</u>
Liabilities	Accrued liabilities		
Derivatives designated as hedging instruments:			
Foreign currency option contracts		\$ 542	\$ —
Foreign currency forward exchange contracts		37	105
		<u>\$ 579</u>	<u>\$ 105</u>
Derivatives not designated as hedging instruments:			
Foreign currency option contracts		\$ 125	\$ —
Foreign currency forward exchange contracts		2,790	14,830
		<u>\$ 2,915</u>	<u>\$ 14,830</u>

Valuations are based on quoted prices in markets that are not active or for which all significant inputs are observable, directly or indirectly. The selection of a particular technique to value an over-the-counter ("OTC") foreign currency derivative depends upon the contractual term of, and specific risks inherent with, the instrument as well as the availability of pricing information in the market. The Company generally uses similar techniques to value similar instruments. Valuation techniques utilize a variety of inputs, including contractual terms, market prices, yield curves, credit curves and measures of volatility. For OTC foreign currency derivatives that trade in liquid markets, such as generic forward and option contracts, inputs can generally be verified and selections do not involve significant management judgment.

The following table summarizes the amount of unrealized gain or loss recognized in "Accumulated other comprehensive income (loss)" ("OCI") in "Stockholders' equity" in the Condensed Consolidated Balance Sheets:

(In thousands)	Three Months Ended		Nine Months Ended	
	September 30, 2012	October 2, 2011	September 30, 2012	October 2, 2011
Derivatives designated as cash flow hedges:				
Unrealized loss (gain) recognized in OCI (effective portion)	\$ (253)	\$ 25,085	\$ (1,386)	\$ (35,118)
Less: Loss (gain) reclassified from OCI to revenue (effective portion)	(2,358)	13,249	(9,352)	28,568
Less: Loss reclassified from OCI to other, net (1)	—	653	—	4,542
Net loss (gain) on derivatives	<u>\$ (2,611)</u>	<u>\$ 38,987</u>	<u>\$ (10,738)</u>	<u>\$ (2,008)</u>

- (1) During the three and nine months ended October 2, 2011, the Company reclassified from OCI to "Other, net" a net loss of \$0.7 million and \$4.5 million, respectively, relating to transactions previously designated as effective cash flow hedges as the related forecasted transactions did not occur or were concluded probable not to occur in the hedge period or within the additional two month time period thereafter.

The following table summarizes the amount of gain or loss recognized in "Other, net" in the Condensed Consolidated Statements of Operations in the three and nine months ended September 30, 2012 and October 2, 2011:

(In thousands)	Three Months Ended		Nine Months Ended	
	September 30, 2012	October 2, 2011	September 30, 2012	October 2, 2011
Derivatives designated as cash flow hedges:				
Gain (loss) recognized in "Other, net" on derivatives (ineffective portion and amount excluded from effectiveness testing) (1)	\$ (749)	\$ 3,081	\$ (1,176)	\$ (19,555)
Derivatives not designated as hedging instruments:				
Gain (loss) recognized in "Other, net"	\$ 520	\$ 38,411	\$ 6,824	\$ (6,187)

- (1) The amount of loss recognized related to the ineffective portion of derivatives was insignificant. This amount also includes a net loss of \$0.7 million and \$4.5 million reclassified from OCI to "Other, net" in the three and nine months ended October 2, 2011, respectively, relating to transactions previously designated as effective cash flow hedges as the related forecasted transactions did not occur or were concluded probable not to occur in the hedge period or within the additional two month time period thereafter.

## Foreign Currency Exchange Risk

### Designated Derivatives Hedging Cash Flow Exposure

The Company's subsidiaries have had and will continue to have material cash flows, including revenues and expenses, which are denominated in currencies other than their functional currencies. The Company's cash flow exposure primarily relates to anticipated third party foreign currency revenues and expenses. Changes in exchange rates between the Company's subsidiaries' functional currencies and other currencies in which it transacts will cause fluctuations in margin, cash flows expectations, and cash flows realized or settled. Accordingly, the Company enters into derivative contracts to hedge the value of a portion of these forecasted cash flows and to protect financial performance.

As of September 30, 2012, the Company had designated outstanding cash flow hedge option contracts and forward contracts with an aggregate notional value of \$56.3 million and \$32.2 million, respectively. The maturity dates of the outstanding contracts as of September 30, 2012 range from October 2012 to March 2013. As of January 1, 2012, the Company had designated outstanding hedge option contracts and forward contracts with an aggregate notional value of \$67.2 million and \$38.8 million, respectively. The Company designates either gross external or intercompany revenue up to its net economic exposure. These derivatives have a maturity of one year or less and consist of foreign currency option and forward contracts. The effective portion of these cash flow hedges are reclassified into revenue when third party revenue is recognized in the Condensed Consolidated Statements of Operations.

The Company expects to reclassify the majority of its net gains related to these option and forward contracts that are



included in accumulated other comprehensive gain as of September 30, 2012 to revenue in the next 12 months. The Company uses the spot method to measure the effectiveness of its cash flow hedges. Under this method for each reporting period, the change in fair value of the forward contracts attributable to the changes in spot exchange rates (the effective portion) is reported in accumulated other comprehensive income (loss) on its consolidated balance sheet and the remaining change in fair value of the forward contract (the ineffective portion, if any) is recognized in other income (expense), net, in its Condensed Consolidated Statement of Operations. The premium paid or time value of an option whose strike price is equal to or greater than the market price on the date of purchase is recorded as an asset in the Condensed Consolidated Balance Sheets. Thereafter, any change to this time value and the forward points is included in "Other, net" in the Condensed Consolidated Statements of Operations.

Under hedge accounting rules for foreign currency derivatives, the Company reflects mark-to-market gains and losses on its hedged transactions in accumulated other comprehensive income (loss) rather than current earnings until the hedged transactions occur. However, if the Company determines that the anticipated hedged transactions are probable not to occur, it must immediately reclassify any cumulative market gains and losses into its Condensed Consolidated Statement of Operations. During the three and nine months ended September 30, 2012, the Company determined that all its anticipated hedged transactions were probable to occur.

#### ***Non-Designated Derivatives Hedging Transaction Exposure***

Other derivatives not designated as hedging instruments consist of forward contracts used to hedge re-measurement of foreign currency denominated monetary assets and liabilities primarily for intercompany transactions, receivables from customers, and payables to third parties. Changes in exchange rates between the Company's subsidiaries' functional currencies and the currencies in which these assets and liabilities are denominated can create fluctuations in the Company's reported consolidated financial position, results of operations and cash flows. The Company enters into forward contracts, which are originally designated as cash flow hedges, and de-designates them upon recognition of the anticipated transaction to protect resulting non-functional currency monetary assets. These forward contracts as well as additional forward contracts are entered into to hedge foreign currency denominated monetary assets and liabilities against the short-term effects of currency exchange rate fluctuations. The Company records its derivative contracts that are not designated as hedging instruments at fair value with the related gains or losses recorded in "Other, net" in the Condensed Consolidated Statements of Operations. The gains or losses on these contracts are substantially offset by transaction gains or losses on the underlying balances being hedged. As of September 30, 2012, the Company held option contracts and forward contracts with an aggregate notional value of zero and \$41.7 million, respectively, to hedge balance sheet exposure. These forward contracts have maturities of three month or less. The Company held option and forward contracts with an aggregate notional value of \$63.2 million and \$162.0 million, respectively, as of January 1, 2012, to hedge balance sheet exposure.

#### **Credit Risk**

The Company's option and forward contracts do not contain any credit-risk-related contingent features. The Company is exposed to credit losses in the event of nonperformance by the counterparties of its option and forward contracts. The Company enters into derivative contracts with high-quality financial institutions and limits the amount of credit exposure to any single counterparty. In addition, the derivative contracts are limited to a time period of less than one year and the Company continuously evaluates the credit standing of its counterparties.

#### **Note 12. INCOME TAXES**

In the three and nine months ended September 30, 2012, the Company's income tax provision of \$0.6 million and \$12.5 million, respectively, on a loss before income taxes and equity in earnings (losses) of unconsolidated investees of \$48.5 million and \$192.9 million, respectively, was primarily due to projected tax expense in profitable foreign jurisdictions and a change in the valuation allowance on deferred tax assets. In the three and nine months ended October 2, 2011, the Company's income tax provision was \$11.1 million and \$18.0 million, respectively, on a loss before income taxes and equity in earnings of unconsolidated investees of \$360.7 million and \$510.7 million, respectively, was primarily due to projected tax expense in profitable foreign jurisdictions.

#### **Note 13. NET LOSS PER SHARE OF COMMON STOCK**

The Company calculates net income (loss) per share by dividing earnings allocated to common stockholders by the weighted average number of common shares outstanding for the period. The Company's outstanding unvested restricted stock awards are considered participating securities as they may participate in dividends, if declared, even though the awards are not vested. As participating securities, the unvested restricted stock awards are allocated a proportionate share of net income, but



excluded from the basic weighted average shares. No allocation is generally made to other participating securities in the case of a net loss per share.

Prior to the November 15, 2011 reclassification, the Company had two classes of outstanding stock, class A and class B common stock. The Company therefore calculated its net income (loss) per share in the third quarter of fiscal 2011 under the two-class method. In applying the two-class method, earnings are allocated to both classes of common stock and other participating securities based on their respective weighted average shares outstanding during the period. Under the two-class method, basic weighted average shares was computed using the weighted average of the combined former class A and former class B common stock outstanding. Class A and class B common stock were considered equivalent securities for purposes of the earnings per share calculation because the holders of each class are legally entitled to equal per share distributions whether through dividends or in liquidation.

Diluted weighted average shares is computed using basic weighted average shares plus any potentially dilutive securities outstanding during the period using the if-converted method and treasury-stock-type method, except when their effect is anti-dilutive. Potentially dilutive securities include stock options, restricted stock units, senior convertible debentures, amended warrants associated with the CSO2015, and the Upfront Warrants held by Total. As a result of the net loss from continuing operations for each of the three and nine months ended September 30, 2012 and October 2, 2011 there is no dilutive impact to the net loss per share calculation for the period.

The following table presents the calculation of basic and diluted net loss per share:

(In thousands, except per share amounts)	Three Months Ended		Nine Months Ended	
	September 30, 2012	October 2, 2011	September 30, 2012	October 2, 2011
<b>Basic and Diluted net loss per share:</b>				
<b>Numerator:</b> Net loss available to common stockholders	\$ (48,538)	\$ (370,784)	\$ (207,249)	\$ (520,777)
<b>Denominator:</b> Basic and diluted weighted-average common shares	118,952	98,259	116,408	97,456
Basic and diluted net loss per share	<u>\$ (0.41)</u>	<u>\$ (3.77)</u>	<u>\$ (1.78)</u>	<u>\$ (5.34)</u>

Holders of the Company's 4.75% debentures may convert the debentures into shares of the Company's common stock, at the applicable conversion rate, at any time on or prior to maturity. The 4.75% debentures are included in the calculation of diluted net income per share if their inclusion is dilutive under the if-converted method. In each of the three and nine months ended September 30, 2012 and October 2, 2011 there were no dilutive potential common shares under the 4.75% debentures.

Holders of the Company's 1.25% debentures (prior to their repurchase on February 16, 2012) and 0.75% debentures may, under certain circumstances at their option, convert the debentures into cash and, if applicable, shares of the Company's common stock at the applicable conversion rate, at any time on or prior to maturity. The 1.25% debentures and 0.75% debentures are included in the calculation of diluted net income per share if their inclusion is dilutive under the treasury-stock-type method. The Company's average stock price during the three and nine months ended September 30, 2012 and October 2, 2011 did not exceed the conversion price for the 1.25% debentures and 0.75% debentures. Under the treasury-stock-type method, the Company's 1.25% debentures and 0.75% debentures will generally have a dilutive impact on net income per share if the Company's average stock price for the period exceeds the conversion price for the debentures.

Holders of the Company's 4.50% debentures may, under certain circumstances at their option, convert the debentures into cash, and not into shares of the Company's common stock (or any other securities). Therefore, the 4.50% debentures are excluded from the net income per share calculation.

Holders of the amended and restated Warrants under the CSO2015, upon exercise of the 4.50% Warrants, may acquire up to 11.1 million shares of the Company's common stock at an exercise price of \$27.03. In the third quarter of fiscal 2011, as a result of the Total Tender Offer, the Company and the counterparties to the 4.50% Warrants agreed to reduce the exercise price of the 4.50% Warrants from \$27.03 to \$24.00 (see Note 10). If the market price per share of the Company's common stock for the period exceeds the established strike price, the 4.50% Warrants will have a dilutive effect on its diluted net income per share using the treasury-stock-type method.

The Upfront Warrants, issued on February 28, 2012, allow Total to acquire up to 9,531,677 shares of the Company's common stock at an exercise price of \$7.8685. If the market price per share of the Company's common stock for the period

exceeds the established strike price, the Upfront Warrants will have a dilutive effect on its diluted net income per share using the treasury-stock-type method.

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

(In thousands)	As of	
	September 30, 2012 (1)	October 2, 2011 (1)
Stock options	334	440
Restricted stock units	8,829	1,973
Warrants (under the CSO2015)	*	*
Upfront Warrants (held by Total)	**	n/a
4.75% debentures	8,712	8,712
1.25% debentures	n/a	*
0.75% debentures	*	*

(1) As a result of the net loss per share for each of the three and nine months ended September 30, 2012 and October 2, 2011, the inclusion of all potentially dilutive stock options, restricted stock units, and common shares under the 4.75% debentures would be anti-dilutive. Therefore, those stock options, restricted stock units and shares were excluded from the computation of the weighted-average shares for diluted net loss per share for such period.

\* The Company's average stock price during the three and nine months ended September 30, 2012 and October 2, 2011 did not exceed the conversion price for the amended warrants (under the CSO2015), 1.25% debentures and 0.75% debentures and those instruments were thus non-dilutive in such periods.

\*\* The Upfront Warrants were issued in the first quarter of fiscal 2012. The Company's stock price as of the last business day of the third quarter of fiscal 2012 did not exceed the exercise price of the Upfront Warrants.

#### Note 14. STOCK-BASED COMPENSATION

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

(In thousands)	Three Months Ended		Nine Months Ended	
	September 30, 2012	October 2, 2011	September 30, 2012	October 2, 2011
Cost of Americas revenue	\$ 1,590	\$ 1,897	\$ 4,745	\$ 4,958
Cost of EMEA revenue	795	1,562	3,158	5,100
Cost of APAC revenue	368	251	1,125	846
Research and development	1,045	1,608	3,920	5,112
Sales, general and administrative	5,473	6,531	20,231	21,813
Total stock-based compensation expense	<u>\$ 9,271</u>	<u>\$ 11,849</u>	<u>\$ 33,179</u>	<u>\$ 37,829</u>

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

(In thousands)	Three Months Ended		Nine Months Ended	
	September 30, 2012	October 2, 2011	September 30, 2012	October 2, 2011
Employee stock options	\$ 35	\$ 317	\$ 638	\$ 1,388
Restricted stock awards and units	8,969	10,910	32,411	36,790
Change in stock-based compensation capitalized in inventory	267	622	130	(349)
Total stock-based compensation expense	<u>\$ 9,271</u>	<u>\$ 11,849</u>	<u>\$ 33,179</u>	<u>\$ 37,829</u>

**Note 15. SEGMENT INFORMATION**

In December 2011, the Company announced a reorganization to align its business and cost structure to a regional focus in order to support the needs of its customers and improve the speed of decision-making processes. As a result, in the first quarter of fiscal 2012, the Company changed its segment reporting from its UPP Segment and R&C Segment to three regional segments: (i) the Americas Segment, (ii) the EMEA Segment, and (iii) the APAC Segment. The Americas Segment includes both North and South America. The EMEA Segment includes European countries, as well as the Middle East and Africa. The APAC segment includes all Asia-Pacific countries. The Company's President and Chief Executive Officer, as the CODM, has organized the Company, manages resource allocations and measures performance of the Company's activities among these three regional segments.

The CODM assesses the performance of the three regional segments using information about their revenue and gross margin after certain adjustments to reflect the substance of the revenue transactions for certain utility and power plant projects, and adding back certain non-cash expenses such as amortization of other intangible assets, stock-based compensation expense, loss on change in European government incentives, restructuring charges, accelerated depreciation associated with the Company's manufacturing step reduction program, and interest expense. In addition, the CODM assesses the performance of the segments after adding back the results of discontinued operations to revenue and gross margin. The CODM does not review asset information by segment. The following tables present revenue by segment, cost of revenue by segment and gross margin by segment, revenue by geography and revenue by significant customer. Revenue is based on the destination of the shipments. Historical results have been recast under the new segmentation.

(In thousands):	Three Months Ended		Nine Months Ended	
	September 30, 2012	October 2, 2011	September 30, 2012	October 2, 2011
Revenue				
Americas	\$ 502,373	\$ 368,643	\$ 1,176,148	\$ 942,887
EMEA	88,547	293,066	400,074	675,702
APAC	58,028	43,718	162,754	130,511
Total Revenue	648,948	705,427	1,738,976	1,749,100
Cost of revenue				
Americas	409,432	326,372	978,062	839,465
EMEA	111,622	265,515	422,922	620,618
APAC	47,121	37,416	138,471	105,077
Total cost of revenue	568,175	629,303	1,539,455	1,565,160
Gross margin	\$ 80,773	\$ 76,124	\$ 199,521	\$ 183,940

	Three Months Ended		Nine Months Ended	
	September 30, 2012	October 2, 2011	September 30, 2012	October 2, 2011
<b>Revenue by region (in thousands):</b>				
Americas (as reviewed by CODM)	\$ 460,105	\$ 368,643	\$ 1,274,907	\$ 942,887
Utility and power plant projects	42,268	—	(98,759)	—
Americas	<u>\$ 502,373</u>	<u>\$ 368,643</u>	<u>\$ 1,176,148</u>	<u>\$ 942,887</u>
EMEA (as reviewed by CODM)	\$ 88,547	\$ 293,066	\$ 399,881	\$ 675,702
Change in European government incentives	—	—	193	—
EMEA	<u>\$ 88,547</u>	<u>\$ 293,066</u>	<u>\$ 400,074</u>	<u>\$ 675,702</u>
APAC	<u>\$ 58,028</u>	<u>\$ 43,718</u>	<u>\$ 162,754</u>	<u>\$ 130,511</u>
<b>Cost of revenue by region (in thousands):</b>				
Americas (as reviewed by CODM)	\$ 367,067	\$ 324,262	\$ 1,035,870	\$ 815,748
Utility and power plant projects	36,453	—	(73,890)	—
Amortization of intangible assets	42	42	125	362
Stock-based compensation expense	1,589	1,897	4,743	4,959
Acquisition and integration costs	15	—	26	—
Change in European government incentives	—	—	4,029	17,379
Charges on manufacturing step reduction program	3,958	—	6,428	—
Non-cash interest expense	308	171	731	1,017
Americas	<u>\$ 409,432</u>	<u>\$ 326,372</u>	<u>\$ 978,062</u>	<u>\$ 839,465</u>
EMEA (as reviewed by CODM)	\$ 108,515	\$ 263,736	\$ 410,532	\$ 585,347
Amortization of intangible assets	751	21	2,341	63
Stock-based compensation expense	795	1,562	3,158	5,100
Acquisition and integration costs	5	—	10	—
Change in European government incentives	—	—	3,364	—
Charges on manufacturing step reduction program	1,444	—	3,092	29,125
Non-cash interest expense	112	196	425	983
EMEA	<u>\$ 111,622</u>	<u>\$ 265,515</u>	<u>\$ 422,922</u>	<u>\$ 620,618</u>
APAC (as reviewed by CODM)	\$ 45,634	\$ 37,137	\$ 134,106	\$ 102,088
Stock-based compensation expense	368	251	1,125	845
Acquisition and integration costs	4	—	6	—
Change in European government incentives	—	—	1,476	1,959
Charges on manufacturing step reduction program	1,034	—	1,568	—
Non-cash interest expense	81	28	190	185
APAC	<u>\$ 47,121</u>	<u>\$ 37,416</u>	<u>\$ 138,471</u>	<u>\$ 105,077</u>
<b>Gross margin by region:</b>				
Americas (as reviewed by CODM)	20 %	12%	19 %	13%
EMEA (as reviewed by CODM)	(23)%	10%	(3)%	13%
APAC (as reviewed by CODM)	21 %	15%	18 %	22%
Americas	19 %	11%	17 %	11%
EMEA	(26)%	9%	(6)%	8%
APAC	19 %	14%	15 %	19%

(As a percentage of total revenue)		Three Months Ended		Nine Months Ended	
		September 30, 2012	October 2, 2011	September 30, 2012	October 2, 2011
Significant Customers:	Business Segment				
NRG Solar, Inc.	Americas	46%	*	32%	*
Customer B	EMEA	*	10%	*	10%
Customer C	EMEA	*	11%	*	*

\* denotes less than 10% during the period

#### **Note 16. SUBSEQUENT EVENTS**

On October 12, 2012, the Company's Board of Directors approved a reorganization (the "October 2012 Plan") to accelerate operating cost reduction and improve overall operating efficiency. In connection with the October 2012 Plan, which is expected to be completed within the twelve months following approval, the Company expects to eliminate approximately 900 positions primarily in the Philippines, representing approximately 15% of the Company's global workforce. As a result, the Company expects to record restructuring charges totaling \$10.0 million to \$17.0 million, composed of severance benefits, lease and related termination costs, and other associated costs, the majority of which will likely be recorded in the fourth quarter of fiscal 2012. The Company expects greater than 90% of these charges to be cash.

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

### Cautionary Statement Regarding Forward-Looking Statements

This Quarterly Report on Form 10-Q contains forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995. Forward-looking statements are statements that do not represent historical facts and the assumptions underlying such statements. We use words such as "anticipate," "believe," "continue," "could," "estimate," "expect," "intend," "may," "plan," "predict," "potential," "will," "would," "should," 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, projected costs and cost reduction, products, ability to monetize utility projects, competitive positions, management's plans and objectives for future operations, the sufficiency of our cash and our liquidity, our ability to obtain financing, the availability of credit and liquidity support from Total S.A. under the Credit Support Agreement and Liquidity Support Agreement, the ability to comply with debt covenants, trends in average selling prices, the success of our joint ventures and acquisitions, expected capital expenditures, warranty matters, outcomes of litigation, our exposure to foreign exchange, interest and credit risk, general business and economic conditions, industry trends, impact of changes in government incentives, expected restructuring charges, and the likelihood of any impairment of project assets, long-lived assets, goodwill, and intangible assets. These forward-looking statements are based on information available to us as of the date of this Quarterly Report on Form 10-Q and current expectations, forecasts and assumptions and involve a number of risks and uncertainties that could cause actual results to differ materially from those anticipated by these forward-looking statements. Such risks and uncertainties include a variety of factors, some of which are beyond our control. Please see "Part II. Item 1A: Risk Factors" herein and our other filings with the Securities and Exchange Commission ("SEC"), including our Annual on Form 10-K for the year ended January 1, 2012 as amended (the "fiscal 2011 Form 10-K"), for additional information on risks and uncertainties that could cause actual results to differ. These forward-looking statements should not be relied upon as representing our views as of any subsequent date, and we are under no obligation 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.

The following information should be read in conjunction with the Condensed Consolidated Financial Statements and the accompanying Notes to Condensed Consolidated Financial Statements included in this Quarterly Report on Form 10-Q. Our fiscal 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 ends on the Sunday closest to the calendar month end.

### General Overview

We are a vertically integrated solar products and services company that designs, manufactures, and delivers high-performance solar electric systems worldwide for residential, commercial and utility-scale power plant customers. Of all the solar cells available for the mass market, we believe our solar cells have the highest conversion efficiency, a measurement of the amount of sunlight converted by the solar cell into electricity.

We believe our solar cells provide the following benefits compared with conventional solar cells:

- superior performance, including the ability to generate up to 50% more power per unit area than conventional solar cells;
- superior aesthetics, with our uniformly black surface design that eliminates highly visible reflective grid lines and metal interconnect ribbons;
- more KW per pound can be transported using less packaging, resulting in lower distribution costs; and
- more efficient use of silicon, a key raw material used in the manufacture of solar cells.

The high efficiency and superior aesthetics of our solar power products provide compelling customer benefits. In many situations, we offer a significantly lower area-related cost structure for our customers because our solar panels require a substantially smaller roof or land area than conventional solar technology and half or less of the roof or land area of many commercial solar thin film technologies.

We believe our solar power systems provide the following benefits compared with various competitors' systems:

- channel breadth and flexible delivery capability, including turn-key systems;
- high performance delivered by enhancing energy delivery and financial return through systems technology design; and
- cutting edge systems design to meet customer needs and reduce cost, including non-penetrating, fast roof installation technologies.

### *Business Segments Overview*

In December 2011, we announced a reorganization to align our business and cost structure to a regional focus in order to support the needs of our customers and improve the speed of decision-making processes. As a result, in the first quarter of fiscal 2012, we changed our segment reporting from our Utility and Power Plants ("UPP") Segment and Residential and Commercial ("R&C") Segment to three regional segments: (i) the Americas Segment, (ii) the EMEA Segment, and (iii) the APAC Segment. The Americas Segment includes both North and South America. The EMEA Segment includes European countries, as well as the Middle East and Africa. The APAC Segment includes all Asia-Pacific countries. Our President and Chief Executive Officer, as the chief operating decision maker ("CODM"), has organized our Company, manages resource allocations and measures performance of our Company's activities among these three regional segments.

### *Seasonal Trends*

Our business is subject to industry-specific seasonal fluctuations. Sales have historically reflected these seasonal trends with the largest percentage of total revenues realized during the last two calendar quarters of a fiscal year. Lower seasonal demand normally results in reduced shipments and revenues in the first two calendar quarters of a fiscal year. There are various reasons for this seasonality, mostly related to economic incentives and weather patterns. For example, in European countries with feed-in tariffs, the construction of solar power systems may be concentrated during the second half of the calendar year, largely due to the fact that the coldest winter months in the Northern Hemisphere are January through March. In the United States, customers will sometimes make purchasing decisions towards the end of the year in order to take advantage of tax credits or for other budgetary reasons. In addition, sales in the new home development market are often tied to construction market demands which tend to follow national trends in construction, including declining sales during cold weather months.

### *Unit of Power*

When referring to our facilities' manufacturing capacity, total sales and components sales, the unit of electricity in watts for kilowatts ("KW"), megawatts ("MW") and gigawatts ("GW") is direct current ("dc"). When referring to our solar power systems, the unit of electricity in watts for KW, MW, and GW is alternating current ("ac").

### *Levelized Cost of Energy ("LCOE")*

The LCOE equation is an evaluation of the life-cycle energy cost and life-cycle energy production of an energy producing system. It allows alternative technologies to be compared when different scales of operation, investment, or operating time periods exist. It captures capital costs and ongoing system-related costs, along with the amount of electricity produced, and converts them into a common metric. Key drivers for LCOE reduction for photovoltaic products include panel efficiency, capacity factors, reliable system performance, and the life of the system.

### *Fiscal Years*

We report on a fiscal-year basis and end our quarters on the Sunday closest to the end of the applicable calendar quarter, except in a 53-week fiscal year, in which case the additional week falls into the fourth quarter of that fiscal year. Both fiscal year 2012 and 2011 consist of 52 weeks. The third quarter of fiscal 2012 ended on September 30, 2012 and the third quarter of fiscal 2011 ended on October 2, 2011.

## **Outlook**

During fiscal 2011 we saw a decline in overall demand for solar systems primarily in Europe as a result of the decline in European government incentives. The resulting supply environment drove down average selling prices across all product and service lines. Such pricing pressures have continued and are expected to generally continue throughout fiscal 2012 and 2013.

We continue to be focused on reducing the cost of our solar panels and systems. We continue to emphasize improvement of our solar cell efficiency and LCOE performance through enhancement of our existing products, development

of new products and reduction of manufacturing cost and complexity in conjunction with our overall cost-control strategies. We are further working with our suppliers and partners along all steps of the value chain to reduce costs by improving manufacturing technologies and expanding economies of scale.

We plan to continue to expand our business in growing and sustainable markets. We announced the first commercial deployment of our SunPower® C-7 Tracker technology under a power purchase agreement ("PPA") and commenced commercial production of our next generation solar cell with demonstrated efficiencies of up to 24%. Our acquisition of Teneosol S.A. ("Teneosol") in the first quarter of fiscal 2012 has further expanded our European and global customer channels as well as added manufacturing capabilities based in both Europe and South Africa.

### *Residential Leasing Program*

In fiscal 2011, we launched our residential lease program with dealers in the United States, in partnership with a third-party financial institution, which allows customers to obtain SunPower systems under lease agreements up to 20 years, subject to financing availability. On August 8, 2012, we entered into arrangements with two financial institutions that will provide financing to support additional residential solar lease projects. The program includes system maintenance and warranty coverage as well as an early buy-out option after six years or at any time when the lessees sell their home. Leases are classified as either operating or sales-type leases in accordance with the relevant accounting guidelines.

The program does not yet represent a material portion of our revenue. However, we may face additional material risks as the program expands, including our ability to obtain additional financing partners as well as our ability to collect finance and rent receivables in view of the general challenging credit markets worldwide. We believe that our concentration of credit risk is limited because of our large number of customers, credit quality of the customer base, small account balances for most of these customers, and customer geographic diversification. We apply for Treasury Grant payments under Section 1603 of the American Recovery and Reinvestment Act (the "Cash Grant"), which is administered by the U.S. Treasury Department, for residential leases. If the amount or timing of the Cash Grant payments received in connection with the residential lease program varies from what we have projected, this may impact our revenues and margins and we may have to recognize losses, which may adversely impact our results of operations. We make certain assumptions in accounting for the residential lease program, including, among others, the residual value of the leased systems. As the residential lease program grows, if the residual value of leased systems does not materialize as assumed, our results of operations would be adversely affected.

## Results of Operations

### *Revenue*

(In thousands)	Three Months Ended			Nine Months Ended		
	September 30, 2012	October 2, 2011	% Change	September 30, 2012	October 2, 2011	% Change
Americas	\$ 502,373	\$ 368,643	36%	\$ 1,176,148	\$ 942,887	25%
EMEA	88,547	293,066	(70)%	400,074	675,702	(41)%
APAC	58,028	43,718	33%	162,754	130,511	25%
Total revenue	<u>\$ 648,948</u>	<u>\$ 705,427</u>	(8)%	<u>\$ 1,738,976</u>	<u>\$ 1,749,100</u>	(1)%

**Total Revenue:** Total revenue decreased 8% and 1% during the three and nine months ended September 30, 2012 as compared to the three and nine months ended October 2, 2011. The decrease in the three months ended September 30, 2012 as compared to the three months ended October 2, 2011 is primarily due to a decline in utility-scale solar projects and related revenue within the EMEA region partially offset by a 4% increase in revenue per watt. We recognized revenue on 210.0 MW in the three months ended September 30, 2012 as compared to 236.8 MW in the three months ended October 2, 2011. The decrease in the nine months ended September 30, 2012 as compared to the nine months ended October 2, 2011 is primarily driven by a 13% decrease in revenue per watt. We recognized revenue on 637.9 MW in the nine months ended September 30, 2012 as compared to 559.9 MW in the nine months ended October 2, 2011. The overall decrease in total revenue was partially offset by revenue recognized on additional large scale utility projects within the Americas Segment during fiscal 2012.

**Concentrations:** The table below represents our significant customers which accounted for greater than 10% of total revenue in each of the three and nine months ended September 30, 2012 and October 2, 2011, respectively. We entered into a project contract with NRG Solar, Inc. in fiscal 2011, which is anticipated to account for 10% or more of total revenue in fiscal 2012.



Revenue		Three Months Ended		Nine Months Ended	
		September 30, 2012	October 2, 2011	September 30, 2012	October 2, 2011
Significant Customer:	Business Segment				
NRG Solar, Inc.	Americas	46%	*	32%	*
Customer B	EMEA	*	10%	*	10%
Customer C	EMEA	*	11%	*	*

\* denotes less than 10% during the period

**Revenue by Segment:** The below table presents our segment revenue as a percentage of total revenue for the three and nine months ended September 30, 2012 and October 2, 2011, respectively.

Percentage of total revenue	Three Months Ended		Nine Months Ended	
	September 30, 2012	October 2, 2011	September 30, 2012	October 2, 2011
Americas	77%	52%	68%	54%
EMEA	14%	42%	23%	39%
APAC	9%	6%	9%	7%

Sales outside the Americas Segment represented approximately 23% and 32% of total revenue for the three and nine months ended September 30, 2012, respectively, as compared to 48% and 46% for the three and nine months ended October 2, 2011, respectively. The shift in revenue by geography period over period was due to increasing demand in the United States for our solar power products as a result of additional federal and state initiatives supporting attractive solar incentives within the residential, commercial, and utility sectors as well as a slowdown in project development and component shipments in Europe due to the current over-supply environment within the region.

**Americas Revenue:** Americas revenue increased 36% during the three months ended September 30, 2012 as compared to the three months ended October 2, 2011 which was primarily driven by additional revenue recognized on large utility-scale projects under construction in the United States. Also contributing to the increase was additional revenue recognized on component sales which increased 16% period over period, which was primarily driven by a 29% increase in the average selling prices of components within the region.

Americas revenue increased 25% during the nine months ended September 30, 2012 as compared to the nine months ended October 2, 2011, which was primarily a result of an increase in the number and size of the various utility-scale solar power systems under construction, which includes the ramp up in construction of the 250 MW California Valley Solar Ranch ("CVSR") project in San Luis Obispo County, California, a 25 MW project in Modesto, California, and 20 MW project in North Carolina during the nine months ended September 30, 2012, partially offset by projects which were substantially completed during the interim period. Additionally contributing to the increase was additional revenue recognized on component sales which increased 49% period over period, which was primarily driven by a 32% increase in average selling price.

**EMEA Revenue:** EMEA revenue decreased 70% and 41% during the three and nine months ended September 30, 2012 compared with the three and nine months ended October 2, 2011 primarily due to changes in European government incentives during fiscal 2011 which had a materially negative effect on the market for solar systems, particularly large-scale solar products and systems in Europe, which caused our sales related to such projects as well as components sales to decline in Europe.

The decrease in EMEA revenue for the three months ended September 30, 2012 as compared to the three months ended October 2, 2011 was due to a 22.1 MW decline in utility-scale solar projects and related revenue as well as a decrease in component sales and average selling prices. In the three months ended September 30, 2012, we recognized revenue on 6.0 MW of component sales as compared to 41.6 MW in the three months ended October 2, 2011, which represents a 86% decrease in volume quarter over quarter. The overall decline in our EMEA revenue was partially offset by \$16.1 million in revenue due to Tenesol's results of operations being incorporated into our financial results for the third quarter in fiscal 2012.

The decrease in EMEA revenue for the nine months ended September 30, 2012 as compared to the nine months ended October 2, 2011 was due to a 47.0 MW decline in utility-scale solar projects and related revenue as well as a decrease in

components sales and average selling prices. In the nine months ended September 30, 2012, we recognized revenue on 17.0 MW of component sales as compared to 94.4 MW in the nine months ended October 2, 2011, which represents an 82% decrease in volume, period over period. The overall decline in our EMEA revenue was partially offset by \$79.3 million in revenue due to Tenesol's results of operations being incorporated into our financial results for the nine months ended September 30, 2012.

**APAC Revenue:** APAC revenue increased 33% during the three months ended September 30, 2012 compared with the three month ended October 2, 2011 due to higher component sales and shipments, primarily in Japan. In the three months ended September 30, 2012, we recognized revenue on 31.1 MW of component sales as compared to 14.4 MW in the three months ended October 2, 2011, which represents a 116% increase in volume quarter over quarter.

APAC revenue increased 25% during the nine months ended September 30, 2012 compared with the nine months ended October 2, 2011. Revenue increased due to an increase in component sales partially offset by a reduction in systems revenue. In the nine months ended September 30, 2012, we recognized revenue on 79.7 MW of component sales as compared to 31.9 MW in the nine months ended October 2, 2011, which represents a 150% increase in volume quarter over quarter. This increase was partially offset by a decrease in systems revenue due to a shift in demand for our solar products in the residential and commercial markets coupled with an overall decrease in revenue per watt in the region.

#### Cost of Revenue

(In thousands)	Three Months Ended			Nine Months Ended		
	September 30, 2012	October 2, 2011	% Change	September 30, 2012	October 2, 2011	% Change
Americas	\$ 409,432	\$ 326,372	25%	\$ 978,062	\$ 839,465	17%
EMEA	111,622	265,515	(58)%	422,922	620,618	(32)%
APAC	47,121	37,416	26%	138,471	105,077	32%
Total cost of revenue	\$ 568,175	\$ 629,303	(10)%	\$ 1,539,455	\$ 1,565,160	(2)%
Total cost of revenue as a percentage of revenue	88%	89%		89%	89%	
Total gross margin percentage	12%	11%		11%	11%	

**Total Cost of Revenue:** Our cost of revenue will fluctuate from period to period due to the mix of projects completed and recognized as revenue, in particular between large utility projects and large commercial installation projects. The cost of solar panels is the single largest cost element in our cost of revenue. Other cost of revenue associated with the construction of solar power systems includes real estate, mounting systems, inverters, third-party contract manufacturer costs, construction subcontract and dealer costs. In addition, other factors contributing to cost of revenue include amortization of other intangible assets, stock-based compensation, depreciation, provisions for estimated warranty claims, salaries, personnel-related costs, freight, royalties, facilities expenses and manufacturing supplies associated with contracting revenue and solar cell fabrication, as well as factory pre-operating costs associated with our manufacturing facilities.

Total cost of revenue decreased 10% and 2% during the three and nine months ended September 30, 2012, respectively, as compared to the three and nine months ended October 2, 2011 primarily due to lower material costs and higher yields. The decrease during the third quarter of fiscal 2012 as compared to the same period in fiscal 2011 was also a result of an 11% decline in total MW sold. Additionally contributing to the decrease for the nine months ended September 30, 2012 as compared to the same period in fiscal 2011 was \$48.5 million of charges incurred in the second quarter of fiscal 2011 associated with the change in European government incentives and resulting write-downs in project assets and third-party inventory, as well as costs associated with the termination of third-party solar cell contracts. These decreases for the nine months ended September 30, 2012 were partially offset by a 14% increase in total MW of solar power products sold.

#### Gross Margin

(In thousands)	Three Months Ended			Nine Months Ended		
	September 30, 2012	October 2, 2011	% Change	September 30, 2012	October 2, 2011	% Change
Americas	19%	11%	8%	17%	11%	6%
EMEA	(26)%	9%	(35)%	(6)%	8%	(14)%
APAC	19%	14%	5%	15%	19%	(4)%

**Americas Gross Margin:** Gross margin for our Americas Segment was \$92.9 million and \$198.1 million, respectively, for the three and nine months ended September 30, 2012 as compared to \$42.3 million and \$103.4 million, respectively, for the three and nine months ended October 2, 2011. The increase in gross margin from 11% to 19% and from 11% to 17%, over the respective periods is primarily driven by increased revenue from large utility-scale solar power systems under construction and components sales combined with lower material costs. The overall increase was partially offset by industry declines in average selling prices.

**EMEA Gross Margin:** Gross margin for our EMEA Segment was negative \$23.1 million and negative \$22.8 million, respectively, for the three and nine months ended September 30, 2012 as compared to \$27.6 million and \$55.1 million, respectively, for the three and nine months ended October 2, 2011. The overall decrease in EMEA gross margin over both periods is a result of declines in government incentives resulting in changes in market demand. The changes in demand, general financing constraints experienced in the European economy, and the over-supply environment continued to significantly drive down average selling prices throughout the region in fiscal 2012.

**APAC Gross Margin:** Gross margin for our for our APAC Segment was \$10.9 million and \$24.3 million, respectively, for the three and nine months ended September 30, 2012, as compared to \$6.3 million and \$25.4 million, respectively, for the three and nine months ended October 2, 2011. Gross margin increased from 14% to 19% quarter over quarter due to additional volumes of higher margin component sales partially offset by declining average selling prices. The 4% decrease in gross margin during the nine months ended September 30, 2012 as compared to the nine months ended October 2, 2011 is primarily due to project completion and declining average selling prices.

#### Research and Development ("R&D")

(In thousands)	Three Months Ended			Nine Months Ended		
	September 30, 2012	October 2, 2011	% Change	September 30, 2012	October 2, 2011	% Change
R&D Expense	\$ 14,956	\$ 12,664	18%	\$ 45,786	\$ 41,565	10%
As a percentage of revenue	2%	2%		3%	2%	

In the three and nine months ended September 30, 2012, R&D expense was \$15.0 million and \$45.8 million, respectively, which represents an increase of 18% and 10% as compared to the same period in fiscal 2011. The increase in our investment in R&D period over period was primarily due to R&D investments related to the improvement of our current generation solar cell manufacturing technology, development of our next generation of solar cells, solar panels, trackers and rooftop systems, and development of systems performance monitoring products as well as operating expenses related to Tenesol which were incorporated into our financial results for the period. These increases were partially offset by reduction in other discretionary spending as a result of cost reduction initiatives implemented in reaction to the overall solar market, as well as lower stock-based compensation due to lower valuation of stock grants as a result of decline in our share price.

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

(In thousands)	Three Months Ended			Nine Months Ended		
	September 30, 2012	October 2, 2011	% Change	September 30, 2012	October 2, 2011	% Change
Total SG&A	\$ 69,714	\$ 76,329	(9)%	\$ 208,388	\$ 243,364	(14)%
As a percentage of revenue	11%	11%		12%	14%	

During the three and nine months ended September 30, 2012, total SG&A expense decreased 9% and 14%, respectively, as compared to the three and nine months ended October 2, 2011. The overall decrease is primarily attributable to our cost-control strategy implemented in response to the changes in the European market and resulting restructuring, including the overall reduction of consulting charges in Europe and the United States.

SG&A expense decreased \$6.6 million in the three months ended September 30, 2012 as compared to the three months ended October 2, 2011 primarily due to (i) a \$4.8 million decrease in amortization of intangible assets due to \$40.3 million of impairment of certain assets related to strategic acquisitions of EPC and O&M project pipelines in Europe recorded at the end of the third quarter of fiscal 2011; (ii) a \$2.0 million decrease in labor and other employee related costs as a result of the implementation of approved restructuring plans; (iii) a \$2.6 million decrease in corporate bonuses and stock compensation expenses; (iv) a \$2.0 million decrease in consulting, outside services and travel due to cost reduction initiatives; (v) a \$1.0

million decrease in marketing expenses; and (vi) a net decrease of \$1.1 million in other expenses. The overall decrease was partially offset by \$6.9 million of Tenesol's operating expenses which were incorporated into our financial results for the period.

SG&A expense decreased \$35.0 million in the nine months ended September 30, 2012 as compared to the nine months ended October 2, 2011 primarily due to (i) a \$17.0 million decrease in amortization of intangible assets due to \$40.3 million of impairment of certain assets related to strategic acquisitions of EPC and O&M project pipelines in Europe recorded at the end of the third quarter of fiscal 2011; (ii) a \$9.6 million decrease in acquisition and integration related costs which were primarily incurred in the second quarter of fiscal 2011 as a result of the Total tender offer; (iii) an \$8.5 million decrease in salary expenses as a result of the implementation of approved restructuring plans; (iv) an \$8.3 million reduction in bad debt expense as a result of collection efforts for accounts receivable that were previously reserved; (v) a \$6.5 million decrease in consulting and outside services due to cost reduction initiatives; (vi) a \$3.3 million reduction in travel related expenses; and (vii) a net decrease of \$11.8 million in other expenses. The overall decrease was partially offset by \$30.0 million of Tenesol's operating expenses which were incorporated into our financial results for the period.

#### *Goodwill and Other Intangible Asset Impairment*

(In thousands)	Three Months Ended			Nine Months Ended		
	September 30, 2012	October 2, 2011	% Change	September 30, 2012	October 2, 2011	% Change
Goodwill impairment	\$ 46,734	309,457	(85)%	\$ 46,734	\$ 309,457	(85)%
Other intangible assets impairment	12,847	40,301	(68)%	12,847	40,301	(68)%
	<u>\$ 59,581</u>	<u>\$ 349,758</u>		<u>\$ 59,581</u>	<u>\$ 349,758</u>	
As a percentage of revenue	9%	50%		3%	20%	

We conduct our annual impairment test of goodwill as of the Sunday closest to the end of the third fiscal quarter of each year. Impairment of goodwill is tested at our reporting unit level. Management determined that the Americas Segment, the EMEA Segment, and the APAC Segment are also our reporting units. Based on the impairment test as of September 30, 2012, we determined that the carrying value of the Americas and EMEA reporting units exceeded their fair value. We calculated that the implied fair value of goodwill for the two reporting units was zero and therefore recorded a goodwill impairment loss of \$46.7 million, representing all of the goodwill associated with these reporting units. Based on the impairment test performed as of October 2, 2011, we recorded a goodwill impairment loss of \$309.5 million related to the EMEA segment (see Note 4).

We additionally review our intangible assets for impairment whenever events or changes in circumstances indicate that the carrying value of such assets may not be recoverable. During the third quarter of fiscal 2012, we determined that the carrying value of certain intangible assets in Europe were no longer recoverable and therefore recognized an impairment loss of \$12.8 million in the three and nine months ended September 30, 2012. During the three months ended October 2, 2011, we determined the carrying value of certain intangible assets related to strategic acquisitions of EPC and O&M project pipelines in Europe were no longer recoverable and therefore recognized an impairment loss of \$40.3 million in the three and nine months ended October 2, 2011 (see Note 4).

#### *Restructuring Charges*

(In thousands)	Three Months Ended			Nine Months Ended		
	September 30, 2012	October 2, 2011	% Change	September 30, 2012	October 2, 2011	% Change
April 2012 Plan	\$ 8,221	\$ —	n/a	\$ 52,793	\$ —	n/a
December 2011 Plan	2,099	—	n/a	8,086	—	n/a
June 2011 Plan	224	637	(65)%	310	13,945	(98)%
Restructuring charges	<u>\$ 10,544</u>	<u>\$ 637</u>	1,555%	<u>\$ 61,189</u>	<u>\$ 13,945</u>	339%
As a percentage of revenue	2%	—%		4%	1%	

**April 2012 Plan:** As a result of our continued cost reduction progress at its Fab 2 and our joint venture Fab 3 manufacturing facilities, on April 13, 2012, our Board of Directors approved a restructuring plan (the "April 2012 Plan") to consolidate our Philippine manufacturing operations into Fab 2 and begin repurposing Fab 1 in the second quarter of 2012. We expect to recognize restructuring charges up to \$69.0 million, related to all segments, in the twelve months following the

approval and implementation of the April 2012 Plan. Total restructuring charges are expected to primarily be composed of non-cash charges of up to \$54.0 million, and other cash-based associated costs of up to \$15.0 million, for the closure of Fab 1.

**December 2011 Plan:** To accelerate operating cost reduction and improve overall operating efficiency, in December 2011, we implemented a company-wide restructuring program (the "December 2011 Plan"). The December 2011 Plan eliminated approximately 2% of SunPower's global workforce. We expect to recognize restructuring charges up to \$17.0 million, related to all segments, in the twelve months following the approval and implementation of the December 2011 Plan, of which greater than 80% of these charges is expected to be cash.

**June 2011 Plan:** In response to reductions in European government incentives, which had a significant impact on the global solar market, on June 13, 2011, our Board of Directors approved a restructuring plan (the "June 2011 Plan") to realign our resources. The June 2011 Plan eliminated approximately 2% of SunPower's global workforce, in addition to the consolidation or closure of certain facilities in Europe. Restructuring activities associated with the June 2011 Plan were substantially completed as of September 30, 2012.

See Note 7 of our Notes to Condensed Consolidated Financial Statements for further information regarding our restructuring plans.

#### Other Expense, Net

(In thousands)	Three Months Ended			Nine Months Ended		
	September 30, 2012	October 2, 2011	% Change	September 30, 2012	October 2, 2011	% Change
Interest income	\$ 94	\$ 206	(54)%	\$ 762	\$ 1,437	(47)%
Interest expense	(25,834)	(17,096)	51%	(63,935)	(48,414)	32%
Gain on sale of equity interest in unconsolidated investee	—	10,989	(100)%	—	10,989	(100)%
Gain on share lending arrangement	50,645	—	100%	50,645	—	100%
Other, net	594	8,487	(93)%	(4,984)	(10,066)	(50)%
Other income (expense), net	\$ 25,499	\$ 2,586	886%	\$ (17,512)	\$ (46,054)	(62)%
As a percentage of revenue	4%	—%		(1)%	(3)%	

Other income, net increased \$22.9 million, or 886%, in the three months ended September 30, 2012 as compared to the same period in fiscal 2011. The overall increase was primarily driven by a \$50.6 million gain related to the recovery of claims related to unreturned shares under our former share lending arrangement with Lehman Brothers International (Europe) Limited ("LBIE") following their bankruptcy. This was partially offset by (i) an \$11.0 million gain from the sale of 2.9 million shares of Woongjin Energy Co. Ltd, which was recorded in the third quarter of 2011; (ii) an \$11.8 million unfavorable change in gain (loss) on derivatives and foreign exchange largely due to the volatility in the currency markets; (iii) an \$8.7 million increase in interest expense, mainly driven by the non-cash interest expenses as a result of amortization of warrants, which were issued to Total in connection with the Liquidity Support Agreement executed in the first quarter of fiscal 2012; and (iv) other net favorable changes totaling \$3.8 million.

Other expense, net decreased \$28.5 million, or 62%, in the nine months ended September 30, 2012 as compared to the same period in fiscal 2011. The overall decrease was primarily driven by (i) \$50.6 million gain related to the recovery of claims related to unreturned shares under our former share lending arrangement with LBIE following their bankruptcy, and (ii) an \$8.6 million favorable change in gain (loss) on derivatives and foreign exchange period over period primarily resulting from expensing the time value of option contracts and forward points on forward exchange contracts of effective cash flow hedges. This was partially offset by additional expenses as follows: (i) a \$6.9 million impairment charge recorded in the second quarter of fiscal 2012 as we determined current market and operating conditions indicated an inability to recover the carrying amount of one of our equity investments (see Note 9); (ii) a \$15.5 million increase in interest expense primarily due to the non-cash interest expenses as a result of amortization of warrants, which were issued to Total in connection with the Liquidity Support Agreement executed in the first quarter of fiscal 2012; (iii) an \$11.0 million cash gain from the sale of 2.9 million shares of Woongjin Energy Co. Ltd, which was recorded in the third quarter of 2011; and (iv) other net favorable changes totaling \$2.7 million.

#### Income Taxes

(In thousands)	Three Months Ended			Nine Months Ended		
	September 30, 2012	October 2, 2011	% Change	September 30, 2012	October 2, 2011	% Change
Provision for income taxes	\$ (593)	\$ (11,077)	(95)%	\$ (12,542)	\$ (17,963)	(30)%
As a percentage of revenue	— %	(2)%		(1)%	1%	

In the three and nine months ended September 30, 2012, our income tax provision of \$0.6 million and \$12.5 million, respectively, on a loss before income taxes and equity in earnings (losses) of unconsolidated investees of \$48.5 million and \$192.9 million, respectively, was primarily due to projected tax expense in profitable foreign jurisdictions and a change in the valuation allowance on deferred tax assets. In the three and nine months ended October 2, 2011, our income tax provision was \$11.1 million and \$18.0 million, respectively, on a loss before income taxes and equity in earnings of unconsolidated investees of \$360.7 million and \$510.7 million, respectively, was primarily due to projected tax expense in profitable foreign jurisdictions.

A significant amount of our total revenue is generated from customers located outside of the United States, and a substantial portion of our assets and employees are located outside of the United States. United States income taxes and foreign withholding taxes have not been provided on the undistributed earnings of our non-United States subsidiaries as such earnings are intended to be indefinitely reinvested in operations outside the United States to extent that such earnings have not been currently or previously subjected to taxation of the United States.

We record a valuation allowance to reduce our United States deferred tax assets 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. As of September 30, 2012, we believe there is insufficient evidence to realize additional deferred tax assets in fiscal 2012.

#### *Equity in Earnings (Loss) of Unconsolidated Investees*

(In thousands)	Three Months Ended			Nine Months Ended		
	September 30, 2012	October 2, 2011	% Change	September 30, 2012	October 2, 2011	% Change
Equity in earnings (loss) of unconsolidated investees	\$ 578	\$ 971	(40)%	\$ (1,772)	\$ 7,932	(122)%
As a percentage of revenue	—%	—%		— %	—%	

Our equity in earnings (loss) of unconsolidated investees for the three months ended September 30, 2012 and October 2, 2011 was net earnings of \$0.6 million and \$1.0 million, respectively. The decrease in earnings period over period is primarily attributable to the impact of the sale of our equity ownership in Woongjin Energy during fiscal 2011 and the first quarter of fiscal 2012 partially offset by an increase in our share of earnings in our AUOSP joint venture.

Our equity in earnings (loss) of unconsolidated investees for the nine months ended September 30, 2012 and October 2, 2011 was net losses of \$1.8 million and net earnings of \$7.9 million, respectively. The increase in net loss period over period is primarily attributable to the sale of our equity ownership in Woongjin Energy during fiscal 2011 and the first quarter of fiscal 2012.

#### *Net Loss*

(In thousands)	Three Months Ended			Nine Months Ended		
	September 30, 2012	October 2, 2011	% Change	September 30, 2012	October 2, 2011	% Change
Net loss	\$ (48,538)	\$ (370,784)	(87)%	\$ (207,249)	\$ (520,777)	(60)%

Our net loss decreased \$322.2 million, or 87%, in the three months ended September 30, 2012 compared to the three months ended October 2, 2011. The decrease quarter over quarter is primarily attributable to (i) a \$290.2 million decrease in goodwill and other intangible asset impairment and (ii) a \$50.6 million gain related to the recovery of claims related to unreturned shares under our former share lending arrangement with LBIE following their bankruptcy. This was partially offset

by \$9.9 million of additional charges associated with restructuring programs. Our net loss decreased \$313.5 million, or 60%, in the nine months ended September 30, 2012 as compared to the nine months ended October 2, 2011. The decrease period over period is primarily driven by (i) a \$290.2 million decrease in goodwill and other intangible asset impairment; (ii) a \$50.6 million gain related to the recovery of claims related to unreturned shares under our former share lending arrangement with LBIE following their bankruptcy; and (iii) a \$30.8 million decrease in other operating expenses attributable to our cost-control strategy implemented in response to the changes in the European market and resulting restructuring. This was partially offset by \$47.2 million of additional charges associated with the implementation of approved restructuring programs and a \$15.5 million increase in interest expense as a result of amortization of warrants, which were issued to Total in connection with the Liquidity Support Agreement executed in the first quarter of fiscal 2012. Information about other significant variances in our results of operations is described above.

## Liquidity and Capital Resources

### Cash Flows

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

(In thousands)	Nine Months Ended	
	September 30, 2012	October 2, 2011
Net cash used in operating activities	\$ (212,956)	\$ (258,980)
Net cash used in investing activities	(18,306)	(76,398)
Net cash provided by (used in) financing activities	(115,017)	107,821

### Operating Activities

Net cash used in operating activities of \$213.0 million in the nine months ended September 30, 2012 was primarily the result of: (i) a net loss of \$207.2 million; (ii) increases in prepaid expense and other assets of \$221.1 million primarily related to deferred costs associated with several large utility-scale solar projects under construction in North America; (iii) increase in project assets of \$101.9 million for construction of future and current projects primarily in North America; and (iv) a net decrease of \$39.9 million in other operating liabilities, net of changes to operating assets. This was partially offset by (i) a decrease in accounts receivable \$124.9 million; (ii) non-cash impairment charges totaling \$59.6 million associated with goodwill and other intangible asset impairment in the third quarter of fiscal 2012; (iii) a loss of \$56.4 million on retirement of property, plant and equipment as primarily the result of our restructuring plan regarding Fab 1 consolidation; and (iv) \$116.4 million other, net related to non-cash charges of \$167.0 million primarily attributable to depreciation and amortization, stock based compensation, and non-cash interest charges, net with a \$50.6 million gain in connection with our former share lending arrangement with Lehman Brothers International (Europe) Limited ("LBIE") which was classified as cash from financing activities (see below).

Net cash used in operating activities of \$259.0 million in the nine months ended October 2, 2011 was primarily the result of: (i) a net loss of \$520.8 million; (ii) increases in inventories and project assets of \$164.0 million for construction of future and current projects in Italy and the North America; (iii) increases in prepaid and other assets of \$123.0 million primarily associated with outstanding receivables due and receivable from our joint ventures; and (iv) non-cash income of \$19.2 million related to our equity share in earnings of unconsolidated investees and gains associated with the sale of our equity interest in Woongjin Energy. This was partially offset by: (i) non-cash impairment charges totaling \$382.2 million associated with goodwill and other intangible asset impairment in the third quarter of fiscal 2011 as well as inventories and project asset write-downs in the second quarter of fiscal 2011 associated with the change in European government incentives; (ii) other non-cash charges of \$170.1 million primarily related to depreciation and amortization, stock based compensation, and non-cash interest charges; and (iii) a net decrease of \$15.7 million in other operating assets and liabilities.

### Investing Activities

Net cash used in investing activities in the nine months ended September 30, 2012 was \$18.3 million, which included (i) \$79.0 million related to capital expenditures primarily associated with improvements to our current generation solar cell manufacturing technology, leasehold improvements associated with our San Jose, California office, the build-out of our new solar panel assembly facility in Mexicali, Mexico, and other projects; (ii) a \$10.0 million strategic equity investment in an unconsolidated investee; and (iii) \$1.4 million in purchases of marketable securities. This was partially offset by (i) \$54.3 million of restricted cash released back to us due to expirations of fully cash-collateralized letter of credits under the September



2011 Letter of Credit Facility with Deutsche Bank Trust and transition of outstanding letter of credits into the August 2011 Deutsche Bank facility under which payment of obligations is guaranteed by Total S.A.; and (ii) \$17.4 million in proceeds from the sale of our equity interest in our Woongjin Energy joint venture on the open market.

Net cash used in investing activities in the nine months ended October 2, 2011 was \$76.4 million, of which: (i) \$85.5 million related to capital expenditures primarily associated with improvements to our current generation solar cell manufacturing technology, leasehold improvements associated with new offices leased in San Jose, California, and other projects; (ii) \$80.0 million related to additional cash investments in our AUOSP joint venture; and (iii) \$9.0 million in purchases of marketable securities. This was partially offset by (i) a decrease in restricted cash of \$29.8 million; (ii) \$43.8 million in proceeds received related to the sale of debt securities and distributions on certain money market funds; and (iii) \$24.0 million in proceeds from the sale of a portion of our equity interest in our Woongjin Energy joint venture on the open market.

#### *Financing Activities*

Net cash used in financing activities in the nine months ended September 30, 2012 of \$115.0 million reflects: (i) \$178.3 million of cash distributions in connection with the transfer of entities under common control; (ii) \$198.6 million paid to fully repurchase the outstanding 1.25% convertible debentures; (iii) repayment of \$126.4 million of our outstanding borrowings primarily under the Credit Agricole revolving credit facility; and (iv) \$5.4 million in purchases of stock for tax withholding obligations on vested restricted stock. This was partially offset by (i) \$163.6 million in proceeds from the sale of 18.6 million shares of our common stock to Total; (ii) drawdowns of \$125.0 million under the Credit Agricole revolving credit facility; (iii) \$50.6 million of proceeds from the recovery of a claim in connection with our former share lending arrangement with LBIE; (iv) \$27.6 million from project loans; and (v) \$26.8 million of financing proceeds for the lease receivables from a financial institution that we partner with under our residential lease program.

Net cash provided by financing activities in the nine months ended October 2, 2011 was \$107.8 million and reflects cash received of: (i) \$489.2 million in cash proceeds from subsequent drawdowns under the Union Bank, Société Générale, and Credit Agricole revolving credit facilities; (ii) \$4.0 million from stock option exercises; and (iii) \$2.3 million in cash proceeds in conjunction with warrant holders' exercise of their rights to reduce warrant exercise prices (see Note 10). This was partially offset by: (i) repayment of \$377.1 million of outstanding balances under the Union Bank and Société Générale revolving credit facilities; and (ii) \$10.6 million in purchases of stock for tax withholding obligations on vested restricted stock.

#### *Debt and Credit Sources*

##### *Convertible Debentures*

As of both September 30, 2012 and January 1, 2012, an aggregate principal amount of \$250.0 million of the 4.50% debentures remain issued and outstanding. Interest on the 4.50% debentures is payable on March 15 and September 15 of each year. The 4.50% debentures mature on March 15, 2015. The 4.50% debentures are convertible only into cash, and not into shares of our common stock (or any other securities). Prior to December 15, 2014, the 4.50% debentures are convertible only upon specified events and, thereafter, they will be convertible at any time, based on an initial conversion price of \$22.53 per share of our common stock. The conversion price will be subject to adjustment in certain events, such as distributions of dividends or stock splits. Upon conversion, we will deliver an amount of cash calculated by reference to the price of our common stock over the applicable observation period. We may not redeem the 4.50% debentures prior to maturity. Holders may also require us to repurchase all or a portion of their 4.50% debentures upon a fundamental change, as defined in the debenture agreement, at a cash repurchase price equal to 100% of the principal amount plus accrued and unpaid interest. In the event of certain events of default, such as our failure to make certain payments or perform or observe certain obligations thereunder, Wells Fargo, the trustee, or holders of a specified amount of then-outstanding 4.50% debentures will have the right to declare all amounts then outstanding due and payable. Concurrent with the issuance of the 4.50% debentures, we entered into privately negotiated convertible debenture hedge transactions and warrant transactions which represent a call spread overlay with respect to the 4.50% debentures (the "CSO2015"), assuming full performance of the counterparties and 4.50% Warrants strike prices in excess of the conversion price of the 4.50% debentures. According to the counterparties to the warrants, the consummation of the Total Tender Offer triggered their rights to make a downward adjustment to the strike price of the warrants. In the third quarter of fiscal 2011, we and the counterparties to the 4.50% Warrants agreed to reduce the exercise price of the 4.50% Warrants from \$27.03 to \$24.00. Please see "*Conversion of our outstanding 4.75% debentures, our warrants related to our outstanding 4.50% and 4.75% debentures, and future substantial issuances or dispositions of our common stock or other securities, could dilute ownership and earnings per share or cause the market price of our stock to decrease.*" in "Part I. Item 1A: Risk Factors" in the fiscal 2011 Form 10-K.



As of both September 30, 2012 and January 1, 2012, an aggregate principal amount of \$230.0 million of the 4.75% senior convertible debentures ("4.75% debentures") remain issued and outstanding. Interest on the 4.75% debentures is payable on April 15 and October 15 of each year. Holders of the 4.75% debentures are able to exercise their right to convert the debentures at any time into shares of our common stock at a conversion price equal to \$26.40 per share. The applicable conversion rate may adjust in certain circumstances, including upon a fundamental change, as defined in the indenture governing the 4.75% debentures. If not earlier converted, the 4.75% debentures mature on April 15, 2014. Holders may also require us to repurchase all or a portion of their 4.75% debentures upon a fundamental change at a cash repurchase price equal to 100% of the principal amount plus accrued and unpaid interest. In the event of certain events of default, such as our failure to make certain payments or perform or observe certain obligations thereunder, Wells Fargo, the trustee, or holders of a specified amount of then-outstanding 4.75% debentures will have the right to declare all amounts then outstanding due and payable. Concurrent with the issuance of the 4.75% debentures, we entered into certain convertible debenture hedge transactions (the "4.75% Bond Hedge") and warrant transactions (the "4.75% Warrants") with affiliates of certain of the underwriters of the 4.75% debentures. According to the counterparties to the warrants, the consummation of the Total Tender Offer triggered their rights to make a downward adjustment to the strike price of the warrants. In the third quarter of fiscal 2011, we and the counterparties to the 4.75% Warrants agreed to reduce the exercise price of the 4.75% Warrants from \$38.50 to \$26.40, which is no longer above the conversion price of the 4.75% debentures. Please see *"Conversion of our outstanding 4.75% debentures, our warrants related to our outstanding 4.50% and 4.75% debentures, and future substantial issuances or dispositions of our common stock or other securities, could dilute ownership and earnings per share or cause the market price of our stock to decrease."* in "Part I. Item 1A: Risk Factors" in the fiscal 2011 Form 10-K.

#### *Mortgage Loan Agreement with IFC*

On May 6, 2010, our subsidiaries SunPower Philippines Manufacturing Ltd. ("SPML") and SPML Land, Inc. ("SPML Land") entered into a mortgage loan agreement with IFC. Under the loan agreement, SPML may borrow up to \$75.0 million during the first two years, and SPML shall repay the amount borrowed, starting 2 years after the date of borrowing, in 10 equal semiannual installments over the following 5 years. SPML shall pay interest of LIBOR plus 3% per annum on outstanding borrowings, and a front-end fee of 1% on the principal amount of borrowings at the time of borrowing, and a commitment fee of 0.5% per annum on funds available for borrowing and not borrowed. SPML may prepay all or a part of the outstanding principal, subject to a 1% prepayment premium. As of both September 30, 2012 and January 1, 2012, SPML had \$75.0 million outstanding under the mortgage loan agreement. SPML and SPML Land pledged certain assets as collateral supporting SPML's repayment obligation. Additionally, in accordance with the terms of the mortgage loan agreement, we are required to establish a debt service reserve account which shall contain the amount, as determined by IFC, equal to the aggregate principal and interest due on the next succeeding interest payment date after such date.

As of September 30, 2012 and January 1, 2012, we had restricted cash and cash equivalents of \$6.4 million and \$1.3 million, respectively, related to the IFC debt service reserve.

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

On December 29, 2010, we borrowed from CEDA 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") maturing April 1, 2031 under a loan agreement with CEDA. Certain of our obligations under the loan agreement were contained in a promissory note dated December 29, 2010 issued by us to CEDA, which assigned the promissory note, along with all right, title and interest in the loan agreement, to Wells Fargo, as trustee, with respect to the Bonds for the benefit of the holders of the Bonds. The Bonds initially bore interest at a variable interest rate (determined weekly), but in June 2011, at our option were converted into fixed-rate bonds at 8.50% per annum (which include covenants of, and other restrictions on, us). Additionally, in accordance with the terms of the loan agreement, we are required to keep all loan proceeds on deposit with Wells Fargo, the trustee, until funds are withdrawn by us for use in relation to the design and leasehold improvements of our new corporate headquarters in San Jose, California. As of September 30, 2012 and January 1, 2012, we had restricted cash and cash equivalents of \$3.0 million and \$10.0 million, respectively, for design and leasehold improvements and debt service reserves under the CEDA loan agreement.

As of both September 30, 2012 and January 1, 2012, the \$30.0 million aggregate principal amount of the Bonds was classified as "Long-term debt" in our Condensed Consolidated Balance Sheets.

#### *August 2011 Letter of Credit Facility with Deutsche Bank*

On August 9, 2011, we entered into a letter of credit facility agreement with Deutsche Bank, as issuing bank and as administrative agent, and certain financial institutions, and further amended on December 20, 2011. Payment of obligations

under the letter of credit facility is guaranteed by Total S.A. pursuant to the Credit Support Agreement between us and Total S.A. The letter of credit facility provides for the issuance, upon our request, of letters of credit by the issuing banks thereunder in order to support certain of our obligations, in an aggregate amount not to exceed (a) \$725.0 million until December 31, 2012; and (b) \$771.0 million for the period from January 1, 2013 through December 31, 2013. Aggregate letter of credit amounts may be increased upon the agreement of the parties, but otherwise may not exceed (i) \$878.0 million for the period from January 1, 2014 through December 31, 2014; (ii) \$936.0 million for the period from January 1, 2015 through December 31, 2015; and (iii) \$1.0 billion for the period from January 1, 2016 through June 28, 2016. Each letter of credit issued under the letter of credit facility must have an expiration date no later than the second anniversary of the issuance of that letter of credit, provided that up to 15% of the outstanding value of the letters of credit may have an expiration date of between two and three years from the date of issuance.

As of September 30, 2012, letters of credit issued under the August 2011 letter of credit facility with Deutsche Bank totaled \$697.5 million.

*September 2011 Letter of Credit Facility with Deutsche Bank and Deutsche Bank Trust Company Americas (together, "Deutsche Bank Trust")*

On September 27, 2011, we entered into a letter of credit facility with Deutsche Bank Trust which provides for the issuance, upon request by us, letters of credit to support our obligations in an aggregate amount not to exceed \$200.0 million. Each letter of credit issued under the facility is fully cash-collateralized and we have entered into a security agreement with Deutsche Bank Trust, granting them a security interest in a cash collateral account established for this purpose.

As of September 30, 2012 letters of credit issued under the Deutsche Bank Trust facility amounted to \$1.5 million which were fully collateralized with restricted cash on the Consolidated Balance Sheets.

*September 2011 Revolving Credit Facility with Credit Agricole*

On September 27, 2011, we entered into a revolving credit agreement with Credit Agricole, as administrative agent, and certain financial institutions, under which we may borrow up to \$275.0 million until September 27, 2013. Amounts borrowed may be repaid and reborrowed until September 27, 2013. We are required to pay interest on outstanding borrowings of: (a) with respect of any LIBOR loan, 1.5% plus the LIBOR divided by a percentage equal to one minus the stated maximum rate of all reserves required to be maintained against "Eurocurrency liabilities" as specified in Regulation D; (b) with respect to any alternative base loan, 0.5% plus the greater of (1) the prime rate, (2) the Federal Funds rate plus 0.5%, and (3) the one month LIBOR plus 1%; (c) a commitment fee equal to 0.25% per annum on funds available for borrowing and not borrowed; (d) an upfront fee of 0.125% of the revolving loan commitment; and (e) arrangement fee customary for a transaction of this type.

In the event Total S.A. no longer beneficially owns 40% of our issued and outstanding voting securities, the revolving credit facility would be subject to renegotiation, with a view to agreeing to amend the revolving credit facility consistent with terms and conditions and market practice for similarly situated borrowers. If we cannot reach an agreement with the lenders, we are required to prepay all principal, interest, fees, and other amounts owed and the revolving credit facility will terminate.

Our revolving credit facility with Credit Agricole requires that we maintain certain financial ratios, including that the ratio of our debt at the end of each quarter to our EBITDA (earnings before interest, tax, depreciation, and amortization) for the last twelve months, as defined, would not exceed 4.5 to 1. If our forecasts are not achieved as anticipated, it is possible that we could breach this or other covenants in the future, which could affect the availability of borrowings under the line and potentially result in cross defaults on other agreements, such as our convertible notes, if not remedied. On February 28, 2012, as further described below, we entered into the Liquidity Support Facility with Total S.A. under which we may receive up to \$600 million of liquidity support. Under this facility, Total S.A. must provide us and we must accept from Total S.A. additional liquidity in the form of guarantees, revolving or convertible debt, equity, or other forms of liquidity support agreed to by us, in the event that either our actual or projected unrestricted cash, cash equivalents and unused borrowing capacity are reduced below \$100 million, or we fail to satisfy any financial covenant under our indebtedness, including the revolving facility with Credit Agricole.

As of both September 30, 2012 and January 1, 2012, we had \$250.0 million outstanding under the revolving credit facility with Credit Agricole. Outstanding borrowings under our revolving credit facility are due September 27, 2013 and are therefore classified as "Short-term debt" as of September 30, 2012. We expect to extend the existing facility or refinance prior to the maturity date.

## **Liquidity**

As of September 30, 2012, we had unrestricted cash and cash equivalents of \$377.1 million as compared to \$725.6 million as of January 1, 2012. Our cash balances are held in numerous locations throughout the world and as of September 30, 2012, we had approximately \$139.5 million held outside of the United States. This offshore cash is used to fund operations of our EMEA and APAC business units as well as non-U.S. manufacturing operations, which requires local payment for product materials and other expenses. The amounts held outside of the United States represents the earnings of our foreign subsidiaries which, if repatriated to the United States under current law, would be subject to United States federal and state tax less applicable foreign tax credits. Repatriation of earnings that have not been subjected to U.S. tax and which have been indefinitely reinvested outside the U.S. could result in additional United States federal income tax payments in future years.

On July 5, 2010, we formed our AUOSP joint venture. Under the terms of the joint venture agreement, our subsidiary SunPower Technology, Ltd. ("SPTL") and AU Optronics Singapore Pte. Ltd. ("AUO") each own 50% of AUOSP. Both SPTL and AUO are obligated to provide additional funding to AUOSP in the future. During the second half of fiscal 2010, we, through SPTL, and AUO each contributed total initial funding of \$27.9 million. In fiscal 2011, SPTL and AUO each contributed an additional \$80.0 million in funding. Under the joint venture agreement, each shareholder agreed to contribute additional amounts to the joint venture in fiscal 2012 through 2014 amounting to \$241.0 million, or such lesser amount as the parties may mutually agree (see the Contractual Obligations table below). In addition, if AUOSP, SPTL, or AUO requests additional equity financing to AUOSP, then SPTL and AUO will each be required to make additional cash contributions of up to \$50.0 million in the aggregate. Further, we could in the future guarantee certain financial obligations of AUOSP.

On January 31, 2012, we completed our acquisition from Total of 100% of the equity of Tenesol, a global solar provider headquartered in La Tour de Salvagny, France, and a wholly-owned subsidiary of Total, for \$165.4 million in cash pursuant to a stock purchase agreement entered into on December 23, 2011. Concurrently with the closing of the acquisition, Total purchased \$18.6 million shares of our common stock in a private placement at \$8.80 per share for total proceeds of \$163.7 million. Tenesol has module manufacturing operations in Toulouse, France and Capetown, South Africa and is in the process of developing a third site near Carling, France. Our manufacturing and assembly activities have required and will continue to require significant investment of capital and substantial engineering expenditures.

Under the terms of the 4.50% Warrants, we sold to affiliates of certain of the initial purchasers of the 4.50% cash convertible debentures warrants to acquire, subject to anti-dilution adjustments, up to 11.1 million shares of our common stock. The bond hedge and warrants described in Note 10 of Notes to the Condensed Consolidated Financial Statements represent a call spread overlay with respect to the 4.50% debentures. Assuming full performance by the counterparties (and 4.50% Warrants strike prices in excess of the conversion price of the 4.50% debentures), the transactions effectively reduce our potential payout over the principal amount on the 4.50% debentures upon conversion of the 4.50% debentures. In the third quarter of fiscal 2011, we and the counterparties to the 4.50% Warrants agreed to reduce the exercise price of the 4.50% Warrants from \$27.03 to \$24.00.

We expect total capital expenditures related to purchases of property, plant and equipment in the range of \$115 million to \$125 million in fiscal 2012 in order to improve our current and next generation solar cell manufacturing technology and other projects. In addition, we expect to invest a significant amount of capital to develop solar power systems and plants for sale to customers. The development of solar power plants can require long periods of time and substantial initial investments. Our efforts in this area may consist of all stages of development, including land acquisition, permitting, financing, construction, operation and the eventual sale of the projects. We often choose to bear the costs of such efforts prior to the final sale to a customer, which involves significant upfront investments of resources (including, for example, large transmission deposits or other payments, which may be non-refundable), land acquisition, permitting, legal and other costs, and in some cases the actual costs of constructing a project, in advance of the signing of PPAs and Engineering Procurement Construction contracts and the receipt of any revenue, much of which is not recognized for several additional months or years following contract signing. Any delays in disposition of one or more projects could have a negative impact on our liquidity.

Certain of our customers also require performance bonds issued by a bonding agency or letters of credit issued by financial institutions. Obtaining letters of credit may require adequate collateral. All letters of credit issued under our August 2011 Deutsche Bank facility are guaranteed by Total S.A. pursuant to the Credit Support Agreement. Our letter of credit facility with Deutsche Bank Trust is fully collateralized by restricted cash, which reduces the amount of cash available for operations. As of September 30, 2012 letters of credit issued under the Deutsche Bank Trust facility amounted to \$1.5 million which were fully collateralized with restricted cash on the Condensed Consolidated Balance Sheets.

In fiscal 2011, we launched our residential lease program with dealers in the United States, in partnership with a third-party financial institution, which allows customers to obtain SunPower systems under lease agreements up to 20 years, subject to financing availability. On August 8, 2012, we entered into arrangements with two financial institutions that will provide

financing to support additional residential solar lease projects. We receive prepaid rent for periods under which the third-party financial institution has agreed to assume collection risk for certain residential leases. Changes in the amount or timing of prepaid rent received from the financial institution may have an impact on our cash position within the next twelve months. The normal collection of monthly, non-prepaid rent payments for leases placed in service is not expected to have a material impact on our cash position within the next twelve months. We are actively arranging additional third-party financing for our residential lease program; however, due to the general challenging credit markets worldwide, we may be unable to arrange additional financing partners for our residential lease program in future periods, which could have a negative impact on our sales. In the unlikely event that we have entered into a material number of additional leases without promptly obtaining corresponding third-party financing, our cash and working capital could be negatively impacted.

We believe that our current cash, cash equivalents and cash expected to be generated from operations will be sufficient to meet our working capital and fund our committed capital expenditures over the next 12 months, including the development and construction of solar power systems and plants over the next 12 months. In addition, we have the Liquidity Support Facility (described below) with up to \$600 million available from Total S.A. to us under certain specified circumstances. However, there can be no assurance that our liquidity will be adequate over time. A significant portion of our revenue is generated from a limited number of customers and large projects and our inability to execute these projects, or to collect from these customers or for these projects, would have a significant negative impact on our business. Our capital expenditures and use of working capital may be greater than we expect if we decide to make additional investments in the development and construction of solar power plants and sales of power plants and associated cash proceeds are delayed, or if we decide to accelerate increases in our manufacturing capacity internally or through capital contributions to joint ventures. We require project financing in connection with the construction of solar power plants, which financing may not be available on terms acceptable to us. 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. *See also "A limited number of customers and large projects are expected to continue to comprise a significant portion of our revenues and any decrease in revenue from these customers or projects could have a significant adverse effect on us," and "Due to the general economic environment, the continued market pressure driving down the average selling prices of our solar power products and other factors, we may be unable to generate sufficient cash flows or obtain access to external financing necessary to fund our operations and make adequate capital investments as planned"* in Part I, Item 1A "Risk Factors" in the fiscal 2011 Form 10-K.

We are party to an agreement with a customer to construct the California Valley Solar Ranch, a solar park. Part of the debt financing necessary for the customer to pay for the construction of this solar park is being provided by the Federal Financing Bank in reliance on a guarantee of repayment provided by the Department of Energy (the "DOE") under a loan guarantee program. On February 28, 2012, we entered into a Liquidity Support Agreement with Total S.A. and the DOE, and a series of related agreements with Total S.A. and Total, under which Total S.A. has agreed to provide us, or cause to be provided, additional liquidity under certain circumstances to a maximum amount of \$600 million (the "Liquidity Support Facility"). Total S.A. is required to provide liquidity support to us under the facility, and we are required to accept such liquidity support from Total S.A., if either our actual or projected unrestricted cash, cash equivalents, and unused borrowing capacity are reduced below \$100 million, or we fail to satisfy any financial covenant under our indebtedness. In either such event, subject to a \$600 million aggregate limit, Total S.A. is required to provide us with sufficient liquidity support to increase the amount of our unrestricted cash, cash equivalents and unused borrowing capacity to above \$100 million, and to restore compliance with our financial covenants. The Liquidity Support Facility is available until the completion of the solar park, expected to be operational in 2013 and completed before the end of 2014, and, under certain conditions, up to December 31, 2016, at which time all outstanding guarantees will expire and all outstanding debt under the facility will become due. In return for Total S.A.'s agreement to provide the Liquidity Support Facility, on February 28, 2012, we issued to Total a seven-year warrant to purchase 9,531,677 shares of our common stock at an exercise price of \$7.8685 per share. During the term of the facility, we must pay Total S.A. a quarterly fee equal to 0.25% of the unused portion of the facility. Liquidity support may be provided by Total S.A. or through its affiliates in the form of revolving non-convertible debt, convertible debt, equity, guarantees of our indebtedness or other forms of liquidity support agreed to by us, depending on the amount outstanding under the facility immediately prior to provision of the applicable support among other factors. We are required to compensate Total S.A. for any liquidity support actually provided, and the form and amount of such compensation depends on the form and amount of support provided, with the amount of compensation generally increasing with the amount of support provided over time. Such compensation is to be provided in a variety of forms including guarantee fees, warrants to purchase common stock, interest on amounts borrowed, and discounts on equity issued. The use of the Liquidity Support Facility is not limited to direct obligations related to the solar park, and is available for general corporate purposes, but we have agreed to conduct our operations, and use any proceeds from such facility in ways that minimize the likelihood of Total S.A. being required to provide further support. For a more detailed description of the Liquidity Support Facility and related agreements, see Item 9B of our fiscal 2011 Form 10-K.

If our capital resources are insufficient to satisfy our liquidity requirements, we may seek to sell additional equity securities or debt securities or obtain other debt financing, including under the Liquidity Support Facility. The current economic environment, however, could limit our ability to raise capital by issuing new equity or debt securities on acceptable terms, and lenders may be unwilling to lend funds on acceptable terms that would be required to supplement cash flows to support operations. The sale of additional equity securities or convertible debt securities, including under the Liquidity Support Agreement, would result in additional dilution to our stockholders (and potential for further dilution upon the exercise of warrants or the conversion of convertible debt issued under the Liquidity Support Facility) and may not be available on favorable terms or at all, particularly in light of the current conditions in the financial and credit markets. Additional debt would result in increased expenses and would likely impose new restrictive covenants which may be similar or different than those restrictions contained in the covenants under the letter of credit facility with Deutsche Bank, the letter of credit facility with Deutsche Bank Trust, the mortgage loan agreement with IFC, the loan agreement with CEDA, the revolving credit facility with Credit Agricole, the 4.50% debentures or the 4.75% debentures. In addition, financing arrangements, including project financing for our solar power plants and letters of credit facilities, may not be available to us, or may not be available in amounts or on terms acceptable to us.

### Contractual Obligations

The following summarizes our contractual obligations as of September 30, 2012:

(In thousands)	Total	Payments Due by Period			
		2012 (remaining 3 months)	2013-2014	2015-2016	Beyond 2016
Convertible debt, including interest (1)	\$ 524,487	\$ 5,544	\$ 266,582	\$ 252,361	\$ —
IFC mortgage loan, including interest (2)	82,749	699	31,986	32,288	17,776
CEDA loan, including interest (3)	77,175	637	5,100	5,100	66,338
Credit Agricole revolving credit facility, including interest (4)	254,306	1,091	253,215	—	—
Project financing	27,617	27,617	—	—	—
Future financing commitments (5)	245,940	47,770	198,170	—	—
Operating lease commitments (6)	116,053	5,434	30,141	24,573	55,905
Capital lease commitments (7)	9,306	477	3,430	2,147	3,252
Utility obligations (8)	750	—	300	300	150
Non-cancellable purchase orders (9)	227,172	227,172	—	—	—
Purchase commitments under agreements (10)	2,169,112	239,325	529,889	688,486	711,412
Total	\$ 3,734,667	\$ 555,766	\$ 1,318,813	\$ 1,005,255	\$ 854,833

- (1) Convertible debt, including interest, relates to the aggregate of \$480.1 million in outstanding principal amount of our senior convertible debentures on September 30, 2012. For the purpose of the table above, we assume that all holders of the 4.50% debentures and 4.75% debentures will hold the debentures through the date of maturity in fiscal 2015 and 2014, respectively, and all holders of the 0.75% debentures will require us to repurchase the debentures on August 1, 2015, and upon conversion, the values of the senior convertible debentures will be equal to the aggregate principal amount with no premiums.
- (2) IFC mortgage loan, including interest, relates to the \$75.0 million borrowed as of September 30, 2012. Under the loan agreement, SPML is required to repay the amount borrowed, starting 2 years after the date of borrowing, in 10 equal semiannual installments over the following 5 years. SPML is required to pay interest of LIBOR plus 3% per annum on outstanding borrowings.
- (3) CEDA loan, including interest, relates to the proceeds of the \$30.0 million aggregate principal amount of the Bonds. The Bonds mature on April 1, 2031. On June 1, 2011 the Bonds were converted to bear interest at a fixed rate of 8.50% through maturity.
- (4) Credit Agricole revolving credit facility, with interest, relates to the \$250.0 million borrowed as of September 30, 2012

and maturing on September 27, 2013. We are required to pay interest on outstanding borrowings of (a) with respect to any LIBOR loan, 1.50% plus the LIBOR divided by a percentage equal to one minus the stated maximum rate of all reserves required to be maintained against "Eurocurrency liabilities" as specified in Regulation D; and (b) with respect to any alternate base loan, 0.50% plus the greater of (1) the prime rate, (2) the Federal Funds rate plus 0.5%, and (3) the one month LIBOR plus 1%.

- (5) SPTL and AUO agreed in the joint venture agreement to contribute additional amounts to AUOSP in fiscal 2012 through 2014 amounting to \$241.0 million by each shareholder, or such lesser amount as the parties may mutually agree. Further, in connection with a purchase agreement with a non-public company we will be required to provide additional financing to such party of up to \$4.9 million, subject to certain conditions.
- (6) Operating lease commitments primarily relate to certain solar power systems leased from unaffiliated third parties over minimum lease terms of up to 20 years and various lease agreements for our headquarters in San Jose, California, sales and support offices throughout the United States and Europe and a solar module facility in Mexicali, Mexico.
- (7) Capital lease commitments primarily relate to certain manufacturing and equipment under capital leases in Europe for terms of up to 12 years.
- (8) Utility obligations relate to our 11-year lease agreement with an unaffiliated third party for our administrative, research and development offices in Richmond, California.
- (9) Non-cancellable purchase orders relate to purchases of raw materials for inventory and manufacturing equipment from a variety of vendors.
- (10) Purchase commitments under agreements relate to arrangements entered into with several suppliers, including joint ventures, for polysilicon, ingots, wafers, solar cells and solar panels as well as agreements to purchase solar renewable energy certificates from solar installation owners in New Jersey and Pennsylvania. These agreements specify future quantities and pricing of products to be supplied by the vendors for periods up to 10 years and there are certain consequences, such as forfeiture of advanced deposits and liquidated damages relating to previous purchases, in the event that we terminate the arrangements. Where pricing is specified for future periods, with two of our ingot/wafer suppliers, the Company may reduce its purchase commitment under the contract if the Company obtains a bona fide third party offer at a price that is a certain percentage lower than the applicable purchase price in the existing contract. If market prices decrease, the Company intends to use such provisions to either move its purchasing to another supplier or to seek to force the initial supplier to reduce its price to remain competitive with market pricing. These two contracts constitute approximately 1% of the aggregate purchase commitments shown.

#### ***Liabilities Associated with Uncertain Tax Positions***

As of September 30, 2012 and January 1, 2012, total liabilities associated with uncertain tax positions were \$29.8 million and \$29.3 million, respectively, and are included in "Other long-term liabilities" in our Condensed Consolidated Balance Sheets as they are not expected to be paid within the next twelve months. Due to the complexity and uncertainty associated with our tax positions, we cannot make a reasonably reliable estimate of the period in which cash settlement will be made for our liabilities associated with uncertain tax positions in other long-term liabilities. Therefore, they have been excluded from the table above.

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

As of September 30, 2012, we did not have any significant off-balance-sheet arrangements, as defined in Item 303(a)(4)(ii) of SEC Regulation S-K.



### **ITEM 3: QUANTITATIVE AND QUALITATIVE DISCLOSURE ABOUT MARKET RISK**

#### **Foreign Currency Exchange Risk**

Our exposure to movements in foreign currency exchange rates is primarily related to sales to European customers that are denominated in Euros. Revenue generated from European customers represented 14% and 23% of our total revenue in the three and nine months ended September 30, 2012, respectively, and 42% and 39% of our total revenue during the three and nine months ended October 2, 2011, respectively. A 10% change in the Euro exchange rate would have impacted our revenue by approximately \$8.9 million and \$40.0 million in the three and nine months ended September 30, 2012, respectively, and \$29.3 million and \$67.6 million in the three and nine months ended October 2, 2011, respectively.

In the past, we have experienced an adverse impact on our revenue, gross margin and profitability as a result of foreign currency fluctuations. When foreign currencies appreciate against the U.S. dollar, inventories and expenses denominated in foreign currencies become more expensive. Strengthening of the Malaysian Ringgit against the U.S. dollar would increase AUOSP's liability under the facility agreement with the Malaysian government which in turn would negatively impact our equity in earnings of the unconsolidated investee. An increase in the value of the U.S. dollar relative to foreign currencies could make our solar power products more expensive for international customers, thus potentially leading to a reduction in demand, our sales and profitability. Furthermore, many of our competitors are foreign companies that could benefit from such a currency fluctuation, making it more difficult for us to compete with those companies.

We currently conduct hedging activities which involve the use of option and forward contracts to address our exposure to changes in the foreign exchange rate between the U.S. dollar and other currencies. As of September 30, 2012, we had outstanding hedge option contracts and forward contracts with aggregate notional values of \$56.3 million and \$73.9 million, respectively. As of January 1, 2012, we held option and forward contracts totaling \$130.4 million and \$200.8 million, respectively, in notional value. Because we hedge some of our expected future foreign exchange exposure, if associated revenues do not materialize we could experience losses. During the nine months ended October 2, 2011, in connection with the decline in forecasted revenue surrounding the overall change in the solar sector, we concluded that certain previously anticipated transactions were probable not to occur and thus we reclassified the amount held in "Accumulated other comprehensive income (loss)" in our Condensed Consolidated Balance Sheets for these transactions, which totaled a loss of \$4.5 million, to "Other, net" in our Condensed Consolidated Statement of Operations. If we conclude that we have a pattern of determining that hedged forecasted transactions probably will not occur, we may no longer be able to continue to use hedge accounting in the future to reduce our exposure to movements in foreign exchange rates. Such a conclusion and change in our foreign currency hedge program could adversely impact our revenue, margins and results of operations. We cannot predict the impact of future exchange rate fluctuations on our business and operating results.

#### **Credit Risk**

We have certain financial and derivative instruments that subject us to credit risk. These consist primarily of cash and cash equivalents, restricted cash and cash equivalents, investments, accounts receivable, note receivable, advances to suppliers, foreign currency option contracts, foreign currency forward contracts, bond hedge and warrant transactions and a share lending arrangement for our common stock. We are exposed to credit losses in the event of nonperformance by the counterparties to our financial and derivative instruments.

We enter into agreements with vendors that specify future quantities and pricing of polysilicon to be supplied for periods up to 10 years. Under certain agreements, we are required to make prepayments to the vendors over the terms of the arrangements. As of September 30, 2012 and January 1, 2012, advances to suppliers totaled \$357.5 million and \$327.5 million, respectively. Two suppliers accounted for 74% and 23% of total advances to suppliers as of September 30, 2012, and 74% and 20% of total advances to suppliers as of January 1, 2012. We may be unable to recover such prepayments if the credit conditions of these suppliers materially deteriorate.

We enter into foreign currency derivative contracts and convertible debenture hedge transactions with high-quality financial institutions and limit the amount of credit exposure to any single counterparty. The foreign currency derivative contracts are limited to a time period of less than one year. We regularly evaluate the credit standing of our counterparty financial institutions.

#### **Interest Rate Risk**

We are exposed to interest rate risk because many of our customers depend on debt financing to purchase our solar power systems. An increase in interest rates could make it difficult for our customers to obtain the financing necessary to

purchase our solar power systems on favorable terms, or at all, and thus lower demand for our solar power products, reduce revenue and adversely impact our operating results. An increase in interest rates could lower a customer's return on investment in a system or make alternative investments more attractive relative to solar power systems, which, in each case, could cause our customers to seek alternative investments that promise higher returns or demand higher returns from our solar power systems, reduce gross margin and adversely impact our operating results. This risk is significant to our business because our sales model is highly sensitive to interest rate fluctuations and the availability of credit, and would be adversely affected by increases in interest rates or liquidity constraints.

Our interest expense would increase to the extent interest rates rise in connection with our variable interest rate borrowings. As of September 30, 2012, the outstanding principal balance of our variable interest borrowings was \$325.0 million. We do not believe that an immediate 10% increase in interest rates would have a material effect on our financial statements. In addition, lower interest rates have an adverse impact on our interest income. Our investment portfolio primarily consists of \$160.0 million in money market funds as of September 30, 2012, and exposes us to interest rate risk. Due to the relatively short-term nature of our investment portfolio, we do not believe that an immediate 10% increase in interest rates would have a material effect on the fair market value of our money market funds. Since we believe we have the ability to liquidate substantially all of this portfolio, we do not expect our operating results or cash flows to be materially affected to any significant degree by a sudden change in market interest rates on our investment portfolio.

#### **Equity Price Risk Involving Minority Investments in Joint Ventures and Other Non-Public Companies**

Our investments held in joint ventures and other non-public companies expose us to equity price risk. As of September 30, 2012 and January 1, 2012, investments of \$107.3 million and \$129.9 million, respectively, are accounted for using the equity method, and \$14.9 million and \$4.9 million, respectively, are accounted for using the cost method. These strategic investments in third parties are subject to risk of changes in market value, which if determined to be other-than-temporary, could result in realized impairment losses. We generally do not attempt to reduce or eliminate our market exposure in equity and cost method investments. We monitor these investments for impairment and record reductions in the carrying values when necessary. Circumstances that indicate an other-than-temporary decline include the valuation ascribed to the issuing company in subsequent financing rounds, decreases in quoted market prices and declines in operations of the issuer. There can be no assurance that our equity and cost method investments will not face risks of loss in the future.

#### **Interest Rate Risk and Market Price Risk Involving Convertible Debt**

The fair market value of our 4.75%, 4.50%, and 0.75% convertible debentures is subject to interest rate risk, market price risk and other factors due to the convertible feature of the debentures. The fair market value of the debentures will generally increase as interest rates fall and decrease as interest rates rise. In addition, the fair market value of the debentures will generally increase as the market price of our common stock increases and decrease as the market price of our common stock falls. The interest and market value changes affect the fair market value of the debentures, but do not impact our financial position, cash flows or results of operations due to the fixed nature of the debt obligations, except to the extent increases in the value of our common stock may provide the holders of our 4.50% debentures, and/or 0.75% debentures the right to convert such debentures into cash in certain instances. The aggregate estimated fair value of the 4.75% debentures, 4.50% debentures, and 0.75% debentures was \$435.9 million as of September 30, 2012. The aggregate estimated fair value of the 4.75% debentures, 4.50% debentures, 1.25% debentures and 0.75% debentures was \$604.6 million as of January 1, 2012. Estimated fair values are based on quoted market prices as reported by an independent pricing source. A 10% increase in quoted market prices would increase the estimated fair value of our then-outstanding debentures to \$479.5 million and \$665.0 million as of September 30, 2012 and January 1, 2012, respectively, and a 10% decrease in the quoted market prices would decrease the estimated fair value of our then-outstanding debentures to \$392.3 million and \$544.1 million as of September 30, 2012 and January 1, 2012, respectively.



## **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 September 30, 2012 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

### ITEM 1. *LEGAL PROCEEDINGS*

The disclosure under "Legal Matters" in "*Note 8. Commitments and Contingencies*" in "*Part I. Financial Information, Item 1. Financial Statements: Notes to Condensed Consolidated Financial Statements*" of this Quarterly Report on Form 10-Q is incorporated herein by reference.

## **ITEM 1A: *RISK FACTORS***

In addition to other information set forth in this report, readers should carefully consider the risk factors discussed in "Part I. Item 1A: Risk Factors" in our Annual Report on Form 10-K for the fiscal year ended January 1, 2012, which could materially affect our business, financial condition or future results. The risks described in our Annual Report on Form 10-K are not the only risks facing our company. Additional risks and uncertainties not currently known to us or that we currently deem to be immaterial also may materially adversely affect our business, financial condition or future results.

## 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 Securities Exchange Act of 1934, 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 2, 2012 through July 29, 2012	300	\$ 4.57	—	—
July 30, 2012 through August 26, 2012	29,163	\$ 4.39	—	—
August 27, 2012 through September 30, 2012	21,977	\$ 4.35	—	—
	51,440	\$ 4.37	—	—

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

**ITEM 6: EXHIBITS****EXHIBIT INDEX**

<b>Exhibit Number</b>	<b>Description</b>
10.1*	Amendment No. 1 to Compensation and Funding Agreement, dated August 10, 2012, by and between SunPower Corporation and Total S.A.
10.2*	Amendment No. 4 to Affiliation Agreement, dated August 10, 2012, by and between SunPower Corporation and Total Gas & Power USA, SAS.
10.3*†	Engineering, Procurement and Construction Agreement, dated September 30, 2011 by and between High Plains Ranch II, LLC and SunPower Corporation, Systems
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.INS*+	XBRL Instance Document.
101.SCH*+	XBRL Taxonomy Schema Document.
101.CAL*+	XBRL Taxonomy Calculation Linkbase Document.
101.LAB*+	XBRL Taxonomy Label Linkbase Document.
101.PRE*+	XBRL Taxonomy Presentation Linkbase Document.
101.DEF*+	XBRL Taxonomy Definition Linkbase Document.

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

Exhibits marked with an extended cross (†) are subject to a request for confidential treatment filed with the Securities and Exchange Commission.

Exhibits marked with a cross (+) are XBRL (Extensible Business Reporting Language) information furnished and not filed herewith, are not a part of a registration statement or Prospectus for purposes of sections 11 or 12 of the Securities Act of 1933, are deemed not filed for purposes of section 18 of the Securities Exchange Act of 1934, and otherwise are not subject to liability under these sections.

## 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 thereto duly authorized.

**SUNPOWER CORPORATION**

Dated: November 2, 2012

By: /s/ CHARLES D. BOYNTON

**Charles D. Boynton**  
**Executive Vice President and**  
**Chief Financial Officer**

**Index to Exhibits**

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## AMENDMENT NO. 1 TO COMPENSATION AND FUNDING AGREEMENT

This Amendment No. 1 (this “Amendment”) to the Compensation and Funding Agreement dated as of February 28, 2012 (the “Funding Agreement”) by and between Total S.A., a société anonyme organized under the laws of the Republic of France (“Total”), and SunPower Corporation, a Delaware corporation (“SunPower”), is made and entered into as of August 10, 2012. Capitalized terms used in this Amendment and not otherwise defined shall have the meaning given to them in the Funding Agreement.

### W I T N E S S E T H:

WHEREAS, Total and SunPower desire to amend the Funding Agreement to correct the definitions of “EBITDA” and “Financial Indebtedness” to reflect the original intention of the parties as set forth below.

NOW, THEREFORE, in consideration of the foregoing premises and the matters set forth herein, as well as other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged and accepted, and intending to be legally bound, Total and SunPower hereby agree as follows:

1. Amendments to Definitions.

(a) Section 1(f) of the Funding Agreement is amended by (i) replacing the phrase “SunPower and its Subsidiaries on a consolidated basis” in the second line thereof with the phrase “SunPower and its Subsidiaries (other than project finance Subsidiaries with obligations in respect of Project Finance Indebtedness) on a consolidated basis”, and (ii) replacing the phrase “SunPower and its Subsidiaries” with the phrase “SunPower and such Subsidiaries” in subsections (f) and (k) thereof.

(b) Section 1(i) of the Funding Agreement is amended and restated in its entirety to read as follows:

““Financial Indebtedness” of SunPower and any of its Subsidiaries shall mean, without duplication, all Indebtedness of such Person other than (i) all obligations to pay the deferred purchase price of property or services, (ii) all obligations created or arising under any conditional sale or other title retention agreement with respect to property acquired by such Person, (iii) Indebtedness in connection with the factoring of the accounts receivable of the Borrower or any Subsidiary in respect of rebates from U.S. Governmental Authorities pursuant to the Tech Credit Agreement in the ordinary course of business, (iv) intercompany liabilities (but including liabilities to a non-Subsidiary Affiliate) maturing within 365 days of the incurrence thereof, (v) Project Finance Indebtedness, (vi) all contingent reimbursement and other payment obligations in respect of letters of credit and similar surety instruments (including construction performance bonds), and (vii) all guaranty obligations with respect to the types of Indebtedness listed in clauses (i) through (vi) above.”



(c) A new Section 1(w) is added to the Funding Agreement (and existing subsections (w), (x), (y), (z), (aa), (bb), (cc), (dd), (ee), (ff), (gg) and (hh) are renumbered as subsections (x), (y), (z), (aa), (bb), (cc), (dd), (ee), (ff), (gg), (hh) and (ii) respectively) to read as follows:

“Project Finance Indebtedness” means Indebtedness of any project finance Subsidiary as to which the holders of such Indebtedness have recourse only to such project finance Subsidiary and any other project finance Subsidiaries, including such Subsidiaries' assets, but without recourse to SunPower or other Subsidiaries which are not project finance Subsidiaries, other than the Equity Interests in project finance Subsidiaries.”

2. Agreement. All references to the “Agreement” set forth in the Funding Agreement and the other Transaction Documents shall be deemed to be references to the Funding Agreement as amended pursuant to this Amendment.

3. Headings. The headings set forth in this Amendment are for convenience of reference purposes only and shall not affect or be deemed to affect in any way the meaning or interpretation of this Amendment or any term or provision hereof.

4. Confirmation of the Funding Agreement. All sections and subsections of the Funding Agreement modified or added pursuant to this Amendment shall be deemed modified or added as of the date of the Funding Agreement. Other than as expressly modified or added to pursuant to this Amendment, all provisions of the Funding Agreement remain unmodified and in full force and effect.

IN WITNESS WHEREOF, the undersigned have caused this Amendment No. 1 to be executed by their respective duly authorized officers to be effective as of the date first above written.

**TOTAL S.A.**

By: /s/ Patrick de la Chevardiére  
Name: Patrick de la Chevardiére  
Title: CFO

**SUNPOWER CORPORATION**

By: /s/ Chuck Boynton  
Name: Chuck Boynton  
Title: Chief Financial Officer

## AMENDMENT NO. 4 TO AFFILIATION AGREEMENT

This AMENDMENT NO. 4 (this “Amendment”) to the Affiliation Agreement, dated as of April 28, 2011 (the “Affiliation Agreement”), by and between Total Gas & Power USA, SAS, a *société par actions simplifiée* organized under the laws of the Republic of France (“Parent”), and SunPower Corporation, a Delaware corporation (the “Company”), is made and entered into as of August 10, 2012 by and between Parent and the Company. Capitalized terms used in this Amendment and not otherwise defined shall have the meaning given to them in the Affiliation Agreement.

### W I T N E S S E T H:

WHEREAS, Parent and the Company entered into Amendment No. 3 to the Affiliation Agreement dated as of February 28, 2012 (the “Third Amendment”) which, among other things, amended the definition of “Excluded Debt Incurrence” and Parent and the Company desire to further amend the Affiliation Agreement to correct such definition to reflect the original intention of the parties in entering into the Third Amendment as set forth below.

NOW, THEREFORE, in consideration of the foregoing premises and the matters set forth herein, as well as other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged and accepted, and intending to be legally bound, Parent and the Company hereby agree as follows:

1. Amendment to Definitions. The definition of “Excluded Debt Incurrence” in Article I of the Affiliation Agreement is amended and restated in its entirety as follows:

“**Excluded Debt Incurrence**’ shall mean (i) Non-Recourse Debt and (ii) guarantees of loans to customers purchasing solar products of the Company and its Subsidiaries in accordance with that certain Agreement (Non-Recourse) between SunPower Corporation and First Technology Federal Credit Union, formerly known as Addison Avenue Federal Credit Union, dated as of April 27, 2009, as amended by that Amendment 1 dated January 28, 2011 (as further amended from time to time, “First Tech Facility”) and guarantees of loans or leases by third party lenders or lessors (as applicable) to customers purchasing or leasing solar products of the Company and its Subsidiaries subject to limitations substantially similar to the First Tech Facility, in all cases in an aggregate amount at any time outstanding not to exceed \$5,000,000.”

2. Agreement. All references to the “Agreement” set forth in the Affiliation Agreement shall be deemed to be references to the Affiliation Agreement as amended pursuant to this Amendment.

3. Headings. The headings set forth in this Amendment are for convenience of reference purposes only and shall not affect or be deemed to affect in any way the meaning or interpretation of this Amendment or any term or provision hereof.

4. Confirmation of the Affiliation Agreement. Article I shall be deemed modified as of the date of the Third Amendment. Other than as expressly modified pursuant to this Amendment, all provisions of the Affiliation Agreement, as amended prior to the date of this Amendment, remain unmodified and in full force and effect.

IN WITNESS WHEREOF, the undersigned have caused this Amendment No. 4 to be executed by their respective duly authorized officers to be effective as of the date first above written.

**TOTAL GAS & POWER USA, SAS**

By: /s/ Bernard Clement  
Name: Bernard Clement  
Title: President

**SUNPOWER CORPORATION**

By: /s/ Chuck Boynton  
Name: Chuck Boynton  
Title: Chief Financial Officer

**CONFIDENTIAL TREATMENT REQUESTED**

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

**ENGINEERING, PROCUREMENT AND CONSTRUCTION AGREEMENT**

**between**

**HIGH PLAINS RANCH II, LLC,**

**and**

**SUNPOWER CORPORATION, SYSTEMS**

**September 30, 2011**

## TABLE OF CONTENTS

	Page
1. DEFINITIONS AND RULES OF INTERPRETATION	1
1.1 Definitions	1
1.2 Exhibits	21
1.3 Interpretation	21
1.4 Headings	22
1.5 Conflicts in Documentation	23
2. RESPONSIBILITIES OF OWNER	23
2.1 Owner Representative	23
2.2 Operating Personnel	23
2.3 Applicable Permits	23
2.4 Interconnection Facilities	23
2.5 Owner-Provided Information	23
2.6 Owner Performance Security	23
2.7 Owner's Separate Contractors	24
2.8 Taxes and Permit Expenses	24
2.9 Access to Site	24
2.10 Cooperation	24
3. RESPONSIBILITIES OF CONTRACTOR	24
3.1 General	24
3.2 Performance of Work	25
3.3 Design and Construction of PV Power Plant	25
3.4 Contractor's Project Manager	25
3.5 Utilities and Services	25
3.6 Inspection	26
3.7 Organization	26
3.8 Contractor-Acquired Permits	26
3.9 Hazardous Materials Disposal System	26
3.10 Maintenance of Site	27
3.11 Site Security	27
3.12 Safety	27
3.13 Quality Assurance Programs	28
3.14 Contractor Deliverables	28
3.15 Training of Operating Personnel	28
3.16 Commissioning Personnel	28
3.17 ***	29
3.18 Shipping	29
3.19 Davis-Bacon Act Requirements	29
3.20 Escrow Agreement	29
3.21 Subordination Agreement	29
3.22 Contractor Credit Support	30

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

**TABLE OF CONTENTS**  
(continued)

	<b>Page</b>
4. COVENANTS, WARRANTIES AND REPRESENTATIONS	30
4.1 Contractor	30
4.2 Owner	33
5. COST OF WORK	34
5.1 Contract Price	34
5.2 Taxes	34
5.3 Fiscal Agreement Costs	35
5.4 Cash Grant Intention and Turnover	35
TERMS OF PAYMENT	
6.	35
6.1 Monthly Invoicing	35
6.2 Progress Assessment	36
6.3 Contractor's Invoices	36
6.4 Owner Review	37
6.5 Payments	37
6.6 Retention	38
6.7 Final Contractor's Invoice	39
6.8 Disputes Regarding Payments	39
COMMENCEMENT AND SCHEDULING OF THE WORK; DESIGN REVIEW	
7.	40
7.1 Notice to Proceed	40
7.2 Design Review	40
7.3 CPM Schedule Submission	40
7.4 Owner Review of the CPM Schedule	41
7.5 Progress Reporting, Monthly Updates to CPM Schedule	41
7.6 Thirty Day Look Ahead Schedule	41
7.7 Form of Submittals	41
7.8 Delay Response Plan	41
FORCE MAJEURE; EXCUSABLE EVENT	
8.	43
8.1 Certain Events	43
8.2 Notice of Force Majeure Event and Excusable Event	43
8.3 Scope of Suspension; Duty to Mitigate	43
8.4 Contractor's Remedies	44
8.5 Termination Due to Force Majeure and Excusable Event	44
9. SUBCONTRACTORS AND SUPPLIERS	45
9.1 Subcontracts Generally	45
9.2 Use of Specified Suppliers and Specified Subcontractors	45

## TABLE OF CONTENTS

(continued)

	<b>Page</b>
9.3 Assignment	45
9.4 Supply of Inverter Equipment	46
9.5 Supply of Photovoltaic Modules	46
9.6 Separate Owner Purchase of Photovoltaic Modules and Inverter Equipment	46
10. LABOR RELATIONS	47
10.1 General Management of Employees	47
10.2 Project Labor Agreement	47
10.3 Labor Disputes	47
10.4 Personnel Documents	47
10.5 Key Personnel	47
10.6 Replacement of Employees and Other Persons at Owner's Request	48
11. INSPECTION	48
11.1 Inspection	48
12. SITE CONDITIONS	48
12.1 Assumed Site Conditions	48
12.2 Additional Site Condition Information	48
13. PERFORMANCE GUARANTEE; COMMISSIONING; TESTING	48
13.1 Performance Guarantee and Other Requirements	48
13.2 Commissioning Procedures	48
13.3 Performance Acceptance Test Procedures and PV Power Plant Functional Test Procedures	48
14. SYSTEMS, PERFORMANCE ACCEPTANCE TESTS, AND COMPLETION	49
14.1 System Turnover	49
14.2 Acceptance Tests	51
15. BLOCK, PHASE AND PV POWER PLANT SUBSTANTIAL COMPLETION	52
15.1 Block Completion	52
15.2 Phase Substantial Completion	54
15.3 PV Power Plant Substantial Completion	54
15.4 Notice of Substantial Completion	55
15.5 Final Completion	56
15.6 Notice of Final Completion	56
15.7 Contractor's Access After Substantial Completion	56
16. LIQUIDATED DAMAGES; EARLY COMPLETION BONUS	57

## TABLE OF CONTENTS

(continued)

	<b>Page</b>
16.1 Delay Liquidated Damages	57
16.2 Bonus Payment for Early Completion	59
16.3 Payment of Delay Liquidated Damages and Bonus Payment	59
16.4 Buy-Down Not Available for Minimum Performance Guarantee	59
16.5 Liquidated Damages for Failure to Satisfy Performance Guarantee	59
16.6 Contractor Election	59
16.7 Extension of Cure Period	61
16.8 Sole Remedy; Liquidated Damages Not a Penalty	61
16.9 Enforceability	62
16.10 Achievement of Performance Guarantee; Reimbursement of Liquidated Damages	62
17. CHANGES IN THE WORK	63
17.1 Change In Work	63
17.2 By Owner	63
17.3 Adjustment to CPM Schedule Due to Force Majeure Events or Excusable Events	63
17.4 Preparation of Change In Work Form	64
17.5 Execution of Change In Work Form	64
17.6 No Obligation or Payment Without Executed Change In Work Form	64
17.7 Owner Directives	64
17.8 Disputed Changes In Work	65
17.9 Change for Contractor's Convenience	65
18. WARRANTIES CONCERNING THE WORK	65
18.1 Defect *** Warranties	65
18.2 Warranty Periods	66
18.3 Exclusions	66
18.4 Enforcement by Owner; Subcontractor Warranties	67
18.5 Correction of Defects	68
18.6 Limitations On Warranties	69
19. TITLE	69
19.1 Title; No Encumbrances	69
19.2 Transfer	70
19.3 Custody During Performance	70
20. DEFAULTS AND REMEDIES	70
20.1 Contractor Events of Default	70
20.2 Owner's Rights and Remedies	71
20.3 Owner Event of Default	72
20.4 Contractor's Rights and Remedies	73

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



## TABLE OF CONTENTS

(continued)

	Page
20.5 Termination Payment	74
21. TERMINATION OR SUSPENSION	74
21.1 Termination and Damages for Contractor Event of Default	75
21.2 Owner's Right to Elect to Assume Obligations with Subcontractors	75
21.3 Contractor Conduct	75
21.4 Suspension for Cause	75
21.5 Claims for Payment	77
21.6 Release of Punch List Holdback upon Termination	77
22. INSURANCE	77
22.1 General	77
22.2 Contractor's Insurance (General Coverages)	78
22.3 Owner's Insurance (General Coverages)	79
22.4 Builder's All-Risk Insurance	80
22.5 Endorsements Applicable to Contractor Insurance	81
22.6 Subcontractor Insurance	82
22.7 Contractor's Certificates	82
22.8 Owner's Certificates	82
22.9 Descriptions Not Limitations	83
22.10 Cost of Premiums.	83
22.11 Other Deductibles	83
22.12 Both Party's Rights to Provide Insurance	83
22.13 No Limitation of Liability	84
22.14 Other Terms and Provisions	84
23. RISK OF LOSS OR DAMAGE	84
23.1 Care, Custody and Control	84
23.2 Risk of Loss	84
24. INDEMNIFICATION	84
24.1 Comparative Fault	84
24.2 By Contractor	84
24.3 By Owner	86
24.4 Patent Infringement and Other Indemnification Rights	87
24.5 Claim Notice	88
24.6 Survival of Indemnity Obligations	89
24.7 Treatment of Indemnification Payments	89
24.8 Contractor Lien Indemnity	90
25. CONFIDENTIAL INFORMATION	90
25.1 Confidential Information	90

## TABLE OF CONTENTS

(continued)

	Page
25.2 Use of Confidential Information	91
25.3 Remedies for Breach of Confidentiality Obligations	92
26. ASSIGNMENT	93
26.1 Assignment to Other Persons	93
26.2 Indemnitees; Successors and Assigns	93
27. HAZARDOUS MATERIALS	94
27.1 Use by Contractor	94
27.2 Remediation by Contractor	94
27.3 Notice of Hazardous Materials	94
27.4 Pre-Existing Contamination	95
28. NON-PAYMENT CLAIMS	95
29. NOTICES AND COMMUNICATIONS	96
29.1 Requirements	96
29.2 Representatives	97
29.3 Effective Time	97
30. LIMITATIONS OF LIABILITY AND REMEDIES	97
30.1 Consequential Damages	97
30.2 Limitations on Contractor's Liability	98
30.3 Limitation on Owner's Liability	99
31. DISPUTES	99
31.1 Dispute Resolution	99
31.2 Referral to Contractor's Project Manager and Owner Representative	99
31.3 Referral to Authorized Officers	99
31.4 Independent Expert Resolution	100
31.5 Arbitration Resolution	101
31.6 Continuation of Work During Dispute	101
32. INTELLECTUAL PROPERTY	101
32.1 Ownership	101
32.2 Irrevocable License	101
32.3 Transfer and Assignment	102
32.4 Subcontractor Licenses	102
32.5 Non-Exclusive License	102
33. MISCELLANEOUS	102

**TABLE OF CONTENTS**  
(continued)

	<b>Page</b>
33.1 Severability	102
33.2 Governing Law; Venue; Stipulations	102
33.3 Survival of Termination	103
33.4 No Oral Modification	103
33.5 No Waiver	103
33.6 Review and Approval	103
33.7 Third Party Beneficiaries	103
33.8 Further Assurances	103
33.9 Financing Cooperation	104
33.10 Record Retention	104
33.11 Binding on Successors	104
33.12 Merger of Prior Contracts	104
33.13 Counterparts	105
33.14 Attorneys' Fees	105
33.15 Announcements; Publications	105
33.16 Independent Contractor	105
33.17 Audit	105
33.18 Independent Engineer	106

## EXHIBITS

Exhibit A	Statement of Work <ul style="list-style-type: none"><li>A-1 Contractor's Statement of Work</li><li>A-2 Owner-Provided Facilities, Services and Information</li><li>A-3 Division of Responsibilities Table</li></ul>
Exhibit B	Contractor Deliverables
Exhibit C	Permits <ul style="list-style-type: none"><li>C-1 Owner-Acquired Permits</li><li>C-2 Contractor-Acquired Permits</li><li>C-3 Division of CUP Responsibilities Table</li></ul>
Exhibit D	Site Safety Plan <ul style="list-style-type: none"><li>D-1 Contractor Safety Program</li></ul>
Exhibit E	Operating Personnel Training Program
Exhibit F	Lien Waiver and Releases <ul style="list-style-type: none"><li>F-1 Conditional Waiver and Release Upon Progress Payment</li><li>F-2 Unconditional Waiver and Release Upon Progress Payment</li><li>F-3 Conditional Waiver and Release Upon Final Payment</li><li>F-4 Unconditional Waiver and Release Upon Final Payment</li></ul>
Exhibit G	Schedule Milestones
Exhibit H	Testing Process <ul style="list-style-type: none"><li>H-1 Block Capacity Test</li><li>H-2 Phase and PV Power Plant Capacity Test</li><li>H-3 PPA Phase Capacity Certification Procedure</li><li>H-4 PV Power Plant Functional Test</li></ul>
Exhibit I	Progress Payment Schedule <ul style="list-style-type: none"><li>I-1 Progress Payment Schedule</li><li>I-2 Cumulative Maximum Payment Amounts</li></ul>
Exhibit J	Legal Description of Site
Exhibit K	Site Plan
Exhibit L	Specified Suppliers and Specified Subcontractors
Exhibit M	Commissioning Procedures
Exhibit N	Example Calculation of Holdback Release
Exhibit O	Example Calculations of Liquidated Damages
Exhibit P	***
Exhibit Q	List of Environmental Reports

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Exhibit R	Module Warranty Terms and Conditions
Exhibit S	Change In Work Form
Exhibit T	Block Descriptions
Exhibit U	Form of Contractor's Invoice
Exhibit V	Single Line Electrical Drawing
Exhibit W	Quality Assurance Program
Exhibit X	X-1 Block Substantial Completion Certificate
	X-2 Phase Substantial Completion Certificate
	X-3 PV Power Plant Substantial Completion Certificate
	X-4 Final Completion Certificate
Exhibit Y	***
Exhibit Z	Project Labor Agreement
	Z-1 Assignment of PLA
Exhibit AA	Davis Bacon Act Requirements
Exhibit BB	Form of Escrow Agreement
Exhibit CC	County Fiscal Agreement
Exhibit DD	Form of Subordination Agreement
Exhibit EE	Form of Material and Equipment Supply Agreement
Exhibit FF	Contractor Letter of Credit

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## ENGINEERING, PROCUREMENT AND CONSTRUCTION AGREEMENT

This ENGINEERING, PROCUREMENT AND CONSTRUCTION AGREEMENT is made and entered into as of this 30th day of September, 2011 (the “**Effective Date**”), between High Plains Ranch II, LLC, a Delaware limited liability company (“HPR II” or “Owner”) and SunPower Corporation, Systems, a Delaware corporation (“**Contractor**”). Each entity is sometimes individually referred to herein as a “**Party**” and the entities are sometimes collectively referred to herein as the “**Parties**.”

### RECITALS

WHEREAS, HPR II is developing a 250 MW AC design capacity photovoltaic power plant at the Site (as hereinafter defined) (the “**PV Power Plant**”);

WHEREAS, Owner has negotiated and agreed upon terms and conditions for the sale of the electrical energy generated by its photovoltaic power project, together with related attributes of the electrical energy and environmental attributes, to Pacific Gas and Electric Company (“**PG&E**”) pursuant to the Power Purchase Agreements (as hereinafter defined); and

WHEREAS, Owner and Contractor entered into that certain Preliminary Construction Agreement dated August 4, 2011 (the “PCA”), for the purposes of performing certain preliminary work necessary to the construction of the PV Power Plant;

WHEREAS, the Parties intend this Agreement to supersede the PCA, and all of the rights and liabilities of the Parties thereunder;

WHEREAS, Owner desires to engage Contractor to design, engineer, procure certain equipment and materials for, install, construct, test, commission the PV Power Plant, and to perform certain related work, and Contractor desires to provide such materials and services, all in accordance with the terms and conditions set forth in this Agreement;

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

### AGREEMENT

#### 1. **DEFINITIONS AND RULES OF INTERPRETATION**

**1.1 Definitions.** For the purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires, the following terms shall have the following meanings.

“AC” or “ac” means alternating current.

**“Affiliate”** means, with respect to a specified Person, any other Person that directly, or indirectly through one or more intermediaries, Controls, is under common Control with, or is Controlled by such specified Person.

**“After-Tax Basis”** shall mean, with respect to any indemnified amount to or for the benefit of a person (the “recipient”) that is required to be paid on such basis, the indemnified amount increased so that, after deduction of the amount of all Taxes (assuming for this purpose that the recipient of such payment is a U.S. corporation whose only taxable income arises in connection with the Project and this Agreement and is subject to taxation at the highest federal rate generally applicable to persons of the same type as the recipient for the year in which such income is taxable and at a marginal rate of state and local tax rate of (\*\*\*%) required to be paid by the recipient (less any tax savings realized and the present value (determined using a discount rate equal to \*\*\* percent (\*\*\*) of any tax savings projected to be realized as a result of the payment of the indemnified amount, in each case using the same tax rate assumptions as set forth in the immediately preceding parenthetical phrase) with respect to the receipt by the recipient of such amounts (as reasonably estimated by the recipient), such increased payment (as so reduced) is equal to the indemnified amount otherwise required to be paid.

**“Agreement”** means this Engineering, Procurement and Construction Agreement, including all Exhibits hereto, as the same may be modified, amended or supplemented from time to time in accordance with the terms hereof.

**“Applicable Law”** means and includes any statute, license, law, rule, regulation, code, ordinance, judgment, Permit Requirement, decree, writ, legal requirement or order, of any national, federal, state or local court or other Governmental Authority, and the official, written judicial interpretations thereof, applicable to the Work, the Site, the PV Power Plant or the Parties.

**“Applicable Permit”** means each national, state, local or other license, consent, appraisal, authorization, ruling, exemption, variance, order, judgment, decree, declaration, regulation, certification, filing, recording, permit (including, where applicable, conditional permits) or other approval with, from or of any Governmental Authority, including each and every environmental, construction, operating or occupancy permit, that is required by Applicable Law for the performance of the Work and the ownership or operation of the PV Power Plant, including those set forth on Exhibits C-1 and C-2.

**“Approved Bank”** means a bank (i) that has net assets of not less than \$100,000,000,000 and the long term senior debt obligations of which are rated of at least “AA” or better by Standard and Poor's Rating Services, Inc. or “Aa2” or better by Moody's Investor Services, Inc. and (ii) that has an office or branch in United States.

**“As-Built Drawings”** means a complete set of as-built drawings prepared in accordance with Applicable Laws and which in all material respects accurately depicts and represents the completed PV Power Plant as constructed and installed.

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**“Assignment and Assumption Agreement”** means that Assignment and Assumption Agreement dated August 17, 2011, by and between Fluor Constructors International, Inc. and the Contractor attached hereto as Exhibit Z-1.

**“Authorized Officer”** has the meaning set forth in Section 31.3.

**“Block”** means a grouping of Systems and the portion of the Work required to complete a Block, as specified in Exhibit T, that is treated as a separate portion of the Work under this Agreement for purposes of schedule, sequencing, commissioning, testing and completion. The Parties understand and agree that the Blocks may proceed in overlapping schedules, so that during some periods, various Blocks may be under construction simultaneously.

**“Block Substantial Completion”** means, with respect to the initial Block, the satisfaction (or waiver by Owner) of the requirements set forth in Section 15.1.1, and with respect to each additional Block thereafter, the satisfaction (or waiver in writing by Owner) of the requirements set forth in Section 15.1.2.

**“Block Substantial Completion Certificate”** means, for any Block, a certificate signifying that Block Substantial Completion for such Block has occurred, in the form of the attached Exhibit X-1.

**“Block Substantial Completion Date”** means, for each Block, the date on which the Block Substantial Completion with respect to such Block occurred, determined in accordance with Section 15.5.

**“Block Substantial Completion Test”** means the Performance Acceptance Tests to be performed for each Block in compliance with the criteria and guidelines set forth in Exhibit H-1.

**“Bonus Payment”** shall have the meaning set forth in Section 16.2.

**“Business Day”** means a day, other than a Saturday or Sunday or a public holiday, on which banks are generally open for business in the State of California.

**“Cash Grant”** shall mean the cash grant in lieu of energy credits under Section 48 of the Internal Revenue Code, from the U.S. Department of the Treasury under Section 1603 of the American Recovery and Reinvestment Act of 2009 in respect of the Project or a Phase.

**“Cash Grant Guidance”** shall mean the guidance issued on July 9, 2009 (as revised in March 2010 and April 2011), by the U.S. Department of the Treasury for payments for specified energy property in lieu of tax credits under the American Recovery and Reinvestment Act of 2009, the “Frequently Asked Questions” and “Frequently Asked Questions Regarding Commencement of Construction” published by the U.S. Department of Treasury, and any clarification, amendment, addition or supplement thereto, or any other guidance or similar materials, issued by the U.S. Department of Treasury or any other Governmental Authority.

**“Change In Law”** means the enactment, adoption, promulgation, modification (including a written change in interpretation by a Governmental Authority) or repeal of any Applicable Law after the Effective Date, *provided, however*, that the final enactment, modification, amendment



or repeal of an Applicable Law prior to the Effective Date but which takes effect after the Effective Date shall not be a Change In Law pursuant to this Agreement.

**“Change In Work”** means a change in the Work as defined in Section 17.1.

**“Change In Work Form”** means the form in respect of a Change In Work attached as Exhibit S hereto.

**“Claim Notice”** has the meaning set forth in Section 24.5.

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

**“Commencement of Construction”** means that (x) Contractor has (1) completed all pre-construction engineering and design services, (2) received all Contractor-Acquired Permits that, in each case, are reasonably necessary to begin (or, if previously interrupted or suspended, resume) physical work of a significant nature on the Project and to proceed to completion without foreseeable interruption of a material duration, (3) engaged all subcontractors and ordered all essential equipment and supplies that, in each case, are reasonably necessary to begin (or, if previously interrupted or suspended, resume) physical work of a significant nature on the Project and to proceed to completion of the PV Power Plant without foreseeable interruption of a material duration; and (y) Contractor has begun (or resumed) such physical work.

**“Commissioning”** is energization and functional testing of a Block or portions thereof, including verifying System completeness as received from Contractor's construction team and readiness for operations and testing.

**“Commissioning Hold Items”** has the meaning set forth in Section 14.1.4.

**“Commissioning Plan”** means the commissioning plan for the PV Power Plant to be developed and finalized in compliance with the criteria and guidelines set forth in Exhibit M.

**“Commissioning Procedures”** means the actions to be followed by Owner or Contractor related to the commissioning of the PV Power Plant as specified with respect to such party in the Commissioning Plan.

**“Competitor of NRG”** means any Person (or any such Person's Affiliates) engaged as a substantial portion of their business, in the development, construction, and/or operation of utility scale power plants. For purposes of confirming whether a third party constitutes a Competitor of NRG under this Agreement, Contractor shall notify Owner of the identity of such third party and Owner shall respond to Contractor in writing within ten (10) Business Days whether such third party constitutes a Competitor of NRG hereunder, *provided* that if Owner does not respond within such ten (10) Business Days period, then such third party shall be deemed not to be an Competitor of NRG.

**“Competitor of SunPower”** means \*\*\*, \*\*\*, their Affiliates, and any Person (or any such Person's Affiliates) engaged primarily in the business of manufacturing photovoltaic modules, except \*\*\* and \*\*\*.

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**“Completion Certificate”** means a Block Substantial Completion Certificate, a Phase Substantial Completion Certificate, the PV Power Plant Substantial Completion Certificate, and the Final Completion Certificate, as applicable.

**“Confidential Information”** has the meaning set forth in Section 25.1.

**“Contract Intellectual Property”** has the meaning assigned thereto in Section 32.1.

**“Contract Interest Rate”** has the meaning set forth in Section 6.5.4.

**“Contract Price”** has the meaning set forth in Section 5.1, as the same may be adjusted pursuant to the terms hereof.

**“Contractor”** has the meaning set forth in the preamble and shall include any of its successors and permitted assigns.

**“Contractor-Acquired Permits”** means the Applicable Permits required by Contractor for the performance of the Work as set forth in Exhibit C-2.

**“Contractor Deliverable(s)”** means the documentation described in the Contractor Deliverables Table.

**“Contractor Deliverables Table”** means the table of Contractor Deliverables attached hereto as Exhibit B.

**“Contractor Event of Default”** has the meaning set forth in Section 20.1.

**“Contractor Financing Parties”** means any and all lenders providing financing or refinancing to Contractor Parent, Contractor or their Affiliates with an interest in the Contractor's rights and interests under this Agreement and any trustee or agent acting on their behalf.

**“Contractor Indemnitee”** has the meaning set forth in Section 24.3.

**“Contractor Lien”** has the meaning set forth in Article 28.

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**“Contractor Taxes”** means \*\*\*

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**“Contractor's Invoice”** means an invoice from Contractor to Owner prepared by Contractor and in a form attached as Exhibit U.

**“Contractor's Project Manager”** means the project manager appointed by Contractor and reasonably approved by Owner pursuant to Section 3.4.

**“Contractor's Safety Program”** has the meaning set forth in Section 3.12.2.

**“Control”** means (including with correlative meaning the terms **“Controlled”**, **“Controls”** and **“Controlled by”**), as used with respect to any Person, the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting securities, by contract or otherwise.

**“Cost Segregation Firm”** shall mean any regionally or nationally recognized certified appraisal, valuation, or accounting firm that has expertise in providing reports that determine the cost basis of property in accordance with the general rules for determining the basis of property for federal income tax purposes.

**“Cost Segregation Report”** means the report prepared by the Cost Segregation Firm that sets forth an allocation of the cost basis of property relating to the applicable Phase of the PV Power Plant in accordance with the general rules for determining the basis of property for federal income tax purposes. The Cost Segregation Report shall include, without limitation, an allocation of the cost basis of property relating to the Phase without regard to any amounts paid or incurred by Owner other than the Contract Price.

**“County Fiscal Agreement”** means that agreement attached hereto as Exhibit CC.

**“CPM Schedule”** has the meaning set forth in Section 7.2.

**“Critical Path”** means the set of dependent tasks and related periods set forth in the CPM Schedule which are required for Contractor to achieve Substantial Completion by the applicable Substantial Completion Guaranteed Date.

**“Cure Period”** means, with respect to each Phase or the PV Power Plant, the period beginning on the applicable Phase Substantial Completion Guaranteed Date or the PV Power Plant Substantial Completion Guaranteed Date and ending \*\*\* days later, as adjusted pursuant to Section 16.6.

**“Davis Bacon Act”** means the federal law codified at 42 U.S.C 1341 *et seq.*, as amended, and commonly referred to as the Davis Bacon Act.

**“DC”** or **“dc”** means direct current.

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**“Defect”** means any failure of the PV Power Plant (or applicable portions thereof) to conform to the Plant Specifications.

**“Defect Warranty”** has the meaning set forth in Section 18.1.1.

**“Defect Warranty Period”** has the meaning set forth in Section 18.2.1.

**“Delay Liquidated Damages”** has the meaning set forth in Section 16.1.

**“Delay Notice”** has the meaning set forth in Section 8.2.1.

**“Delay Response Plan”** has the meaning set forth in Section 7.7.

**“Design Review Conference”** has the meaning set forth in Section 7.2.

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**“Disclosing Party”** has the meaning set forth in Section 25.1.

**“Discussion Period”** has the meaning set forth in Section 31.3.

**“Dispute”** has the meaning set forth in Section 31.1.

**“Dollars,” “dollars” or “\$”** means United States Dollars.

**“Effective Date”** has the meaning set forth in the preamble.

**“Environmental Law”** means any Applicable Law or Applicable Permit relating to the environment, or to handling, storage, transportation, emissions, discharges, releases or threatened emissions, discharges or releases of Hazardous Materials into the environment, including ambient air, surface water, ground water or land, or otherwise relating to the manufacture, processing, distribution, use, treatment or disposal of any Hazardous Materials, including, but not limited to, the Clean Air Act, the Federal Water Pollution Control Act (including, but not limited to the Clean Water Act and the Oil Pollution Act), the Safe Drinking Water Act, the Federal Solid Waste Disposal Act (including, but not limited to, the Resource Conservation and Recovery Act of 1976), the Comprehensive Environmental Response, Compensation, and Liability Act, the Toxic Substances Control Act, the Federal Insecticide, Fungicide and Rodenticide Act, the Emergency Planning and Community Right-to-Know Act, and the Occupational Safety and Health Act (to the extent relating to human exposure to Hazardous Materials) and any other federal, state or local laws, ordinances, rules or regulations now or hereafter existing relating to any of the foregoing.

**“Environmental Reports”** means the reports listed in Exhibit Q, hereto.

**“Event of Default”** means either a Contractor Event of Default or an Owner Event of Default, as the context may require

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**“Excusable Event”** means an event that wholly or partially prevents or otherwise adversely affects Contractor's performance of the Work, to the extent such event is attributable to (i) an Unknown Pre-Existing Site Condition or (ii) an Owner-Caused Delay.

**“Final Completion”** means satisfaction by Contractor or waiver by Owner of all of the conditions for Final Completion set forth in Section 15.5.

**“Final Completion Certificate”** means a certificate with respect to the entire PV Power Plant signifying that Final Completion of the PV Power Plant has been achieved in the form of the attached Exhibit X-4.

**“Final Completion Date”** has the meaning set forth in Section 15.6.

**“Final Completion Guaranteed Date”** means the date that is \*\*\* days after the PV Power Plant Substantial Completion Date.

**“Final Contractor's Invoice”** has the meaning set forth in Section 6.7.

**“Final EIR”** is the Final Environmental Impact Report prepared and certified by the County of San Luis Obispo in connection with the issuance of the Conditional Use Permit for the Project.

**“Final Payment”** has the meaning set forth in Section 6.7.

**“Final Performance Acceptance Test”** has the meaning set forth in Section 16.10.

**“Force Majeure Event”** means any act, event, condition, or occurrence that (i) wholly or partially prevents the affected Party from performing its obligations under this Agreement, (ii) is beyond the reasonable control of and not the result of negligence of, the affected Party and (iii) such affected Party has been unable to overcome by the exercise of due diligence, and to the extent that the foregoing requirements are met, “Force Majeure Event” may include \*\*\*. Notwithstanding the foregoing, the following events, conditions or occurrences shall not constitute a Force Majeure Event:

(a) the absence of sufficient financial means to perform obligations or the failure to make payments in accordance with this Agreement;

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(b) any Labor Dispute of Contractor's workers or personnel (including workers or personnel of Contractor's Affiliates) or any Subcontractor or such Subcontractor's workers or personnel or any independent contractor, vendor, fabricator, or manufacturer engaged by Contractor to the extent occurring at the Site or, in the case of the Contractor, Contractor's Affiliates, or Subcontractors, at the Contractor's, Contractor's Affiliates', or Subcontractor's facilities (except for Labor Disputes that are national or regional in scope);

(c) mechanical failures unless caused by a Force Majeure Event;

(d) storms and other climatic or weather conditions (except unusually severe weather conditions and insufficient irradiation for performance testing as described above); and

(e) the unavailability or shortages of equipment and materials unless itself caused solely by an event of Force Majeure.

**"Full Notice to Proceed"** means a Notice signed by a representative of Owner to Contractor authorizing Contractor to commence and complete all Work under this Agreement, delivered concurrently with the Effective Date.

**"Geotechnical Reports"** are the reports entitled Geotechnical Exploration, PG&E California Valley Solar Ranch, dated October 3, 2008, PG&E California Valley Solar Ranch Corrosivity Analysis, dated October 7, 2008, and Aggregate Resource Evaluation, May 31, 2009, listed in Exhibit Q.

**"Governmental Authority"** means applicable national, federal, state, and local governments and all agencies, authorities, departments, instrumentalities, courts, corporations, other authorities lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power, or other subdivisions of any of the foregoing having a regulatory interest in or jurisdiction over the Site, the PV Power Plant, the Work or the Parties.

**"Gross Invoiced Amount"** means the cumulative invoiced portion of the Contract Price by the Contractor.

**"Guaranteed Capacity"** has the meaning set forth in Exhibit T.

**"Guaranteed Reference Conditions"** or **"GRC"** has the meaning set forth in Exhibit H-1.

**"Hazardous Materials"** means any chemical, substance or material regulated or governed by any Applicable Permit, or any substance, emission or material now or hereafter deemed by any Governmental Authority to be a "regulated substance," "hazardous material," "hazardous waste," "hazardous constituent," "hazardous substance," "toxic substance," "radioactive substance" or "pesticide."

**“HPR II”** has the meaning set forth in the preamble and shall include any successors and permitted assigns.

**“HPR II PPA”** means that certain Power Purchase and Sale Agreement between PG&E and HPR II dated July 23, 2008.

**“HPR III”** means High Plains Ranch III, LLC, a Delaware limited liability company, that was merged into HPR II with HPR II as the surviving entity pursuant to that Merger Agreement by and between HPR II and HPRIII dated as of September 29, 2011.

**“HPR III PPA”** means that certain Amended and Restated Power Purchase and Sale Agreement between PG&E and HPR III dated March 5, 2010, as amended by that certain Amendment of the Amended and Restated Power Purchase Agreement, effective as of April 26, 2010, and as [assigned/amended] by that certain Merger Agreement between HPRII and HPRIII dated as of September 29, 2011.

**“Hydrology Reports”** are the reports entitled Preliminary Hydrologic Investigation for the California Valley Solar Ranch, dated Nov. 1, 2008, Preliminary Hydrologic Investigation for the California Valley Solar Ranch (Addendum), dated Dec. 1, 2009, Hydrogeology in the Vicinity of the Proposed California Valley Solar Ranch, dated Dec. 18, 2009, and Preliminary Hydrology for APN 084-401-002 (Martin Property) California Valley Solar Ranch, Alternative Layout “T0-Alt #3” dated June 21, 2010, listed in Exhibit Q.

**“Indemnatee”** means an Owner Indemnatee or a Contractor Indemnatee, as the context may require.

**“Independent Accountant”** shall mean such “Big 4” accounting firm chosen by Owner to provide the certifications attesting to the accuracy of all costs claimed as part of the basis of the Phases for purposes of the Section 1603 Applications or Section 1603 Commencement of Construction Applications.

**“Independent Engineer”** means an independent engineer of recognized expertise, selected by the Owner Financing Parties and reasonably acceptable to Owner and Contractor, and such independent engineer's successors and permitted assigns.

**“Independent Expert”** means any Person agreed to by the Parties for expedited resolution of Minor Change Disputes pursuant to Section 31.4.

**“Industry Standards”** means those standards of design, construction and workmanship relating to the PV Power Plant Hardware, components, operation, and construction, specified in Part Two, Section 3 of Exhibit A-1.

**“Intellectual Property”** means all, patents, copyrights, trademarks, service marks, trade secrets, licenses, and proprietary information, whether registered or not, including where such rights are obtained or enhanced by registration, any registration of such rights and applications and rights to apply for such registrations.

**“Intellectual Property Claim”** means a claim or legal action for unauthorized disclosure or use of any trade secret, patent, copyright, trademark or service mark arising from Contractor's performance (or that of its Affiliates or Subcontractors) under this Agreement that: (a) concerns any PV Power Plant Hardware or other services provided by Contractor, any of its Affiliates, or any Subcontractor under this Agreement; (b) is based upon or arises out of the performance of the Work by Contractor, any of its Affiliates, or any Subcontractor, including the use of any tools or other implements of construction by Contractor, any of its Affiliates, or any Subcontractor; or (c) is based upon or arises out of the design or construction of any item by Contractor or any of its Affiliates or Subcontractors under this Agreement or the operation of any item according to directions embodied in Contractor's final PV Power Plant design, or any revision thereof, prepared or approved by Contractor.

**“Interconnection Facilities”** means Transmission Provider's facilities necessary to permit Owner to interconnect and deliver energy at the Interconnection Point in accordance with the LGIA and shall include, but not be limited to, connection, switching, metering, communications, control, safety equipment as well as Network Upgrades.

**“Interconnection Point”** shall be the 230 kV bus in the Caliente Switching Station, where the gen-tie terminates.

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

**“Invoice Payment”** has the meaning set forth in Section 6.5.3.

**“Key Personnel”** means the following Contractor personnel performing Work under this Agreement: Contractor's Project Manager, construction site manager and startup and commissioning manager.

**“kV”** means kilovolts.

**“kW”** means a measure of instantaneous power as measured in kilowatts AC.

**“kWh”** means kilowatt-hours AC.

**“Large Generator Interconnection Agreement”** or **“LGIA”** shall have the meaning set forth in the PPAs

**“Labor Dispute”** means work stoppages, slowdowns, strikes, disputes, disruptions, boycotts, and walkouts.

**“Letter of Credit”** means an irrevocable standby letter of credit issued by a bank or trust company (i) with a combined capital surplus of at least one billion dollars (\$1,000,000,000) and (ii) whose senior unsecured obligations have a credit rating of at least A- from Standard and Poor's or A3 from Moody's Investor Services Inc.

**“License”** has the meaning set forth in Section 32.2.



“**Losses**” means, subject to Article 30, any and all actions, suits, claims, demands, costs, charges, expenses, liabilities, Taxes, losses or damages.

“**Major Subcontractor**” means a Person that is selected and enters into a subcontract with Contractor or any Subcontractor for the performance of any part of the Work, and whose subcontract or subcontracts (in the aggregate) with Contractor require payments by Contractor of \*\*\* or more.

“**Mechanical Completion**” means, for each Block, that the Block is mechanically, electrically and structurally constructed in accordance with the Statement of Work, and ready for initial operations, adjustment and testing in accordance with the requirements for Mechanical Completion as set forth in Exhibit M, except for Non-Critical Deficiencies.

“**Meteorological Station**” or “**Met Station**” means the meteorological station described in Exhibit A-1.

“**Milestone Item**” means a discrete portion of the Work as set forth in Exhibit G.

“**Minimum Performance Guarantee**” for (a) each Phase shall be equal to \*\*\*% of the Guaranteed Capacity of such Phase, and (b) the PV Power Plant, shall be equal to \*\*\*% of the Guaranteed Capacity of the PV Power Plant, in each case of (a) and (b), during a Successful Run of the applicable Performance Acceptance Test with all applicable PV modules connected and operational.

“**Minor Change Disputes**” has the meaning set forth in Section 31.4.

“**Module Warranty Terms and Conditions**” means the terms and conditions set forth in Exhibit R.

“**Monthly Progress Report**” means a written monthly progress report prepared by Contractor, in a form to be agreed by the Parties, and including information, set forth in Exhibit A-1.

“**Monthly Updated CPM Schedule**” has the meaning set forth in Section 7.4.

“**MW AC**” means megawatts of alternating current.

“**MW DC**” means megawatts of direct current

“**Network Upgrade**” shall mean all transmission and network upgrades required by CAISO and/or the Transmission Provider to interconnect the Project with the Transmission Provider's transmission system.

“**Non-Critical Deficiencies**” means each item of Work that Owner or Contractor identifies as requiring completion or containing defects or deficiencies that do not (a) impede the safe operation of the PV Power Plant or any portion thereof, in accordance with Industry Standards; and (b) adversely affect the reliability, operability, or mechanical or electrical integrity of the PV Power Plant or any portion thereof.

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“**Notice**” or “**Notification**” means a written communication between authorized representatives of the Parties required or permitted by this Agreement and conforming to the requirements of Article 29.

“**Notice of Final Completion**” means a Notice from Contractor to Owner provided under Section 15.6.

“**Notice of Substantial Completion**” means, for each Block, Phase or the PV Power Plant, as applicable, a Notice from Contractor to Owner provided under Section 15.4.

“**Notify**” means to provide a Notice or Notification.

“**Operating Personnel**” means the personnel hired by Owner, or by an entity providing operating services for Owner, to operate the PV Power Plant or any applicable portion thereof (including all operators, instrument technicians and supervisors and Owner's contractors (other than Contractor)).

“**OSHA**” means the United States Department of Labor Occupational Safety and Health Administration.

“**Owner**” has the meaning set forth in the preamble and shall include any successors and permitted assigns.

“**Owner-Caused Delay**” means \*\*\*.

“**Owner Critical Path Dates**” means the respective dates identified in Exhibit G for the performance of the Owner Critical Path Items.

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**“Owner Critical Path Items”** means the items identified in Exhibit G as “Owner Critical Path Items.”

**“Owner Directive”** has the meaning set forth in Section 17.7.

**“Owner Event of Default”** has the meaning set forth in Section 20.3.

**“Owner Financing Parties”** means (a) any and all third party lenders (that is, unaffiliated with Owner or Owner Parent) providing senior or subordinated construction, interim or long-term debt financing or refinancing to Owner; (b) any and all third party equity investors (that is, unaffiliated with Owner or Owner Parent) in Owner providing tax equity investment or leveraged lease-financing or refinancing; or (c) any Person providing credit support to Owner, in each case of (a), (b) and (c) above, in connection with the PV Power Plant, and, in each case, any trustee or agent acting on behalf of such lenders or investors.

**“Owner Indemnatee”** has the meaning set forth in Section 24.2.

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**“Owner-Provided Facilities and Services”** has the meaning set forth in Exhibits A-2 and A-3.

**“Owner-Provided Information”** means the information provided by or on behalf of Owner as set forth in Exhibit A-2.

**“Owner Representative”** means the representative designated by Owner pursuant to Section 2.1.

**“Owner's Engineer”** means any engineering firm or firms or other engineer or engineers selected and designated by Owner, provided that it is not a Competitor of SunPower.

**“Owner's Separate Contractors”** means each contractor or other Person that is in direct or indirect contractual privity with Owner and that performs any work in respect of the Project, but excluding Contractor and each Person engaged by Contractor or any of its Subcontractors in connection with the performance of the Work; *provided, however*, that where a Person so engaged by Contractor or any of its Subcontractors is also performing work in connection with the Owner-Provided Facilities and Services, as a contractor or a subcontractor of a contractor of Owner, such Person shall be considered one of “Owner's Separate Contractors” with respect to its performance of such work.

**“Owner Taxes”** means (i) any and all Taxes imposed under Applicable Law in respect of the income or gross income of the Owner, the direct or indirect owners of beneficial interests in the Owner and the Affiliates of the foregoing, (ii) Property Taxes imposed under Applicable Law in respect of the Site or the PV Power Plant Interconnection Facilities, and (iii) any and all other Taxes, not described in clauses (i) or (ii), including Property Taxes, imposed under Applicable Law on Owner, the PV Power Plant (or the operation thereof), or any property incorporated

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therein pursuant to Section 5.2), in each case, for any period beginning on or after the Substantial Completion of the relevant Block.

“**PCA**” has the meaning set forth in the recitals.

“**Performance Acceptance Tests**” means, as the context may require, the Block Substantial Completion Tests, the Phase Substantial Completion Tests, and the PV Power Plant Substantial Completion Tests.

“**Performance Acceptance Test Procedures**” means the written test procedures, standards, protective settings, and testing programs for the Performance Acceptance Tests established by Contractor and approved by Owner in compliance with the criteria and guidelines set forth in Exhibits H-1, H-2, and H-3, as applicable.

“**Performance Guarantee**” means that the Tested Capacity of a Phase or the PV Power Plant, as applicable, is at least equal to the Guaranteed Capacity during a Successful Run of the applicable Performance Acceptance Test, as set forth in Exhibit H-2.

“**Performance Liquidated Damages**” means, for each Phase and the PV Power Plant, the amounts (if any) paid or to be paid by Contractor pursuant to Section 16.3 if Contractor fails to satisfy the applicable Performance Guarantee.

“**Permit Expenses**” means the actual costs payable to a Governmental Authority and all other reasonable third party costs and expenses incurred in connection with the application for and issuance of an Applicable Permit.

“**Permit Requirement**” means any requirement or condition on or with respect to the issuance, maintenance, renewal, transfer of, or otherwise relating to, any Applicable Permit or any application therefor.

“**Person**” means any individual, corporation, company, voluntary association, partnership, incorporated organization, trust, limited liability company, or any other entity or organization, including any Governmental Authority.

“**PG&E**” has the meaning assigned to such term in the recitals.

“**Phase**” means each of Phase 1, Phase 2, Phase 3 and Phase 4.

“**Phase 1**” means the first stage of the PV Power Plant, corresponding to “Phase 1” referred to in the HPR II PPA, which stage includes the Work required to complete the initial Block specified for such Phase in Exhibit T.

“**Phase 1 Substantial Completion Guaranteed Date**” means the Guaranteed Phase Operation Date for Phase 1 under the HPR II PPA, and as such date may be adjusted or extended pursuant to the terms thereof.

**“Phase 2”** means the second stage of the PV Power Plant corresponding to “Phase 2” referred to in the HPR II PPA, which stage includes the Work required to complete the Blocks specified for such Phase in Exhibit T.

**“Phase 2 Substantial Completion Guaranteed Date”** means the Guaranteed Phase Operation Date for Phase 2 under the HPR II PPA, and as such date may be adjusted or extended pursuant to the terms thereof.

**“Phase 3”** means the third stage of the PV Power Plant, corresponding to “Phase III” referred to in the HPR II PPA, which stage includes the Work required to complete the Blocks specified for such Phase in Exhibit T.

**“Phase 3 Substantial Completion Guaranteed Date”** means the Guaranteed Phase Operation Date for Phase 3 under the HPR II PPA, and as such date may be adjusted or extended pursuant to the terms thereof.

**“Phase 4”** means the stage of the PV Power Plant corresponding to the “Project” referred to in the HPR III PPA,, which stage includes the Work required to complete the Blocks specified for such Phase in Exhibit T.

**“Phase 4 Substantial Completion Guaranteed Date”** means the Guaranteed Phase/Commercial Operation Date for Phase 4 stated in Exhibit G, and as such date may be adjusted or extended pursuant to the terms of the HPR III PPA.

**“Phase Substantial Completion”** means, with respect to each Phase, the satisfaction (or waiver by Owner) of the requirements set forth in Section 15.2 with respect to such Phase.

**“Phase Substantial Completion Certificate”** means a certificate with respect to a Phase signifying that Phase Substantial Completion for such Phase has occurred, in the form of the attached Exhibit X-2.

**“Phase Substantial Completion Date”** means, for any Phase, the date on which the Phase Substantial Completion with respect to such Phase occurred, determined in accordance with Section 15.4.

**“Phase Substantial Completion Guaranteed Date”** means, as applicable, the Phase 1 Substantial Completion Guaranteed Date, the Phase 2 Substantial Completion Guaranteed Date, the Phase 3 Substantial Completion Guaranteed Date, and the Phase 4 Substantial Completion Guaranteed Date.

**“Phase Substantial Completion Tests”** means, the Performance Acceptance Tests to be performed for each Phase as described in Exhibits H-2 and H-3.

**“Plant Specifications”** is the description of the PV Power Plant set forth in Exhibit A-1, Part Two.

**“Power Purchase Agreements”** or **“PPAs”** means the HPR II PPA and the HPR III PPA.

**“Pre-Commissioning”** shall be the activities necessary to commence Commissioning as set forth in Exhibit M.

**“Pre-Existing Contamination”** means any Hazardous Materials present at or under the Site, prior to the Effective Date as identified in the Environmental Reports and that was not brought to the Site by Contractor or its Subcontractors.

**“Priority A Item”** has the meaning set forth in Section 14.1.6(a).

**“Priority B Item”** has the meaning set forth in Section 14.1.6(b).

**“Progress Payment Schedule”** means the schedule of monthly progress payments set forth in Exhibit I, as it may be adjusted in accordance with Article 17.

**“Project”** means (a) the PV Power Plant that is designed, engineered, procured, and constructed in accordance with this Agreement and (b) the PV Power Plant Interconnection Facilities.

**“Project Labor Agreement”** or **“PLA”** means that certain Project Labor Agreement for the California Valley Solar Ranch Project, dated October 27, 2010, by and between Fluor Constructors International, Inc. and International Brotherhood of Electrical Workers, Local 639, et al, a copy of which is attached hereto as Exhibit Z.

**“Property Tax”** means any real or personal property, or any ad valorem Taxes related to the Site, the PV Power Plant, the PV Power Plant Hardware, or any other property that will be incorporated therein.

**“Punch List”** has the meaning set forth in Section 14.1.6.

**“Punch List Amount”** has the meaning set forth in Section 14.1.6.

**“Punch List Holdback”** means an amount equal to \*\*\* of the Punch List Amount for each Priority B Item.

**“PV”** means photovoltaic.

**“PV Power Plant”** means the photovoltaic energy generating facility to be designed, engineered, procured, constructed, tested and commissioned under this Agreement in Phases as provided herein and as described in the Plant Specifications.

**“PV Power Plant Functional Tests”** means the functional tests on the PV Power Plant set forth in Exhibit H-4.

**“PV Power Plant Functional Test Procedures”** means the written test procedures, standards, protective settings, and testing programs for the PV Power Plant Functional Tests established by Contractor and approved by Owner in compliance with the criteria and guidelines set forth in Exhibit H-4.

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**“PV Power Plant Hardware”** means all materials, supplies, apparatus, devices, equipment, machinery, tools, components, instruments and appliances that are to be incorporated into the PV Power Plant, whether provided by Contractor or any Subcontractor or Supplier.

**“PV Power Plant Interconnection Facilities”** shall mean the PV Power Plant substation and 230 kV gen-tie structures extending from the substation to one span short of reaching Caliente switching station, as well as conductors and communication cables from the substation to Caliente switching station.

**“PV Power Plant Substantial Completion”** means the satisfaction (or waiver by Owner) of the requirements set forth in Section 15.3.

**“PV Power Plant Substantial Completion Certificate”** means a certificate with respect to the entire PV Power Plant signifying that the PV Power Plant Substantial Completion has been achieved, in the form of the attached Exhibit X-3.

**“PV Power Plant Substantial Completion Date”** means the date on which the PV Power Plant Substantial Completion occurred, determined in accordance with Section 15.5.

**“PV Power Plant Substantial Completion Guaranteed Date”** means \*\*\*, as such date may be adjusted or extended pursuant to the terms hereof.

**“PV Power Plant Substantial Completion Tests”** means the Performance Acceptance Tests to be performed for the PV Power Plant as described in Exhibits H-2.

**“Receiving Party”** has the meaning set forth in Section 25.1.

**“Release”** means the discharging, depositing, injecting, dumping, spilling, leaking, placing, pumping, pouring, emitting, emptying, escaping, leaching, disposing, or discarding of any Hazardous Materials into the environment so that such Hazardous Materials or any constituent thereof may enter the environment, or be emitted into the air or discharged into any waters, including ground waters.

**“Remedial Plan”** means, for each Phase and the PV Power Plant, a plan prepared by Contractor regarding the actions to be taken and the schedule to remedy failures to meet the applicable Performance Guarantee, as submitted to and approved by Owner pursuant to Section 16.6.2.

**“Required Manuals”** means the manuals, instructions and training aids, whether created by Contractor, Subcontractor or Supplier, which are set forth in the Contractor Deliverables Table.

**“Retention”** has the meaning set forth in Section 6.6.1.

**“Retention L/C”** means one or more irrevocable letters of credit to be provided by Contractor, issued by an Approved Bank on terms reasonably acceptable to Owner in lieu of all or a portion of the Retention.

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**“Schedule Milestones”** means the Milestone Items associated with the Work, including the Owner Critical Path Items and the related Owner Critical Path Dates, as set forth in Exhibit G.

**“SCADA System”** is the Supervision, Control, and Data Acquisition System for the PV Power Plant as described in Part One, Section 2.6, of Exhibit A-1.

**“Section 1603 Application”** means an application submitted to the U.S. Department of the Treasury requesting a Cash Grant in respect of the Project or a Phase.

**“Section 1603 Commencement of Construction Application”** means an application submitted to the U.S. Department of the Treasury evidencing that the commencement of construction (within the meaning of the requirements of Section 1603 of the American Recovery and Reinvestment Act of 2009 and in accordance with the Cash Grant Guidance) with respect to the Project (or a Phase) has begun.

**“Site”** means the site for the location of the PV Power Plant, as more particularly described in Exhibit J.

**“Site Conditions”** means the physical and other conditions at the Site and the surrounding area as a whole, including conditions relating to the environment, transportation, access, waste disposal, handling and storage of materials, the availability and quality of electric power, the availability and quality of water, the availability and quality of roads, climatic conditions and seasons, topography, air and water (including raw water) quality and access conditions, ground surface conditions, surface soil conditions, sound attenuation, subsurface geology, nature and quantity of surface and subsurface materials to be encountered (including Hazardous Materials).

**“Site Control Center”** or **“SCC”** has the meaning set forth in Part One, Section 6.10 of Exhibit A-1.

**“Site Plan”** means the plan set forth in Exhibit K.

**“Specified Subcontractor”** means a Major Subcontractor set forth on Exhibit L (as amended from time to time in accordance with this Agreement).

**“Specified Supplier”** means a Supplier of equipment as set forth on Exhibit L (as amended from time to time in accordance with this Agreement).

**“Standard Test Conditions”** or **“STC”** means those standard test conditions described in Exhibits H-1, H-2 and H-3, as applicable.

**“Statement of Work”** means the requirements regarding the Work set forth in Exhibit A-1.

**“Subcontractor”** means any Person, including any Supplier, other than Contractor or any of its Affiliates, that performs any portion of the Work for Contractor in furtherance of Contractor's obligations under this Agreement.



**“Substantial Completion”** means (a) with respect to a Block, the Block Substantial Completion with respect to such Block, (b) with respect to a Phase, the Phase Substantial Completion with respect to such Phase, and (c) with respect to the PV Power Plant, the PV Power Plant Substantial Completion.

**“Substantial Completion Date”** has the meaning set forth in Section 15.5.

**“Substantial Completion Guaranteed Date”** means the Phase 1 Substantial Completion Guaranteed Date, the Phase 2 Substantial Completion Guaranteed Date, the Phase 3 Substantial Completion Guaranteed Date, the Phase 4 Substantial Completion Guaranteed Date, or the PV Power Plant Substantial Completion Guaranteed Date, as applicable.

**“Substantial Completion Certificate”** means a certificate from Owner certifying that Substantial Completion for a Block or Phase or the PV Power Plant, as applicable, has occurred in the form attached hereto as Exhibits X-1, X-2, & X-3.

**“Successfully Run”** or **“Successful Run”** means, for each Phase and for the PV Power Plant (or, to the extent applicable, Block), (x) with respect to a Performance Acceptance Test, that (i) the applicable Performance Acceptance Test was completed in accordance with the applicable Performance Acceptance Test Procedures and (ii) the results from such Performance Acceptance Test demonstrate that such Phase, or the PV Power Plant, has successfully achieved at least the Minimum Performance Guarantee (or, with respect to a Block, the results from such Performance Acceptance Test demonstrate that the Block has successfully achieved at least \*\*\*% of its Guaranteed Capacity) and (y) with respect to a PV Power Plant Functional Test, that (i) the PV Power Plant Functional Test was completed in accordance with the applicable PV Power Plant Functional Test Procedure and (ii) the results from such PV Power Plant Functional Test demonstrate that the all major systems comprising the PV Power Plant are running in automatic and with a computed capacity weighted availability that is greater than or equal to \*\*\*%.

**“Supplier”** means a Person that supplies PV Power Plant Hardware directly to Contractor in connection with the performance of the Work.

**“Suspension for Cause”** has the meaning set forth in Section 21.4.2.

**“System Turnover Package”** consists of the installation, assembly, and Pre-Commissioning checklists for each System in a Block.

**“Systems”** has the meaning set forth in Section 14.1.

**“Taxes”** means any and all taxes, charges, duties, imposts, levies and withholdings imposed by any Governmental Authority, including sales tax, use tax, income tax, withholding taxes, corporation tax, franchise taxes, margin tax, capital gains tax, capital transfer tax, inheritance tax, value added tax, customs duties, capital duty, excise duties, betterment levy, stamp duty, stamp duty reserve tax, national insurance, social security or other similar contributions, and any interest, penalty, fine or other amount due in connection therewith, but not including Permit Expenses.

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**“Tested Capacity”** has the meaning set forth in Exhibit H-2.

**“Transmission Provider”** means PG&E, by or through one or more of its Affiliates, or any other Person providing transmission services from time to time for energy generated by the PV Power Plant.

**“Third Party Intellectual Property”** means Intellectual Property developed, conceived, reduced to practice or created by Subcontractors or other third parties in the performance of any portion of the Work or otherwise delivered to Contractor or Owner as part of the Work.

**“30 Day Look-ahead Schedule”** has the meaning set forth in Section 7.5.

**“United States”** means the United States of America.

**“Unknown Pre-Existing Site Conditions”** means (i) any adverse environmental conditions affecting the Work which are not disclosed in the Environmental Reports (and that were not brought on to the Site by the Contractor or by any Subcontractor), except geological conditions and archaeological artifacts or features, and which were discovered after the Effective Date; and (ii) any adverse Site Conditions that existed or arose prior to the Effective Date of which NRG Solar LLC or its Affiliates had actual knowledge and did not disclose the same to Contractor.

**“Waiver and Release Form”** shall mean the waivers and releases of liens described in Section 6.3(b) or Section 6.7, as applicable.

**“Warranty”** means the Defect Warranty \*\*\*, as the context requires.

**“Warranty Period”** means, for each Block, the applicable Defect Warranty Period or the applicable \*\*\*, as the context requires.

**“Work”** means all of Contractor's obligations set forth in Exhibits A-1 and A-3.

**1.2 Exhibits.** This Agreement includes the Exhibits annexed hereto and any reference in this Agreement to an “Exhibit” by letter designation or title shall mean one of the Exhibits identified in the table of contents and such reference shall indicate such Exhibit herein. Each Exhibit attached hereto is incorporated herein in its entirety by this reference.

### **1.3 Interpretation.**

(a) Terms defined in a given number, tense or form shall have the corresponding meaning when used in this Agreement with initial capitals in another number, tense or form. The meaning assigned to each term defined herein shall be equally applicable to both the singular and the plural forms of such term and vice versa, and words denoting either gender shall include both genders as the context requires. Where a word or phrase is defined herein, each of its other grammatical forms shall have a corresponding meaning.

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(b) The terms such as “hereof,” “herein,” “hereto,” “hereinafter” and other terms of like import are not limited in applicability to the specific provision within which such references are set forth but instead refer to this Agreement taken as a whole.

(c) When a reference is made in this Agreement to an Article, Section, subsection or Exhibit, such reference is to an Article, Section, subsection or Exhibit of this Agreement unless otherwise specified.

(d) The word “include,” “includes,” and “including” when used in this Agreement shall be deemed to be followed by the words “without limitation,” and, unless otherwise specified, shall not be deemed limited by the specific enumeration of items, but shall be deemed without limitation. The term “or” is not exclusive.

(e) Except as otherwise provided herein, a reference to any Party to this Agreement or any other agreement or document shall include such Party's successors and permitted assigns.

(f) Except as otherwise provided herein, reference to any Applicable Law means such Applicable Law as amended, modified, codified, replaced or reenacted, and all rules and regulations promulgated thereunder.

(g) The Parties shall act reasonably and in accordance with the principles of good faith and fair dealing in the performance of this Agreement. Unless expressly provided otherwise in this Agreement, (i) where the Agreement requires the consent, approval, acceptance or similar action by a Party, such consent, approval or acceptance shall not be unreasonably withheld, conditioned or delayed and (ii) wherever the Agreement gives a Party a right to determine, require, specify or take similar action with respect to a matter, such determination, requirement, specification or similar action shall be reasonable.

(h) Except as expressly provided herein or as the context may otherwise require, all references to “months” shall mean calendar months, and all references to “days” shall mean calendar days (i.e., including Business Days and non-Business Days).

(i) Words “shall” and “will” are used interchangeably with the same meaning.

(j) The Parties have participated jointly in the negotiation and drafting of this Agreement. Any rule of construction or interpretation otherwise requiring this Agreement to be construed or interpreted against any Party by virtue of the authorship of this Agreement shall not apply to the construction and interpretation hereof.

**1.4 Headings.** All headings or captions contained in this Agreement are for convenience of reference only, do not form a part of this Agreement and shall not affect in any way the meaning or interpretation of this Agreement.

**1.5 Conflicts in Documentation.** This Agreement, including the Exhibits hereto shall be taken as mutually explanatory. If either Party becomes aware of an express conflict

between the provisions of this Agreement or any Exhibit hereto, such Party shall immediately Notify the other Party of such conflict. In the event of a conflict between any provision within Articles 1 through 33 of this Agreement and an Exhibit, the provisions of Articles 1 through 33 of this Agreement shall take precedence.

## **2. RESPONSIBILITIES OF OWNER**

Owner shall carry out the responsibilities allocated to Owner under this Article 2 at Owner's cost and expense.

**2.1 Owner Representative.** Owner shall designate (by a Notice delivered to Contractor) an "Owner Representative," who shall act as the single point of contact on behalf of Owner with respect to the prosecution and scheduling of the Work and any issues relating to this Agreement. Owner may designate a new Owner Representative from time to time by a Notice delivered to Contractor.

**2.2 Operating Personnel.** Owner shall provide Operating Personnel with requisite plant operating experience, who shall be licensed where necessary, to provide operating support to Contractor for testing and commissioning of each Block, Phase, and the PV Power Plant as provided in Sections 3.15 and 3.16.

**2.3 Applicable Permits.** Other than Contractor-Acquired Permits, Owner shall obtain and maintain in full force and effect all Applicable Permits. Owner shall comply with all requirements and perform all tasks identified as Owner's responsibility in the Division of CUP Responsibility Table attached hereto as Exhibit C-3. Owner agrees to provide prompt Notice to Contractor of any changes in its Applicable Permits to be obtained and maintained by it that could reasonably be expected to have a material adverse impact on the performance of the Work. \*\*\*.

**2.4 Interconnection Facilities.** Owner shall provide the Interconnection Facilities and the Owner-Provided Facilities and Services in accordance with the Schedule Milestones and the Owner Critical Path Dates.

**2.5 Owner-Provided Information.** Owner shall provide the Owner-Provided Information set forth in Exhibit A-2 to Contractor on or prior to the applicable Milestone Item as set forth in Exhibit G.

**2.6 Owner Performance Security.** Owner has, on or before the Effective Date, caused to be furnished to Contractor the \*\*\* and shall cause the same to be maintained in full force and effect until indefeasible payment in full of all such obligations and liabilities. \*\*\*.

**2.7 Owner's Separate Contractors.** Owner shall retain at Owner's sole cost, determination and responsibility, Owner's Separate Contractors. Contractor shall cooperate with all Owner's Separate Contractors who may be working at or near the Site. Contractor shall not allow it, or its Subcontractors, activities on the Site to unreasonably interfere with Owner's Separate Contractors. Owner shall cause Owner's Separate Contractors to comply with Contractor's directions in accordance with Contractor's Safety Program.

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**2.8 Taxes and Permit Expenses.** Owner shall pay in a timely manner any and all Owner Taxes, or in the event such Owner Taxes are paid by Contractor, or any Subcontractor, Owner shall promptly reimburse Contractor for same. Owner shall also pay in a timely manner any such other Taxes as are Owner's responsibility under Article 5. Owner shall also pay all Permit Expenses to the applicable Governmental Authorities and other third parties in connection with all Applicable Permits, excluding Contractor-Acquired Permits.

**2.9 Access to Site.** Owner shall provide reasonable access and use of the Site to Contractor and the Subcontractors for the purposes of allowing Contractor to perform its obligations and exercise its rights under this Agreement.

**2.10 Cooperation.** Owner shall cooperate and cause Owner's Separate Contractors to cooperate with Contractor and the Subcontractors who may be working at or near the Site. Owner shall not allow its, or its Affiliates' or any Owner's Separate Contractor's, operations and activities on the Site to interfere with the performance of the Work by Contractor.

### **3. RESPONSIBILITIES OF CONTRACTOR**

Contractor shall carry out the responsibilities allocated to Contractor under this Article 3 at Contractor's cost and expense.

**3.1 General.** Contractor shall perform, furnish and be responsible for all of the Work including all engineering, services, procurement, testing, commissioning, labor, PV Power Plant Hardware and supervision necessary to provide the PV Power Plant in accordance with the provisions of this Agreement. Contractor acknowledges and agrees that this Agreement constitutes a fixed price obligation by Contractor to engineer, design, procure, construct, test and commission the PV Power Plant, subject to the terms of this Agreement. Contractor acknowledges and agrees that, except as otherwise explicitly set forth in this Agreement, Contractor shall have sole control over the engineering, procurement, design and construction means, methods, techniques, sequences, and procedures and for the coordination of all portions of the Work under this Agreement.

**3.2 Performance of Work.** Contractor shall perform and complete all of the Work, and cause each Subcontractor to perform and complete each such Subcontractor's respective portion of the Work, in accordance with the terms of this Agreement and Industry Standards, and in compliance with Applicable Law and Applicable Permits. The Work shall be subject to the warranty provisions set forth in Article 18.

#### **3.3 Design and Construction of PV Power Plant.**

3.3.1 General. Contractor shall design, engineer and construct the PV Power Plant so that it meets the requirements of the Statement of Work and is capable of operation in compliance with this Agreement, all Applicable Laws, Applicable Permits and Industry Standards in effect as of the Effective Date. Contractor shall provide all engineering and design services necessary to set forth in detail the specifications, drawings and requirements for the procurement of PV Power Plant Hardware and for the construction of the entire PV Power Plant in a manner that

satisfies the requirements of this Agreement. Contractor shall preserve all permanent survey construction monuments and benchmarks during its performance of the Work.

3.3.2 **Commencement of Construction.** Contractor shall achieve Commencement of Construction on or before September 26, 2011, or such later date as is consistent with the requirements of the Owner Financing Parties, provided, however, that Contractor's failure to timely achieve Commencement of Construction shall not constitute a Contractor Event of Default if such failure is caused by any action or inaction of Owner.

3.4 **Contractor's Project Manager.** Contractor shall designate a Contractor's Project Manager who shall have full responsibility for the prosecution of the Work and shall act as a single point of contact in all matters on behalf of Contractor. Contractor may designate a new Contractor's Project Manager from time to time by Notice delivered to Owner, subject to Owner's approval, not to be unreasonably withheld or delayed.

### 3.5 **Utilities and Services.**

3.5.1 **Provision of Services.** Contractor shall install, connect and maintain at its own expense during its performance under this Agreement, from the commencement of the Work until the Substantial Completion Date of the PV Power Plant, all utilities, facilities and services, as set forth in Exhibit A-1 (other than Owner-Provided Facilities and Services) required for the performance of the Work.

3.5.2 **Payment.** Contractor shall pay when due all construction utility usage charges and arrange with local authorities and utility companies having jurisdiction over the Site for the provision of utilities.

3.5.3 **Supply of Construction Facilities.** Other than Owner-Provided Facilities and Services, Contractor shall provide all construction facilities necessary to complete the PV Power Plant. Contractor shall obtain all supplies, equipment, materials or services required for the performance of the Work.

3.6 **Inspection.** Contractor shall perform all inspection, quality surveillance and other like services required for performance of the Work, including inspecting all PV Power Plant Hardware that comprise the PV Power Plant or that is to be used in the performance of the Work.

3.7 **Organization.** Contractor shall provide staff to supervise and coordinate the work of Contractor and Subcontractors on the Site. Contractor shall maintain adequate staff that are dedicated to the timely completion of the Work, and that have the technical and managerial expertise to control and execute the Work in accordance with the requirements of this Agreement. Contractor shall maintain a qualified and competent organization at the Site with adequate capacity and numbers of construction and commissioning personnel, equipment and facilities to execute the Work in accordance with the terms of this Agreement.

3.8 **Contractor-Acquired Permits.** Contractor shall obtain, at its sole cost, all Contractor-Acquired Permits. As necessary, Contractor shall provide reasonable technical

support regarding plant design details or proposed construction processes to assist Owner in obtaining other Applicable Permits. Contractor shall comply with all requirements and perform all tasks identified as Contractor's responsibility in the Division of CUP Responsibility Table attached hereto as Exhibit C-3. \*\*\*.

**3.9 Hazardous Materials Disposal System.** Contractor shall prepare and maintain accurate and complete documentation of all Hazardous Materials used by Contractor or Subcontractors at the Site in connection with the Work, and of the disposal of any such Hazardous Materials, including transportation documentation and the identity of all Subcontractors providing Hazardous Materials disposal services to Contractor at the Site. Contractor shall be responsible for disposal of all wastes generated by it or its Subcontractors during the performance of the Work, including waste water, sanitary wastes, demolition debris, construction debris, spoil, Hazardous Materials for which Contractor is responsible hereunder, surplus excavation material, office wastes and waste but excluding wastes generated by the PV Power Plant from and after the Substantial Completion Date of any applicable Block, which will be responsibility of the Owner. All such wastes shall be handled, stored or disposed of in accordance with Applicable Law in a suitable off-site location. All costs and all regulatory obligations under Applicable Law in connection with the handling, storage and disposal of such wastes are the responsibility of Contractor.

**3.10 Maintenance of Site.** Contractor shall maintain the Site clear of debris, waste material and rubbish. Contractor at its sole cost and expense shall dispose of such debris, waste material and rubbish in accordance with Applicable Law.

**3.11 Site Security.** During the performance of the Work at the Site, Contractor shall provide all necessary and reasonably appropriate security at the Site and is responsible for the security of the Site and the protection of the Work.

**3.12 Safety.**

3.12.1 Contractor Responsibility for Safe Performance of Work. During the performance of the Work, Contractor shall be responsible for the safety of the Persons at the Site and for the safe performance of the Work. Contractor shall give notices and comply with Applicable Laws, ordinances, rules, regulations and lawful orders of public authorities bearing on the safety of persons or property or their protection from damage, injury or loss.

3.12.2 Contractor Safety Program.

(a) Obligation to Provide Safety Program. No later than thirty (30) days before the mobilization at the Site, Contractor shall provide a safety program specifically designed for the Work. The safety program shall describe the safety program to be used by Contractor and the Subcontractors in the performance of the Work at the Site (the "**Contractor's Safety Program**"). Contractor's Safety Program shall be designed to provide a safe environment during the performance of the Work at such location and shall, among other things, seek to minimize the number of safety-related incidents during the performance of the Work. Contractor's Safety Program shall include requirements

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for the safety pre-qualification of each of the Subcontractors and a drug and alcohol program (which shall include a drug testing policy).

(b) Owner Review of Safety Program. Owner shall have the right to review and comment on Contractor's Safety Program and Contractor shall cooperate with Owner to incorporate reasonably requested changes into the Safety Program addressing such comments, *provided*, that if such incorporation of Owner's comments would add to the scope of the Work or materially change the Critical Path, Contractor shall be entitled to a Change In Work.

(c) Coordination with Insurance Providers. Contractor shall coordinate with its insurance providers and ensure Contractor's Safety Program conforms with the requirements of Contractor's insurance providers.

3.12.3 Contractor Safety Representative. Contractor shall designate a safety representative with the necessary qualifications and experience to supervise the implementation of and monitoring of all safety precautions and programs related to the Work. The safety representative shall make routine inspections of the Site and shall hold safety meetings with Contractor's personnel, Subcontractors and others, as Contractor reasonably deems appropriate.

3.12.4 Contractor's Duty to Notify regarding Incidents or Accidents. Contractor shall promptly provide to the Owner Representative:

- (i) immediate oral notice of any incident or accident related to the Work;
- (ii) written reports of any incidents or accidents that occur related to the Work, no later than twenty-four (24) hours after such incident or accident;
- (iii) written accident reports of OSHA lost time or recordable accidents that occur related the Work, prepared in accordance with the safety program approved by Owner pursuant to this Section 3.12; and
- (iv) copies of all written communications, including notices, with Governmental Authorities and insurance companies with respect to accidents that occur related to the Work, and thereafter provide such written reports relating thereto as Owner may reasonably request.

In the event the Owner Representative or any other representatives of Owner observes unsafe behaviors or practices by any of Contractor's or any Subcontractor's personnel that are not in compliance with Contractor's Safety Program, Owner shall Notify Contractor and Contractor shall act promptly to take reasonable action to correct such unsafe behavior or practice, and shall promptly Notify Owner in writing of actions reasonably taken by Contractor to prevent such unsafe behavior or practice from occurring again. Notwithstanding Owner's review of Contractor's Safety Program for the Work or Owner's exercise of its rights to Notify Contractor of unsafe practices or behavior pursuant to the preceding sentence, Contractor shall be solely responsible for implementing Contractor's Safety Program and shall perform the Work, and shall



cause the Subcontractors to implement, follow and perform the Work, in accordance with Contractor's Safety Program.

**3.13 Quality Assurance Programs.** Contractor shall use quality assurance programs throughout the performance of the Work. Contractor's standard quality assurance program is attached hereto as Exhibit W. Within thirty (30) days following the Effective Date, Contractor shall provide to Owner a quality assurance program specifically tailored to the PV Power Plant with which Contractor shall comply throughout the performance of the Work.

**3.14 Contractor Deliverables.** Contractor shall issue the Contractor Deliverables to Owner and to other parties in accordance with the Contractor Deliverables Table.

**3.15 Training of Operating Personnel.** Commencing no later than forty-five (45) days prior to the anticipated Phase Substantial Completion Date for Phase 1 and, again, 45 days prior to the anticipated PV Power Plant Substantial Completion, Contractor shall, or where applicable, shall cause the Subcontractors to, train designated Operating Personnel, including Owner's operations supervision employees in accordance with the training program set forth in Exhibit E.

**3.16 Commissioning Personnel.** Contractor shall provide or cause to be provided appropriate and qualified installation and commissioning personnel, all equipment, tools, construction and temporary material and all other labor necessary for all of the Work to achieve Substantial Completion of each Block, Phase or PV Power Plant, as applicable.

**3.17 \*\*\***

**3.18 Shipping.**

3.18.1 General. Contractor shall provide all shipping and handling of PV Power Plant Hardware, construction material, and equipment, including customs clearance and any required storage and claims (except as set forth in any Material and Equipment Supply Agreement executed pursuant to Section 9.6 with respect to certain costs in connection with the equipment sold under that agreement).

3.18.2 Use of United States-flag Vessels. Contractor agrees:

(i) to utilize privately owned United States-flag commercial vessels to ship at least fifty percent (50%) of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to this Agreement, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels; and

(ii) To furnish within twenty (20) days following the date of loading for shipments originating within the United States or within thirty (30) Business Days following the date of loading for shipments originating outside the United States, a legible copy of a rated, 'on-board' commercial ocean bill-of-lading in English for each shipment of cargo described in subparagraph (i) of this Section 3.18.2 to both the contracting officer (through the Contractor in the case of Subcontractor bills-of-lading)

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and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590

**3.19 Davis-Bacon Act Requirements.** Contractor shall comply with the requirements of the Davis-Bacon Act as set forth in Exhibit AA.

**3.20 Escrow Agreement.** Contractor shall enter into an agreement for the escrow of certain intellectual property rights in the form of the Escrow Agreement attached as Exhibit BB.

**3.21 Subordination Agreement.** Contractor shall enter into an agreement for the subordination of its claims of mechanics liens in the form of the Subordination Agreement attached as Exhibit DD. Contractor shall require that all Subcontractors with subcontract prices over \*\*\* enter into agreements for the subordination of their claims of mechanics liens substantially in the form of the Subordination Agreement attached as Exhibit DD.

**3.22 Contractor Credit Support.** \*\*\*, Contractor shall as of the date of this Agreement issue a Letter of Credit in the amount of \*\*\* running in favor of Owner and providing Credit Support to Owner for the payment by Contractor of its obligations and liabilities under this Agreement and attached hereto as Exhibit FF.

#### **4. COVENANTS, WARRANTIES AND REPRESENTATIONS**

##### **4.1 Contractor.**

4.1.1 Organization, Standing and Qualification. Contractor warrants and represents that, as of the Effective Date, it is a corporation, duly incorporated, validly existing and in good standing under the laws of the State of Delaware, and has full power and authority to execute, deliver and perform its obligations hereunder and to engage in the business it presently conducts and contemplates conducting under this Agreement, and is and will be duly licensed or qualified to do business in good standing under the laws of the State of California and in each other jurisdiction in which the nature of the business transacted by it makes such licensing or qualification necessary and where the failure to be so licensed or qualified would have a material adverse effect on its ability to perform its obligations hereunder.

4.1.2 Due Authorization; Enforceability. Contractor represents and warrants that, as of the Effective Date, this Agreement has been duly authorized, executed and delivered by or on behalf of Contractor and is, upon execution and delivery, the legal, valid and binding obligation of Contractor, enforceable against Contractor in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency or similar laws affecting creditors' rights generally and general principles of equity.

4.1.3 No Conflict; No Liens. Contractor represents and warrants that, as of the Effective Date, the execution, delivery and performance by Contractor of this Agreement will not conflict with or violate (a) its organizational documents, (b) any indenture, mortgage, chattel mortgage, deed of trust, lease, conditional sales contract, loan or credit arrangement or other agreement or instrument to which Contractor is a

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Party or by which it or its properties may be bound or affected, or (c) any Applicable Laws. Except as specifically set forth in this Agreement, Contractor will not subject the PV Power Plant, the Project or any component part thereof or the Site or any portion thereof to any lien other than as contemplated or permitted by this Agreement.

4.1.4 Government Approvals. Other than with respect to the Contractor-Acquired Permits, Contractor represents and warrants that, as of the Effective Date, neither the execution nor delivery by Contractor of this Agreement requires the consent or approval of, or the giving of notice to or registration with, or the taking of any other action in respect of, any Governmental Authority.

4.1.5 No Suits, Proceedings. Contractor represents and warrants that, as of the Effective Date, there are no actions, suits, proceedings, patent or license infringements, or investigations pending or, to Contractor's knowledge, threatened against it at law or in equity before any court (United States or otherwise) or before any Governmental Authority (whether or not covered by insurance) that individually or in the aggregate could result in any materially adverse effect on Contractor's ability to perform its obligations under this Agreement. Contractor has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or any Governmental Authority that may result in any such materially adverse effect or such impairment.

4.1.6 Business Practices. Contractor represents and warrants that, as of the Effective Date, none of it or its representatives have made any payment or given anything of value, and Contractor covenants that it will not make any payment or give anything of value, in either case to any government official (including any officer or employee of any Governmental Authority) to influence his, her or its decision or to gain any other advantage for Owner or Contractor in connection with the Work to be performed hereunder. Contractor shall follow Contractor's Parent's Code of Business Conduct and Ethics policy with respect to all of the Work. None of Contractor nor any of its employees or agents shall intentionally take any action with respect to this Agreement or any of the Work that in any way violates any Applicable Laws concerning corrupt practices. Contractor shall immediately Notify Owner of any violation of this Section 4.1.6.

4.1.7 Owner-Provided Information. Contractor acknowledges that Owner does not make any representation or warranty with respect to the accuracy or completeness of documents or information (including oral statements) or opinions expressed by Owner, except as provided in the express representations and warranties of Owner in this Agreement and as set forth in the Owner-Provided Information, on which, in each case, Contractor shall be entitled to rely without verification. Except as set forth in the preceding sentence, Contractor acknowledges and agrees that it is not relying on Owner for any information, data, inferences or conclusions, or other information with respect to Site Conditions, including the surface conditions of the Site and the surrounding areas, or the Work.

4.1.8 Licenses. Contractor covenants that all Persons who will perform any portion of the Work will have all business and professional certifications if and as required by Applicable Law to perform the services under this Agreement.

4.1.9 Cash Grant.

(a) Contractor agrees that, at the request of Owner and subject to the Cost Segregation Firm entering into a non-disclosure agreement reasonably acceptable to Contractor, it shall reasonably cooperate with the Cost Segregation Firm selected by Owner, and will use reasonable commercial efforts to cause all Subcontractors and Suppliers to cooperate with such Cost Segregation Firm, to provide any and all cost segregation information, supporting documentation and records, including without limitation, supporting documentation for the detailed breakdown of all costs includible in the Work, copies of contracts, invoices for expenses and proof of payments, available to Contractor and/or any Subcontractor or Supplier that is reasonably required or reasonably requested by such Cost Segregation Firm in connection with the preparation of a Cost Segregation Report for each Phase. Pursuant to the non-disclosure agreement, the Cost Segregation Firm will be required to agree that it shall not, and that it shall cause its employees, agents and representatives not to, use the Confidential Information of Contractor for any reason other than the completion of the Cost Segregation Report. In addition, all detailed cost information including, but not limited to, cost and profit margins provided to the Cost Segregation Firm by Contractor supporting the Cost Segregation Report will not be disclosed to Owner or other third parties and will be held by the Cost Segregation Firm in confidence. Unless authorized by Contractor in writing prior to disclosure, the Cost Segregation Firm shall not, and shall cause its employees, agents and representatives not to, disclose the Confidential Information of Contractor to any third parties or to Owner's Representatives, except to those employees and representatives of the Cost Segregation Firm who reasonably require such information for the purposes of the Cost Segregation Report.

(b) Notwithstanding anything else to the contrary in this Agreement, Contractor shall disclose and provide to the Owner such Confidential Information, that is not initially provided under any arrangement or action provided under Section 4.1.9(a), to the extent (x) the Independent Accountant is unable to certify and attest to the accuracy of costs for purposes of any application for a Cash Grant in respect of a Phase without that disclosure of Confidential Information, (y) Owner is advised by counsel that it would violate the penalties of perjury clause of a Section 1603 Application or Section 1603 Commencement of Construction Application without that disclosure of Confidential Information, or (z) the U.S. Department of the Treasury determines that it requires disclosure of Confidential Information to issue as great a Cash Grant as possible.

(c) Contractor shall not claim, or cause to be claimed, any tax credit under Section 45 or Section 48 of the Code, or any cost recovery deduction, with respect to the property described in the Section 1603 Applications or Section 1603 Commencement of Construction Applications. Contractor shall not file its own Section 1603 Application or Section 1603 Commencement of Construction Application or make any other claim to a Cash Grant.

(d) Owner shall provide Contractor five (5) Business Days written notice before Owner submits a Section 1603 Commencement of Construction Application and/or Section 1603 Application. In connection with Owner filing a Section 1603 Commencement of Construction Application or Section 1603 Application, Contractor shall provide a statement, signed under penalties of perjury and otherwise in compliance with the Cash Grant Guidance, describing the Work that both commenced under this Agreement after the Effective Date (but including any Work performed under the PCA) and has been completed prior to the earlier of the date of such certification and December 31, 2011.

4.1.10 Financial Condition. Contractor represents and warrants that Contractor is financially solvent, able to pay its debts as they mature and possesses sufficient working capital to complete its obligations under this Agreement.

## 4.2 Owner.

4.2.1 Organization, Standing and Qualification. Owner represents and warrants that, as of the Effective Date, Owner is a limited liability company duly formed, validly existing, and in good standing under the laws of the State of Delaware, and has full power and authority to execute, deliver and perform its obligations hereunder and to engage in the business Owner presently conducts and contemplates conducting, and is and will be duly licensed or qualified to do business and in good standing in each jurisdiction wherein the nature of the business transacted by it makes such licensing or qualification necessary and where the failure to be licensed or qualified would have a material adverse effect on its ability to perform its obligations hereunder.

4.2.2 Due Authorization; Enforceability. Owner represents and warrants that, as of the Effective Date, this Agreement has been duly authorized, executed and delivered by or on behalf of Owner and is, upon execution and delivery, the legal, valid, and binding obligation of Owner, enforceable against Owner in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency or similar laws affecting creditors' rights generally and by general equitable principles.

4.2.3 No Conflict. Owner represents and warrants that, as of the Effective Date, the execution, delivery and performance by Owner of this Agreement will not conflict with or violate: (a) its organizational documents; (b) any indenture, mortgage, chattel mortgage, deed of trust, lease, conditional sales contract, loan or credit arrangement or other agreement or instrument to which Owner is a Party or by which it or its properties may be bound or affected; or (c) any Applicable Laws.

4.2.4 Governmental Approvals. Except for those permits listed in Exhibit C-2, Owner represents and warrants that all Applicable Permits either have been obtained by Owner and are in full force and effect on the Effective Date or will be obtained and will be in full force and effect on or prior to the date on which they are required, under this Agreement and Applicable Law, so as to permit Contractor to

commence and prosecute the Work to completion in accordance with the CPM Schedule.

4.2.5 No Suits, Proceedings. Owner represents and warrants that, as of the Effective Date, there are no actions, suits, proceedings or investigations pending or, to Owner's knowledge, threatened against it at law or in equity before any court (United States or otherwise) or before any Governmental Authority (whether or not covered by insurance) that individually or in the aggregate could result in any materially adverse effect on Owner's ability to perform its obligations under this Agreement. Owner has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any Governmental Authority that may result in any such materially adverse effect or such impairment.

4.2.6 Land. Owner represents and warrants that it holds good and defensible leasehold title in respect of the Site which is sufficient for the execution of the Work and will provide Contractor with all unrestricted access necessary to the Site to perform the Work.

4.2.7 Site Conditions. Owner represents and warrants that the Owner Provided Information contained in Exhibit A-2 is accurate and includes material information relating to the actual Site Conditions.

4.2.8 Financial Condition. Owner represents and warrants that Owner is financially solvent, able to pay its debts as they mature and possesses sufficient working capital to complete its obligations under this Agreement.

## 5. COST OF WORK

5.1 Contract Price. In consideration of Contractor's performance of the Work, Owner shall pay to Contractor a contract price of \*\*\* (the "**Contract Price**"). The Contract Price shall be payable in accordance with the Progress Payment Schedule and Article 6 of this Agreement. The Contract Price shall not be changed nor shall Contractor be entitled to any other compensation, reimbursement of expenses or additional payment of any kind without prior written authorization of Owner or as otherwise specifically set forth in this Agreement (including Section 5.2, Article 8 and Article 17). Payments shall be made at the times and in the manner provided in Article 6. For the avoidance of doubt, the Contract Price is inclusive of Contractor Taxes, but is exclusive of all Owner Taxes and builder's all risk insurance, which shall be payable by Owner in accordance with Section 22.4.

### 5.2 Taxes.

5.2.1 Taxes Included and Excluded in Contract Price. The Contract Price excludes any and all Owner Taxes, which shall be the sole responsibility of Owner, and Owner shall fully indemnify Contractor against any and all such Owner Taxes. The Contract Price includes any and all Contractor Taxes, which shall be the sole responsibility of Contractor, and Contractor shall fully indemnify Owner against any and all such Contractor Taxes.

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5.2.2 Payment of Taxes. Contractor shall timely pay all Contractor Taxes assessed against it under Applicable Law in connection with Work under this Agreement and shall make any and all payroll deductions required by Applicable Law. Owner shall timely pay all Owner Taxes due for which it is responsible under Applicable Law. In the event Contractor or its Subcontractors are required under Applicable Law to pay any Owner Taxes, Contractor or its Subcontractors shall timely pay such amounts, and Owner shall reimburse Contractor within thirty (30) days of delivery of Contractor's invoice for such amounts in accordance with Article 6. In the event Contractor is required under Applicable Law to withhold or impose any Owner Taxes from Owner on any payment under Article 6, Owner shall pay to Contractor such Taxes and Contractor shall timely remit such Taxes to the applicable Governmental Authority under Applicable Law. In the event Owner is required under Applicable Law to withhold or impose any Contractor Taxes from Contractor on any payment under Article 6, Owner shall timely remit such Taxes to the applicable Governmental Authority under Applicable Law. In the event Owner is required under Applicable Law to pay any Contractor Taxes that cannot be fully applied toward payments to be made under Article 6, Owner shall timely pay such amounts, with Contractor to promptly reimburse Owner for the same within ten (10) Business Days, following receipt by Contractor of an invoice for such amounts.

5.3 Fiscal Agreement Costs. \*\*\* shall have full financial responsibility and pay any and all costs associated with those obligations set forth in the County Fiscal Agreement attached hereto as Exhibit CC including all costs related to guaranteed tax true-up payments, impact payments and ongoing costs related to the decommissioning security but specifically excluding the ultimate obligation to pay for the decommissioning of the Project. To the extent any credit support or enhancement is required under the County Fiscal Agreement, \*\*\* shall be exclusively responsible for the cost of providing such credit support or enhancement but, except where any draw on such credit support or enhancement is due to \*\*\* breach of the provisions of the County Fiscal Agreement regarding such credit enhancement, \*\*\* shall be exclusively responsible for the cost of any draws made against such credit support or enhancement and any obligation to refresh such credit support or enhancement after such draw. Other than with respect to the cost of decommissioning the Project and the costs described to be \*\*\* costs in the immediately preceding sentence, \*\*\* shall have no obligation to stand behind, repay or otherwise indemnify \*\*\* for any costs under the County Fiscal Agreement.

5.4 Cash Grant Intention and Turnover. It is the intention of the Parties that Owner is the owner of the PV Power Plant and entitled to any Cash Grant payable in respect thereof. Consequently, in the event Contractor receives the Cash Grant in circumstances where Contractor has not reacquired the PV Power Plant or a Phase thereof pursuant to this Agreement or any other agreement between Owner, NRG or an affiliate of NRG on the one hand and Contractor or an Affiliate of Contractor on the other hand, Contractor shall segregate and hold in trust for Owner any such amounts received, and remit any such amounts received to Owner promptly, but in no event more than five (5) days after receipt thereof.

## 6. TERMS OF PAYMENT

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Concurrently with the execution and delivery of this Agreement, Owner is making an initial payment to Contractor as specified on the attached Exhibit I-1. In addition, Owner shall make payments to Contractor as follows:

**6.1 Monthly Invoicing.** Subject to the terms of this Agreement, Owner shall make progress payments to Contractor on a monthly basis in accordance with the Progress Payment Schedule attached hereto as Exhibit I-1, *provided, however*, that the cumulative payments of the Contract Price shall not exceed the Cumulative Maximum Amounts as set forth in Exhibit I-2. In connection with a Change in Work for which schedule relief is provided, the CPM Schedule and the Progress Payment Schedule shall be equitably adjusted to account therefor in a Change in Work Form pursuant to Article 17. Subject to the provisions of this Article 6, Contractor shall submit a monthly Contractor's Invoice to Owner in accordance with Section 6.3. Payments due Contractor under this Agreement shall be electronically transferred by wire transfer to the bank account and in accordance with the bank instructions identified in Contractor's most recent invoice in immediately available funds no later than the payment due date. Invoice number and project name shall be referenced in the bank wire reference fields. All payments shall be made in U.S. Dollars.

**6.2 Progress Assessment.** In order to verify the progress made by Contractor in connection with any Contractor's Invoice submitted by Contractor, Owner shall have the right to inspect the Work or any part thereof that Owner reasonably requests, *provided, however*, that, subject to Section 6.8, such inspections shall not delay payment by Owner to Contractor of any undisputed amount set forth on Contractor's Invoice.

**6.3 Contractor's Invoices.** On or about the fifth (5th) Business Day of each month after commencement of the Work, Contractor shall electronically deliver to Owner a Contractor's Invoice for the Work completed in relation to the applicable activities set forth in the Progress Payment Schedule in the immediately preceding month (or portion thereof with respect to the first month after commencement of the Work). Contractor shall not request in any Contractor's Invoice the payment of any sum attributable to Work for which Contractor has already been paid. Each Contractor's Invoice, with the exception of the Final Contractor's Invoice, shall:

(a) (i) identify which applicable activities described on the Progress Payment Schedule for the Work have been completed; (ii) identify the related progress payments set forth on the Progress Payment Schedule for the Work that are then due; and (iii) identify any other known amounts then payable by Owner to Contractor under any provision hereof (without limiting Owner's right to dispute any amounts requested for payment pursuant to Section 6.8); (iv) identify any Owner Taxes that are either required to be withheld by or reimbursed to, Contractor; and (v) provide a summation of the previous amounts invoiced by Contractor and the payments made by Owner; and

(b) be accompanied by: (i) with respect to Work for which payment is requested pursuant to such invoice, (A) conditional waiver and releases upon progress payment (to the extent not previously submitted) substantially in the form of Exhibit F-1 and otherwise complying with the requirements of California



Civil Code Section 3262(d)(1) (or any successor statute) from Contractor and (B) copies of conditional waiver and releases upon progress payment (to the extent not previously submitted) substantially in the form of Exhibit F-1, and otherwise complying with the requirements of California Civil Code Section 3262(d)(1) (or any successor statute) from each Major Subcontractor with respect to Work performed and invoiced by each Major Subcontractor, in each case sufficient to release all liens and lien rights under Applicable Law upon receipt of such payment with respect to such Work; and (ii) with respect to Work for which payments had previously been made to Contractor, (A) unconditional waiver and releases upon progress payment (to the extent not previously submitted) substantially in the form of Exhibit F-2, and otherwise complying with the requirements of California Civil Code Section 3262(d)(2) (or any successor statute) from Contractor and (B) copies of unconditional waiver and releases upon progress payment (to the extent not previously submitted) substantially in the form of Exhibit F-2, and otherwise complying with the requirements of California Civil Code Section 3262(d)(2) (or any successor statute) from each Major Subcontractor with respect to amounts (if any) due to such Major Subcontractor which are not being contested in good faith by Contractor, in each case sufficient to release all liens and lien rights under Applicable Law with respect to such Work.

Contractor understands and agrees that any Contractor's Invoice that is inaccurate shall not, only to the extent of such deficiency, constitute a valid request for payment.

**6.4 Owner Review.** Within \*\*\* days after Owner receives a Contractor's Invoice and all accompanying documentation required by Section 6.3, Owner shall Notify Contractor concerning any dispute over the accuracy of, or entitlement to, any amount of the submitted Contractor's Invoice and the basis for such dispute. If Owner has not Notified Contractor within such \*\*\* day period of any good faith objection thereto, Owner shall be deemed to have approved such Contractor's Invoice.

## **6.5 Payments.**

6.5.1 Payments. Subject to Section 6.8, Owner shall make payment to Contractor for the full undisputed amount specified in each invoice, except as set forth in Section 6.5.2 and Section 6.6, no later than \*\*\* days following the date of Owner's receipt of Contractor's Invoice and supporting documentation in the manner and detail and at the time required pursuant to Section 6.3. To the extent payment of a monthly invoiced amount would cause cumulative payments of the Contract Price to exceed the Cumulative Maximum Amounts set forth in Exhibit I-2, Owner may defer payment of such excess to the first monthly period whereby payment of such excess would not result in cumulative payments in excess of the Cumulative Maximum Amount for such period.

6.5.2 Offsets. Without limiting its rights under Section 6.6, Owner may offset against such payment any undisputed amount then due from Contractor

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pursuant to any provision of this Agreement; *provided, however*, that disputed amounts shall be handled in accordance with Section 6.8.

6.5.3 Form of Payment. All payments to be made to either Party under this Agreement shall be paid in Dollars and shall be paid electronically (by means of ACH or wire) in immediately available funds. All payments shall be due within \*\*\* days of the paying Party's receipt of the other Party's invoice (each, an **"Invoice Payment"**) or, if such date is not a Business Day, on the immediately succeeding Business Day, to such account as may be designated by each Party from time to time by Notice to the other Party in accordance with Article 29, *provided, however*, that banking transfer instructions have been provided by the invoicing Party to the paying Party at least five (5) Business Days before the first payment of the paying Party is due and payable.

6.5.4 Late Payments. Any undisputed payment due hereunder that is delinquent by more than \*\*\* Business Days, shall, beginning on the next calendar day, bear interest at the prime rate as published in "The Money Rates" Section of The Wall Street Journal (U.S. Edition) on the date that payment was due, plus \*\*\* per annum, until paid, but in any event not to exceed the maximum rate permitted by Applicable Law (the **"Contract Interest Rate"**). The payment of interest unaccompanied by payment of the delinquent payment shall not excuse or cure any Event of Default or delay in such payment. Contractor shall be responsible for paying all Subcontractors in connection with the Work completed by such Subcontractor.

## 6.6 Retention.

6.6.1 Amount of Retention. Owner shall retain and withhold payment of \*\*\*, without duplication, of all Invoice Payments made to Contractor (the **"Retention"**) such that, at all times and subject to Section 6.6.2, the Retention shall equal \*\*\* of the Gross Invoiced Amount, *provided*, that, Contractor, at its sole cost and at any time, may provide a Retention L/C and the amount of such Retention L/C shall reduce, dollar-for-dollar, the amount of the payments previously or thereafter withheld for Retention under this Section 6.6.1 and Owner shall pay to Contractor any such portion of the Retention for which the Retention L/C is substituted within five (5) days following Owner's receipt of such Retention L/C that is in accordance with this Section 6.6.1.

6.6.2 Release of Retention. Upon Substantial Completion of each Block, Owner shall release the Retention applicable to all amounts invoiced relating to such Block (or if any invoice relates to more than one Block, to the extent relating to such Block) (or, as applicable, the Retention L/C shall be reduced accordingly), except that Owner shall be entitled to deduct from the Retention released to Contractor the Punch List Holdback applicable to such Block; *provided*, (i) that on the PV Power Plant Substantial Completion Date, Owner shall release all remaining Retention with the exception of the Punch List Holdback associated with all Priority B Items still outstanding as of the PV Power Plant Substantial Completion Date, and (ii) that in the event of an Owner Caused Delay which results in deferral of a Block Substantial

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Completion Date for a period exceeding \*\*\* days, then Owner shall release the Retention for the subject Block less any applicable Punchlist Holdback. In the event a Block Substantial Completion is so deferred, Contractor shall continue with all other Work under this Agreement, and shall, upon completion of the Interconnection Facilities and any Network Upgrades, proceed, consistent with the maintenance of scheduling efficiency in the Work and adherence to the CPM Schedule, to perform any Work necessary to achieve Substantial Completion of the applicable Block.

6.6.3 Release of Punch List Holdback. On a monthly basis, Contractor shall invoice Owner for items on each Punch List which have been completed and accepted by Owner in accordance with Agreement in the preceding month and Owner shall release to Contractor the portion of the Punch List Holdback for such completed items.

6.7 Final Contractor's Invoice. On or after the date on which Contractor delivers to Owner a Notice of Final Completion in accordance with Section 15.7, Contractor shall submit a final Contractor's Invoice (a "**Final Contractor's Invoice**") which shall set forth all amounts due to Contractor that remain unpaid in connection with the Work (including (i) any remaining Punch List Holdback that has not been released to Contractor in accordance with Section 6.6.3, (ii) any amount of Performance Liquidated Damages to be refunded by Owner to Contractor pursuant to Section 16.8, and (iii) any Owner Taxes paid by Contractor or any Subcontractor for which Owner has not reimbursed Contractor pursuant to Section 6.5). Unless Owner validly rejects Contractor's Notice of Final Completion in accordance with Section 15.6, Owner shall pay to Contractor the amount due under such Final Contractor's Invoice (the "**Final Payment**") in accordance with Section 6.5 and issue to Contractor the Final Completion Certificate in accordance with Section 15.6. Contractor's Final Contractor's Invoice shall include (i) with respect to Work for which the Final Payment is requested, (A) conditional waiver and releases upon final payment substantially in the form of Exhibit F-3, and otherwise complying with the requirements of California Civil Code Section 3262(d)(3) (or any successor statute) from Contractor and (B) copies of conditional waiver and releases upon final payment substantially in the form of Exhibit F-3, and otherwise complying with the requirements of California Civil Code Section 3262(d)(3) (or any successor statute) from each Major Subcontractor with respect to work performed and invoiced by each Major Subcontractor, in each case sufficient to release all liens and lien rights under Applicable Law upon receipt of such Final Payment; and (ii) with respect to Work for which payments had previously been made to Contractor, unconditional waiver and releases upon final payment (to the extent not previously submitted) substantially in the form of Exhibit F-4, and otherwise complying with the requirements of California Civil Code Section 3262(d)(4) (or any successor statute) from Contractor and (B) copies of unconditional waiver and releases upon final payment (to the extent not previously submitted) substantially in the form of Exhibit F-4, and otherwise complying with the requirements of California Civil Code Section 3262(d)(4) (or any successor statute) from each Major Subcontractor with respect to amounts (if any) due to such Major Subcontractor which are not being contested in good faith by Contractor, in each case sufficient to release all liens and lien rights under Applicable Law with respect to such Work, provided that, if Contractor is unable to obtain all such waivers from any such Major Subcontractor, Contractor may, in lieu thereof, furnish to Owner a bond or other security acceptable to Owner to protect Owner, the PV Power Plant and the Site from any liens of such Major Subcontractor or any claims made on account of such liens.

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**6.8 Disputes Regarding Payments.** Subject to Contractor's rights and remedies under Article 20, failure by Owner to pay any invoiced amount disputed in good faith until resolution of such dispute in accordance with Article 31 hereof shall not alleviate, diminish, modify nor excuse the performance of Contractor or relieve Contractor's obligations to perform hereunder, subject to the provisions of such Article 31. Contractor's acceptance of any payment (including Final Payment), and Owner's payment of any invoiced amount, shall not be deemed to constitute a waiver of amounts that are then in dispute. Contractor and Owner shall use reasonable efforts to resolve all disputed amounts reasonably expeditiously and in any case in accordance with the provisions of Article 31. No payment made hereunder shall be construed to be acceptance or approval of that part of the Work to which such payment relates or to relieve Contractor of any of its obligations hereunder. If a Contractor's Invoice was properly submitted in accordance with all of the provisions of this Agreement and amounts disputed by Owner with respect to such invoice are later resolved in favor of Contractor, Owner shall pay interest on such disputed amounts due to Contractor, at the Contract Interest Rate, from the date on which the interest on such payment was originally due under Section 6.5.4 until the date such payment is actually received by Contractor. If Owner has paid any amounts pursuant to a Contractor's Invoice, which amounts are later disputed by Owner and such dispute is thereafter resolved in favor of Owner, Contractor shall refund any such payment and pay interest on such amount, at the Contract Interest Rate, from the date on which the payment was originally made by Owner until such refunded amount is received by Owner.

## **7. COMMENCEMENT AND SCHEDULING OF THE WORK; DESIGN REVIEW**

**7.1 Notice to Proceed.** Concurrently with the execution and delivery of this Agreement Owner is issuing to Contractor a Full Notice to Proceed instructing Contractor to commence performance of Work in accordance with the terms hereof.

**7.2 Design Review.** As of the date hereof, Owner and Contractor are continuing review the design and selection of equipment for Phase I. In order to afford Owner the opportunity to review Contractor's design and selection of equipment for each subsequent Phase, Contractor shall, on not less than fifteen (15) days prior notice to Owner and at a mutually agreed location, schedule a design review conference ("**Design Review Conference**") with respect to the design and selection of equipment for each Phase. Each Design Review Conference shall take place not less than ten (10) days before Contractor submits each design submittal to the County of San Louis Obispo. Contractor shall bear the expenses of the conference facility and meals during the conference. Each of Owner and Contractor shall pay for the travel, lodging and other expenses of its own participants in the Design Review Conference.

**7.3 CPM Schedule Submission.** Within seven (7) Days after the Effective Date, Contractor shall prepare and submit to Owner for its review a level 2 critical path method schedule for the Work using Primavera Project Planner 6.0 ("**Primavera**") based upon the Schedule Milestones set forth in Exhibit G. The CPM Schedule shall represent Contractor's best judgment as to how it shall complete the Work in compliance with the Schedule Milestones including the Phase Substantial Completion Guaranteed Dates, the PV Power Plant Substantial Completion Guaranteed Date, and the Final Completion Guaranteed Date. Within \*\*\* Days after the Effective Date, Contractor shall provide to Owner for Owner's review a level 3 schedule for the Work using Primavera ("**CPM Schedule**") based upon the Schedule Milestones

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set forth in Exhibit G. The CPM Schedule shall represent Contractor's best judgment as to how it shall complete the Work in compliance with the Schedule Milestones including the Phase Substantial Completion Guaranteed Dates, the PV Power Plant Substantial Completion Guaranteed Date, and the Final Completion Guaranteed Date. The CPM Schedule shall, at a minimum, include the following activities for the Work: engineering, procurement, equipment fabrication, shipping, construction, commissioning, and testing. Without limiting the foregoing, the CPM Schedule shall: (i) show the duration, early start dates, early finish dates and available float for each activity, show activity number, activity description and responsible Party or Subcontractor, reflect logical relationships between activities with a reasonable duration for each activity, show an uninterrupted critical path from the Full Notice to Proceed through Substantial Completion and Final Completion; and (ii) include a general description of the Work being performed. With each update of the CPM Schedule, Contractor shall provide a material resource-loaded family of curves that supports the CPM Schedule and reflects Contractor's Progress Payment Schedule. Contractor shall use the CPM Schedule in planning, organizing, directing, coordinating, performing and executing the Work, and the CPM Schedule shall be the basis for evaluating progress of the Work.

**7.4 Owner Review of the CPM Schedule.** Owner may review the CPM Schedule for general conformance with this Agreement, including the Schedule Milestones. If Owner reasonably determines that the CPM Schedule does not conform with this Agreement or the Schedule Milestones in any respect, Contractor shall promptly revise and resubmit the CPM Schedule to Owner. Upon Owner's review of the CPM Schedule and Contractor's revision of the CPM Schedule to correct any deficiencies in the CPM Schedule noted by Owner, the CPM Schedule so reviewed and corrected shall be the baseline CPM Schedule for the Work. Owner's review of the CPM Schedule shall not relieve Contractor of any obligations for the performance of the Work, change the Phase Substantial Completion Guaranteed Dates, the PV Power Plant Substantial Completion Guaranteed Dates, or the Final Completion Guaranteed Dates.

**7.5 Progress Reporting, Monthly Updates to CPM Schedule.** Contractor shall prepare a Monthly Progress Report and submit it to Owner within five (5) days of the end of each month. As part of the Monthly Progress Report, Contractor shall update the CPM Schedule monthly to reflect the actual progress to date ("**Monthly Updated CPM Schedule**"); *provided, however*, Contractor may not modify the Phase Substantial Completion Guaranteed Dates or the PV Power Plant Substantial Completion Guaranteed Date without a Change In Work Form being executed pursuant to this Agreement, nor shall Contractor change any dates that relate to Owner's obligations without obtaining Owner's written consent. If any schedule changes affect a critical path for completion of any Scheduled Milestone, Contractor shall provide Owner with a written explanation of such change along with the Monthly Updated CPM Schedule. The Monthly Updated CPM Schedule shall be in the same detail and form as required by the CPM Schedule.

**7.6 Thirty Day Look Ahead Schedule.** As part of the Monthly Progress Report, Contractor shall submit to Owner a thirty Day look-ahead schedule ("**30 Day Look-ahead Schedule**"), which shall be based on the CPM Schedule showing in detail the activities to be performed during the next thirty (30) Days, including target, forecast, and actual dates for each activity, shall be detailed (at a minimum) at level 3 (within the meaning of Primavera), and shall meet all other requirements of a Monthly Updated CPM Schedule.

**7.7 Form of Submittals.** All submittals by Contractor to Owner of the CPM Schedule and any Monthly Updated CPM Schedule shall be in accordance with Exhibit B.

**7.8 Delay Response Plan.** If, at any time during the prosecution of the Work, (i) should the Monthly Updated CPM Schedule show that any activity on the Critical Path of the CPM Schedule is delayed such that Phase Substantial Completion or PV Power Plant Substantial Completion will occur later than the applicable Phase Substantial Completion Guaranteed Date or PV Power Plant Substantial Completion Guaranteed Date, and (ii) Contractor or any of its Subcontractors are in Owner's reasonable judgment responsible for such delay, Owner may, in addition to any other remedies that it may have under this Agreement, require that Contractor prepare a plan to explain and display how it intends recover such delay ("**Delay Response Plan**"). Contractor shall do the following after the determination by Owner of the requirement for a Delay Response Plan:

7.8.1 Within \*\*\* days of such determination, Contractor shall prepare the Delay Response Plan and submit it to Owner for its review. Contractor shall prepare the Delay Response Plan even if Contractor disputes Owner's determination of the need for a Delay Response Plan. The Delay Response Plan shall represent Contractor's best judgment as to how it shall regain compliance with the CPM Schedule and demonstrate the ability to achieve the Schedule Milestones in accordance with this Agreement.

7.8.2 Within \*\*\* days of receipt of the Delay Response Plan, Contractor shall participate in a conference with Owner, and with any other Person, including Subcontractors, whom Owner designates to participate, to review and evaluate the Delay Response Plan. Any revisions necessary as a result of this review shall be resubmitted for review by Owner within three (3) days of the conference. The revised Delay Response Plan shall then be the schedule which Contractor shall use in planning, organizing, directing, coordinating, performing, and executing the Work and for regaining compliance with and to achieve the Schedule Milestones in accordance with this Agreement.

7.8.3 As applicable, Contractor shall perform the Work in accordance with the Delay Response Plan.

7.8.4 Until such time as Owner is satisfied that the Delay Response Plan will result in the achievement of the Schedule Milestones in accordance with this Agreement, Contractor shall meet with Owner at the Site on a weekly basis to determine the effectiveness of the Delay Response Plan and to determine whether Contractor will achieve the Schedule Milestones in accordance with this Agreement. If, in the opinion of Owner, Contractor is still behind schedule, Contractor shall be required to prepare another Delay Response Plan to take effect immediately upon written approval by Owner. Contractor shall prepare such Delay Response Plan even if Contractor disputes Owner's opinion.

7.8.5 In preparing and executing the Delay Response Plan, Contractor shall take all reasonable steps to regain compliance with the CPM Schedule.

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7.8.6 The cost of preparing the Delay Response Plan shall be for Contractor's account.

7.8.7 Owner's requirement, review and approval of any Delay Response Plan shall not relieve Contractor of any obligations for the performance of the Work, change the Phase Substantial Completion Guaranteed Dates, the PV Power Plant Substantial Completion Guaranteed Date or the Schedule Milestones.

## **8. FORCE MAJEURE; EXCUSABLE EVENT**

**8.1 Certain Events.** No failure or omission to carry out or observe any of the terms, provisions or conditions of this Agreement shall give rise to any claim by either Party against the other Party hereto, or be deemed to be a breach of, or default under, this Agreement if such failure or omission shall be caused by or arise out of a Force Majeure Event or an Excusable Event. No payment obligations of either Party that was due prior to the occurrence of a Force Majeure Event or Excusable Event causing the suspension of performance shall be excused as a result of such occurrence.

**8.2 Notice of Force Majeure Event and Excusable Event.** If either Party's ability to perform its obligations under this Agreement is affected by a Force Majeure Event or, in the case of Contractor, an Excusable Event, the Party claiming such event shall, promptly after it becomes aware of the occurrence of the event, and in any event no more than \*\*\* days after the claiming Party becomes aware of such occurrence, give Notice to the other Party (a "**Delay Notice**") of the occurrence of such event, including what date the claiming Party became aware of the occurrence of such event and an estimate of the event's anticipated duration and effect upon the performance of its obligations (to the extent such information is available) and any action being taken to avoid or mitigate its effect. The claiming Party shall have a continuing obligation to deliver to the other Party regular updated reports and any additional documentation and analysis supporting its claim regarding such event promptly after such information is available to the claiming Party. Within \*\*\* days after a Force Majeure Event or Excusable Event has ended, the Party that was affected by such Force Majeure Event or Excusable Event shall give Notice to the other Party of: (i) the length of time such Force Majeure Event or Excusable Event was in effect; (ii) the effect such Party claims such Force Majeure Event or Excusable Event had on any Substantial Completion Guaranteed Date, on the dates for achievement of Phase Substantial Completions set forth in Sections 16.1(i), (ii), (iii), and (iv) (but specifically excluding the date specified with respect to Section 16.1(i)(b)), or the Final Completion Guaranteed Date, as applicable and (iii) in the case of a Force Majeure Event or Excusable Event affecting Contractor's performance of its obligations hereunder, any additional costs incurred (which shall be determined in accordance with Article 17) by reason of such Force Majeure Event or Excusable Event.

**8.3 Scope of Suspension; Duty to Mitigate.** The suspension of, or impact on, performance due to a Force Majeure Event or an Excusable Event shall be of no greater scope and no longer duration than is required by the effect of such Force Majeure Event or Excusable Event. The Party entitled to claim such event shall use its commercially reasonable efforts:

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(a) to mitigate the duration of, and costs arising from, any suspension or delay in, or other impact on, the performance of its obligations under this Agreement; and

(b) to continue to perform its obligations hereunder not affected by such event.

When the claiming Party is able to resume performance of its obligations under this Agreement, such Party shall give Notice to the other Party to that effect.

#### **8.4 Contractor's Remedies.**

8.4.1 Force Majeure Events and Excusable Events. As Contractor's remedy for the occurrence of a Force Majeure Event or an Excusable Event and *provided* that Contractor has otherwise materially complied with the applicable provisions of Section 8.2, if a Force Majeure Event or an Excusable Event occurs: (a) the CPM Schedule, the applicable Work, the dates for achievement of Phase Substantial Completions set forth in Sections 16.1(i), (ii), (iii), and (iv) (but specifically excluding the date specified with respect to Section 16.1(i)(b)), and any applicable Substantial Completion Guaranteed Date(s) affected by such Force Majeure Event or Excusable Event shall be equitably adjusted to account for the impact of such Force Majeure Event or Excusable Event on Contractor's performance of the Work and (b) if the delay due to a Force Majeure Event or Excusable Event exceeds \*\*\*, or if Contractor's costs increase by an amount exceeding \*\*\* despite Contractor's efforts to mitigate any such increase pursuant to Section 8.3(a), the Contract Price shall be increased by the sum of the actual and reasonably substantiated costs incurred by Contractor attributable to such Force Majeure Event or Excusable Event.

8.4.2 Changes In Work. Upon the occurrence of a Force Majeure Event or an Excusable Event for which Contractor is entitled to a change in the Contract Price, the CPM Schedule and the applicable Work (and any other key dates, including the dates for achievement of Phase Substantial Completions set forth in Sections 16.1(i), (ii), (iii), and (iv) (but specifically excluding the date specified with respect to Section 16.1(i)(b)), and any applicable Substantial Completion Guaranteed Date(s)) affected by such Force Majeure Event or Excusable Event, Contractor and Owner shall prepare a Change In Work Form in accordance with Article 17. Contractor's sole remedy for the effects of a Force Majeure Event or Excusable Event on Contractor's performance hereunder shall be the changes to this Agreement as set forth in Section 8.4.1.

#### **8.5 Termination Due to Force Majeure and Excusable Event.**

8.5.1 Termination Due to Prolonged Force Majeure Event. If a Force Majeure Event has occurred and Contractor is prevented from performing the Work for more than \*\*\* consecutive days as a result thereof, either Party may terminate this Agreement by Notice to the other Party.

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8.5.2 Termination Due to Prolonged Excusable Event. If any Excusable Event has occurred and continues for more than \*\*\* consecutive days: (i) Contractor may terminate this Agreement by Notice to Owner and (ii) except if such Excusable Event is the result of an Owner-Caused Delay, Owner may terminate this Agreement by Notice to Contractor.

8.5.3 Contractor Right to Payment. Upon any termination pursuant to Section 8.5.1 or Section 8.5.2, Contractor \*\*\*.

## 9. SUBCONTRACTORS AND SUPPLIERS

### 9.1 Subcontracts Generally.

9.1.1 Subject to Section 9.2, Contractor may have portions of the Work performed by Subcontractors or Suppliers, including its Affiliates or their employees, *provided*, that in such event, Contractor shall remain responsible for such Work and Owner will look solely to Contractor as if the Work were performed by Contractor, and Contractor shall cause such Subcontractors and Suppliers to comply with the obligations of Contractor hereunder to the extent applicable to the Work they perform. The total aggregate value of all agreements between Contractor and all Subcontractors that are not required to provide the lien waivers described in Section 6.3 and 6.7 shall not exceed \*\*\*.

9.1.2 Not less than ten (10) Business Days prior to entering into any agreement with a Subcontractor in respect of a contract that has an estimated value less than \*\*\* for any portion of the Work, Contractor shall Notify Owner of the proposed agreement. Within five (5) Business Days of such Notice, Owner shall Notify Contractor of any election to apply Section 1.A.(2) or Section or 1.A.(3) of Exhibit CC to such agreement. In the event Owner fails to timely provide such Notice, it shall be deemed that Section 1.A.(3) of Exhibit CC shall apply to such agreement.

9.2 Use of Specified Suppliers and Specified Subcontractors. Set forth in Exhibit L is a schedule of Specified Suppliers and Specified Subcontractors who, notwithstanding anything to the contrary herein, Contractor shall be entitled to engage in furtherance of Contractor's obligations under this Agreement without the consent of Owner. Contractor shall Notify Owner of any additional suppliers or subcontractors that Contractor anticipates engaging that, if engaged, would be deemed a Specified Supplier or Specified Subcontractor. Owner shall have the right to review and approve such engagement, such approval not to be unreasonably withheld, delayed or conditioned, and, following such Owner approval, Exhibit L shall be deemed to be amended to reflect such additional approved Specified Supplier or Specified Subcontractor (which thereafter shall be deemed a Specified Supplier or Specified Subcontractor, as applicable). \*\*\*. Contractor shall update and amend Exhibit L by Notice to Owner from time to time as necessary to reflect additions or changes thereto in accordance with this Section 9.2. Contractor acknowledges and

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agrees that it shall remain fully responsible and liable for performance of any obligations of its Suppliers and Subcontractors.

**9.3 Assignment.** No subcontract or purchase order shall bind or purport to bind Owner, but each subcontract and purchase order with a Major Subcontractor shall provide for the assignment of such subcontract or purchase order to Owner, or at Owner's request, to the Owner Financing Parties (if any), upon the termination of this Agreement pursuant to Section 20.1, *provided* that each assignee (except for collateral assigns) shall have sufficient creditworthiness, established to Contractor's or the applicable Major Subcontractor's satisfaction, to meet its payment obligations to such Major Subcontractor.

**9.4 Supply of Inverter Equipment.** Contractor agrees that, unless otherwise consented to in writing by Owner, the PV Power Plant shall be built with inverter equipment supplied by a Specified Supplier set forth in Exhibit L, provided such inverter equipment meets the requirements of this Agreement and all Applicable Laws and Applicable Permits.

**9.5 Supply of Photovoltaic Modules.** Contractor shall build the PV Power Plant with photovoltaic modules manufactured by SunPower Corporation or its Affiliates. Such modules shall meet the requirements of this Agreement and all Applicable Laws and Applicable Permits.

**9.6 Separate Owner Purchase of Photovoltaic Modules and Inverter Equipment.** Notwithstanding anything else to the contrary within this Agreement, including (without limitation) Sections 9.4, 9.5 19.2, 23.1 and 23.2 hereof:

9.6.1 Upon delivery of written notice from Owner to Contractor no later than November 1, 2011, Contractor and Owner shall execute and deliver to each other one or more Materials and Equipment Supply Agreements, each of which shall be in the form substantially set forth in Exhibit EE hereto. Owner shall in such notice identify for which Phase the inverter equipment and/or PV modules to be separately sold to Owner under that Materials and Equipment Supply Agreement shall be used.

9.6.2 Contractor shall use and incorporate the PV modules and/or inverter equipment sold to Purchaser under any Materials and Supply Agreement into the Phase set forth in each of such Materials and Equipment Supply Agreement and such notice delivered under Section 9.6.1 in respect of such Materials and Equipment Supply Agreement and otherwise in accordance with this Agreement.

9.6.3 Contractor represents and warrants that the prices charged by Contractor to Owner for PV modules and/or inverter equipment sold to Purchaser under each Materials and Equipment Supply Agreement represent the reasonable fair market value of such PV modules and inverter equipment. Owner reserves the right to audit, through the use of a mutually agreed third Party, Contractor's records to validate compliance with this provision.

9.6.4 Owner shall notify Contractor of any material communications between Owner or Owner Parent, on the one hand, and the U.S. Department of the Treasury, on the other hand, within five (5) Business Days after such material

communication has been sent or received by Owner or Owner Parent, regarding any Cash Grant with respect to any Phase or the Project or any application for such a Cash Grant. Owner shall provide Contractor with the opportunity to meaningfully participate in meetings and any proceedings involving such applications or Cash Grant (at Contractor's own cost and expense). \*\*\*.

## 10. LABOR RELATIONS

**10.1 General Management of Employees.** Notwithstanding the provisions of Section 10.3, and subject to Section 10.5, Contractor shall preserve its rights to exercise and shall exercise its management rights in performing the Work. Such management rights shall include the rights to hire, discharge, promote and transfer employees; to select and remove persons or supervision; to establish and enforce reasonable standards of production; to introduce labor saving PV Power Plant Hardware; to determine the number of craftsmen necessary to perform a task, job or project; and to establish, maintain and enforce rules and regulations conducive to efficient and productive operations.

**10.2 Project Labor Agreement.** Contract has caused Fluor Constructors International, Inc. ("Fluor") to assign to Contractor the PLA, and Contractor has assumed all obligations of Fluor thereunder. The Assignment and Assumption Agreement is attached hereto as Exhibit Z-1.

**10.3 Labor Disputes.** Contractor shall use reasonable efforts to adopt policies and practices designed to avoid Labor Disputes and to minimize the risk of labor-related delays or disruption of the progress of the Work. Contractor shall advise Owner promptly, in writing, of any actual or threatened Labor Dispute of which Contractor has knowledge that might materially affect the performance of the Work by Contractor or by any of its Subcontractors. Notwithstanding the foregoing, the settlement of Labor Disputes shall be at the discretion of the Party having the difficulty.

**10.4 Personnel Documents.** Contractor shall ensure that at the time of hiring, all its personnel and personnel of any Subcontractors performing the Work on the Site are in possession of all such documents as may be required by any and all Applicable Laws.

**10.5 Key Personnel.** Contractor shall provide staff to supervise and coordinate the Work of Contractor and its Subcontractors on the Site. Subject to Contractor's right to terminate the employment of such personnel pursuant to Section 10.1, Contractor shall ensure that the Key Personnel shall at all times hold and perform the duties of their respective positions (other than

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with respect to Key Personnel who terminate their employment with Contractor). Any replacement of the Key Personnel shall be subject to the prior written consent of Owner, which shall not be unreasonably withheld or delayed. If Owner fails to respond to a request for consent within five (5) business days after Contractor's request, Owner shall be deemed to have consented to including the proposed individual among the Key Personnel.

**10.6 Replacement of Employees and Other Persons at Owner's Request.** Notwithstanding anything in this Article 10 to the contrary, within forty-eight (48) hours after receiving a written request by Owner, which request shall include reasonable substantiating details, Contractor shall remove from the PV Power Plant, the Site, and from any performance of the Work, and cause any Subcontractor to remove from the PV Power Plant, the Site and from any performance of the Work, as soon as reasonably practicable, any Person performing the Work (including any of the Key Personnel) whom Owner reasonably believes to be creating a material safety hazard or who engages in misconduct, is incompetent or negligent or whose off-Site conduct Owner reasonably believes is harming or having a negative effect on the perception of the Project or Owner's relationship with the surrounding community. In the event Contractor disagrees that any such Person should be removed pursuant to this Section 10.6, Owner and Contractor shall submit such disagreements to their senior management pursuant to Section 31.3.

## **11. INSPECTION**

**11.1 Inspection.** Owner and Owner Representatives, including Owner's Engineer, shall have the right to observe and inspect the Work. Such observations and inspections (i) shall not unduly interfere with performance of the Work, (ii) shall be arranged at reasonable times and with reasonable advance Notice to Contractor and (iii) shall comply with Applicable Law and this Agreement, including Contractor's Safety Program.

## **12. SITE CONDITIONS**

**12.1 Assumed Site Conditions.** \*\*\*

**12.2 Additional Site Condition Information.** Owner shall promptly provide to Contractor any additional information relating to Site Conditions that Owner or its Affiliates discover or that comes into Owner's or its Affiliates' possession from time to time.

## **13. PERFORMANCE GUARANTEE; COMMISSIONING; TESTING**

**13.1 Performance Guarantee and Other Requirements.** Contractor shall perform the Work so that each Phase and the PV Power Plant satisfies the applicable Performance Guarantee and other requirements set forth in Exhibit H-2, Exhibit H-3, and Exhibit H-4, respectively.

**13.2 Commissioning Procedures.** Contractor shall provide a Commissioning Plan for each Block and each Phase, as applicable, in accordance with the Commissioning Procedures.

**13.3 Performance Acceptance Test Procedures and PV Power Plant Functional Test Procedures.** Contractor shall perform the Performance Acceptance Tests for each Block,

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each Phase and the PV Power Plant in accordance with the Performance Acceptance Test Procedures and, as it relates to the PV Power Plant, the PV Power Plant Functional Test Procedures, all as set forth in the applicable Exhibit H.

## **14. SYSTEMS, PERFORMANCE ACCEPTANCE TESTS, AND COMPLETION**

### **14.1 System Turnover**

14.1.1 Designation of Systems. Within \*\*\* following the date Owner issues the Notice to Proceed, Contractor shall designate the functional boundaries of discrete parts, components and/or areas of the Facility (each a “**System**”) that will be utilized by Contractor to facilitate Pre-Commissioning and Commissioning and the orderly turnover of each System of the Facility to Owner and shall submit such designations to Owner for Owner's written approval.

14.1.2 Preparation of System Turnover Package. For each System designated in accordance with Section 14.1.1, Contractor shall develop a System turnover package in accordance with Exhibit B (the “**System Turnover Package**”).

14.1.3 Preparation of Facility Commissioning Plan. Not less than \*\*\* prior to the scheduled date for commencement of Commissioning of the first Block, Contractor shall submit to Owner, for its review and approval, the proposed Commissioning Plan developed in accordance with the requirements set forth in Exhibit M. Owner will review and respond to Contractor's proposed Commissioning Plan within thirty (30) Days following submission to Owner, and the Parties and Owner's Representative shall meet to finalize the Commissioning Plan within five (5) Days of Owner's Representative's response. Thereafter, Contractor shall incorporate any necessary edits to the proposed Commissioning Plan and submit the final version of the Commissioning Plan to Owner within thirty (30) Days of such meeting. Owner's review and approval of the Commissioning Plan shall in no way relieve Contractor of its responsibility for performing the Work in compliance with this Agreement.

14.1.4 Acceptance of a System for Commissioning. As soon as Contractor has completed all Pre-Commissioning activities associated with a System, Contractor shall submit to Owner the initial System Turnover Package for such System. Upon receipt, Owner shall review the System Turnover Package and within ten (10) Days of receipt advise Contractor whether it accepts such System Turnover Package. Upon verification by Owner that a System Turnover Package is complete Owner shall accept the System Turnover Package and shall evidence such acceptance by written notification thereof to Contractor.

14.1.5 Commissioning of a System. Upon Owner's acceptance of a System Turnover Package, Contractor shall proceed with the Commissioning activities associated with such System and conduct all functional testing of the System, as set forth in the Commissioning Plan developed in accordance with Section 14.1.3.

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14.1.6 Classification of Punch List Items. With each System Turnover Package submitted to Owner, Contractor shall include a punch list for each individual System to compile and update, on a continuing basis, a master list of all outstanding items requiring completion or rectification to achieve, as applicable, Substantial Completion and Final Completion including (i) all outstanding punch list items for each System, and (ii) any other Work remaining to be completed to achieve, as applicable, Substantial Completion and Final Completion (the “**Punch List**”). The Punch List shall contain:

(a) Those items, the lack of which or the failure to rectify or complete prior to the applicable Substantial Completion which when considered individually or in the aggregate of all Punch List items for the PV Power Plant, would preclude the achievement of the applicable Substantial Completion, including any defect in the design, construction, installation, operation or performance of the System or incomplete Work, that (i) adversely affects the ability of the System or any part of the PV Power Plant to be operated safely and in compliance with Applicable Law or the manufacturer's or vendor's operations and maintenance expectations and recommendations, (ii) prevents, interrupts, disrupts or interferes with or may prevent, interrupt, disrupt or interfere with the normal and continuous operation of such System or any part of the PV Power Plant in accordance with the Plant Specifications (“**Priority A Items**”); and.

(b) Those items, the lack of which or the failure to rectify or complete which would not preclude the achievement of an applicable Substantial Completion but would preclude the achievement of Final Completion (“**Priority B Items**”). Priority B Items do not and cannot include Priority A Items.

Included with each Punch List submitted by Contractor under this Section 14.1.6, Contractor shall include, for Owner's approval, its cost estimate for rectifying or completing each Priority B Item (the “Punch List Amount”). Within five (5) Business Days of receipt of each Punch List, Owner shall inform Contractor whether it disagrees with Contractor's estimated Punch List Amounts. If Owner does not notify Contractor of its disagreement with Contractor's estimated Punch List Amounts within such five (5) Business Day Period, the Punch List Amounts shall be deemed approved by Owner. Any disagreement as to Punch List Amounts shall be resolved pursuant to Article 31.

14.1.7 Owner's Right to Identify Punch List Items. Notwithstanding anything herein to the contrary, Owner may, at any time prior to Final Completion, notify Contractor in writing of any deficiency in or incomplete portion of the Work to be added to the Punch List for correction or completion by Contractor in accordance with this Agreement, *provided, however*, that any such deficiency which constitutes a Priority A Item and which is discovered by or reported to Contractor prior to Substantial Completion shall, at the election of Owner (i) be remedied by Contractor prior to the achievement of Substantial Completion, or (ii) be added to the Punch List as a Priority B Item for remediation prior to Final Completion.

14.1.8 Completion of Punch List Items.

14.1.8.1 Prior to the applicable Substantial Completion Contractor shall rectify or complete in accordance with the standards set forth in this Agreement, including the Plant Specifications and the Scope of Work, all Priority A Items which have been identified and placed on the Punch List prior to Substantial Completion.

14.1.8.2 Prior to Final Completion, Contractor shall rectify or complete in accordance with the standards set forth in this Agreement, including the Specifications and the Scope of Work, all Priority B Items which have not been satisfactorily rectified or completed prior to Substantial Completion.

14.1.8.3 In the event that Contractor fails to commence in a reasonable period of time after the applicable Substantial Completion or to diligently proceed thereafter with the rectification or completion of Priority B Items remaining at or after the applicable Substantial Completion so as to rectify or complete such Priority B Items by the Final Completion Guaranteed Date, Owner may rectify or complete such Priority B Items itself or through its designee at the expense of Contractor. In the event Owner elects to rectify or complete such Priority B Items, either itself or through a designee, Contractor shall immediately pay Owner (directly, or through forfeiture of the applicable Punch List Holdback amount) all costs and expenses incurred in rectifying or completing such Priority B Items.

14.1.8.4 Following Substantial Completion, Contractor shall complete any outstanding Priority B Items so as not to interrupt, disrupt or interfere with the normal and continuous operation of any portion of the PV Power Plant; *provided, however*, should an unforeseen circumstance arise such that the completion of any such Priority B Items may cause interruption, disruption or interference with the normal and continuous operation of any portion of the PV Power Plant, Contractor shall complete such Priority B Items during scheduled or unscheduled facility downtime or as otherwise directed by Owner so as not to cause any interruption in Owner's commercial activities at the Site. All Priority B Items shall be completed by the Final Completion Guaranteed Date. In no event shall this Section be interpreted to modify the definition of Priority B Items, as such items are not to be of the character that could interrupt, disrupt or interfere with the normal and continuous operation of any portion of the PV Power Plant.

**14.2 Acceptance Tests.** Contractor shall perform the Performance Acceptance Tests and the PV Power Plant Functional Tests in accordance with the Performance Acceptance Test Procedures and PV Power Plant Functional Test Procedures. Contractor shall give advance Notice (which Notice may be by email) to Owner of the performance of any Performance Acceptance Test or PV Power Plant Functional Tests at least \*\*\* weeks prior to commencing such tests. Contractor shall keep Owner continuously apprised of the schedule for Performance Acceptance Tests and the PV Power Plant Functional Tests including any changes in the schedule, the commencement and performance of such tests, and shall give Owner Representative at least \*\*\* advance Notice (which Notice may be by email) of the re-performance of any such tests.

14.2.1 Test Reports. Contractor shall submit a test report for each Performance Acceptance Test and PV Power Plant Functional Tests performed by Contractor within \*\*\* days after the completion of such Performance Acceptance

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Test, which report shall provide the such test results, together with a comparison to, and showing of compliance with, the applicable criteria and other testing requirements and criteria set forth in Exhibit H-1, H-2, H-3, and H-4, as applicable. Contractor shall cause all reports to contain the test data and calculations to allow Owner to verify the conclusions of such report.

14.2.2 Owner's Right to Observe Testing. Representatives of Owner, including Owner's Engineer, shall have the right to be present during any tests performed by Contractor under this Article 14.

14.2.3 Failure to Pass Acceptance Tests and PV Power Plant Functional Tests; Non-Conforming Work. Subject to Sections 16.4 through 16.7, if any Block, Phase, or the PV Power Plant as a whole, shall not pass the applicable Performance Acceptance Test or PV Power Plant Functional Tests, Contractor shall, at Contractor's sole cost and expense (subject to Article 8), in accordance with the Performance Acceptance Test Procedures or the PV Power Plant Functional Test Procedures, take such corrective actions as to such Block, the Phase or the PV Power Plant as a whole, as the case may be, to address such failure to pass the Performance Acceptance Test or the PV Power Plant Functional Test Procedures; *provided* that all such corrective action shall otherwise be in compliance with the requirements for the Work hereunder. If at any time during and promptly after completion of the Performance Acceptance Test or the PV Power Plant Functional Tests (or any re-performance of any such tests or pursuant to any Remedial Plan, and regardless of achievement of the Performance Guarantee or Minimum Performance Guarantee), Owner advises Contractor in writing of any Defect that was discovered during a Performance Acceptance Test or PV Power Plant Functional Tests, Contractor shall, at Contractor's sole cost and expense (subject to Article 8), correct any Defect (except if such Defect is a Priority B Item, in which case it shall be included on the Punch List with respect to the applicable Block or Phase, as the case may be), and within five (5) Days after correcting such Defect provide Notice to Owner that such corrective measures have been completed. Any dispute regarding the existence or correction of any such Defect shall be resolved pursuant to Article 31.

## **15. BLOCK, PHASE AND PV POWER PLANT SUBSTANTIAL COMPLETION**

### **15.1 Block Completion.**

15.1.1 Initial Block to Achieve Block Completion The following are the conditions precedent for the initial Block to achieve Block Substantial Completion:

- (a) such Block has achieved Mechanical Completion;
- (b) all Systems supporting the initial Block have been completed and accepted by Owner in accordance with Section 14.1;
- (c) the Interconnection Facilities and the PV Power Plant Interconnection Facilities have been completed to such a point so as to permit the Block Substantial Completion Tests for such Block to be conducted;



(d) the Block Substantial Completion Tests for such Block have been Successfully Run;

(e) Owner has received all Contractor Deliverables required to be delivered in connection with the first Block Substantial Completion;

(f) the Punch List for such Block has been prepared in accordance with Section 14.1.6;

(g) Contractor shall have delivered the applicable Waiver and Release Forms required to be delivered pursuant to Section 6.3(b) with respect to such Block; and

(i) Contractor has obtained, and Owner has received copies of, all Contractor Acquired Permits necessary for the commencement and ongoing operation of such Block in accordance with Applicable Law.

15.1.2 Each Successive Block to Achieve Block Completion. The following are the conditions precedent for each successive Block (after the initial Block) to achieve Block Completion:

(a) such Block has achieved Mechanical Completion;

(b) all Systems supporting such Block have been completed and accepted by Owner in accordance with Section 14.1;

(c) the Interconnection Facilities and PV Power Plant Interconnection Facilities have been completed to such a point so as to permit the Block Substantial Completion Tests for such Block to be conducted and such Block to be operated in conjunction with all other Blocks that previously achieved Block Substantial Completion;

(d) the Block Substantial Completion Tests for such Block have been Successfully Run;

(e) Owner has received all Contractor Deliverables required to be delivered in connection with such Block Substantial Completion;

(f) the Punch List for such Block has been prepared in accordance with Section 14.1.6;

(g) Contractor has obtained, and Owner has received copies of, all Contractor Acquired Permits necessary for the commencement and ongoing operation of such Block in accordance with Applicable Law; and

(h) Contractor shall have delivered all applicable Waiver and Release Forms required to be delivered pursuant to Section 6.3(b) with respect to such Block.

15.1.3 Block Substantial Completion Notice and Certificate. Contractor shall deliver to Owner a Notice of Substantial Completion with respect to

each Block as provided in Section 15.4, and the provisions of such Section 15.4 shall apply with respect to the issuance of a Block Substantial Completion Certificate with respect to a Block and the occurrence of the Substantial Completion Date for such Block.

## **15.2 Phase Substantial Completion.**

15.2.1 Phase Substantial Completion. The following are the conditions precedent for each Phase to achieve “**Phase Substantial Completion**”:

(a) with respect to Phase 1, all of the conditions set forth in Section 15.1.1 have been satisfied (or have been waived by Owner), and, with respect to all Phases other than Phase 1, all of the conditions set forth in Section 15.1.2 have been satisfied (or have been waived by Owner) with respect to each of the Blocks comprising such Phase (including that all of the Blocks comprising such Phase have achieved Substantial Completion);

(b) the Phase Substantial Completion Tests for such Phase have been Successfully Run and Minimum Performance Guarantee for such Phase has been achieved;

(c) except with respect to Phase 1, Owner has received all Contractor Deliverables (if any) required to be delivered in connection with such Phase Substantial Completion Date;

(d) all undisputed Delay Liquidated Damages with respect to such Phase then due and payable, if any, pursuant to Article 15 have been paid;

(e) all undisputed Performance Liquidated Damages with respect to such Phase then due and payable, if any, pursuant to Article 15 have been paid; and

(f) training of Operating Personnel in accordance with Section 3.15 of this Agreement in respect of Phase 1 is complete.

15.2.2 Phase Substantial Completion Notice and Certificate. Contractor shall deliver to Owner a Notice of Substantial Completion with respect to each Phase as provided in Section 15.4, and the provisions of such Section 15.4 shall apply with respect to the issuance of a Phase Substantial Completion Certificate with respect to a Phase and the occurrence of the Substantial Completion Date for such Phase.

## **15.3 PV Power Plant Substantial Completion.**

15.3.1 Conditions to PV Power Plant Substantial Completion. The following are the conditions precedent for the PV Power Plant Substantial Completion:

(a) each Phase has achieved Phase Substantial Completion;

(b) substation completion has been achieved and all of the Work comprising electrical works required to provide an integrated electrical system from the point of interconnection to each individual Block with the requirements of this Agreement, and Contractor has delivered to Owner copies of all test reports and electrical schematics relating thereto required under this Agreement;

(c) all civil works constituting a part of the Work are complete and meet the requirements of this Agreement;

(d) the PV Power Plant Substantial Completion Tests for the PV Power Plant Substantial Completion have been Successfully Run and the PV Power Plant has achieved the Minimum Performance Guarantee;

(e) Owner has received all Contractor Deliverables (if any) required to be delivered in connection with the PV Power Plant Substantial Completion Date;

(f) Contractor shall have delivered all applicable Waiver and Release Forms required to be delivered pursuant to Section 6.3(b) with respect to the PV Power Plant and all Work;

(g) Contractor has obtained, and Owner has received copies of, all Contractor Acquired Permits necessary for the commencement and ongoing operation of the PV Power Plant in accordance with Applicable Law and otherwise required to be obtained by Contractor hereunder as of such time, such Contractor Acquired Permits are in full force and effect, and Contractor shall have completed all requirements under each such Contractor Acquired Permit required to be completed as of such time, subject to any final Punch List items; and

(h) all training of Operating Personnel in accordance with Section 3.15 of this Agreement is complete.

15.3.2 PV Power Plant Substantial Completion Certificate. Contractor shall deliver to Owner a Notice of Substantial Completion with respect to the PV Power Plant as provided in Section 15.4, and the provisions of such Section 15.4 shall apply with respect to the issuance of the PV Power Plant Substantial Completion Certificate and the occurrence of the PV Power Plant Substantial Completion Date.

**15.4 Notice of Substantial Completion.** When Contractor believes that it has satisfied the provisions of Section 15.1, 15.2 or 15.3, as applicable, Contractor shall deliver to Owner a Notice of Substantial Completion with respect to the applicable Block or Phase or with respect to the PV Power Plant, as applicable. Owner shall, within ten (10) days after receipt of such Notice, issue the Substantial Completion Certificate with respect to such Block or Phase or with respect to the PV Power Plant, as applicable, or if Owner rejects such Contractor's Notice, respond in writing giving its reasons for such rejection and Contractor shall take the appropriate corrective action to achieve Substantial Completion for such Block, Phase or PV Power Plant, as applicable \*\*\*

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\*\*\* Upon completion of any corrective action, Contractor shall provide to Owner a new Notice of Substantial Completion for approval. This process shall be repeated on an iterative basis until Owner accepts (or is deemed to have accepted) such Notice of Substantial Completion, and issues the Substantial Completion Certificate with respect to such Block or Phase or with respect to the PV Power Plant, as applicable. The “**Substantial Completion Date**” for any applicable Block, Phase or PV Power Plant shall be the day after the date on which the last of the conditions of Section 15.1, 15.2 or 15.3, as applicable, was satisfied or, in the discretion of Owner, waived.

**15.5 Final Completion.** Final Completion of the PV Power Plant shall be deemed to have occurred only if the following conditions have been satisfied (or waived by Owner):

(a) Substantial Completion for each Phase comprising the PV Power Plant shall have been achieved;

(b) the PV Power Plant Functional Tests have been Successfully Run;

(c) Contractor shall have completed all items on each Punch List (except such items that remain the subject of a Dispute) related to the Blocks and Phases, as applicable, comprising the PV Power Plant;

(d) all Contractor's and Subcontractors' personnel (except any personnel that is to perform operational services pursuant to a separate operation and maintenance contract, if any) shall have left the Site, and all surplus materials, waste materials, rubbish and construction facilities other than those to which Owner holds title shall have been removed from the Site, and any permanent facilities used by Contractor and the Site shall have been restored to the same condition that such permanent facilities and the Site were in on the date Work commenced hereunder, ordinary wear and tear excepted;

(e) Upon Final Payment, Contractor shall have delivered the applicable Waiver and Release Forms contemplated by Section 6.7; and

(f) Owner shall have received all Contractor Deliverables in relation to the PV Power Plant as set forth on the Contractor Deliverables Table.

**15.6 Notice of Final Completion.** Contractor shall deliver to Owner a Notice of Final Completion stating that Contractor believes it has satisfied the provisions of Section 15.6. Within fifteen (15) days after receipt of the Notice of Final Completion, Owner shall issue the Final Completion Certificate, or if Owner rejects Contractor's Notice of Final Completion, respond in writing giving Owner's reasons for such rejection and Contractor shall promptly take appropriate corrective action to achieve Final Completion. \*\*\* Upon completion of such corrective action, Contractor shall provide a new Notice of Final Completion to Owner for approval. This process shall be repeated on an iterative basis until Owner accepts (or is deemed to have accepted) the Notice of Final Completion and issues the Final Completion Certificate. The “**Final Completion Date**” for the

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PV Power Plant shall be the day after the date on which the last of the conditions of Section 15.6 was satisfied or, in the discretion of Owner, waived.

**15.7 Contractor's Access After Substantial Completion.** Notwithstanding anything to the contrary in this Agreement, following Block Substantial Completion of a Block, Contractor shall have the right to access such Block and the Site of such Block, including the right to shut down and/or remove such Block from service, to the extent necessary to perform Work with respect to another portion of the applicable Phase or another Phase, including with respect to performing any applicable testing, as well as to the extent necessary to complete the Punch List items with respect to such Block. Contractor will use reasonable commercial efforts to accomplish the same in a manner that would minimize interference with commercial operation of the applicable Block and minimize the loss of electricity generation by such Block or any other portion of the PV Power Plant. Notwithstanding the foregoing, (x) should a shut-down or a reduction in the operation of a Block, a Phase or any other portion of the PV Power Plant be required to complete or correct any Punch List items, then such reduction or shut-down shall be scheduled at the reasonable discretion of Owner, and Contractor shall complete such Work during such Owner scheduled period, *provided*, that any unreasonable delay by Owner in scheduling such reduction or shut-down shall be an Owner-Caused Delay, which shall entitle Contractor to a Change In Work pursuant to Section 8.4, and (y) Contractor acknowledges that Owner may schedule such reduction or shut-down at any time including off -peak hours, nights, weekends and holidays as may be necessary for Contractor to perform the Work. To the extent Contractor accesses a Block or the Site of such Block after Block Substantial Completion to perform Work as permitted under this Agreement, Contractor shall use due care in performing such Work and shall be responsible for any damage to such Block or Site of the Block resulting from Contractor, or any of its Subcontractor's, failure to use due care in performing the Work.

## **16. LIQUIDATED DAMAGES; EARLY COMPLETION BONUS**

**16.1 Delay Liquidated Damages.** Contractor agrees that if Phase Substantial Completion for any Phase is not achieved by the applicable date identified in this Section 16.1, then Contractor shall pay liquidated damages ("**Delay Liquidated Damages**") to Owner:

(i) with respect to failure (a) to achieve Phase 1 Substantial Completion by the Phase 1 Substantial Completion Guaranteed Date, \*\*\*;

(ii) with respect to failure (a) to achieve Phase 2 Substantial Completion by the Phase 2 Substantial Completion Guaranteed Date, \*\*\*;

(iii) with respect to failure (a) to achieve Phase 3 Substantial Completion by the Phase 3 Substantial Completion Guaranteed Date, \*\*\*;

(iv) with respect to failure (a) to achieve Phase 4 Substantial Completion by the Phase 4 Substantial Completion Guaranteed Date, \*\*\*

(v) \*\*\*;

*provided, however*, (a) that any amount Contractor is obligated to pay to Owner under this Section 16.1 shall be subject to the limitations set forth in Article 30, (b) that any amount

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Contractor is obligated to pay Owner under parts (a)(x) and (a)(y) of Subsections 16.1(i), 16.1(ii), and 16.1(iii), shall be subject to a maximum aggregate liability of \$\*\*\*, (c) that any amount Contractor is obligated to pay Owner under parts (a)(x) and (a)(y) of Subsection 16.1(iv) shall be subject to a maximum aggregate liability of \$\*\*\*, and (d) that any amount Contractor is obligated to pay Owner under Subsection 16.1(v) shall be subject to a maximum liability of \$\*\*\*.

**16.2 Bonus Payment for Early Completion.** Owner agrees that if Contractor achieves Phase Substantial Completion for a Phase prior to with respect to Phase 1, \*\*\*, with respect to Phase 2 or Phase 4, \*\*\*, with respect to Phase 3, \*\*\*, or achieves the PV Power Plant Substantial Completion prior to the PV Power Plant Substantial Completion Guaranteed Date, Contractor shall be entitled to a bonus payment (“Bonus Payment”) from Owner in the amount of \$\*\*\*.

**16.3 Payment of Delay Liquidated Damages and Bonus Payment.** The Parties agree that payment of Delay Liquidated Damages, as set forth in Section 16.1, and payment of a Bonus Payment as set forth in Section 16.2, shall be made, as applicable, at the time of Phase Substantial Completion for the applicable Phase.

**16.4 Buy-Down Not Available for Minimum Performance Guarantee.** If Contractor fails to achieve the Minimum Performance Guarantee for any Phase, Contractor shall continue seeking to achieve at least the Minimum Performance Guarantee for such Phase, and Contractor must continue to perform the Work until Contractor achieves Phase Substantial Completion for such Phase (it being understood that achievement of the Minimum Performance Guarantee is an express condition of Phase Substantial Completion).

**16.5 Liquidated Damages for Failure to Satisfy Performance Guarantee.** Contractor agrees that if, based on the results of the most recent Performance Acceptance Test that has been Successfully Run with respect to a Phase prior to its Phase Substantial Completion, such Phase (or the PV Power Plant) has satisfied the Minimum Performance Guarantee, but has not satisfied the Performance Guarantee, as calculated in accordance with Exhibit H-2, then, subject to Section 16.6, Contractor shall pay Performance Liquidated Damages to Owner, which shall be calculated as \*\*\*. Any amount Contractor is obligated to pay to Owner under this Section 16.5 shall be subject to the limitations set forth in Article 30, and shall be due and payable on or after the applicable Phase Substantial Completion Date (or, as applicable, PV Power Plant Substantial Completion) but in any event within 30 days after Owner's invoice therefor. An example calculation of Performance Liquidated Damages is set forth in Section 1 of Exhibit O.

**16.6 Contractor Election.** Actions During Cure Period if Minimum Performance Guarantee is Satisfied, but not Performance Guarantee.

16.6.1 Payment of Performance Liquidated Damages; Cure Period; Buy-Down. If, based on the results of the most recent Performance Acceptance Test that has been Successfully Run with respect to a Phase prior to its Phase Substantial Completion, such Phase (or in the case of the last Phase, the PV Power Plant) has

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satisfied the Minimum Performance Guarantee, but has not satisfied the Performance Guarantee, Contractor, at its option, shall elect to either:

- (a) pay any applicable Performance Liquidated Damages as may be due and payable with respect to such Phase (or the PV Power Plant) and have no further obligation to try to achieve the applicable Performance Guarantee; or
- (b) continue to attempt to satisfy the applicable Performance Guarantee until the expiration of the applicable Cure Period.

Contractor shall exercise either option provided in this Section 16.6.1 by delivery of Notice to Owner not later than ten (10) days after the Phase Substantial Completion Date or PV Power Plant Substantial Completion Date, as applicable. Notwithstanding Contractor's election of option (b) of this Section 16.6.1, upon the expiration of the applicable Cure Period, if the applicable Performance Guarantee has not been achieved, Contractor shall be deemed to have elected to have no further obligation to try to achieve the applicable Performance Guarantee.

16.6.2 Remedial Plans. If Contractor elects to attempt to satisfy the applicable Performance Guarantee as provided in Section 16.6.1(b) after the Phase Substantial Completion Date or PV Power Plant Substantial Completion Date, as applicable, Contractor shall submit a Remedial Plan to Owner, which shall specify the corrective actions Contractor will take and the commencement date of such corrective action, for Owner's approval, which shall not be unreasonably withheld. The corrective actions described in each Remedial Plan that Contractor proposes to undertake with respect to the Work shall be designed and intended to cause such Phase or the PV Power Plant, as applicable, to satisfy the applicable Performance Guarantee with a reasonable probability of success and may not involve a material risk of damaging or diminishing the performance of any of the Work. The projected completion date for such corrective action must fall within the applicable Cure Period.

16.6.3 Prosecution of Remedial Plan. If Contractor elects to attempt to achieve the applicable Performance Guarantee and proceeds with a Remedial Plan, Contractor shall promptly and diligently pursue completion of such Remedial Plan.

16.6.4 Additional Remedial Plans. If Contractor is unable to satisfy the Performance Guarantee after completing the initial Remedial Plan, Contractor may (i) elect to deliver a new Remedial Plan to Owner within ten (10) days after completion of such initial Remedial Plan or (ii) elect to have no further obligation to try to achieve the Performance Guarantee pursuant to Section 16.6.1(a), *provided, however*, that such new Remedial Plan shall be deemed null and void if the applicable Cure Period has already expired or will otherwise expire during the period covered thereby.

16.6.5 Access During Cure Period. Notwithstanding anything to the contrary in Article 19 or Article 23, during the Cure Period and upon approval of a Remedial Plan, Owner shall provide Contractor with reasonable access to applicable portions of the PV Power Plant at which point Contractor shall assume the care,

custody, and control of those parts of the PV Power Plant affected by Contractor's Work pursuant to the applicable Remedial Plan. Contractor shall be granted such access, subject to Section 15.7, for purposes of achieving the Performance Guarantee and for the period as set forth in the applicable Remedial Plan, to:

- (a) perform corrective actions pursuant to the applicable Remedial Plan; and
- (b) perform the applicable Performance Acceptance Tests, as provided in such Remedial Plan.

**16.6.6 Operations During Cure Period.** During the Cure Period, Owner shall have the right to operate the applicable Phase and/or the PV Power Plant, including the right to maximize the economic benefits of the Project. Any failure by Owner to provide Contractor with access to the applicable portion of the PV Power Plant as set forth in this Section 16.6.6 shall not be considered a breach of any covenant, condition, representation or warranty of Owner, and shall not be construed as an Owner Event of Default. Contractor's only remedy for a failure by Owner to provide Contractor with access to the applicable Phase and/or the PV Power Plant as set forth in this Section 16.6.6 shall be an equitable extension of the Cure Period until such reasonable access is provided. Notwithstanding the foregoing, Contractor shall be entitled to reasonable access to the applicable Phase and/or the PV Power Plant between sunset and sunrise.

**16.7 Extension of Cure Period.** Notwithstanding anything to the contrary herein, if Contractor has been unable to cause the applicable Phase or the PV Power Plant to meet the Performance Guarantee on or prior to the expiration of the initial Cure Period, Contractor may submit to Owner for approval a request for extension of such Cure Period and a revised Remedial Plan setting forth in specificity and detail the corrective actions which Contractor proposes to undertake to enable such Phase to achieve the Performance Guarantee during an extended Cure Period pursuant to this Section 16.7. Upon Owner's approval of such revised Remedial Plan, such Cure Period shall be extended for the period of time set forth in the Remedial Plan.

**16.8 Sole Remedy; Liquidated Damages Not a Penalty.** Without limiting Owner's remedies hereunder with respect to Contractor's unexcused failure to achieve Substantial Completion of a Phase or the PV Power Plant or failure to achieve any Performance Guarantee, the amounts payable under Section 16.1, Section 16.4, or Section 16.5 in each case as limited by Article 30, and the other remedies provided for in this Article 16, shall be the sole and exclusive remedies of Owner for delays in achieving Substantial Completion by the applicable Substantial Completion Guaranteed Date, or for failure to achieve the Performance Guarantee with respect to any Phase or the PV Power Plant as a whole. The Parties agree that Owner's actual damages in the event of such delays or failures would be extremely difficult or impracticable to determine. After negotiation, the Parties have agreed that the Delay Liquidated Damages, PV Plant Substantial Completion Delay Liquidated Damages, and the Performance Liquidated Damages are in the nature of liquidated damages and are a reasonable and appropriate measure of the damages that Owner would incur as a result of such delays or failures, and do not represent a penalty.



**16.9 Enforceability.** The Parties explicitly agree and intend that the provisions of this Article 16 shall be fully enforceable by any court exercising jurisdiction over any dispute between the Parties arising under this Agreement. Each Party hereby irrevocably waives any defenses available under law or equity relating to the enforceability of the liquidated damages provisions set forth in this Article 16 on the grounds that such liquidated damages provisions should not be enforced as constituting a penalty or a forfeiture.

**16.10 Achievement of Performance Guarantee; Reimbursement of Liquidated Damages.**

**16.10.1 Reimbursement of Performance Liquidated Damages.** Upon completion of any Performance Acceptance Test with respect to a Phase or with respect to the PV Power Plant in accordance with this Agreement, the Parties shall meet and review the results of such Performance Acceptance Test. Based on the results of such Performance Acceptance Test that has been Successfully Run prior to the expiration of the Cure Period (the “**Final Performance Acceptance Test**”), the Parties shall apply the following:

(a) Performance Guarantee Satisfied. If such Final Performance Acceptance Test indicates that the Performance Guarantee with respect to all of Phases of the Project through and including such Phase, or with respect to the PV Power Plant as a whole, as applicable, has been achieved, then within ten (10) Business Days thereafter, Owner shall refund to Contractor:

(i) the amount of any Performance Liquidated Damages previously paid by Contractor pursuant to Section 16.5 or offset by Owner, *minus*

(ii) as the sole compensation to Owner for its lost revenue during the Cure Period) an amount equal to the following: \*\*\*. For purposes of this Section 16.10(a), the “**Cure Period Deficiency**” is calculated as the Guaranteed Capacity less the Tested Capacity demonstrated by the Performance Acceptance Test used to achieve, as applicable, Phase Substantial Completion or PV Plant Substantial Completion, expressed in kW. An example calculation of the foregoing is set forth in Section 2.1 of Exhibit O.

(b) Performance Guarantee Not Satisfied. If such Final Performance Acceptance Test indicates that the Performance Guarantee with respect to all of Phases of the Project through and including such Phase, or with respect to the PV Power Plant as a whole, as applicable, has not been satisfied, but the amount paid by Contractor (or offset by Owner) as Performance Liquidated Damages pursuant to Section 16.5 exceeds the amount that Contractor would have paid based on the results of such Final Performance Acceptance Test, then within ten (10) Business Days after an invoice is delivered to Owner, Owner shall refund to Contractor the amount of any such excess Performance Liquidated Damages paid by Contractor pursuant to Section 16.5 or offset by Owner (i.e., the difference between the amount of Performance Liquidated Damages paid under Section 16.5 and those that would have been payable if the results of such Final Performance Acceptance Test had been used to achieve the applicable Phase Substantial

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Completion for prior Phase(s) or PV Power Plant Substantial Completion, as applicable) *minus* (as the sole compensation to Owner for its lost revenue during the Cure Period) an amount equal to the following: \*\*\*. An example calculation of the foregoing is set forth in Section 2.2 of Exhibit O.

## 17. CHANGES IN THE WORK

**17.1 Change In Work.** A Change In Work shall result from one of the following:

- (a) the addition to, modification of, or deletion from the Work (performed or yet to be performed) during the performance of the Work mutually agreed to by the Parties in accordance with Sections 17.2, 17.4, 17.5 and 17.6;
- (b) the occurrence of a Force Majeure Event or an Excusable Event (as and only to the extent permitted by Section 8.4);
- (c) an Owner Directive in accordance with Section 17.7;
- (d) a failure by Owner to provide access as provided in Section 15.8; or
- (e) any other event or circumstance specifically identified in this Agreement as necessitating a Change In Work or entitling either Party to seek a Change In Work.

**17.2 By Owner.** Subject to Section 17.4, Owner shall have the right to make changes in the Work, within the general scope thereof and consistent with this Agreement, whether such changes are modifications, accelerations, alterations, additions or deletions. All such changes shall be made in accordance with this Article 17, shall be documented in accordance with Sections 17.4 through 17.8 and shall be considered, for all purposes of this Agreement, as part of the Work.

**17.3 Adjustment to CPM Schedule Due to Force Majeure Events or Excusable Events.** If a Force Majeure Event or an Excusable Event occurs, the CPM Schedule, the Guaranteed Substantial Completion Dates, the dates for achievement of Phase Substantial Completions set forth in Sections 16.1(i), (ii), (iii), and (iv) (but specifically excluding the date specified with respect to Section 16.1(i)(b)), any other applicable Milestones and the Contract Price shall be modified as and to the extent provided in Section 8.4, as the case may be, and as set forth in the Change In Work Form accepted by Owner.

### **17.4 Preparation of Change In Work Form.**

**17.4.1 Due to Owner Initiated Change In Work.** If Owner provides Notice to Contractor that Owner is proposing a Change in accordance with Section 17.2, Contractor shall, as soon as practicable, prepare a Change in Work Form (as set forth in Exhibit S), subject to the remaining provisions of this Section 17.4.1, which shall include a detailed proposal for such Change In Work, together with a detailed explanation and basis thereof, and any increase or decrease in the cost required to complete the Work (priced in accordance with Exhibit S-4).

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17.4.2 Due to Excusable Event or a Force Majeure Event. If a Force Majeure Event or an Excusable Event occurs for which Contractor is entitled to an adjustment to the CPM Schedule and/or the Contract Price pursuant to Section 8.4.1, then Contractor shall, as soon as practicable, prepare and submit to Owner in accordance with Section 8.4.2 a proposed Change In Work Form, which shall include (a) any projected change in the Contract Price occasioned by such Change In Work and (b) the effect such Change In Work could be expected to have on the CPM Schedule or any other schedule events or dates for performance by Contractor hereunder, in each case all as and to the extent provided in Section 8.4.1 with respect to such Force Majeure Event or Excusable Event and as set forth in the Change In Work Form.

**17.5 Execution of Change In Work Form.** If Contractor and Owner reach agreement on all matters that constitute the Change In Work, then the Parties shall execute a Change In Work Form as set forth in Exhibit S-1 (at no cost to Owner for preparation of the form) and Contractor shall perform the Work, as set forth in such Change In Work Form. If the Parties agree that a Change In Work has occurred pursuant to Section 17.1 but cannot agree on the appropriate adjustment to the Contract Price, Contractor shall, unless otherwise agreed, proceed with such Change in Work and be reimbursed on a time and materials basis at Contractor's then applicable personnel and labor rates as described in Exhibit S (or at the rates of the applicable Subcontractors). If the Parties dispute that a Change in Work has occurred, or dispute the appropriate adjustment to the CPM Schedule associated with such Change in Work, those disputes shall be resolved per Article 31.

**17.6 No Obligation or Payment Without Executed Change In Work Form.** Contractor shall not be obligated to undertake a Change In Work until the Parties have executed a Change In Work Form, except as set forth in Sections 17.5 and 17.7, or if immediate action is reasonably required to address an emergency which endangers human health or property. In the absence of an executed Change In Work Form, except as set forth in Section 17.7 or in the event of such emergency, if Contractor undertakes any changes in the Work such changes shall be made at Contractor's risk and expense and Contractor shall not be entitled to any schedule modification or payment hereunder for undertaking such changes (subject to Contractor's right to a Change In Work in the circumstances specified in Sections 8.4.1 and 8.4.2).

**17.7 Owner Directives.** If Contractor and Owner are unable to agree on whether a Change In Work has occurred or on the matters described in a Change In Work Form issued as set forth in Exhibit S-2 or S-3, as applicable (other than the appropriate adjustment to the Contract Price which shall be addressed as set forth in Section 17.5), regardless of whether such Change In Work Form was initiated by Contractor or by Owner, Contractor shall perform the Work as Owner so directs in writing (an “**Owner Directive**”), *provided* that such Owner Directive would not adversely and materially affect Contractor's ability to meet the Performance Guarantees or its Warranty obligations hereunder or otherwise to perform the Work in accordance with this Agreement, and Contractor shall be reimbursed for such Change In Work pursuant to an Owner Directive on a time and materials basis at Contractor's then applicable personnel and labor rates as described in Exhibit S (or at the rates of the applicable Subcontractors). If an Owner Directive causes Contractor to depart from the CPM Schedule,

then the Parties shall execute a Change of Work Form to record the change in the CPM Schedule and any affected Schedule Milestones.

**17.8 Disputed Changes In Work.** Subject to Section 17.5, any disputes regarding a Change In Work Form or whether a Change In Work has occurred or that are otherwise related to a Change In Work shall be subject to the dispute resolution provisions of Article 31.

**17.9 Change for Contractor's Convenience.** Contractor shall have the right, at its own cost and expense, to take any action that is generally consistent with this Agreement and that Contractor, in good faith, determines to be reasonably necessary to meet the requirements of this Agreement. No Change In Work shall be deemed to have occurred in connection with any such change or action subject to the following sentence. If such action involves: (a) substitution of material PV Power Plant Hardware, (b) the substitution or replacement of a Major Subcontractor (other than if such substitute or replacement Subcontractor is a Specified Subcontractor or Specified Supplier identified on Exhibit L), or (c) a material deletion from, or material modification of, the Work, as described in this Agreement, Contractor shall obtain Owner's written approval prior to undertaking such action.

## **18. WARRANTIES CONCERNING THE WORK**

**18.1 Defect \*\*\* Warranties.** With respect to each Block of the PV Power Plant, Contractor warrants to Owner:

18.1.1 Defect Warranty. That those Systems that comprise a Block, shall, upon Block Substantial Completion: (a) be free from Defects in materials, construction, fabrication and workmanship; (b) be new and unused; and (c) be of good quality and in good condition (collectively, the “**Defect Warranty**”).

18.1.2 \*\*\*.

18.1.3 PV Module Warranty. Contractor shall issue (or shall cause an Affiliate thereof to issue) warranties for the PV modules in accordance with the Module Warranty Terms and Conditions attached as Exhibit R. Notwithstanding anything in Exhibit R to the contrary, the warranties for the PV modules shall be deemed to commence \*\*\*.

**18.2 Warranty Periods.**

18.2.1 Defect Warranty Period. Contractor shall have no liability under the Defect Warranty for a particular Block from and after the end of the \*\*\* period commencing on the applicable Block Substantial Completion Date (such period, the “**Defect Warranty Period**”), *provided, however, that:*

(a) the warranty period for any item or part required to be re-performed, repaired, corrected or replaced following discovery of a Defect during the applicable Defect Warranty Period shall continue until the end of the later of (a) the expiration of such Defect Warranty Period and (b) \*\*\* from the date of completion of such repair or replacement; and

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(b) \*\*\*

18.2.2 \*\*\*.

18.2.3 Warranty Claims. With respect to warranty claims under Section 18.2.1 or Section 18.2.2, as applicable, Contractor shall be liable to Owner in connection with such Defects prior to the end of the applicable Warranty Period so long as Owner complies with its Notice obligations under this Article 18.

### 18.3 Exclusions.

18.3.1 Defect Warranty \*\*\*. The Defect Warranty \*\*\* shall not apply to:

(a) \*\*\*

(b) \*\*\*

18.3.2 Operating Personnel. Notwithstanding the provisions of Section 18.3.1(b), prior to the training of the Operating Personnel by Contractor pursuant to Section 3.15, any adverse stress or damage to the PV Power Plant caused by Operating Personnel while under the direction of Contractor shall be the responsibility of Contractor, except to the extent such Operating Personnel's acts or omissions constitute negligence, gross negligence, willful misconduct or a failure to comply with Contractor's instructions.

### 18.4 Enforcement by Owner; Subcontractor Warranties.

18.4.1 Supplier Warranties. Contractor shall obtain standard defect warranties from Subcontractors of the PV Power Plant Hardware, including the PV modules, supplied under this Agreement to the extent such warranties are available on commercially reasonable terms.

18.4.2 \*\*\*

18.4.3 Assignment of Warranties by Contractor. If this Agreement has been terminated in accordance with Article 20, or otherwise at Final Completion, Contractor shall assign all Subcontractor warranties to Owner, subject to the terms and conditions of such warranties; *provided, however*, that, notwithstanding such assignment, Contractor shall be entitled to enforce each such warranty through the end of the applicable Warranty Period. Contractor shall cause Owner to be an express third-party beneficiary of all such representations, warranties, guarantees and obligations of the Suppliers of all PV modules and other PV Power Plant Hardware.

### 18.5 Correction of Defects.

18.5.1 Notice of Warranty Claim. \*\*\*

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18.5.2 Upon Contractor's Request. \*\*\*

18.5.3 Failure of Contractor to Perform Warranty Work. \*\*\*

**18.6 Limitations On Warranties.** \*\*\*

**19. TITLE**

**19.1 Title; No Encumbrances.** Except as otherwise provided in any Material and Equipment Supply Agreement executed pursuant to Section 9.6, to the extent Owner's payments to Contractor are fully made in accordance with this Agreement, subject to Section 19.2, Contractor warrants that Owner shall have good title, free and clear of all liens, claims, charges, security interests and encumbrances whatsoever (other than those created by or attributable to Owner, any third-party or that result from Owner's failure to pay Owner Taxes hereunder) to all Work, PV Power Plant Hardware and other items furnished by Contractor or any of its Subcontractors that become part of the PV Power Plant or that are to be used for the operation, maintenance or repair thereof in accordance with this Agreement.

**19.2 Transfer.** Except as otherwise provided in any Material and Equipment Supply Agreement executed pursuant to Section 9.6, title to each Block shall transfer to Owner upon the Block Substantial Completion for such Block, subject to Section 19.1. Upon such transfer of title Owner shall assume and take care, custody and control of such Block in accordance with Section 23.1; provided that nothing in this Section 19.2, in Section 23.1 or elsewhere in this Agreement shall reduce, limit or otherwise affect Contractor's rights or Owner's obligations under Sections 15.7 or 16.6.5.

**19.3 Custody During Performance.** The transfer of title to a Block shall in no way affect Owner's rights or obligations as set forth in any other provision of this Agreement. Subject to Section 23.1, Contractor shall have care, custody, and control and risk of loss of all PV Power Plant Hardware and other items with respect to a Block and exercise due care with respect thereto until the earlier of the Block Substantial Completion Date of such Block or the date of termination of this Agreement.

**20. DEFAULTS AND REMEDIES**

**20.1 Contractor Events of Default.** Contractor shall be in default of its obligations pursuant to this Agreement upon the occurrence of any one or more events of default set forth below (each, a "**Contractor Event of Default**");

(a) Contractor \*\*\* becomes insolvent, generally does not pay its debts as they become due, admits in writing its inability to pay its debts, makes a general assignment for the benefit of creditors, or Contractor \*\*\* commences any case, proceeding or other action seeking reorganization or receivership, or adopts an arrangement with creditors, under any bankruptcy, insolvency, reorganization or similar law of the United States or any state thereof for the relief of creditors or affecting the rights or remedies of creditors generally;

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(b) insolvency, receivership, reorganization, or bankruptcy or similar proceedings are commenced against Contractor \*\*\* and such proceeding shall remain undismissed or unstayed for a period of sixty (60) days;

(c) any material representation or warranty made by Contractor herein was materially false or misleading when made and if capable of remedy, Contractor fails to remedy such materially false or misleading representation or warranty within thirty (30) days after Contractor receives a Notice from Owner with respect thereto, except such thirty (30) day limit shall be extended if: (i) curing such failure reasonably requires more than thirty (30) days; and (ii) Contractor commences such cure within such thirty (30) day period and diligently prosecutes such cure, in each case after the date on which Contractor receives a Notice from Owner with respect thereto;

(d) Contractor assigns or transfers this Agreement or any right or interest herein except in accordance with Article 26;

(e) Contractor fails to maintain any insurance coverages required of it in accordance with Article 22 and Contractor fails to remedy such breach within ten (10) days after the earlier of the date on which Contractor first becomes aware of or receives a Notice from Owner with respect thereto, except such ten (10) day limit shall be extended if: (i) curing such failure reasonably requires more than ten (10) days; and (ii) Contractor commences such cure within such ten (10) day period and diligently prosecutes such cure;

(f) Contractor fails to perform any provision of this Agreement providing for the payment of money to Owner, except for any disputed amounts, and such failure continues for twenty (20) days after Contractor has received a Notice from Owner, or Contractor fails to perform any material provision of this Agreement not otherwise addressed in this Section 20.1, and such failure continues for thirty (30) days, except such thirty (30) day limit shall be extended if: (i) curing such failure reasonably requires more than thirty (30) days; and (ii) Contractor commences such cure within such thirty (30) day period and diligently prosecutes such cure, in each case after the date on which Contractor first receives a Notice from Owner with respect thereto;

(g) the Substantial Completion Date for any Phase or the PV Power Plant has not occurred by the \*\*\* day after the applicable Phase Substantial Completion Guaranteed Date or the PV Power Plant Substantial Completion Guaranteed Date, as such date may be extended pursuant to the provisions of this Agreement; or

(h) \*\*\*

**20.2 Owner's Rights and Remedies.** If a Contractor Event of Default occurs, subject to Article 30, Owner shall have the following rights and remedies and may elect to pursue any or all of them, in addition to any other rights and remedies that may be available to Owner hereunder, and Contractor shall have the following obligations:

(a) Owner may terminate this Agreement by giving Notice of such termination to Contractor;

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(b) Owner may proceed against the \*\*\* or any security provided by Contractor to Owner in support of Contractor's performance of its obligations under this Agreement;

(c) if Owner terminates this Agreement in accordance with the provisions hereof, Contractor shall withdraw from the Site, shall assign (to the extent such subcontract may be assigned) to Owner (without recourse to Contractor) such of Contractor's subcontracts as Owner may request, and shall license, in the manner provided herein, to Owner all Contract Intellectual Property of Contractor related to the Work reasonably necessary to permit Owner to complete or cause the completion of the Work, and in connection therewith Contractor authorizes Owner and its respective agents to use such information in completing the Work, shall remove such materials, equipment, tools and instruments used by and any debris or waste materials generated by Contractor in the performance of the Work as Owner may direct, and Owner may take possession of any or all Contractor Deliverables necessary for completion of the Work (whether or not such Contractor Deliverables are complete);

(d) Owner may seek equitable relief to preserve the rights of Owner during the pendency of any dispute or to enforce its rights under this Agreement;

(e) Owner may pursue the dispute resolution procedures set forth in Article 31 to enforce the provisions of this Agreement;

(f) Owner may make such payments or perform such obligations as are reasonably required to cure any Contractor Event of Default and either offset the cost of such payment or performance against payments otherwise due to Contractor under this Agreement or Contractor shall be otherwise liable to pay and reimburse such amounts to Owner;

(g) if Owner terminates this Agreement, Owner may seek damages as provided in Section 21.1; and

(h) Owner may suspend the Work by giving Notice of such suspension to Contractor pursuant to Section 21.4.2.

**20.3 Owner Event of Default.** Owner shall be in default of its obligations pursuant to this Agreement upon the occurrence of any one or more events of default set forth below (each, an “**Owner Event of Default**”):

(a) Owner \*\*\* becomes insolvent, generally does not pay its debts as they become due, admits in writing its inability to pay its debts, makes a general assignment for the benefit of creditors, or Owner \*\*\* commences any case, proceeding or other action seeking reorganization or receivership, or adopts an arrangement with creditors, under any bankruptcy, insolvency, reorganization or similar law of the United States or any state thereof for the relief of creditors or affecting the rights or remedies of creditors generally;

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(b) insolvency, receivership, reorganization, or bankruptcy or similar proceedings are commenced against Owner \*\*\* and such proceeding shall remain undismissed or unstayed for a period of sixty (60) days;

(c) any material representation or warranty made by Owner herein was false or misleading when made and if capable of remedy, Owner fails to remedy such false or misleading representation or warranty within thirty (30) days after Owner receives a Notice from Contractor with respect thereto, except such thirty (30) day limit shall be extended if: (i) curing such failure reasonably requires more than thirty (30) days; and (ii) Owner commences such cure within such thirty (30) day period and diligently prosecutes such cure, in each case after the date on which Owner receives a Notice from Contractor with respect thereto;

(d) Owner assigns or transfers this Agreement or any right or interest herein, except in accordance with Article 26;

(e) Owner fails to perform any provision of this Agreement requiring Owner to pay undisputed sums to Contractor and such failure continues for ten (10) days after Owner has received a Notice from Contractor with respect thereto;

(f) Owner fails to perform any material provision of this Agreement not otherwise addressed in this Section 20.3, and such failure continues for (30) days, except such thirty (30) day limit shall be extended if: (i) curing such failure reasonably requires more than thirty (30) days; and (ii) Owner commences such cure within such thirty (30) day period and diligently prosecutes such cure, in each case after the date on which Owner first receives a Notice from Contractor with respect thereto;

(g) \*\*\*; or

(h) Owner fails to maintain any insurance coverages required of it in accordance with Article 22 and Owner fails to remedy such breach within thirty (30) days after the date on which Owner first receives a Notice from Contractor with respect thereto, except such thirty (30) day limit shall be extended if: (i) curing such failure reasonably requires more than thirty (30) days; and (ii) Contractor commences such cure within such thirty (30) day period and diligently prosecutes such cure.

**20.4 Contractor's Rights and Remedies.** If an Owner Event of Default occurs, subject to Article 30, Contractor shall have the following rights and remedies and may elect to pursue any or all of them, in addition to any other rights and remedies that may be available to Contractor hereunder:

(a) to terminate this Agreement upon providing Notice of such termination to Owner (in which event Contractor shall be compensated in the manner described in Section 20.5);

(b) to proceed against the \*\*\* or any other security provided by Owner to Contractor in support Owner's performance of its obligations under this Agreement;

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(c) to seek equitable relief to preserve the rights of Contractor during the pendency of any dispute or to enforce its rights under this Agreement;

(d) to pursue the dispute resolution procedures set forth in Article 31 to enforce the provisions of this Agreement;

(e) Contractor may proceed against \*\*\* or any security provided by Owner to Contractor in support Owner's performance of its obligations under this Agreement; and

(f) subject (in the case of an Owner Default that is reasonably Disputed by Owner) to Section 31.6, Contractor may suspend the Work by giving Notice of such suspension to Owner; *provided* that such Notice of suspension may be given by Contractor either concurrently or at any time after the Notice described in Section 20.3(e).

**20.5 Termination Payment.** In addition to the remedies provided in Section 20.3, if Contractor terminates this Agreement due to an Owner Event of Default, then as compensation through the effective date of such termination:

(a) Owner shall pay to Contractor an amount \*\*\*; and

(b) Owner shall pay to Contractor \*\*\*;

The amounts payable above shall be grossed up to the extent the Owner is required to make any withholdings under Applicable Law in respect of any of such amounts, such that the amount received by Contractor shall be no less than Contractor would receive in accordance with the foregoing if no such withholding were required. Contractor shall provide reasonable evidence for the costs associated with this Section 20.4 and take reasonable steps to mitigate such costs, losses and damages to the extent reasonably practicable following such termination.

## **21. TERMINATION OR SUSPENSION**

**21.1 Termination and Damages for Contractor Event of Default.** In the event of a Contractor Event of Default, Owner may terminate this Agreement by delivery of Notice to Contractor, to be effective upon the receipt of such Notice by Contractor or upon such other subsequent termination date specifically identified by Owner therein. Subject to Article 30, Contractor shall be liable to Owner for reasonable and direct costs incurred by Owner in completing the Work, including costs of engaging a replacement contractor or for obtaining additional professional services required as a consequence of such Contractor Event of Default, *provided* such costs exceed the unpaid balance of the Contract Price (and, to the extent applicable, Contractor shall remain liable for the satisfaction of all liabilities incurred prior to Owner's termination, including Contractor's indemnification obligations to the extent provided in Article 24, and payment of all accrued Delay Liquidated Damages, PV Power Plant Substantial Completion Liquidated Damages and Performance Liquidated Damages). Upon determination of the total cost of the Work, Owner shall Notify Contractor in writing of the amount, if any, that Contractor shall pay Owner, and such amount shall be paid within thirty (30) days after receipt of such Notice. If it is determined under Article 31 that there was not a Contractor Event of Default or that Owner was not entitled to the remedy against Contractor

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provided above, Owner will be liable to Contractor for a termination payment calculated in accordance with Section 20.5.

**21.2 Owner's Right to Elect to Assume Obligations with Subcontractors.** Upon a termination of this Agreement by Owner pursuant to Section 21.1, Owner shall have the right, at its option, to assume any subcontract or purchase order that Contractor has entered into with a Subcontractor in connection with the Work, including without limitation, the subcontracts for the supply of PV Panels. If Owner elects to assume any subcontract or purchase order as described in this Section 21.2, then (a) Contractor shall execute all assignments or other reasonable documents and take all other reasonable steps requested by Owner which may be required to vest in Owner all rights, set-offs, benefits and titles necessary to effect such assumption by Owner; and (b) Owner shall simultaneously agree to indemnify Contractor against liabilities thereafter arising under the assumed subcontract or purchase order. Contractor shall use commercially reasonable efforts to include in each of its subcontracts or purchase orders, Subcontractor's agreement to permit its subcontract or purchase order to be assumed by Owner upon termination of this Agreement.

**21.3 Contractor Conduct.** Upon receipt of Notice from Owner of termination pursuant to Section 21.1, Contractor shall: (a) cease operations as directed by Owner in the Notice; (b) take action necessary, or that Owner may reasonably direct, for the protection and preservation of the Work; and (c) except for Work directed to be performed prior to the effective date of termination stated in such Notice, or except as expressly requested by Owner in writing or under Section 21.2, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders with respect to the Work or the PV Power Plant.

**21.4 Suspension for Cause.**

21.4.1 Stop Work; Suspension for Cause. Owner may (i) order Contractor to immediately stop performance of that portion of the Work at the Site that would reasonably be expected to cause an imminent danger to life or damage to property, or (ii) by giving thirty (30) days' advance Notice thereof to Contractor, suspend performance of the Work due to a Contractor Event of Default (each, a "**Suspension for Cause**"). As a condition to the effectiveness of such Notice, Owner shall provide Contractor a reasonable explanation of the grounds for such Suspension for Cause as well as Owner's reasonable instructions to remedy the same. If the Work is suspended as a result of a valid Suspension for Cause, then Contractor shall not be entitled to any schedule extensions or change in the cost of the performance of the Work for a Suspension for Cause resulting from a Contractor Event of Default. Owner's right to suspend performance of the Work under this Section 21.4.1 shall be without prejudice to any other right or remedy Owner may have under this Agreement.

21.4.2 Resumption of Work. In the case of a Suspension for Cause pursuant to Section 21.4.1, once the cause of such Suspension for Cause has been resolved by Contractor in accordance with the instructions of Owner in its Notice of Suspension for Cause as provided above or by other reasonable means identified by Contractor, all as determined by Owner in its reasonable discretion, and if this Agreement is still in effect, then if Owner does not re-order the resumption of the

Work after five (5) days Notice, any further delay to the resumption of the Work shall be considered an Owner-Caused Delay. In the event that any such Suspension for Cause is subsequently determined not to have been properly issued in accordance with the provisions of this Section 21.4.1, then Contractor shall be entitled to a Change In Work in accordance with Section 17.3 and such other relief as provided in Section 21.4.3 to reflect any additional increased costs of Contractor resulting from any such suspension, as reasonably demonstrated by Contractor to Owner.

21.4.3 Extension of Time and Compensation Rights. If the last sentence of Section 21.4.2 applies, then:

(a) the CPM Schedule (including any applicable Substantial Completion Guaranteed Dates) shall be extended by a period no less than the suspension period, plus a reasonable period for demobilization and remobilization, as mutually agreed upon by Contractor and Owner;

(b) Owner shall pay Contractor for those reasonable costs and cost increases incurred during the applicable suspension of the Work that are documented by Contractor to the reasonable satisfaction of Owner, to the extent directly attributable to the suspension:

(i) for the purpose of safeguarding or storing the Work and the PV Power Plant Hardware at the point of fabrication, in transit, or at the Site;

(ii) for personnel, Subcontractors or PV Power Plant Hardware, the payments for which are continued during such suspension;

(iii) for reasonable costs of demobilization and remobilization of Contractor and its Subcontractors, including suspension costs set forth in any subcontract, purchase order or other agreement;

(iv) for rescheduling the Work (including any increased labor or materials costs and including penalties or additional payments to Subcontractors for the same), plus (A) \*\*\* of such costs as an allowance for profit and home office overhead and (B) \*\*\* of such costs as an allowance for contingency.

**21.5 Claims for Payment**. All claims by Contractor for compensation or extension of time under Section 21.4.4 must be made within \*\*\* days after either (i) the Notice from the Owner that the Agreement has been terminated or (ii) such suspension has ended.

**21.6 Release of Punch List Holdback upon Termination**. In the event this Agreement is terminated prior to completion of the Work for any reason other than a Contractor Event of Default, Owner shall release from the Punch List Holdback an amount equal to the *sum* of (i) all amounts invoiced by Contractor under Section 6.6.3 that remain unpaid, *plus* (ii) with respect to all Work performed to complete items on any applicable Punch List that have been completed but that have not been invoiced, all Punch List Amounts relating to such completed items, *plus* (iii) with respect to all Work performed toward the completion of items on any applicable Punch Lists which have been partially completed, an amount equal to the value of

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such Work, calculated based on a time and materials basis at Contractor's then applicable personnel and labor rates (or at the rates of the applicable Subcontractors) plus \*\*\* of such value for home office overhead and profit, *provided*, that such amount shall not exceed such Punch List Amount for such partially completed items. An example calculation of the release of the Punch List Holdback is set forth in Exhibit N.

## 22. INSURANCE

### 21.1 General.

22.1.1 Contractor Insurance. Contractor shall procure at its own expense and maintain in full force and effect as required under this Agreement, with responsible insurance companies authorized to do business in the state where the Work is performed, the types and limits of insurance as set forth in Section 22.2. Such insurances may be procured in whole or in part under Contractor's own insurance program.

22.1.2 Owner-Provided Insurance. Owner shall procure at its own expense and maintain in full force and effect as required under this Agreement, with responsible insurance companies authorized to do business in the state where the Work is performed, the types and limits of insurance as set forth in Section 22.3.

22.1.3 Insurer Qualifications. The insurance companies referred to in this Article 22 shall have an A.M. Best Insurance financial strength rating of A- or better, and a financial size of IX or greater, or shall be of recognized responsibility satisfactory to the Parties.

22.1.4 Insurance Terms. Capitalized terms used in this Article 22 and not otherwise defined in this Agreement shall have the meanings generally ascribed to them in the commercial insurance industry.

22.1.5 Additional Insurance. Each Party, at its own cost, may purchase any additional insurance it believes necessary to protect its interests.

**22.2 Contractor's Insurance (General Coverages)**. Contractor shall procure and maintain in full force and effect, the insurance policies specified in this Article 22.

22.2.1 Workers' Compensation and Employer's Liability Insurance. Contractor shall maintain workers' compensation insurance and such other forms of insurance which Contractor is required to maintain in order to comply with statutory limits under workers' compensation laws of any applicable jurisdiction in the United States (and any other location in which the Work is to be performed) including USL&H coverage (if any exposure exists), where applicable, and employer's liability (including occupational disease) coverage with limits of \*\*\* for disease, and \*\*\* for each employee, which shall cover all of Contractor's employees, whether full-time, part-time, leased, temporary or casual, who are engaged in the Work.

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22.2.2 Commercial General Liability Insurance. Contractor shall maintain commercial general liability insurance written on an occurrence basis and with a combined single limit of \*\*\* per occurrence and \*\*\* annual aggregate. Such insurance shall include coverage for products/completed operations (for three years beyond Final Completion), broad form/blanket contractual liability for written contracts, broad form property damage, bodily injury (including death), and personal injury liability, independent contractor liability, mobile equipment, cross liabilities, and hostile fire liability. The policy shall contain no exclusions for X.C.&U., rigging, lifting, and boom overload, or operations within 50 feet of a railroad.

22.2.3 Automobile Liability Insurance. Contractor shall maintain automobile liability insurance (including coverage for owned, non-owned and hired automobiles) covering vehicles used by Contractor in connection with the Work in an amount of \*\*\* combined single limit per occurrence for bodily injury and property damage. Contractor's automobile liability insurance coverage shall contain appropriate no-fault insurance provisions or other endorsements in accordance with Applicable Laws.

22.2.4 Umbrella or Excess Liability Insurance. Contractor shall maintain umbrella/excess insurance on an occurrence basis covering claims in excess of the underlying insurance described in Sections 22.2.1 (employer's liability only), 22.2.2 and 22.2.3, in the amount of \*\*\* per occurrence, and on a following-form basis.

22.2.5 Professional Liability Insurance. If the Work includes engineering, architectural, design or other professional services, Contractor shall secure and maintain or shall cause to be secured and maintained, professional liability insurance (errors and omissions) with a minimum single limit of \*\*\* to cover those liabilities caused by Contractor's errors, omissions or negligent acts related to the professional services being provided pursuant to this Agreement.

22.2.6 Contractor's Pollution Liability Insurance. Contractor shall maintain Contractor's Pollution Liability coverage, to provide coverage for Contractor's legal liability for environmental/pollution claims arising out of Contractor's Work, with limits of \*\*\* per occurrence.

22.2.7 Equipment, Supplies and Materials. All equipment, tools, supplies and materials (a) belonging to Contractor or to any of its Subcontractors or (b) used by or on behalf of Contractor or any of its Subcontractors for its performance hereunder which is not intended to become a permanent part of the completed Work shall be brought to and kept at the Site at the sole cost, risk and expense of Contractor or such Subcontractor, and Owner shall not be liable for loss or damage thereto. Should such property be insured, said insurers shall waive rights of subrogation against Owner and its affiliates and the Owner Financing Parties. Owner will not be responsible for any insurance premium payments related to the aforementioned equipment, supplies or materials.

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**22.3 Owner's Insurance (General Coverages).** Owner shall procure and maintain in full force and effect, the insurance policies specified in this Section 22.3.

22.3.1 Workers' Compensation Insurance and Employers' Liability Insurance. In accordance with the laws of the State of California, Owner shall maintain in force workers' compensation insurance for all of its employees (if any). Owner shall also maintain employer's liability coverage in an amount of not less than \*\*\* per accident and per employee for disease (if exposure exists). In lieu of such insurance, Owner may maintain a self-insurance program meeting the requirements of the State of California along with the required employer's liability insurance.

22.3.2 Commercial General Liability Insurance. Owner shall maintain commercial general liability insurance written on an occurrence basis and with a combined single limit of \*\*\* per occurrence and \*\*\* annual aggregate. Such insurance shall include coverage for products/completed operations, broad form/blanket contractual liability for written contracts, broad form property damage and personal injury liability, independent contractor liability and hostile fire liability.

22.3.3 Automobile Liability Insurance. Owner shall maintain automobile liability insurance (including coverage for owned, nonowned and hired automobiles) covering vehicles used by Owner (if any), including the loading or unloading of such vehicles, in an amount of \*\*\* combined single limit per occurrence for bodily injury, and property damage.

22.3.4 Umbrella or Excess Liability Insurance. Owner shall maintain umbrella/excess insurance on an occurrence basis covering claims in excess of the underlying insurance described in Sections 22.3.2 and 22.3.3 in an amount not less than \*\*\* per occurrence, and on a following-form basis.

**22.4 Builder's All-Risk Insurance.** On or before the Full Notice To Proceed Date, \*\*\* shall procure and thereafter at all times until PV Power Plant Substantial Completion, maintain, or cause to be maintained, builder's all-risk insurance in relation to the PV Power Plant. Such builder's all-risk insurance shall be in a form acceptable to the \*\*\* and the \*\*\*. \*\*\* shall provide and pay for builder's all-risk insurance for the PV Power Plant on the terms set out herein.

22.4.1 Additional Insureds. Such builder's all-risk insurance shall include as additional insureds \*\*\* and \*\*\*, but only to the extent of their interests. Such \*\*\* or its \*\*\* shall remain additional insureds until the PV Power Plant Substantial Completion Date.

22.4.2 Coverage. Builder's all-risk shall cover all property in the course of construction, including the Work, PV Power Plant Hardware, miscellaneous equipment, buildings and structures, machinery, fixtures, furnishings and other properties constituting a part of the PV Power Plant (other than PV Power Plant Hardware properly covered under Contractor's equipment floater noted in Section

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22.2.7), from physical loss or damage caused by perils covered by a builder's all-risk form or equivalent coverage. Such insurance shall:

- (a) include "extensions of coverage" (including earthquake, flood, collapse, sinkhole, subsidence, subject to sub-limits that are reasonably available in the commercial insurance marketplace);
- (b) include mechanical and electrical breakdown coverage during testing and commissioning, including the Performance Acceptance Tests and other operations of the PV Power Plant prior to Project Substantial Completion. The builder's all-risk coverage shall not contain an exclusion for resultant damage caused by faulty workmanship, design or materials, which coverage shall be equivalent to LEG-2/96;
- (c) cover the PV Power Plant and the Site for removal of debris; and
- (d) otherwise cover damage to property and other claims arising out of the unloading, lifting, lowering or other handling of property at the Site.

Such insurance shall cover the full replacement cost of the Work or the property at the Site in relation to the PV Power Plant, as the case may be, then at risk, including primary cost of the PV Power Plant Hardware relevant to the PV Power Plant plus freight.

22.4.3 Loss Payees. Losses if any, covered by builder's all-risk shall be payable to Owner, Owner Financing Parties, if any, Contractor, Contractor Financing Parties, if any, and Subcontractors as loss payees, as their respective interests may appear. The policies shall be endorsed to state that, notwithstanding anything to the contrary, the interest of the aforementioned Persons, if any, shall not be invalidated by any act or failure to act on the part of Owner, Contractor or any other Person, and shall be insured regardless of any breach or violation by Owner, Contractor or any other Person of any warranties, declarations or conditions contained in such insurance policies. The Parties agree that, in the event of physical loss of the PV Power Plant, any insurance proceeds under this Section 22.4 shall be reserved in a segregated account until such time as it has been determined whether or not to repair, replace or rebuild the damaged portions of the PV Power Plant, subject always to the terms of any lending agreements between Owner and, if applicable, Owner Financing Parties.

22.4.4 Deductibles. Any required payments of the deductibles for claims relating to builders all-risk insurance shall be the responsibility of Contractor, subject to an aggregate maximum liability for such deductibles of \*\*\*. To the extent Contractor is not the cause of loss or damage to Blocks which have achieved Substantial Completion, Contractor shall not be liable for deductible amounts associated with that loss or damage, notwithstanding any provision to the contrary in this Agreement. Owner shall be liable for payment of any deductible amounts due under the builder's risk insurance in excess of the amount for which Contractor is liable under this Section 22.4.4.

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22.4.5 Waivers of Subrogation. Subject to the foregoing language related to policy deductibles, such insurance shall provide for a waiver of underwriters' right to subrogation against Owner, Contractor and Subcontractors of all tiers, provided, however, that such waiver shall not apply to the right to subrogation against any manufacturer or supplier of PV Power Plant Hardware if the loss or damage is caused, directly or indirectly, by a fault or defect in such PV Power Plant Hardware..

**22.5 Endorsements Applicable to Contractor Insurance**. All policies of liability insurance to be maintained by Contractor shall be written or endorsed to include the following:

(a) With respect to workers' compensation/employer's liability insurance, to provide that the insurer shall waive for the benefit of Owner and where permitted by law, all rights of subrogation against Owner, its subsidiaries and Affiliates, Owner Financing Parties, co-venturers, landowners of the Site where the Project is located, or their directors, officers, members, managers, as well as their respective employees and/or agents of each;

(b) With respect to commercial general liability, automobile liability and excess/umbrella insurance, to provide that Owner, its subsidiaries and Affiliates, Owner Financing Parties, if any, its co-venturers, landowners of the Site where the Project is located, or their directors, officers, members, managers, as well as the employees and/or agents of each shall be included as additional insured, and that all insurance policies (including Worker's Compensation, where permitted by law) shall waive any and all right of subrogation or recovery which the insurer may have or acquire against Owner, Owner Parent, subsidiaries and Affiliates, Owner Financing Parties, if any, its co-venturers, landowners of the Site where the Project is located, or their directors, officers, members, managers, as well as the employees and/or agents of each. The additional insured status shall apply regardless of the enforceability of the indemnity provisions of this Agreement;

(c) To provide a severability of interest or cross liability clause;

(d) That the insurance shall be primary and not excess to or contributing with any insurance or self-insurance maintained by Owner;

(e) With respect to coverage for completed operations under the general liability insurance, to be in place throughout the performance of the Work and for three (3) years after Final Completion. Such three (3) year tail following Final Completion shall be required only for general liability insurance and not for excess/umbrella insurance.

**22.6 Subcontractor Insurance**. Contractor shall require each of its Subcontractors performing work at the Site, to obtain, maintain and keep in force during the time during which they are involved in performance of the Work, insurance coverage in accordance with the insurance requirements of Contractor set forth in Sections 22.2.1, 22.2.2, 22.2.3 and 22.2.4 and 22.2.5 if providing engineering/design work; provided, however, that the limits of any such

Major Subcontractors' Umbrella Excess Liability Insurance policies otherwise maintained in accordance with the requirements under Section 22.2.4, shall not be less than \*\*\*. Subcontractors shall include Owner, its Affiliates and the landowner's of the Site where the Project is located as additional insured parties on the policies that Subcontractors maintain which are of the types listed in Sections 22.2.2, 22.2.3, and 22.2.4, and shall waive subrogation in favor of Owner, its Affiliates, Owner Financing Parties, and the landowner's of the Site where the Project is located under all policies they maintain which are of the types listed in Section 22.2. Contractor agrees that all its subcontractors contractually agree that their insurance will respond on a primary basis to any similar insurance being maintained by Contractor, Owner, or any additional insured. Any deviation from these requirements must be agreed to, in writing, by the Owner.

**22.7 Contractor's Certificates.** On or prior to the Full Notice to Proceed Date, Contractor shall furnish to Owner certificates of insurance from each insurance carrier showing that the insurance required of Contractor as set forth in this Article 22 is in full force and effect, the amount of the carrier's liability thereunder. Contractor shall also be responsible for obtaining certificates of insurance for the insurance coverages required to be maintained by its Subcontractor in accordance with Section 22.6 from each Subcontractor before such Subcontractor is allowed to commence Work or enter the Site. Certificates of insurance submitted under this Section 22.7 shall be in form and content reasonably acceptable to Owner. Certificates of each renewal of the insurance should also be delivered to Owner and, if applicable, any Owner Financing Party promptly after receipt.

**22.8 Owner's Certificates.** On or prior to the Full Notice to Proceed Date, Owner shall furnish to Contractor certificates of insurance from Owner's insurance carrier(s), showing that the insurance coverages required of Owner as set forth in this Article 22 are in full force and effect, the value of the property being insured thereunder. Certificates of insurance submitted under this Section 22.8 shall be in form and content reasonably acceptable to Contractor. Certificates of each renewal of the insurance should also be delivered to Contractor and any Contractor Financing Party promptly after receipt.

**22.9 Descriptions Not Limitations.** The insurance coverages referred to in this Article 22 will be set forth in full in the respective policy forms, and the foregoing descriptions of such policies are not intended to be complete, nor to alter or amend any provision of the actual policies, and in matters (if any) in which the said description may be conflicting with such instruments, the provisions of the policies of the insurance shall govern; provided, however, that neither the content of any insurance policy or certificate nor approval thereof shall relieve either Parties of any of their obligations under this Agreement.

**22.10 Cost of Premiums. It is expressly agreed and understood that:**

(a) the cost of premiums for insurance required to be maintained by \*\*\* as set forth in this Article 22 and all Taxes thereon shall be borne by \*\*\*, and shall be endorsed to provide that \*\*\* shall have no liability for the payment of any premium thereon; and

(b) that the cost of premiums for insurance required to be maintained by \*\*\* as set forth in this Article 22 and all Taxes thereon shall be borne by \*\*\* and shall be

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endorsed to provide that \*\*\* shall have no liability for the payment of any premium thereon.

**22.11 Other Deductibles.** Except as provided in Section 22.4.4 (with respect to deductibles relating to claims under the builders all-risk insurance), any required payment of any deductible for a claim relating to other insurance coverages to be maintained by either Party hereunder shall be the responsibility of the party being required to maintain that coverage, and \*\*\* shall be responsible for the payment of such deductibles relating to claims under the insurance policies described in Section 22.2.

**22.12 Both Party's Rights to Provide Insurance.** If either Party fails to provide or maintain any insurance required of it hereunder, then, on ten (10) days notice of its intent to do so and absent provision of the insurance, the other Party shall have the right, but not the obligation, to provide or maintain any such insurance, and to deduct the cost thereof from any amounts due and payable to the breaching Party (including, in the case of Owner, from any amounts due and payable to Contractor in respect of the Contract Price), or, if there are no such amounts due and payable to the breaching Party, the breaching Party shall reimburse the other Party for such costs on demand. Should any of the policies required to be maintained by either Party become unavailable or be canceled for any reason during the period of this Agreement, such Party shall immediately procure replacement coverage. The failure of either Party to procure such replacement coverage which is within the reasonable control of such Party (so as to provide continuous coverage) shall constitute a material breach hereunder.

**22.13 No Limitation of Liability.** The insurance coverages required of Contractor as set forth in this Article 22 shall in no way affect, nor are they intended as a limitation of, Contractor's liability with respect to its performance of the Work. The insurance coverages required of Owner set forth in this Article 22 shall in no way affect, nor are they intended as a limitation of, Owner's liability with respect to its performance of its obligations hereunder.

**22.14 Other Terms and Provisions.**

22.14.1 Unintentional Errors or Omissions. It is hereby understood and agreed that the coverages afforded by the insurance policies required of either Party set forth in this Article 22 shall not be invalidated or affected by any unintentional omissions or errors.

22.14.2 Notification. Contractor and Owner shall notify the other Party of any and all incidents giving rise to an insurance claim, and otherwise keep the other Party timely apprised of insurance claim proceedings.

**23. RISK OF LOSS OR DAMAGE**

**23.1 Care, Custody and Control.** Until the Block Substantial Completion Date with respect to a Block, Contractor shall have care, custody and control of such Block. From and after the earlier of (x) the Block Substantial Completion Date with respect to a Block and (y) the termination of this Agreement, care, custody, and control of the Work with respect to such Block shall pass to Owner.

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**23.2 Risk of Loss.** Subject to Section 22.4.4, Owner assumes risk of loss, and full responsibility, for the cost of replacing or repairing any damage to the Work related thereto (including the PV Power Plant Hardware), and assumes risk of loss, and full responsibility, for the cost of replacing or repairing any damage to any materials, equipment and supplies which are purchased by Contractor for permanent installation into the completed Project and which are located at the Site.

## **24. INDEMNIFICATION**

**24.1 Comparative Fault.** Notwithstanding anything to the contrary herein, it is the intent of the Parties that where fault is determined to have been joint or contributory, principles of comparative fault will be followed and each Party shall bear the proportionate cost of any loss, damage, expense and liability attributable to such Party's fault.

**24.2 By Contractor.** Subject to Section 24.1, Contractor shall defend, indemnify and hold harmless, Owner, the Owner Financing Parties (if any) and any of their employees, shareholders, members, directors, officers, managers, representatives, successors and permitted assigns (each, an “**Owner Indemnitee**”) from and against the following, except to the extent arising from the sole negligence of an Owner Indemnitee:

(a) all Losses arising from third-party claims for property damage (that is, not including the PV Power Plant), personal injury or bodily injury or death to the extent caused by any negligent, willful, reckless or otherwise tortious act or omission (including strict liability) during the performance of the Work or from performing the Work under this Agreement, or any curative action under any Warranty following performance of the Work, of Contractor, any Subcontractor (including Contractor's Affiliate as the provider of PV modules for the PV Power Plant), or anyone directly or indirectly employed by any of them, or anyone for whose acts such Person may be liable;

(b) all Losses that directly arise out of or result from:

(i) all claims for payment for Work performed, whether or not reduced to a lien or mechanics' lien, filed by Contractor or any Subcontractors, or other persons performing any portion of the Work, including reasonable attorneys' fees and expenses incurred by any Owner Indemnitee in discharging any Contractor Lien, except to the extent such claim is resulting from a breach by Owner to make payment under this Agreement; and

(ii) employers' liability or workers' compensation claims filed by any employees or agents of Contractor or any of its Subcontractors;

(c) all Losses arising from third-party claims, including claims by Subcontractors and claims for property damage, personal injury or bodily injury or death, and fines and penalties issued by Governmental Authorities, that directly or indirectly arise out of or result from the failure of Contractor, any of its Subcontractors, or the PV Power Plant as designed and constructed to comply with Applicable Laws;

(d) all Losses arising from claims by any Governmental Authority that directly or indirectly arise out of or result from the failure of Contractor or its Subcontractors to pay, as and when due, all Taxes, fees or charges of any kind that are the responsibility of Contractor or any of its Subcontractors or any of their respective agents or employees with respect to any payment for the Work made to or earned by Contractor or any of its Subcontractors or any of their respective agents or employees under this Agreement (which, for avoidance of doubt, expressly excludes Owner Taxes); and

(e) all Losses, including claims for property damage or bodily injury or death, whether or not involving damage to the PV Power Plant or the Site, that arise out of or result from Pre-Existing Contamination at the Site except Unknown Pre-Existing Site Conditions, or the use of Hazardous Materials (other than arising as a result of Releases or spills described in Section 24.3(f)) whether lawful or unlawful, brought onto the Site by Contractor or any Subcontractor. Such use of or contamination by Hazardous Materials include:

(i) the storage, transportation, processing or disposal of such Hazardous Materials; and

(ii) any environmental condition caused by such Hazardous Materials.

(f) \*\*\*

**24.3 By Owner.** Subject to Section 24.1, Owner shall defend, indemnify and hold harmless Contractor, its Subcontractors and any Person acting for or on behalf of Contractor and their respective employees, agents, partners, Affiliates, shareholders, members, directors, officers, members, managers, successors and permitted assigns (each, a “**Contractor Indemnatee**”) from and against the following, except to the extent arising from the sole negligence of a Contractor Indemnatee:

(a) all Losses arising from third-party claims for property damage, personal injury or bodily injury or death to the extent caused by any negligent, willful, reckless or otherwise tortious act or omission (including strict liability) of Owner or any of its Affiliates, any Owner's Separate Contractor or anyone directly or indirectly employed by

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any of them, or anyone for whose acts such Person may be liable, during the performance by Owner of its obligations or failing to perform any of its obligations under this Agreement;

(b) all Losses arising from third-party claims, including claims for property damage, personal injury or bodily injury or death that directly or indirectly arise out of or result from the failure of Owner, of any of its Affiliates or of any of Owner's Separate Contractors to comply with the terms and conditions of Applicable Laws;

(c) all Losses arising from claims, assessments or any similar action by any Governmental Authority that directly or indirectly arise out of or result from the failure of Owner to pay or if applicable, reimburse Contractor, as and when due, all Taxes, fees or charges of any kind imposed by any Governmental Authority for which Owner is obligated to pay or if applicable, reimburse Contractor pursuant to the terms of this Agreement;

(d) all Losses that directly arise out of or result from employers' liability or workers' compensation claims filed by any employees or agents of Owner or any of its Owner's Separate Contractors;

(e) all Losses arising from any third party claim to the extent arising from the misuse of the License;

(f) all Losses, including claims for property damage or bodily injury or death, whether or not involving damage to the PV Power Plant or the Site, whether lawful or unlawful, that directly or indirectly arise out of or result from:

(i) the presence or existence of Hazardous Materials at the Site (A) brought onto or generated at the Site by Owner or any of Owner's Separate Contractors (other than Hazardous Materials that were brought onto the Site or generated by Contractor or any Subcontractor during the performance of the Work); or (B) which migrated onto the Site from another location (other than such Hazardous Materials that were brought onto the Site or generated by Contractor or any Subcontractor, or which Contractor or any Subcontractor Released or discharged in violation of its obligations under Section 27.3); or

(ii) the Release or spill by Owner or its Affiliates or any of Owner's Separate Contractors or any Person for whom they are responsible, of Hazardous Materials, such Hazardous Materials otherwise having been brought onto the Site by Contractor or any Subcontractor in accordance with the terms of this Agreement and all Applicable Laws; and

(iii) Unknown Pre-Existing Site Conditions; and

(g) any and all fines, penalties or assessments issued by any Governmental Authority that Contractor may incur as a result of executing any applications at Owner's request.

## **24.4 Patent Infringement and Other Indemnification Rights.**

24.4.1 Contractor Obligation to Indemnify. Contractor shall defend, indemnify, and hold harmless the Owner Indemnitees against all Losses arising from any Intellectual Property Claim. Owner shall provide Contractor with reasonably prompt notice of any Claim for which Owner seeks indemnity hereunder. Contractor shall, at its own expense settle or defend any such Intellectual Property Claim and pay all damages and costs, including reasonable attorneys' fees, awarded against Owner and, if Owner is enjoined from completing the PV Power Plant or any part thereof, or from the use, operation or enjoyment of the PV Power Plant or any part thereof, as a result of a final, non-appealable judgment of a court of competent jurisdiction or as a result of injunctive relief provided by a court of competent jurisdiction, either:

- (a) procure for Owner, or reimburse Owner for procuring, the right to continue using the infringing service, PV Power Plant Hardware or other Work;
- (b) modify the infringing service, PV Power Plant Hardware or other Work so that the same becomes non-infringing; or
- (c) replace the infringing service, PV Power Plant Hardware or other Work with non-infringing service, PV Power Plant Hardware or other Work, as the case may be.

Notwithstanding the foregoing, in no case shall Contractor take any action which adversely affects Owner's continued use and enjoyment of the applicable service, PV Power Plant Hardware or other Work without the prior written consent of Owner.

### **24.4.2 Contractor Deliverables; Electronic Data Files.**

(a) Owner's acceptance of the Contractor Deliverables, supplied materials and equipment or other component of the Work shall not be construed to relieve Contractor of any obligation hereunder.

(b) Except where any Contractor Deliverable shall be in the form of an electronic data file, any other electronic data files furnished to Owner pursuant to this Agreement are provided only for the convenience of Owner. Owner recognizes that such electronic data files not provided to Owner as a Contractor Deliverable may not be adequate or appropriate for Owner's needs. In the case of any discrepancies between the Contractor Deliverable represented by electronic data files and the plotted hardcopy of such files bearing the seal of Contractor's registered professional engineer, the sealed hardcopy shall govern. Contractor assumes no responsibility for the accuracy or completeness of the electronic data files not provided to Owner as a Contractor Deliverable, and any use or reuse of such electronic data for any purpose shall be at Owner's sole risk.

**24.5 Claim Notice.** An Indemnatee shall provide Notice to the indemnifying Party, within ten (10) days after receiving Notice of the commencement of any legal action or of any claims or threatened claims against such Indemnatee in respect of which indemnification may be

sought pursuant to the foregoing provisions of this Article 24 or any other provision of this Agreement providing for an indemnity (such Notice, a “**Claim Notice**”). The Indemnitee's failure to give, or tardiness in giving, such Claim Notice will reduce the liability of the indemnifying Party only by the amount of damages attributable to such failure or tardiness, but shall not otherwise relieve the indemnifying Party from any liability that it may have under this Agreement. In case any such claim or legal action shall be made or brought against an Indemnitee and such Indemnitee shall Notify (by sending a Claim Notice) the indemnifying Party thereof, the Indemnitee may by such Claim Notice require the indemnifying Party to assume and control the defense of the claim (other than any Intellectual Property Claim, which shall be controlled by Contractor unless otherwise agreed by the Parties) that is the subject of such Claim Notice, in which case the indemnifying Party may select counsel after consultation with the Indemnitee, and the indemnifying Party shall pay all expenses of the conduct of such defense. The Indemnitee shall have the right to employ separate counsel in any such proceeding and to participate in (but not control) the defense of such claim, but the fees and expenses of such counsel shall be borne by the Indemnitee unless the indemnifying Party agrees otherwise; *provided, however*, that if the named parties to any such proceeding (including any impleaded parties) include both the Indemnitee and the indemnifying Party, the indemnifying Party requires that the same counsel represent both the Indemnitee and the indemnifying Party, and representation of both parties by the same counsel would be inappropriate due to actual or potential conflicting interests between them, then the Indemnitee shall have the right to retain its own counsel at the cost and expense of the indemnifying Party. If the indemnifying Party fails to assume or diligently prosecute the defense of any claim in accordance with the provisions of this Section 24.5, then the Indemnitee shall have the absolute right to control the defense of such claim and the fees and expenses of such defense, including reasonable attorneys' fees of the Indemnitee's counsel and any reasonable amount determined to be owed by Indemnitee pursuant to such claim, shall be borne by the indemnifying Party, *provided, however*, that the indemnifying Party shall be entitled, at its expense, to participate in (but not control) such defense. Subject to all of the foregoing provisions of this Section 24.5:

(a) as between the Parties, the indemnifying Party shall control the settlement of all claims, in coordination with any insurer as required under the applicable insurance policies in Article 22 as to which it has assumed the defense; *provided, however*, that to the extent the indemnifying Party, in relation to such insurer, controls settlement:

(i) such settlement shall include a dismissal of the claim and an explicit release from the party bringing such claim or other proceedings of all Indemnitees; and

(ii) the indemnifying Party shall not conclude any settlement without the prior approval of the Indemnitee, which approval shall not be unreasonably withheld or delayed; and

(b) except as provided in the preceding sentence concerning the indemnifying Party's failure to assume or to diligently prosecute the defense of any claim, no Indemnitee seeking reimbursement pursuant to the foregoing indemnity shall, without the prior written consent of the indemnifying Party, settle, compromise, consent to the entry of any judgment in or otherwise seek to terminate any action, claim, suit, investigation or



proceeding for which indemnity is afforded hereunder unless such Indemnatee reasonably believes that the matter in question involves potential criminal liability against such Indemnatee. The Indemnatee shall provide reasonable assistance to the indemnifying Party when the indemnifying Party so requests, at the indemnifying Party's expense, in connection with such legal action or claim, including executing any powers-of-attorney or other documents required by the indemnifying Party with regard to the defense or indemnity obligations.

**24.6 Survival of Indemnity Obligations.** The indemnities set forth in this Article 24 shall survive the Final Completion Date or the earlier termination of this Agreement for a period of \*\*\* following the Final Completion Date or earlier termination. All Claim Notices must be delivered, if at all, to the applicable Party prior to the expiration of such period. If any Claim Notice is made within such period, then the indemnifying period with respect to all claims identified in such Claim Notice (and the indemnity obligation of the Parties hereunder with respect to such claim) shall extend through the final, non-appealable resolution of such claims. For purposes of clarification hereunder, without limiting the other rights granted hereunder to either Party, a Party may enforce the indemnity provisions hereunder pursuant to the provisions of Article 31 without having to declare an Owner Event of Default or a Contractor Event of Default, as applicable.

**24.7 Treatment of Indemnification Payments.** To the extent permitted by Applicable Law, the Parties agree to treat all indemnification payments made under this Agreement as adjustments to the Contract Price; provided, however, that any indemnification payments in respect of a Phase made subsequent to the submission of a Section 1603 Application or Section 1603 Commencement of Construction Application for that Phase shall be made on an After-Tax Basis unless (i) the underlying Claim for the indemnity corresponds to an express statement from the Department of Treasury that a reduction in the applied for Cash Grant is the result of the initial cost basis of the relevant portion of the Phase being less than that stated in the Cash Grant, or (ii) the contemplated reduction in purchase price from any such indemnity would not be inconsistent with the tax basis of the "qualified property" in that Phase stated in a Section 1603 Application or Section 1603 Commencement of Construction Application (prior to approval of that application) or as approved by the Department of Treasury in respect of the Cash Grant actually paid.

**24.8 Contractor Lien Indemnity.** Contractor shall indemnify, defend, and hold harmless, Owner, Owner-Financing Parties, and the title insurer(s) for Owner-Financing Parties against loss due to the perfection of any "Contractor Liens" with priority greater than that of the liens of the Owner-Financing Parties upon the assets of Owner.

## **25. CONFIDENTIAL INFORMATION**

**25.1 Confidential Information.** For purposes of this Agreement, the term "**Confidential Information**" means proprietary information concerning the business, operations and assets of Owner or Contractor (as the case may be), their respective parent companies, subsidiaries or affiliates (collectively, the "**Disclosing Party**") that is clearly marked "Proprietary" or "Confidential" if disclosed in writing, and, if disclosed orally or visually, is communicated to be confidential at the time of disclosure and reduced to a writing marked

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“Proprietary” or “Confidential” within a period of thirty (30) days after the initial oral or visual disclosure by the Disclosing Party to the Party receiving the information (“**Receiving Party**”). Subject to the preceding sentence, Confidential Information may include information or materials prepared in connection with the performance of the Work under this Agreement, or any related subsequent agreement, designs, drawings, specifications, techniques, models, data, documentation, manuals, source code, object code, diagrams, flow charts, research, development, processes, procedures, know-how, manufacturing, development or marketing techniques and materials, development or marketing timetables, strategies and development plans, business plans, customer, supplier or personnel names and other information related to customers, suppliers or personnel, pricing policies and financial information, and other information of a similar nature, whether or not reduced to writing or other tangible form (provided the requirements of the preceding sentence are satisfied), and any other trade secrets. In no event, shall Confidential Information include (a) information known to Receiving Party prior to obtaining the same from Disclosing Party (provided that such knowledge did not involve a breach of confidentiality obligations by any Person from whom such knowledge was directly or indirectly obtained) as reflected by the written records of Receiving Party; (b) information in the public domain at the time of disclosure by Disclosing Party; (c) information obtained by Receiving Party from a third party rightfully in the possession of such information and who did not receive same, directly or indirectly, from Disclosing Party; (d) information approved for public release by express prior written consent of an authorized officer of Disclosing Party; or (e) the materials specifically identified as “Non-Confidential Information” in Exhibit B.

## **25.2 Use of Confidential Information.**

25.2.1 General. Receiving Party hereby agrees that it shall use the Confidential Information for the purposes of this Agreement, the PV Power Plant, and/or the Project. Receiving Party agrees to use the same degree of care Receiving Party uses with respect to its own proprietary or confidential information, which in any event shall result in a reasonable standard of care to prevent unauthorized use or disclosure of the Confidential Information. Except as otherwise provided herein, Receiving Party shall keep confidential and not disclose the Confidential Information. Owner and Contractor shall cause each of their directors, officers, managers, employees, agents, partners, representatives, Subcontractors, successors and permitted assigns to become familiar with, and abide by, the terms of this Section 25.2.

25.2.2 Disclosures Required under Applicable Law. Notwithstanding the provisions of this Section 25.2, Receiving Party may disclose any of the Confidential Information to the extent required by Applicable Law. Prior to making or permitting any such disclosure, Receiving Party shall provide Disclosing Party with prompt Notice of any such requirement so that Disclosing Party (with Receiving Party's assistance, if requested) may seek a protective order or other appropriate remedy. In any such event, the Receiving Party shall use commercially reasonable efforts, at the sole cost and expense of the Disclosing Party, to ensure that all Confidential Information that is so disclosed shall be accorded confidential treatment, to the extent possible, and shall so disclose only that portion of the Confidential Information that is legally required to be disclosed.

25.2.3 Permitted Disclosures. Notwithstanding the foregoing, each party has the right to disclose Confidential Information without the consent of the Disclosing Party; (i) as required by any court or other Governmental Authority, or by any stock exchange on which the shares of any Party are listed; (ii) as required in connection with any government or regulatory filings, including filings with any regulating authorities covering the relevant financial markets; (iii) to its attorneys, accountants, financial advisors or other agents that require such information in connection with their work; (iv) to actual and prospective lenders, investors and other financing sources and their advisors, in each case to the extent necessary or advisable in connection with obtaining financing for the Project or the Work; (v) in connection with an actual or prospective merger or acquisition or similar transaction involving such Party or the parent entity of such Party, (vi) in the case of disclosures by Contractor, the Subcontractors and Suppliers, and (vii) in the case of disclosures by Owner, the Owner's Engineer, the Owner Parent and Affiliate of Owner that acts as operator of the Project. In each of cases (iii) through (vii) above, the Disclosing Party shall obtain from the third party to whom it seeks to disclose or to whom it has disclosed Confidential Information a binding confidentiality undertaking in writing agreeing to keep and use such information in confidence that is substantially similar to the undertakings of the Parties in this Article 25 (provided that no such agreement in writing shall be required from third parties who are in any event bound by legal or professional ethical obligations to maintain such confidentiality).

25.2.4 No Disclosure to Competitors. Notwithstanding anything to the contrary in this Agreement, except as required in the case of an emergency that is life-threatening or that can result in bodily injury. Owner shall not disclose any Confidential Information to any Competitor of SunPower.

25.2.5 Publicity. Notwithstanding anything to the contrary in this Section 25, Contractor shall have the right to utilize general information about the PV Power Plant, including photographs, in its promotional materials and public statements. All contractor usage of general information about the PV Power Plant, including photographs, must indicate that NRG is the owner of the Project and cannot disparage the Project or operation of it. For a period of ten (10) years following Final Completion, Contractor shall be allowed: (1) to have reasonable room on the single NRG sign at the main entrances to the Project (specifications to be mutually agreed upon) identifying SunPower as the facility supplier and builder, and (2) to access the Site with guests, who shall not be a Competitor of NRG, for promotional purposes, including the taking of photographs, during normal business hours and at other times as are acceptable to Owner and with the Owner's permission. Owner shall have the right to join on any tours by Contractor, including those tours with media, political and community members. Contractor shall request access to the facility by telephone or email to Owner not less than one (1) week prior to any desired visit to the Site. Contractor shall require all Contractor personnel and guests admitted to the Site to observe all applicable safety standards. In addition to the foregoing, for a period of ten (10) years following Final Completion, Owner shall make available to Contractor read-only access to summary data relating to the performance of the PV Power Plant,

which data shall only be used for purposes internal to Contractor and shall not otherwise be disclosed to any third parties.

25.2.6 Return of Confidential Information. At any time upon the request of Disclosing Party, Receiving Party shall promptly deliver to Disclosing Party or destroy if so directed by Disclosing Party (with such destruction to be certified by Receiving Party) all documents (and all copies thereof, however stored) furnished to or prepared by Receiving Party that contain Confidential Information; *provided, however*, that the Receiving Party may retain one copy of such Confidential Information; and *provided, further*, that all such retained Confidential Information shall be held subject to the terms and conditions of this Agreement.

25.2.7 Termination of Confidentiality. The confidentiality provisions set forth in this Agreement shall remain in full force and effect until the date that is two (2) years after the earlier of (i) the PV Plant Substantial Completion Date or (ii) the termination of this Agreement. After such date, unless otherwise agreed in writing by the Parties, no information previously designated as Confidential Information under this Article 25 shall need to be treated as confidential by the Receiving Party.

**25.3 Remedies for Breach of Confidentiality Obligations.** The Parties acknowledge that the Confidential Information is valuable and unique, and that damages would be an inadequate remedy for breach of the obligations set forth in this Article 25 and the obligations of each Party under this Article 25 are specifically enforceable. Accordingly, the Parties agree that a breach or threatened breach of this Article 25 by either Party, shall entitle the other Party to seek an injunction preventing such breach, without the necessity of proving damages or posting any bond. Any such relief shall be in addition to, and not in lieu of, monetary damages or any other legal or equitable remedy available to such Party, its direct and indirect parent companies, subsidiaries or Affiliates.

## 26. ASSIGNMENT

**26.1 Assignment to Other Persons.** Except as otherwise provided in this Section 26.1, neither Party may assign or otherwise transfer this Agreement to any third party, without the prior written consent of the other Party. Notwithstanding the foregoing, nothing in this Agreement shall prevent either Party from engaging Affiliates or subcontractors in connection with the performance of its obligations under this Agreement (other than its respective payment obligations). Notwithstanding the foregoing:

(a) Owner may (i) collaterally assign its rights, title and interest under this Agreement to any Owner Financing Party, or (ii) assign its rights, title and interest under this Agreement in connection with a sale-leaseback or other similar arrangement for the PV Power Plant and, in each case, in connection therewith, Contractor shall execute and deliver any usual and customary consents, customary legal opinions or other customary documents reasonably requested by Owner;

(b) \*\*\*;

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(c) Contractor may collaterally assign its rights, title and interest under this Agreement to any Contractor Financing Party, who may further assign such rights, title and interest under this Agreement upon foreclosure and, in connection therewith, Owner shall execute and deliver any usual and customary consents (which shall include customary additional cure periods for the benefit of such Contractor Financing Parties), legal opinions or other documents reasonably requested by Contractor; and

(d) \*\*\*.

(e) Notwithstanding anything in the foregoing, Owner shall not assign this Agreement or any rights or interests under this Agreement to any Competitor of SunPower.

Any attempted assignment or delegation in violation of this Section 26.1 shall be null and void and shall be ineffective to relieve either Party of its obligations hereunder.

**26.2 Indemnitees; Successors and Assigns.** Upon any assignment by either Party hereunder, the definition of “Owner Indemnitee” or “Contractor Indemnitee”, as applicable, shall be deemed modified to include the assignor and permitted assignee under such assignment and each of their respective employees, agents, partners, Affiliates, shareholders, officers, directors, members, managers, successors and assigns.

## **27. HAZARDOUS MATERIALS**

**27.1 Use by Contractor.** Contractor shall not and shall not permit any of its Subcontractors, directly or indirectly, to permit the manufacture, storage, transmission or presence of any Hazardous Materials on the Site except to the extent that any such Hazardous Material is required for the Work, and Contractor shall not and shall not permit any of its Subcontractors to Release, discharge or otherwise dispose of any Hazardous Materials on the Site, in each case, except in compliance with Applicable Law.

**27.2 Remediation by Contractor.** Without limiting what may constitute a Change In Law hereunder, Contractor shall conduct and complete all investigations, studies, sampling, testing and remediation of the Site to the extent required for compliance with Applicable Laws in connection with the Release, discharge or presence of Hazardous Materials brought onto or generated at the Site by Contractor or any Subcontractor unless such Release or discharge is caused by Owner, any Person for which Owner is responsible (including Owner's Separate Contractors) or any third party. Contractor shall promptly comply in all respects with all lawful orders and directives of all Governmental Authorities regarding Applicable Laws relating to the use, transportation, storage, handling, presence or Release by Contractor, any Subcontractor or any Person acting on its or their behalf or under its or their control, of any Hazardous Materials brought onto or generated at the Site by Contractor or any Subcontractor, except to the extent any such orders or directives are being contested in good faith by appropriate proceedings in connection with the Work.

**27.3 Notice of Hazardous Materials.**

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(a) If Contractor discovers, encounters or is notified of the existence of any contaminated materials or Hazardous Materials at the Site, Contractor shall promptly Notify Owner thereof and restrict access to the area containing such contaminated materials or Hazardous Materials;

(b) If Contractor discovers, encounters or is notified of any spill or Release of any Hazardous Materials at the Site:

(i) if Contractor or any Subcontractor has brought such Hazardous Materials onto the Site or generated such Hazardous Materials, Contractor shall promptly remove such Hazardous Materials from the Site and remediate the Site to the extent required for compliance with all Applicable Laws and Applicable Permits (to the extent the Applicable Permits relate to the Work) in each case at Contractor's sole cost and expense, except where such materials were Released or spilled by Owner, its Affiliates or any third party, including Owner's Separate Contractors; and

(ii) if Contractor or any Subcontractor has brought such Hazardous Materials onto the Site or generated such Hazardous Materials, Contractor shall not be entitled to any extension of time or additional compensation hereunder for any delay or costs incurred by Contractor as a result of the existence of such Hazardous Materials, except where such materials were Released or spilled by Owner, its Affiliates or any third party including Owner's Separate Contractors.

#### **27.4 Pre-Existing Contamination.**

27.4.1 Disclosure of Contamination; Duty to Notify. The Environmental Reports contain a description of, and information on, Pre-Existing Contamination on or prior to the Effective Date. Each Party shall Notify the other Party of any Hazardous Materials at or under the Site of which it becomes aware at any time following the Effective Date, which is not identified in the Environmental Reports.

27.4.2 Risk of Pre-Existing Contamination. Contractor hereby acknowledges and agrees that it shall bear the risk arising in relation to any and all Pre-Existing Contamination including in connection with a Release of Pre-Existing Contamination not in accordance with Applicable Law. The presence at or under the Site of any Hazardous Materials not identified in the Environmental Reports prior to the Effective Date and which were not introduced to the Site by Contractor, its Subcontractors or any other Person for whom Contractor is responsible under this Agreement, shall constitute an Excusable Event entitling Contractor to the relief provided pursuant to Section 8.4.

27.4.3 Owner Action. Upon the discovery of any Hazardous Material or other environmental conditions in violation of any Applicable Law or that adversely affects Contractor's ability to perform the Work, Contractor shall (i) promptly take action as appropriate with respect to Work in the affected area and if appropriate or

required by Applicable Law, direct its workers and Subcontractors not to remove or further disturb the material or item; (ii) promptly provide Notice to Owner of such discovery; (iii) use commercially reasonable efforts to mitigate the effects of any such discovery on the Site, any property or Person, and the performance of the Work according to the CPM Schedule; and (iv) comply with all Applicable Laws with respect to such discoveries. Other than Pre-Existing Contamination which shall be at Contractor's risk, Owner shall, as it determines is necessary, at Owner's sole expense and risk, arrange for the handling, storage, transportation, treatment or delivery for disposal of such Hazardous Materials.

27.4.4 **Contractor Action.** Except with respect to Pre-Existing Contamination, if Contractor executes or completes (with the concurrence of Owner Representative) any required governmental forms relating to regulated activities, including any storage, treatment, transportation, handling or disposal of Hazardous Materials, Contractor shall be acting as, and be deemed to have acted as, Owner's agent strictly for such purpose. Contractor shall not be deemed the generator of any such Hazardous Materials nor shall Contractor be deemed to have title to such Hazardous Materials.

## 28. NON-PAYMENT CLAIMS

To the extent payment by Owner has been made in accordance with Article 6:

(a) Contractor shall not directly or indirectly create, incur, assume or suffer to be created by it or any Subcontractor, employee, laborer, materialman or other supplier of goods or services any right of retention, mortgage, pledge, assessment, security interest, lease, advance claim, levy, claim, lien, charge or encumbrance on the Work, the PV Power Plant Hardware, the PV Power Plant or any part thereof or interest therein (each a "**Contractor Lien**");

(b) Contractor shall keep the Work, the PV Power Plant and the PV Power Plant Hardware free of Contractor Liens; and

(c) Contractor shall promptly bond, pay or discharge, and discharge of record, any liens or other charges which, if unpaid, might be or become a Contractor Lien. Contractor shall Notify Owner as soon as practicable of the assertion of any Contractor Lien.

If any Owner Indemnatee becomes aware of any such Contractor Lien, such Owner Indemnatee may so Notify Contractor, and Contractor shall then, to the extent payment by Owner has been made in accordance with Article 6: (x) bond or satisfy and obtain the release of such Contractor Lien; or (y) defend Owner Indemnitees against any such Contractor Lien and obtain the release of such Contractor Lien. If Contractor does not promptly, and in any event within fifteen (15) days after such Notice, satisfy such Contractor Lien, or give such Owner Indemnatee reasons in writing that are reasonably satisfactory to such Owner Indemnatee for not causing the release of such Contractor Lien, then any Owner Indemnatee shall have the right, at its option, after Notification to Contractor, and subject to Applicable Law, to cause the release of, pay, or settle

such Contractor Lien, and Owner at its sole option may: (1) require Contractor to pay, within five (5) days after request by Owner; or (2) withhold such amount from amounts due or to become due to Contractor (in which case Owner shall, if it is not the applicable Owner Indemnatee, pay such amounts directly to Owner Indemnatee causing the release, payment or settlement of such liens or claims), all reasonable and direct costs and expenses incurred by Owner Indemnatee in causing the release of, paying, or settling such Contractor Lien, including administrative costs, reasonable attorneys' fees and other expenses. Contractor shall have the right to contest any such Contractor Lien.

## 29. NOTICES AND COMMUNICATIONS

**29.1 Requirements.** Any Notice made pursuant to the terms and conditions of this Agreement shall be in writing and be: (a) delivered personally; (b) sent by certified mail, return receipt requested; or (c) sent by a recognized overnight mail or courier service, with delivery receipt requested; in each case to the following addresses:

If to Contractor:       SunPower Corporation, Systems  
1414 Harbour Way South  
Richmond, CA 94804  
Attention: Projects, Contract Administrator

With a copy to:       SunPower Corporation, Systems  
1414 Harbour Way South  
Richmond, CA 94804  
Attention: Jeffrey Dasovitch

If to Owner:           High Plains Ranch II LLC  
c/o NRG Solar LLC  
1301 McKinney Street; Suite 2300  
Houston, Texas 77010  
Attn: Director, Procurement

With a copy to:       NRG Energy, Inc.  
211 Carnegie Center  
Princeton, New Jersey 08540  
Attn: General Counsel

**29.2 Representatives.** Any technical or other communications pertaining to the Work shall be with the Parties' designated representatives. Each Party shall Notify the other in writing of the name of such representatives. The Contractor's Project Manager and the Owner Representative each shall have knowledge of the Work and be available at all reasonable times for consultation. Each Party's representative shall be authorized on behalf of such Party to administer this Agreement, agree upon procedures for coordinating the efforts of the Parties, and, when appropriate, to furnish information to or receive information from the other Party in matters concerning the Work.



**29.3 Effective Time.** Any Notice or Notification given personally, through overnight mail or through certified letter shall be deemed to have been received on delivery, and any Notice given by express courier service shall be deemed to have been received the next Business Day after the same shall have been delivered to the relevant courier.

### **30. LIMITATIONS OF LIABILITY AND REMEDIES**

**30.1 Consequential Damages.** To the extent permitted by Applicable Law, neither Party nor that Party's employees, agents, partners, Affiliates, shareholders, members, directors, officers, managers, successors, assigns and subcontractors shall be liable to any other Party hereto for any loss, damage or other liability otherwise equivalent to or in the nature of any indirect, incidental, consequential, exemplary, punitive or special damages arising from performing or a failure to perform any obligation under this Agreement, whether such liability arises in contract (including breach, indemnity or warranty), tort (including fault, negligence or strict liability), or otherwise, including for any loss of profits, loss of revenue, or loss of use of PV Power Plant Hardware, the PV Power Plant or the Project, downtime costs, increased expense of operation or maintenance of the PV Power Plant Hardware or the PV Power Plant, loss of opportunity or goodwill, cost of purchased or replacement power, equipment or systems, cost of capital, claims of customers for such damages, any governmental fines, penalties or sanctions imposed, subject in each case to the following exclusions:

(a) liquidated damages payable pursuant to Article 16 of this Agreement;

(b) termination payments provided for in Section 20.5;

(c) damages claimed by third parties (other than Owner Indemnitees or Contractor Indemnitees) for which Contractor or Owner has a duty to indemnify hereunder as expressly provided in Article 24, to the extent that they are shown to be consequential in nature;

(d) subject to limitation set forth in Section 30.3, damages arising out of a breach by a Party of Article 25 but not to exceed \*\*\* of the Contract Price.

The subcontractors of each Party shall be entitled to enforce this Section 30.1 as third party beneficiaries of this provision.

### **30.2 Limitations on Contractor's Liability.**

#### **30.2.1 Limitations on Contractor's Liability.**

(a) (Subject to clause (c) and (d) of this Section 30.2.1 and to the provisions of Section 30.2.2, Contractor's aggregate liability for claims by Owner or Owner Indemnitees arising out of or relating to this Agreement will in no event exceed an amount equal to the portions of the Contract Price shown for each period in the following Table:

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Construction Period	Limitation of Liability as Portion of Contract Price
Prior to the Phase Substantial Completion Date for Phase II	***
After the Phase II Substantial Completion Date	***
After the Phase III Substantial Completion Date	***
After the PV Power Plant Substantial Completion Date through the conclusion of all Warranty Periods	***

(b) The above limits shall not apply to any insured claim to the extent that such claim is covered by insurance proceeds actually received from the insurance required to be maintained under this Agreement.

(c) The above limits shall not apply to Contractor's indemnity obligations pursuant to Article 24.

(d) The above limits shall not apply with respect to any willful misconduct or fraud on the part of Contractor.

30.2.2 Maximum Liquidated Damages. Contractor's maximum aggregate liability for liquidated damages under this Agreement will in no event exceed \*\*\* of the Contract Price, *provided, however*, that Contractor's liability for (a) Delay Liquidated Damages shall not exceed \*\*\* of the Contract Price and (b) Performance Liquidated Damages shall not exceed \*\*\* of the Contract Price.

**30.3 Limitation on Owner's Liability**. In no event shall Owner's liability pursuant to this Agreement, whether arising in contract, warranty, tort (including strict liability) or otherwise, be greater in the aggregate than the Contract Price; *provided, however*, that nothing contained in this Section 30.3 or in any other provision of this Agreement shall be construed to limit Owner's liability for: (a) Owner's indemnity obligations pursuant to Article 24; or (b) with respect to any willful misconduct or fraud on the part of Owner. Contractor's sole recourse for

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any damages or liabilities due to Contractor by Owner pursuant to this Agreement shall be limited to the assets of Owner without recourse individually or collectively to the assets of the members or the Affiliates of Owner, the Owner Financing Parties, if any, or their respective officers, directors, employees or agents of Owner, its members or their Affiliates \*\*\*.

## 31. DISPUTES

**31.1 Dispute Resolution.** Any dispute or matter in question between the Parties arising out of or related to this Agreement (a “**Dispute**”) shall be resolved pursuant to the procedures set forth in this Article 31.

**31.2 Referral to Contractor's Project Manager and Owner Representative.** Disputes shall first be referred to Owner Representative and Contractor's Project Manager.

**31.3 Referral to Authorized Officers.** Any Dispute that cannot be resolved between Owner Representative and Contractor's Project Manager within five (5) days after such Dispute arose or, or in the case of payment Disputes, within five (5) days after receipt of a Notice of such Dispute from the affected Party, shall be referred for resolution, by Notice signed by either Owner Representative or Contractor's Project Manager (specifically referencing this Section 31.3), to the officers of the Parties or other authorized representative designated by them, each of which shall have the authority to negotiate and fully resolve the Dispute, neither of which shall be Owner Representative or Contractor's Project Manager (each an “**Authorized Officer**”). If a Party does not make such a designation, then such Party's Authorized Officer for purposes hereof shall be (i) for Owner, President and CEO, NRG Solar, Inc., and (ii) for Contractor, President, Utility and Power Plants. The Authorized Officers shall meet, either in person or by telephonic conference, within ten (10) days of the delivery of such Notice to attempt in good faith to resolve such Dispute. If the Authorized Officers are unable to resolve such Dispute within thirty (30) days after the Dispute has arisen (the “**Discussion Period**”), then either Party by Notice to the other Party may submit the Dispute, as applicable, to (i) an Independent Expert in accordance with Section 31.4 or (ii) arbitration in accordance with Section 31.5.

**31.4 Independent Expert Resolution.** For any Dispute involving Changes where the amount in controversy is less than or equal to \*\*\* (“**Minor Change Dispute**”), the claiming Party shall submit a Notice of the Minor Change Dispute to the other Party together with a proposed Independent Expert. Upon agreement by the Parties as to the selection of the Independent Expert, the Parties shall submit the Minor Change Dispute within fifteen (15) days after the termination of the Discussion Period to the Independent Expert for resolution. If the Parties are unable to agree on the selection of an Independent Expert, then the Minor Change Dispute shall be resolved in accordance with Section 31.5. Resolution of Minor Change Disputes shall be subject to the following, additional requirements and procedures:

(a) the Notice to the responding Party shall include a description of the Minor Change Dispute, the amount (if any) and/or the schedule relief sought, and the grounds and documents on which the claiming Party relies in seeking to have the Minor Dispute determined in its favor. The responding party, within fifteen (15) days after receipt of such Notice shall deliver to the claiming Party and the Independent Expert a response setting forth any additional matters related to the Minor Change Dispute, the amount (if

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any) and/or the schedule relief sought, and the grounds and documents on which the responding Party relies in seeking to have the Minor Dispute determined in its favor;

(b) the Independent Expert shall render his written decision on the Minor Change Dispute as soon as possible, but in any event, no later than twenty (20) days following the submission of the Dispute to the Independent Expert. Such decision shall take into consideration the relevant facts, the terms of this Agreement and Industry Standards. The decision and award of the Independent Expert shall be binding on the Parties and may be entered and enforced in any court provided in Section 31.5(b). The Independent Expert shall provide the Parties with a copy of such decision and award, including a concise written statement of the reasons on which it is based. The Parties shall promptly comply with such decision (which, in the case of an award, shall require the payment of same by the owing Party within ten (10) days following notification of such award); and

(c) any fees or expenses charged by the Independent Expert in connection with the resolution of a Minor Change Dispute under this Section 31.4 shall be borne equally by Owner and Contractor.

**31.5 Arbitration Resolution.** Subject to Section 31.4 as it relates to a Minor Change Dispute, all Disputes that are not resolved by the procedures set forth in Sections 31.2 and 31.3, then either Party, without further delay, shall have the right to submit the Dispute to arbitration in accordance with the following procedures:

(a) the proceedings shall (i) take place in Los Angeles, California; (ii) be conducted in accordance with Construction Industry Rules then in effect of the American Arbitration Association (except to the extent modified by this Section 31.5); (iii) consist of an arbitration panel composed of (x) an individual experienced in and knowledgeable of the engineering, procurement and construction of energy generating facilities selected by Owner, (y) an individual experienced in and knowledgeable of the engineering, procurement and construction of energy generating facilities selected by Contractor and (z) an individual experienced in and knowledgeable of the engineering, procurement and construction of energy generating facilities selected by each of the individuals selected by Owner and Contractor in clauses (x) and (y), respectively;

(b) any decision or award of the arbitration panel shall be bound by all provisions of this Agreement and the arbitration panel shall have no authority or power to enter an award which is in conflict with any of the provisions of this Agreement. The decision or award must be in writing and must contain a reasoned statement of decision including findings of fact on which it is based. Absent fraud, collusion, mistake or manifest error such findings of fact shall be final. Any decision or award of the arbitration panel may be enforced or confirmed in a court of competent jurisdiction;

(c) the fees and expenses of the arbitration panel shall be borne equally by Owner and Contractor; and

(d) any monetary award rendered by the arbitration panel pursuant to this Article 31 shall be due and payable within ten (10) days following such award.

**31.6 Continuation of Work During Dispute.** Pending the final resolution of any Dispute, Contractor shall proceed with the performance of the Work and its other duties and obligations under this Agreement without diminution of effort, so long as Owner continues to make payments of all undisputed amounts payable by Owner under this Agreement (subject to Owner's rights to dispute payments in accordance with this Agreement).

## **32. INTELLECTUAL PROPERTY**

**32.1 Ownership.** Subject to the license rights granted hereunder by Contractor, Contractor shall own and retain all right, title, and interest in and to all Intellectual Property developed, conceived, reduced to practice, or created by Contractor in the performance of the Work under this Agreement or otherwise, or delivered to Owner (including Third Party Intellectual Property) as part of the Work (including as part of the PV Power Plant) (the "Contract Intellectual Property").

**32.2 Irrevocable License.** Subject to the terms of this Agreement, Contractor hereby grants and assigns to Owner a non-exclusive, royalty-free, paid-up, irrevocable, transferable to the extent specifically provided in this Section 32.3, perpetual license in and to the Contract Intellectual Property to use, solely in connection with the operation, maintenance, repair, modification, training of personnel, improvement and alteration of the Project and any component thereof (the "**License**"). The License granted to Owner pursuant to this Section 32.2 is granted only to the extent of Contract Intellectual Property that is included in the PV Power Plant, the Project, the Work or the Contractor Deliverables, including the Required Manuals.

**32.3 Transfer and Assignment.** The License herein and the tangible and intangible forms of the Contractor Deliverables provided to Owner may be transferred, assigned, or sublicensed to any Person to whom the PV Power Plant is sold, leased, assigned, or otherwise transferred and to any transferee, assignee, and successor in interest of Owner, and may be collaterally assigned to the Owner Financing Parties; *provided, however*, that the use of such Contract Intellectual Property shall be solely in connection with the operation, maintenance, repair, modification, training of personnel, improvement and alteration of the Project and any component thereof.

**32.4 Subcontractor Licenses.** With respect to the Third Party Intellectual Property owned or used by Subcontractors in performance of the Work, if the same is not included in the License, Contractor shall procure for Owner an irrevocable, perpetual, nonexclusive, royalty-free, paid-up, transferable to the extent specifically provided in Section 32.3, license to use such Third Party Intellectual Property in connection with the operation, maintenance, repair, modification, training of personnel, improvement and alteration of the Project and any component thereof.

**32.5 Non-Exclusive License.** Owner hereby grants Contractor a personal, limited, nonexclusive, and nontransferable license to use any proprietary information received from

Owner for the sole purpose of performing the Work. The term of such license shall end upon the earliest of: (i) Final Completion or (ii) termination of this Agreement.

### **33. MISCELLANEOUS**

**33.1 Severability.** The invalidity or unenforceability of any portion or provision of this Agreement shall in no way affect the validity or enforceability of any other portion or provision hereof. Any invalid or unenforceable portion or provision shall be deemed severed from this Agreement and the balance of this Agreement shall be construed and enforced as if this Agreement did not contain such invalid or unenforceable portion or provision. If any such provision of this Agreement is so declared invalid, the Parties shall promptly negotiate in good faith new provisions to eliminate such invalidity and to restore this Agreement as near as possible to its original intent and effect (including economic effect).

**33.2 Governing Law; Venue; Stipulations.** This Agreement shall be governed by the internal laws of the State of California, excluding any of its conflicts of laws provisions that would require the application of the laws of another jurisdiction. WITHOUT LIMITING THE REQUIREMENTS OF SECTION 31 OF THIS AGREEMENT AND TO THE EXTENT PERMITTED BY LAW, THE PARTIES HERETO AGREE THAT ALL ACTIONS OR PROCEEDINGS ARISING IN CONNECTION WITH THIS AGREEMENT, SHALL BE TRIED AND LITIGATED ONLY IN THE COURTS LOCATED IN THE STATE OF CALIFORNIA OR THE STATE OF NEW YORK. THE PARTIES, TO THE EXTENT THEY MAY LEGALLY DO SO, WAIVE ANY RIGHT EACH MAY HAVE TO ASSERT THE DOCTRINE OF *FORUM NON CONVENIENS* OR TO OBJECT TO VENUE TO THE EXTENT ANY PROCEEDING IS BROUGHT IN ACCORDANCE WITH THIS SECTION AND STIPULATE THAT THE STATE AND FEDERAL COURTS LOCATED IN THE STATE OF CALIFORNIA AND THE STATE OF NEW YORK SHALL HAVE IN PERSONAM JURISDICTION AND VENUE OVER SUCH PARTY FOR THE PURPOSE OF LITIGATING ANY SUCH DISPUTE, CONTROVERSY OR PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT. THE PARTIES ACKNOWLEDGE AND AGREE THAT THE TERMS AND CONDITIONS OF THIS AGREEMENT HAVE BEEN FREELY, FAIRLY AND THOROUGHLY NEGOTIATED.

**33.3 Survival of Termination.** The provisions of this Agreement which by their nature are intended to survive the termination, cancellation, completion or expiration of this Agreement including any express limitations of or releases from liability and the Warranty provisions of Section 18 shall continue as a valid and enforceable obligation (or defense, as applicable) of the applicable Party notwithstanding any such termination, cancellation, completion or expiration.

**33.4 No Oral Modification.** No oral or written amendment or modification of this Agreement by any officer, agent, member, manager or employee of Contractor or Owner, either before or after execution of this Agreement, shall be of any force or effect unless such amendment or modification is in writing and is signed by a duly authorized representative of the Party to be bound thereby.

**33.5 No Waiver.** A Party's waiver of any Event of Default, breach or failure to enforce any of the terms, covenants, conditions or other provisions of this Agreement at any time shall not in any way affect, limit, modify or waive that Party's right thereafter to enforce or compel strict compliance with every term, covenant, condition or other provision hereof, any course of dealing or custom of the trade notwithstanding. All waivers must be in writing and signed on behalf of Owner and Contractor in accordance with Section 33.4.

**33.6 Review and Approval.** Notwithstanding Owner's review or Owner's approval of any items submitted to Owner for review or approval, neither Owner nor any of its representatives or agents reviewing such items, including the Owner's Engineer, shall have any liability for, under or in connection with the items such Person reviews or approves, and Contractor shall remain responsible for the quality and performance of the Work. Owner's review or approval of any items, including the Contractor Deliverables, shall not constitute a waiver of any claim or right that Owner may then or thereafter have against Contractor.

**33.7 Third Party Beneficiaries.** The provisions of this Agreement are intended for the sole benefit of Owner and Contractor and there are no third-party beneficiaries hereof (other than (i) the Contractor Indemnitees and the Owner Indemnitees; and (ii) the subcontractors of the Parties as set forth in Section 30.1).

**33.8 Further Assurances.** Owner and Contractor will each use its reasonable efforts to implement the provisions of this Agreement, and for such purpose each, at the reasonable request of the other, will, without further consideration, promptly execute and deliver or cause to be executed and delivered to the other such assistance (including in connection with any financing involving the PV Power Plant by either Party), or assignments, consents or other instruments in addition to those required by this Agreement, in form and substance satisfactory to the other, as the other may reasonably deem necessary or desirable to implement any provision of this Agreement.

**33.9 Financing Cooperation.** Contractor shall at its own expense provide such cooperation as Owner may reasonably request in connection with obtaining financing from any Owner Financing Party; provided, however, that such cooperation does not adversely affect the rights or increase the duties and obligations of Contractor under this Agreement in any material respect. At any time and from time to time during the term of this Agreement, Contractor shall, within ten (10) business days after receipt of a written request by Owner, (x) execute and deliver to Owner and/or the Owner Financing Party, estoppel statements reasonably acceptable to Contractor certifying to its knowledge, without inquiry, whether or not (i) this Agreement is in full force and effect, (ii) any modifications have been made hereto, (iii) whether there exist any defaults hereunder or any disputes hereunder between the Parties, (iv) any events have occurred that would, with the giving of notice or the passage of time, constitute a default hereunder, and (v) all amounts then due and owing hereunder have been paid, (y) execute customary consents in a form reasonably acceptable to Contractor, to Owner's assignment of this Agreement to an Owner Financing Party as collateral security and (z) provide such legal opinions as may reasonably be requested in connection with any collateral assignment and consent. Contractor acknowledges that Owner intends to obtain a United States Department of Energy (the "DOE") loan guarantee pursuant to Title XVII of the Energy Policy Act of 2005, as amended, in connection with the financing of the Project and, as such, agrees (1) at DOE's request, to include,

in any consent, estoppel or opinion delivered under this Section 33.9, provisions affirming Contractor's compliance with all government requirements associated with such a loan guarantee, including without limitation the applicable requirements under the Davis-Bacon Act, the Foreign Corrupt Practices Act, the Patriot Act, and the United States Trading with the Enemy Act, and (2) to timely provide any additional certifications requested by the DOE in connection with such loan guarantee.

**33.10 Record Retention.** Contractor agrees to retain for a period of four (4) years from the Final Completion Date all material records relating to its performance of the Work or Contractor's warranty obligations herein.

**33.11 Binding on Successors.** This Agreement shall be binding on the Parties hereto and on their respective successors and permitted assigns.

**33.12 Merger of Prior Contracts.**

33.12.1 This Agreement supersedes any other agreements, whether written or oral, that may have been made or entered into between Owner and Contractor relating to the PV Power Plant or the Work. This Agreement and the Exhibits attached hereto constitute the entire agreement between the Parties with respect to the engineering, procurement and construction of the PV Power Plant, and there are no other agreements or commitments with respect to the PV Power Plant except as set forth herein and therein.

33.12.2 The Parties intend hereby to effect a novation of the PCA; provided, however, that any and all work performed by Contractor pursuant to the PCA or change orders issued thereunder shall be considered a part of the Work and shall be subject to all Warranties given by Contractor under this Agreement.

**33.13 Counterparts.** This Agreement may be executed in any number of counterparts, and any Party hereto may execute any such counterpart, each of which when executed and delivered shall be deemed to be an original and all of which counterparts taken together shall constitute but one and the same instrument. This Agreement shall become effective when each Party shall have received a counterpart by facsimile or electronic mail hereof signed by the other Party. The Parties agree that the delivery of this Agreement may be effected by means of an exchange of facsimile or emailed signatures with original copies to follow by mail or courier service.

**33.14 Attorneys' Fees.** If any legal action or other proceeding is brought for the enforcement of this Agreement or because of an alleged dispute, default, misrepresentation, or breach in connection with any of the provisions of this Agreement, each Party shall bear its own costs and expenses, including its own attorney's fees, incurred in that action or proceeding.

**33.15 Announcements; Publications.** Subject to Section 25.2, neither Party shall (either directly or indirectly), and neither Party shall permit any of its Affiliates to, issue or make any press release or similar public announcement with respect to or concerning any matter the subject of, or contemplated by, this Agreement without reasonable prior approval of the other Party, *provided, however*, that nothing in this Agreement shall prevent either Party from



independently making such public disclosure or filing as it determines in good faith is required by Applicable Law.

**33.16 Independent Contractor.** Contractor is an independent contractor, and nothing contained herein shall be construed as constituting any relationship with Owner other than that of owner and independent contractor, except as expressly provided in this Agreement pursuant to which Owner appoints Contractor as Owner's agent, or as creating any relationship whatsoever between Owner and Contractor's employees. Neither Contractor nor any of its employees is or shall be deemed to be an employee of Owner.

**33.17 Audit.** With respect to any Change In Work which adjusts the Contract Price by compensating Contractor on a time and materials basis, Contractor shall maintain, in accordance with generally accepted accounting principles consistently applied, records and books of account. Owner, Owner's Engineer, the Owner Financing Parties, if any, and their authorized representatives shall be entitled to inspect and audit such records and books of account during normal business hours and upon reasonable advanced Notice during the course of the Work and for a period of four (4) years after Final Completion, *provided, however*, that the purpose of any such audit shall be only for verification of such costs, and Contractor shall not be required to keep records of or provide access to those of its costs covered by the fee, allowances, fixed rates, unit prices, lump sum amounts, or of costs which are expressed in terms of percentages of other costs. Contractor shall retain all such records and books of account for a period of at least four (4) years after the Final Completion Date. Audit data shall not be released by the auditor to parties other than Contractor, Owner, Owner's Engineer, and their respective officers, directors, members, managers, employees and agents in connection with any such audit, subject to the provisions of Article 25. If, as a result of any audit conducted pursuant to this Section 33.17, the results of such audit indicate that Contractor received more than the amount to which it was entitled under this Agreement, Contractor shall refund any overpayment to Owner within ten (10) days of a written request therefore. Owner shall be responsible for all costs and expenses of such audit unless a significant overpayment by Owner is discovered, in which case Contractor shall be responsible for such costs and expenses. It is acknowledged and agreed that the audit and inspection rights provided for in this Section or any other obligations on the part of Contractor to provide information to Owner or its affiliates shall not in any event extend to information related to Contractor's or its affiliates' profit margins, earnings or yield related to the Project or the transactions contemplated by this Agreement.

**33.18 Independent Engineer.** Contractor acknowledges that Owner Financing Parties will engage an Independent Engineer for the purpose of providing to Owner Financing Parties a neutral, third party overview of the Work. Contractor agrees to provide to the Independent Engineer (i) access to the Site and the right inspect the Work, in each case upon reasonable advance notice to Contractor, (ii) attend and observe Performance Acceptance Tests and PV Power Plant Functional Tests, and receive the results thereof, and attend meetings between Contractor and Owner, and (iii) receive copies of proposed Changes in Work, Monthly Progress Reports, Remedial Plans, Notices of Substantial Completion, Notices of Final Completion and Notices of Force Majeure Events. Owner undertakes that, to the extent that the financing documents pursuant to which the Owner Financing Parties extend financing for the Project to Owner require that the Independent Engineer approve, consent to, or otherwise acknowledge any matter arising under this Agreement as a condition to the Owner Financing Parties' funding of

any loans or other financial accommodations to Owner, Owner will use its reasonable efforts to ensure that the Independent Engineer so approves or gives its countersignature with respect to such matter, or indicates that it is not willing to do so in relation to such matter within the time specified in this Agreement for Owner to respond in relation to such matter. Notwithstanding anything else to the contrary herein contained, the Independent Engineer shall have no right to direct Contractor or any portion of the Work or to make any Changes in Work.

(REMAINDER OF PAGE INTENTIONALLY LEFT BLANK)

IN WITNESS WHEREOF, the Parties hereto have caused this Engineering, Procurement and Construction Agreement to be executed as of the Effective Date.

**HIGH PLAINS RANCH II, LLC**

By: /s/ Richard Grosdidier

Name: Richard Grosdidier

Title: Vice President

**SUNPOWER CORPORATION, SYSTEMS**

By: /s/ Howard Wenger

Name: Howard Wenger

Title: President and Chief Executive Officer

**EXHIBITS**

- Exhibit A The Work
  - A-1 Contractor's Statement of Work and Plant Specifications
  - A-2 Owner-Provided Facilities, Services and Information
  - A-3 Division of Responsibilities Table
- Exhibit B Contractor Deliverables Table
- Exhibit C Permits
  - C-1 Owner-Acquired Permits
  - C-2 Contractor-Acquired Permits
  - C-3 Division of CUP Responsibilities Table (attached separately)
- Exhibit D Site Safety Plan (attached separately)
  - D-1 Contractor's Safety Program
- Exhibit E Operating Personnel Training Program
- Exhibit F Lien Waiver and Releases
  - F-1 Conditional Waiver and Release Upon Progress Payment
  - F-2 Unconditional Waiver and Release Upon Progress Payment
  - F-3 Conditional Waiver and Release Upon Final Payment
  - F-4 Unconditional Waiver and Release Upon Final Payment
- Exhibit G Schedule Milestones
- Exhibit H System Testing Process
  - H-1 Performance Guarantee Test Protocol
  - H-2 Performance Guarantee Test Calculations
  - H-3 PPA Phase Capacity Certification Procedure
  - H-4 PV Power Plant Functional Test Protocol
- Exhibit I Milestone Payment Schedule
  - I-1 Progress Payment Schedule
  - I-2 Cumulative Maximum Payment Amounts
- Exhibit J Legal Description of Site
- Exhibit K Site Plan (attached separately)
- Exhibit L Specified Suppliers and Specified Subcontractors
- Exhibit M Commissioning Procedures
- Exhibit N Example Calculation of Holdback Release
- Exhibit O Example Calculations of Liquidated Damages
- Exhibit P \*\*\*
- Exhibit Q Environmental Reports
- Exhibit R Module Warranty Terms and Conditions (attached separately)
- Exhibit S Form of Change in Work
- Exhibit T Block Descriptions
- Exhibit U Form of Contractor's Invoice
- Exhibit V Single Line Electrical Drawings (attached separately)
- Exhibit W Quality Assurance Program (attached separately)
- Exhibit X Forms of Completion Certificates
  - X-1 Block Substantial Completion (Initial and subsequent)
  - X-2 Phase Substantial Completion

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

X-3 PV Power Plant Substantial Completion

X-4 Final Completion

Exhibit Y \*\*\*

Exhibit Z Project Labor Agreement (attached separately)

Exhibit Z-1 Assignment and Assumption Agreement (PLA) (attached separately)

Exhibit AA Davis Bacon Act Requirements

Exhibit BB Form of Escrow Agreement

Exhibit CC County Fiscal Agreement (attached separately)

Exhibit DD Form of Subordination Agreement

Exhibit EE Form of Materials and Equipment Supply Agreement

Exhibit FF Contractor Letter of Credit

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

**EXHIBIT A-1**

**STATEMENT OF WORK AND PLANT SPECIFICATIONS**

\*\*\*

[25 pages redacted]

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A-1-1

Exhibit A-1  
Contractor's Statement of Work

**Exhibit A-2**  
**Owner-Provided Facilities, Services AND INFORMATION**

\*\*\*

[2 pages redacted]

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A-2-1

Exhibit A-2  
Owner-Provided Facilities and Services

## EXHIBIT A-3

### Division Of Responsibilities Table

\*\*\*

[2 pages redacted]

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A-3-1

Exhibit A-3  
Division of Responsibilities Table



## Exhibit B

### CONTRACTOR DELIVERABLES TABLE

This Exhibit B lists the documentation to be provided by Contractor to Owner and/or to others, as specified, in connection with the Work. The documents shall be provided at the times and in the forms set forth in the table.

Type of Document or Data Source	Owner Copies Required		Issued for Construction/ Sequential Revisions Showing Changes	Timing of Delivery
	Electronic Version	Hard Copies		
Drawings				
Drawing Symbols and Abbreviations Definitions	1			2, 3
Site Plans (work areas on property and detailed layout of work areas, roads, access, buildings)	1			2, 3
Civil Drawings (Site preparation plan, site layout and topography)	1			2, 3
Foundation details	1			2, 3
Grading and Drainage Plans	1			2, 3
Erosion and Sediment Control	1			2, 3
Perimeter fence and other site fence drawings	1			2, 3
Array layouts and shading diagrams	1			2, 3
Structural plans, details and elevations	1			2, 3
Electrical single line Drawings	1			2, 3
Wiring schematics/diagrams	1			2, 3
Power and communication wiring including AC and DC systems	1			2, 3
Series and parallel string wiring drawings	1			2, 3
Grounding Plans	1			2, 3
Loop diagrams and interconnects	1			2, 3
Underground wiring, piping and utility drawings	1			2, 3
Mechanical Drawings (layouts, sections and details)	1			2, 3
PCS enclosure drawings	1			2, 3
Inverter Installation Plans	1			2, 3
Building Architectural Drawings (plans, sections and details)	1			2, 3
Communication Block Diagrams - symbol indexes & typical drawings	1			2, 3
SCADA System Schematics and data transfer protocol	1			2, 3
Instrumentation Drawings (Site Control Center general arrangement drawings, instrument location plans, loop diagrams, interconnects, raceway routing diagrams, control system logic diagrams, SCADA system, fiber optics layouts)	1			2, 3
	1			
Specifications				
Electrical Specifications for Equipment	1			2, 3
Mechanical Specifications for Equipment	1			2, 3

Type of Document or Data Source	Owner Copies Required		Issued for Construction/ Sequential Revisions Showing Changes	Timing of Delivery
	Electronic Version	Hard Copies		
Material Specifications	1			2, 3
Civil Specifications	1			2, 3
Structural Specifications	1			2, 3
Architectural Specifications	1			2, 3
Instrument Specifications	1			2, 3
Equipment installation specifications for inverters, transformers, and switchgear.	1			2, 3
Project Communication Procedure	1			2, 3
<b>Lists/Sheets</b>				
Project Communication List	1			2, 3
Punch List Form	1			per §14.1.6
Equipment data sheets	1			2, 3
Electrical Load List	1			2, 3
I/O lists	1			2, 3
Equipment lists	1			2, 3
Commissioning Spare Parts List (supplied by Contractor)	1			4-BSC
Operating Spare Parts list	1			90 prior to BSC
Operating Spare Parts Price Lists	1			4-BSC

<b>Calculations</b>				
Engineering calculations	1			2, 3
PvSyst Model electronic copy	1			2, 3
Short Circuit Study of maximum fault current contribution of the PV Power Plant	1			2, 3
Protective relay settings for upstream device coordination at the point of interconnect	1			2, 3
Grounding Calculations	1			2, 3
Plans, Procedures, Programs and Manuals				
Phase Package - Phase 1	1			1, Not less than 1 week prior to Design Review Conference
System designations	1			As per section 14.1.1 of EPC
System Turnover Packages	1			4 - BSC
Commissioning Plan	1			per §14.1.3
Draft O&M Manuals	1			4-BSC
Final O&M Manuals	1			4-PVSC
Training schedule, materials and aids	1			6, per Exhibit E
Project-specific quality control and quality assurance plan and inspection plan and inspection procedures, including witness points	1			per §3.13
Site-specific safety program	1			per §3.12
Commissioning Plan with log sheets, inspection, alignment and test records	1			6, per §14.1.3
Performance Acceptance Test procedures	1			6, per §14.1.3
Procedure for the administration and processing	1			4, per §14.1.3

of Warranty claims				
As-Built Drawings	1			4-8,
<b>Schedules</b>				
CPM Schedule	1			6, per §7
Monthly Updated CPM Schedules	1			6, per §7
30-Day Look Ahead Schedules	1			6, per §7
<b>Reports</b>				
Weekly Progress Reports of Contractor and Subcontractor (description of prior week's work and plan for current week)	1			6
Monthly Progress Reports of Contractor and Subcontractor (including all deliverables submitted with Monthly Progress Reports)	1			6, per §7.5
Minutes for all weekly meetings	1			6
Accident reports	1			per §3.12.4
Welder coupon test report	1			4-BSC
Pressure test records	1			4-BSC
Job Books, including Record As-Built Drawings and Specifications	1			4-BSC, 8
Certified Performance Test reports	1			4-BSC, 8
Performance Test Reports establishing Substantial Completion	1			6, per §14.2.1

<b>Notices</b>				
Engineer non-conformance notices	1			3
Notices for NRG, CAISO, or PG&E	1			3
Notice of intention to commence Performance Acceptance Tests	1			6, per §14.2
Notice of intent to perform examinations, tests and inspections at any off-Site location	1			15 days prior to offsite inspections
Block Substantial Completion	1			§15.4
<b>Filings and Certifications</b>				
Permit filings	1			3
<b>Material Documents</b>				
Copies of Major Subcontracts (price redacted)	1			7
Warranties from each Subcontractor and Sub-subcontractor	1			4-BSC

<b>Phase 1 Design Package Contents</b>				
Array layout w/major equipment locations	1			1
AC single line(s)	1			1
DC single line(s)	1			1
Conceptual PCS layout	1			1
Conceptual grading plan	1			1
Conceptual storm-water plan	1			1
Instrumentation and communication block diagram	1			1
Monitored points list	1			1
Site logistics plan	1			1
Communications block diagram	1			1
Load list and predicted losses	1			1

Purchase Specifications for:	1			1
Inverter transformer	1			1
PCS	1			1
Inverter	1			1
Medium voltage cable	1			1
SCADA system	1			1
Revenue quality metering	1			1
Data Loggers	1			1
Met Station	1			1
Substation Scope of Work & Design Standards	1			1

Phase 2 Design Package Contents				
Array layout w/major equipment locations	1			1
AC single line(s)	1			1
DC single line(s)	1			1
<b>Conceptual PCS layout</b>	1			1
Conceptual grading plan	1			1
Conceptual storm-water plan	1			1
Instrumentation and communication block diagram	1			1
Monitored points list	1			1
Site logistics plan	1			1
Communications block diagram	1			1
Load list and predicted losses	1			1
Purchase Specifications for:	1			1
Inverter transformer	1			1
PCS	1			1
Inverter	1			1
Medium voltage cable	1			1
SCADA system	1			1
Revenue quality metering	1			1
Data Loggers	1			1
Met Station	1			1
	1			
Phase 3 Design Package Contents				
Array layout w/major equipment locations	1			1
AC single line(s)	1			1
DC single line(s)	1			1
<b>Conceptual PCS layout</b>	1			1
Conceptual grading plan	1			1
Conceptual storm-water plan	1			1
Instrumentation and communication block diagram	1			1
Monitored points list	1			1
Site logistics plan	1			1
Communications block diagram	1			1
Load list and predicted losses	1			1
Purchase Specifications for:	1			1
Inverter transformer	1			1
PCS	1			1
Inverter	1			1
Medium voltage cable	1			1
SCADA system	1			1

Revenue quality metering	1			1
Data Loggers	1			1
Met Station	1			1
	1			
<b>Phase 4 Design Package Contents</b>				
Array layout w/major equipment locations	1			1
AC single line(s)	1			1
DC single line(s)	1			1
<b>Conceptual PCS layout</b>	1			1
Conceptual grading plan	1			1
Conceptual storm-water plan	1			1
Instrumentation and communication block diagram	1			1
Monitored points list	1			1
Site logistics plan	1			1
Communications block diagram	1			1
Load list and predicted losses	1			1
Purchase Specifications for:	1			1
Inverter transformer	1			1
PCS	1			1
Inverter	1			1
Medium voltage cable	1			1
SCADA system	1			1
Revenue quality metering	1			1
Data Loggers	1			1
Met Station	1			1
	1			

**Timing of Delivery:**

- 1 Included in each Phase Design Package (Phase I submittal prior to NTP; Subsequent phases not less than \*\*\* prior to submission to applicable Governmental Authorities.
- 2 Issued for Construction
- 3 No later than \*\*\* after issuance or release of documents or any revisions
- 4 By Substantial Completion (BSC = Block SC, PVSC = PV Plant SC)
- 5 By Final Completion
- 6 Pursuant to the Agreement
- 7 Upon request by Owner
8. Within \*\*\* after the commercial operation date of the PV Power Plant, Contractor shall deliver to the Owner “as-built” drawings, and information and documents for the PV Power Plant Interconnection Facilities and the PV Power Plant such as a one-line diagram, a site plan showing the PV Power Plant and the PV Power Plant Interconnection Facilities, plan and elevation drawings showing the layout of the PV Power Plant Interconnection Facilities and the PV Power Plant, a relay functional diagram, relaying AC and DC schematic wiring diagrams and relay settings for all facilities associated with the main step-up transformers connecting the impedances (determined by factory tests) for the associated step-up transformers, specifications for the inverter system, automatic voltage regulator, PV Power Plant control and protection settings, transformer tap settings, and communications.

All final drawings and as-built drawings will be supplied in Native format. Review copies will be supplied in PDF format.

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

## EXHIBIT C-1

### **APPLICABLE PERMITS**

Owner shall be responsible for the Applicable Permits under the EPC Agreement, including those listed below, but excluding the Contractor-Acquired Permits set forth in Exhibit C-2:

Permit/Approval	Agency
Conditional Use Permit	San Luis Obispo County
Section 7 Consultation and Federal Endangered Species Act Incidental Take Permit	US Fish & Wildlife
State Endangered Species Act Incidental Take Permit	CA Dept. of Fish & Game
Section 1603 Streambed Alteration Agreement	CA Dept. of Fish & Game
Section 401 Water Quality Certification	Central Coast RWQCB

C-1-1

Exhibit C-1  
Owner-Acquired Permits

Exhibit C-2

**CONTRACTOR-ACQUIRED PERMITS**

Contractor shall acquire and maintain those permits and approvals set forth below:

Permit/Approval	Agency
<u>Air Quality Permit to Operate</u>	<u>As Required</u>
<u>Air Quality Construction Activity Management Plan</u>	<u>As Required</u>
<u>SWPPP</u>	<u>As Required</u>
<u>Post Permit</u>	<u>As Required</u>
<u>Certificate of Occupancy</u>	<u>As Required</u>
<u>Grading Permit</u>	<u>As Required</u>
<u>Building Permits</u>	<u>As Required</u>
<u>Trailer Permit</u>	<u>As Required</u>
***	***
***	***
***	***
***	***
***	***

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C-2-1

Exhibit C-2-1  
Contractor Deliverables Table

**Exhibit C-3**

**DIVISION OF CUP RESPONSIBILITIES TABLE**

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[33 pages redacted]

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C-3-1

Exhibit C-3-1  
Division of CUP Responsibilities Table



**Exhibit D**

**SITE SAFETY Plan**

\*\*\*

[630 pages redacted]

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D-1

Exhibit D  
Site Safety Plan

**Exhibit D-1**

**CONTRACTOR'S SAFETY PROGRAM**

**1. GENERAL.**

In accordance with Section 3.12 of the EPC Agreement, Contractor shall provide to Owner a safety program specifically designed for the Site (“**Safety Program**”).

**2. INCORPORATION OF CONTRACTOR'S SAFETY PROGRAM INTO EPC AGREEMENT.**

Upon Owner's review of the Safety Program, the Contractor's Safety Program shall be deemed final and attached hereto as Exhibit D-1 (the “**Contractor's Safety Program**”).

D-1-1

Exhibit D-1  
Contractor's Safety Program

## EXHIBIT E

### OPERATOR PERSONNEL TRAINING PROGRAM

#### 1.0 GENERAL

- 1.1 **Site-Specific Training.** Contractor shall conduct Site-specific training for Owner's designated Operating Personnel. The complete training course shall be conducted during a standard 8-hour work day and not more than 5 contiguous days. Operating Personnel shall receive classroom instruction, which shall be conducted with appropriate visual aids in an air-conditioned classroom. Such classroom instruction will also be followed by and augmented by in-the-field reinforcement of the instruction topics covered by such classroom instruction. Contractor shall design the training program to provide trainees in each individual discipline to acquire sufficient knowledge to allow them to competently operate, troubleshoot and maintain the PV Power Plant. The Parties shall also allow the entire training course to be videotaped by Owner so that it may be presented to additional Operating Personnel that cannot attend the class. Both Contractor and Owner shall obtain a copy of videotaped training to be used for its exclusive purposes.

Within forty-five (45) days prior to the anticipated commencement of such training, Contractor shall provide a draft copy of the training manuals to Owner. Training manuals shall be updated prior to commencement of the training, if new information is available on revised equipment design.

- 1.2 **Notice and Schedule.** Approximately forty-five (45) days prior to the then anticipated Phase 1 Substantial Completion Date, and, again, forty-five (45) days prior to the then anticipated PV Power Plant Substantial Completion, Contractor shall conduct training with complete documentation per section 1.1 of this Exhibit. Ten (10) days prior to each training class, Owner shall provide a list of up to 10 designated Operating Personnel to receive training. A training sign-up sheet shall document attendance of Owner's Operating Personnel and Contractor's instructor(s). Contractor will submit the proposed training schedule, training course outline and training manual for Owner's review.

#### 2.0 SITE-SPECIFIC TRAINING

- 2.1 **Owner Responsibility.** Owner shall be responsible for providing training facilities, which present an environment conducive to learning (heat, light, noise level and air conditioned and be furnished with an LCD projector or equivalent screen, white boards, markers and podium. Each student's desk (table) shall afford working space for training

manuals and the associated C size drawings.

**2.2 Contractor Responsibility.** Contractor shall be responsible for:

Preparation of all classroom and training materials;

Providing hard and soft copies of training materials in sufficient quantities to allow all participants to have their own set of documents (maximum of 10);

Scheduling and coordination of all classroom-training courses;

Provision of instructions, lesson plans, quizzes, final exams, review, and in the field instruction; and

Preparation of larger-scale drawings of the general arrangements and plot plans for the purpose of orientation and discussion.

**3.0 PV SYSTEMS**

**3.1 Instructors.** Contractor shall provide experienced instructors to conduct its training program, which shall consist of classroom sessions bolstered by system walk-downs and examinations.

**3.2 Curriculum.** The course curriculum shall include design considerations. The following outline of topics to be covered typically includes, but shall not be limited to:

- i. Introduction and Personal Safety
- ii. DC Components of the PV systems
- iii. Major Systems Components (Tracker systems and Inverters)
- iv. AC side of the PV system and Utilities interface
- v. Commissioning and start-up
- vi. SCADA, DAS System and Meteorological System

**3.3 Lesson Content and Format.** Each training session typically includes the instruction relating to the following categories:

Lesson Objectives. The major information the student is expected to learn and retain from the lesson shall be presented. Reference materials utilized in the training session shall be displayed. Listed references shall include page numbers in Required Manuals, diagram and/or drawing numbers, and appropriate procedure of section numbers.

Design Basis and List of References. The design basis and reference documents shall be presented. The student is expected to learn and retain this information from the lesson.

System Overview with Drawings. This session shall include a brief description of the intended use of the system.

Component Description with Supporting Documentation. This session shall include information on the major components in the system. Tables, figures, drawings and design details shall also be provided to a level provided and approved from the manufacture of the equipment.

Principles of Operation, Including Startup and Shutdown Procedures. The various operational modes of the system and related documents shall be presented, including:

- A. Operating philosophy
- B. Startup
- C. Normal operation and maintenance
- D. Normal and emergency shutdown
- E. Recognizing and handling abnormal operating conditions on the critical system components and a list of up to 5 of the most common problems and remedies.
- F. Procedure for replacing broken or damaged PV modules
- G. Introduction of disaster preparation the Emergency Preparedness Plan (EPP)

Walk-downs. Walk-downs shall be conducted to familiarize the students with the physical location and appearance of the equipment and to clarify equipment

features, controls, and displays.

Examinations. Students shall be tested on the material presented in each session. In general, an exam relating to each session of instruction shall be administered to evaluate each student's understanding of the material presented. Such exams typically will be administered at the conclusions of each session of instruction; however, Contractor may combine one or more exams in one or more exams. Training and performance evaluations shall be completed for each student in order to gauge such student's performance and training progress. At the conclusion of training, such records shall be submitted to Owner.

#### **4.0 QUALIFIED AND COMPETENT PERSONNEL**

The Contractor's training program will assume that the trainees have some knowledge and experience with the types of systems and equipment to be found in electric power generation.

**EXHIBIT F-1**  
**FORM OF CONDITIONAL WAIVER AND RELEASE**  
**UPON PROGRESS PAYMENT**

California Civil Code §3262

Upon receipt by the undersigned of payments from \_\_\_\_\_ (Payor) in the sum of \$ \_\_\_\_\_ (Payment Amount) payable to \_\_\_\_\_ (Payee or Payees) and when the Payment Amount has been properly deposited in Payee's bank, this document shall become effective to release any mechanic's lien, stop notice, or bond right the undersigned has on the job of \_\_\_\_\_ (Owner) located at \_\_\_\_\_ (Job Description) to the following extent.

This release covers a progress payment for labor, services, equipment, or material furnished to \_\_\_\_\_ (Payor) through \_\_\_\_\_ (Date) only and does not cover any retentions retained before or after the release date; extras furnished before the release date for which payment has not been received; extras or items furnished after the release date. Rights based upon work performed or items furnished under a written change order which has been fully executed by the parties prior to the release date are covered by this release unless specifically reserved by the claimant in this release. This release of any mechanic's lien, stop notice, or bond right shall not otherwise affect the contract rights, including rights between parties to the contract based upon a rescission, abandonment, or breach of the contract, or the right of the undersigned to recover compensation for furnished labor, services, equipment, or material covered by this release if that furnished labor, services, equipment, or material was not compensated by the progress payment. Before any recipient of this document relies on it, said party should verify evidence of payment to the undersigned.

Dated: \_\_\_\_\_  
\_\_\_\_\_  
(Company Name)

By \_\_\_\_\_  
Name:  
Title

F-1-1

Exhibit F-1  
Form of Conditional Lien Waiver and Release  
Upon Progress Payment

EXHIBIT F-2

**FORM OF UNCONDITIONAL WAIVER AND RELEASE UPON**

**PROGRESS PAYMENT**

The undersigned has been paid and has received a progress payment in the sum of \$ \_\_\_\_\_ for labor, services, equipment, or material furnished to \_\_\_\_\_ (Payor) on the job of \_\_\_\_\_ (Owner) located at \_\_\_\_\_ (Job Description) and does hereby release any mechanic's lien, stop notice, or bond right that the undersigned has on the above referenced job to the following extent.

This release covers a progress payment for labor, services, equipment, or materials furnished to \_\_\_\_\_ (Payor) through \_\_\_\_\_ (Date) only and does not cover any retentions retained before or after the release date; extras furnished before the release date for which payment has not been received; extras or items furnished after the release date. Rights based upon work performed or items furnished under a written change order which has been fully executed by the parties prior to the release date are covered by this release unless specifically reserved by the claimant in this release. This release of any mechanic's lien, stop notice, or bond right shall not otherwise affect the contract rights, including rights between parties to the contract based upon a rescission, abandonment, or breach of the contract, or the right of the undersigned to recover compensation for furnished labor, services, equipment, or material covered by this release if that furnished labor, services, equipment, or material was not compensated by the progress payment.

Dated: \_\_\_\_\_  
\_\_\_\_\_  
(Company Name)

By \_\_\_\_\_  
Name:  
Title:

**NOTICE:**

**THIS DOCUMENT WAIVES RIGHTS UNCONDITIONALLY AND STATES THAT YOU HAVE BEEN PAID FOR GIVING UP THOSE RIGHTS. THIS DOCUMENT IS ENFORCEABLE AGAINST YOU IF YOU SIGN IT, EVEN IF YOU HAVE NOT BEEN PAID. IF YOU HAVE NOT BEEN PAID, USE A CONDITIONAL RELEASE FORM.**

F-2-1

Exhibit F-2  
Form of Unconditional Lien Waiver and Release Upon  
Upon Progress Payment



**EXHIBIT F-3**

**FORM OF CONDITIONAL WAIVER  
AND RELEASE UPON FINAL PAYMENT**

California Civil Code §3262

Upon receipt by the undersigned of a Payment Amount from \_\_\_\_\_ in the sum of \$ \_\_\_\_\_ payable to \_\_\_\_\_ and when the Payment Amount has been properly deposited in Payee's bank, this document shall become effective to release any mechanic's lien, stop notice, or bond right the undersigned has on the job of \_\_\_\_\_ (Owner) located at \_\_\_\_\_ (Job Description)

This release covers the final payment to the undersigned for all labor, services, equipment, or material furnished on the job, except for disputed claims for additional work in the amount of \$ \_\_\_\_\_. Before any recipient of this document relies on it, the party should verify evidence of payment to the undersigned.

Dated: \_\_\_\_\_  
(Company Name)

By \_\_\_\_\_  
Name:  
Title:

F-3-1

Exhibit F-3  
Form of Conditional Waiver and Release Upon Final Payment

**EXHIBIT F-4**

**FORM OF UNCONDITIONAL WAIVER**  
**AND RELEASE UPON FINAL PAYMENT**

The undersigned has been paid in full for all labor, services, equipment, or material furnished to \_\_\_\_\_ (Payor) on the job of \_\_\_\_\_ (Owner) located at \_\_\_\_\_ (Job Description) and does hereby waive and release any right to a mechanic's lien, stop notice, or any right against a labor and material bond on the job, except for disputed claims for extra work in the amount of \$ \_\_\_\_\_.

Dated: \_\_\_\_\_  
\_\_\_\_\_  
(Company Name)

By \_\_\_\_\_  
Name:  
Title:

**NOTICE:**

**THIS DOCUMENT WAIVES RIGHTS UNCONDITIONALLY AND STATES THAT YOU HAVE BEEN PAID FOR GIVING UP THOSE RIGHTS. THIS DOCUMENT IS ENFORCEABLE AGAINST YOU IF YOU SIGN IT, EVEN IF YOU HAVE NOT BEEN PAID. IF YOU HAVE NOT BEEN PAID, USE A CONDITIONAL RELEASE FORM.**

F-4-1

Exhibit F-4  
Form of Lien Waiver and Release Upon

**Exhibit G**  
**SCHEDULE MILESTONES**

<b>Milestone</b>	<b>Date</b>	
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\*\*\* CONFIDENTIAL MATERIAL REDACTED AND SEPARATELY FILED WITH THE SECURITIES AND EXCHANGE COMMISSION.

**EXHIBIT H-1**

**PERFORMANCE GUARANTEE TEST PROTOCOL**

\*\*\*

[7 pages redacted]

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

H-1-1

Exhibit H  
System Testing Process

**EXHIBIT H-2**

**PERFORMANCE GUARANTEE TEST CALCULATIONS**

\*\*\*

[2 pages redacted]

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

H-2-1

Exhibit H-2  
Performance Guarantee Test Calculation

## **EXHIBIT H-3**

### **PPA PHASE CAPACITY CERTIFICATION PROCEDURE**

\*\*\*

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

H-3-1

Exhibit H-3  
PPA Phase Capacity Certification Procedure

**EXHIBIT H-4**

**PV POWER PLANT FUNCTIONAL TEST PROTOCOL**

\*\*\*

[4 pages redacted]

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

H-4-1

Exhibit H-4  
PV Power Plant Functional Test Protocol

**EXHIBIT I-1**  
**PROGRESS PAYMENT SCHEDULE**

[illegible]

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





Activities	Scheduled Completion*	% Value of EPC**
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\*\*\* CONFIDENTIAL MATERIAL REDACTED AND SEPARATELY FILED WITH THE SECURITIES AND EXCHANGE COMMISSION.

### CUMULATIVE MAXIMUM PAYMENT SCHEDULE

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

**Exhibit J**

**LEGAL DESCRIPTION OF SITE**

**TRACT 1: MAHINAN, 334033**

GOVERNMENT LOT 2 OF THE NORTHWEST QUARTER OF SECTION 3, IN TOWNSHIP 30 SOUTH, RANGE 19 EAST, MOUNT DIABLO BASE AND MERIDIAN, IN THE COUNTY OF SAN LUIS OBISPO, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT OF THE SURVEY OF SAID LAND RETURNED TO THE GENERAL LAND OFFICE BY THE SURVEYOR GENERAL.

EXCEPTING THEREFROM A 40% INTEREST IN AND TO ALL OIL, GAS, MINERAL, COAL, HYDROCARBON, GEOTHERMAL RIGHTS ON THE ABOVE DESCRIBED PROPERTY AS RESERVED BY E. J. STOKES BY DEED RECORDED JUNE 23, 1982 IN BOOK 2414, PAGE 839 OF OFFICIAL RECORDS.

APN: 072-161-006

**TRACT 2: TWISSELMAN, 333392**

ALL OF SECTION 2, TOWNSHIP 30 SOUTH, RANGE 19 EAST, M.D.B.&M.

EXCEPTING THEREFROM ALL MINERAL RIGHTS IN AND TO ALL OIL, GAS, MINERAL, COAL, HYDROCARBON, GEOTHERMAL RIGHTS ON THE ABOVE DESCRIBED PROPERTY AS RESERVED BY ADELIA O. SPERRY, VANCE CRAIGMILES OSMONT, JR. AKA VANCE CRAIGMIES OSMONT, JR, BETTY OSMONT SPARKS, FORMERLY BETTY OSMONT AND CROCKER FIRST NATIONAL BANK OF SAN FRANCISCO AND VANCE CRAIGMILES OSMONT, JR. AS TRUSTEES UNDER THE LAST WILL AND TESTAMENT OF VANCE CRAIGMILES OSMONT, DECEASED, RECORDED FEBRUARY 13, 1948 IN BOOK 462 PAGE 209 OF OFFICIAL RECORDS.

EXCEPTING THEREFROM ALL MINERAL RIGHTS IN AND TO ALL OIL, GAS, MINERAL, COAL, HYDROCARBON, GEOTHERMAL RIGHTS ON THE ABOVE DESCRIBED PROPERTY AS RESERVED BY ERNEST CHRISTIAN TWISSELMAN, ELEANOR CHRISTINE STILL, HENRY ARTHUR TWISSELMAN, CARL FREDERICK TWISSELMAN, THEODORE FRANKLIN TWISSELMAN AND DOROTHY MARIE TWISSELMAN BY DEED RECORDED NOVEMBER 20, 1952 IN BOOK 685 PAGE 528 OF OFFICIAL RECORDS.

EXCEPTING AND RESERVING THEREFROM ALL OIL, GAS AND OTHER HYDROCARBON SUBSTANCES, AS EXCEPTED AND RESERVED IN THE GRANT DEED FROM KENNETH C. TWISSELMAN AND ROSEMARY TWISSELMAN, ET AL, TO HIGH PLAINS RANCH IV, LLC, A DELAWARE LIMITED LIABILITY COMPANY, RECORDED ON ,SEPTEMBER 27, 2011, INSTRUMENT NO: 2011046563 OF OFFICIAL RECORDS OF SAN LUIS OBISPO COUNTY.

APN: 072-161-002

**TRACT 3: TWISSELMAN, 333391**

PARCEL 1:

THE NORTH 1/2 OF THE SOUTHEAST 1/4; THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4; THE SOUTHWEST 1/4 OF THE NORTHEAST 1/4 ALL IN SECTION 3, TOWNSHIP 30 SOUTH, RANGE 19 EAST, MOUNT DIABLO BASE AND MERIDIAN, IN THE COUNTY OF SAN LUIS OBISPO, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT OF SAID LAND APPROVED BY THE SURVEYOR GENERAL.

EXCEPTING THEREFROM ALL MINERAL RIGHTS IN AND TO ALL OIL, GAS, MINERAL, COAL, HYDROCARBON, GEOTHERMAL RIGHTS ON THE ABOVE DESCRIBED PROPERTY AS RESERVED BY ERNEST CHRISTIAN TWISSELMAN, ELEANOR CHRISTINE STILL, HENRY ARTHUR TWISSELMAN, CARL FREDERICK TWISSELMAN, THEODORE FRANKLIN TWISSELMAN AND DOROTHY MARIE TWISSELMAN BY DEED RECORDED NOVEMBER 20, 1952 IN BOOK 685 PAGE 528 OF OFFICIAL RECORDS.

EXCEPTING AND RESERVING THEREFROM ALL OIL, GAS AND OTHER HYDROCARBON SUBSTANCES, AS EXCEPTED AND RESERVED IN THE GRANT DEED FROM KENNETH C. TWISSELMAN AND ROSEMARY TWISSELMAN, ET AL, TO HIGH PLAINS RANCH IV, LLC, A DELAWARE LIMITED LIABILITY COMPANY, RECORDED ON SEPTEMBER 27, 2011, INSTRUMENT NO: 2011046566 OF OFFICIAL RECORDS OF SAN LUIS OBISPO COUNTY.

PARCEL 2:

THE SOUTHWEST 1/4; THE SOUTH 1/2 OF THE NORTHWEST 1/4; THE SOUTHWEST 1/4 OF THE SOUTHEAST 1/4; THE NORTH 1/2 OF THE NORTHEAST 1/4; AND THE SOUTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 3, TOWNSHIP 30 SOUTH, RANGE 19 EAST, MOUNT DIABLO BASE AND MERIDIAN, IN THE COUNTY OF SAN LUIS OBISPO, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT OF SAID LAND APPROVED BY THE SURVEYOR GENERAL.

EXCEPTING THEREFROM ALL MINERAL RIGHTS IN AND TO ALL OIL, GAS, MINERAL, COAL, HYDROCARBON, GEOTHERMAL RIGHTS ON THE ABOVE DESCRIBED PROPERTY AS RESERVED BY ADELIA O. SPERRY, VANCE CRAIGMILES OSMONT, JR. AKA VANCE CRAIGMIES OSMONT, JR, BETTY OSMONT SPARKS, FORMERLY BETTY OSMONT AND CROCKER FIRST NATIONAL BANK OF SAN FRANCISCO AND VANCE CRAIGMILES OSMONT, JR. AS TRUSTEES UNDER THE LAST WILL AND TESTAMENT OF VANCE CRAIGMILES OSMONT, DECEASED, IN DEED RECORDED FEBRUARY 13, 1948 IN BOOK 462 PAGE 209 OF OFFICIAL RECORDS.

EXCEPTING THEREFROM ALL MINERAL RIGHTS IN AND TO ALL OIL, GAS, MINERAL, COAL, HYDROCARBON, GEOTHERMAL RIGHTS ON THE ABOVE DESCRIBED PROPERTY AS RESERVED BY ERNEST CHRISTIAN TWISSELMAN, ELEANOR CHRISTINE STILL, HENRY ARTHUR TWISSELMAN, CARL FREDERICK TWISSELMAN, THEODORE FRANKLIN TWISSELMAN AND DOROTHY MARIE TWISSELMAN BY DEED RECORDED NOVEMBER 20, 1952 IN BOOK 685 PAGE 528 OF OFFICIAL RECORDS.

EXCEPTING AND RESERVING THEREFROM ALL OIL, GAS AND OTHER HYDROCARBON SUBSTANCES, AS EXCEPTED AND RESERVED IN THE GRANT DEED FROM KENNETH C. TWISSELMAN AND ROSEMARY TWISSELMAN, ET AL, TO HIGH PLAINS RANCH IV, LLC, A DELAWARE LIMITED LIABILITY COMPANY, RECORDED ON SEPTEMBER 27, 2011, INSTRUMENT NO: 2011046566 OF OFFICIAL RECORDS OF SAN LUIS OBISPO COUNTY.

APN: 072-161-003

**TRACT 4: TWISSELMAN, 333398**

THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 12, TOWNSHIP 30 SOUTH, RANGE 19 EAST, M.D.B.&M.

EXCEPTING THEREFROM ALL MINERAL RIGHTS IN AND TO ALL OIL, GAS, MINERAL, COAL, HYDROCARBON, GEOTHERMAL RIGHTS ON THE ABOVE DESCRIBED PROPERTY AS RESERVED BY ADELIA O. SPERRY, VANCE CRAIGMILES OSMONT, JR. AKA VANCE CRAIGMIES OSMONT, JR, BETTY OSMONT SPARKS, FORMERLY BETTY OSMONT AND CROCKER FIRST NATIONAL BANK OF SAN FRANCISCO AND VANCE CRAIGMILES OSMONT, JR. AS TRUSTEES UNDER THE LAST WILL AND TESTAMENT OF VANCE CRAIGMILES OSMONT, DECEASED, IN DEED RECORDED FEBRUARY

13, 1948 IN BOOK 462 PAGE 209 OF OFFICIAL RECORDS AS TO THE EAST HALF OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER.

EXCEPTING THEREFROM ALL MINERAL RIGHTS IN AND TO ALL OIL, GAS, MINERAL, COAL, HYDROCARBON, GEOTHERMAL RIGHTS ON THE ABOVE DESCRIBED PROPERTY AS RESERVED BY ERNEST CHRISTIAN TWISSELMAN, ELEANOR CHRISTINE STILL, HENRY ARTHUR TWISSELMAN, CARL FREDERICK TWISSELMAN, THEODORE FRANKLIN TWISSELMAN AND DOROTHY MARIE TWISSELMAN BY DEED RECORDED NOVEMBER 20, 1952 IN BOOK 685 PAGE 524 OF OFFICIAL RECORDS.

EXCEPTING AND RESERVING THEREFROM ALL OIL, GAS AND OTHER HYDROCARBON SUBSTANCES, AS EXCEPTED AND RESERVED IN THE GRANT DEED FROM KENNETH C. TWISSELMAN AND ROSEMARY TWISSELMAN, ET AL, TO HIGH PLAINS RANCH IV, LLC, A DELAWARE LIMITED LIABILITY COMPANY, RECORDED ON , SEPTEMBER 27, 2011, INSTRUMENT NO: 2011046570 OF OFFICIAL RECORDS OF SAN LUIS OBISPO COUNTY.

APN: 072-161-005

**TRACT 5: TWISSELMAN, 333400**

THE SOUTHEAST 1/4 OF THE NORTHEAST 1/4 AND THE NORTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 12, TOWNSHIP 30 SOUTH, RANGE 19 EAST, MOUNT DIABLO BASE AND MERIDIAN, IN THE COUNTY OF SAN LUIS OBISPO, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT OF SAID LAND APPROVED BY THE SURVEYOR GENERAL.

EXCEPTING THEREFROM 1/2 OF ALL MINERAL RIGHTS AS RESERVED BY AMATISTA CORPORATION, AN ARIZONA CORPORATION, BY DEED RECORDED FEBRUARY 23, 1979 IN BOOK 2135, PAGE 107 OF OFFICIAL RECORDS.

EXCEPTING AND RESERVING THEREFROM ALL OIL, GAS AND OTHER HYDROCARBON SUBSTANCES, AS EXCEPTED AND RESERVED IN THE GRANT DEED FROM KENNETH C. TWISSELMAN AND ROSEMARY TWISSELMAN, ET AL, TO HIGH PLAINS RANCH IV, LLC, A DELAWARE LIMITED LIABILITY COMPANY, RECORDED ON SEPTEMBER 27, 2011, INSTRUMENT NO: 2011046571 OF OFFICIAL RECORDS OF SAN LUIS OBISPO COUNTY.

APN: 072-161-010

**TRACT 6: TWISSELMAN, 333399**

THE WEST HALF OF THE EAST HALF, THE EAST HALF OF THE WEST HALF, THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER, THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER, AND THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 12, TOWNSHIP 30 SOUTH, RANGE 19 EAST, MOUNT DIABLO BASE AND MERIDIAN, IN THE COUNTY OF SAN LUIS OBISPO, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT OF SAID LAND APPROVED BY THE SURVEYOR GENERAL ON JUNE 25, 1856.

EXCEPTING AND RESERVING THEREFROM ALL OIL, GAS AND OTHER HYDROCARBON SUBSTANCES, AS EXCEPTED AND RESERVED IN THE GRANT DEED FROM ROWLAND W. TWISSELMAN AND CATHERINE A. TWISSELMAN TO HIGH PLAINS RANCH IV, LLC, A DELAWARE LIMITED LIABILITY COMPANY, RECORDED ON SEPTEMBER 27, 2011, INSTRUMENT NO: 2011046572 OF OFFICIAL RECORDS OF SAN LUIS OBISPO COUNTY.

APN: 072-161-011

**TRACT 7: TWISSELMAN, 333397**

THE SOUTH 1/2 OF THE SOUTH 1/2 AND THE NORTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 11, TOWNSHIP 30 SOUTH, RANGE 19 EAST, MOUNT DIABLO BASE AND MERIDIAN, IN THE COUNTY OF SAN LUIS OBISPO, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT OF SAID LAND APPROVED BY THE SURVEYOR GENERAL.

EXCEPTING THEREFROM ALL MINERAL RIGHTS IN AND TO ALL OIL, GAS, MINERAL, COAL, HYDROCARBON, GEOTHERMAL RIGHTS ON THE ABOVE DESCRIBED PROPERTY AS RESERVED BY ADELIA O. SPERRY, VANCE CRAIGMILES OSMONT, JR. AKA VANCE CRAIGMIES OSMONT, JR, BETTY OSMONT SPARKS, FORMERLY BETTY OSMONT AND CROCKER FIRST NATIONAL BANK OF SAN FRANCISCO AND VANCE CRAIGMILES OSMONT, JR. AS TRUSTEES UNDER THE LAST WILL AND TESTAMENT OF VANCE CRAIGMILES OSMONT, DECEASED, IN DEED RECORDED FEBRUARY 13, 1948 IN BOOK 462 PAGE 209 OF OFFICIAL RECORDS.

EXCEPTING THEREFROM ALL MINERAL RIGHTS IN AND TO ALL OIL, GAS, MINERAL, COAL, HYDROCARBON, GEOTHERMAL RIGHTS ON THE ABOVE DESCRIBED PROPERTY AS RESERVED BY ERNEST CHRISTIAN TWISSELMAN, ELEANOR CHRISTINE STILL, HENRY ARTHUR TWISSELMAN, CARL FREDERICK TWISSELMAN, THEODORE FRANKLIN TWISSELMAN AND DOROTHY MARIE TWISSELMAN BY DEED RECORDED NOVEMBER 20, 1952 IN BOOK 685 PAGE 524 OF OFFICIAL RECORDS.

EXCEPTING AND RESERVING THEREFROM ALL OIL, GAS AND OTHER HYDROCARBON SUBSTANCES, AS EXCEPTED AND RESERVED IN THE GRANT DEED FROM KENNETH C. TWISSELMAN AND ROSEMARY TWISSELMAN, ET AL, TO HIGH PLAINS RANCH IV, LLC, A DELAWARE LIMITED LIABILITY COMPANY, RECORDED ON SEPTEMBER 27, 2011, INSTRUMENT NO: 2011046574 OF OFFICIAL RECORDS OF SAN LUIS OBISPO COUNTY.

APN: 072-161-014

**TRACT 8: TWISSELMAN, 333394**

THE EAST HALF OF SECTION 10, TOWNSHIP 30 SOUTH, RANGE 19 EAST, M.D.B.&M.

EXCEPTING THEREFROM ALL MINERAL RIGHTS IN AND TO ALL OIL, GAS, MINERAL, COAL, HYDROCARBON, GEOTHERMAL RIGHTS ON THE ABOVE DESCRIBED PROPERTY AS RESERVED BY ADELIA O. SPERRY, VANCE CRAIGMILES OSMONT, JR. AKA VANCE CRAIGMIES OSMONT, JR, BETTY OSMONT SPARKS, FORMERLY BETTY OSMONT AND CROCKER FIRST NATIONAL BANK OF SAN FRANCISCO AND VANCE CRAIGMILES OSMONT, JR. AS TRUSTEES UNDER THE LAST WILL AND TESTAMENT OF VANCE CRAIGMILES OSMONT, DECEASED, RECORDED FEBRUARY 13, 1948 IN BOOK 462 PAGE 209 OF OFFICIAL RECORDS.

EXCEPTING THEREFROM ALL MINERAL RIGHTS IN AND TO ALL OIL, GAS, MINERAL, COAL, HYDROCARBON, GEOTHERMAL RIGHTS ON THE ABOVE DESCRIBED PROPERTY AS RESERVED BY ERNEST CHRISTIAN TWISSELMAN, ELEANOR CHRISTINE STILL, HENRY ARTHUR TWISSELMAN, CARL FREDERICK TWISSELMAN, THEODORE FRANKLIN TWISSELMAN AND DOROTHY MARIE TWISSELMAN BY DEED RECORDED NOVEMBER 20, 1952 IN BOOK 685 PAGE 521 OF OFFICIAL RECORDS AND RE-RECORDED NOVEMBER 30, 1953 IN BOOK 735 PAGE 219 OFFICIAL RECORDS.

EXCEPTING AND RESERVING THEREFROM ALL OIL, GAS AND OTHER HYDROCARBON SUBSTANCES, AS EXCEPTED AND RESERVED IN THE GRANT DEED FROM KENNETH C. TWISSELMAN AND ROSEMARY TWISSELMAN, ET AL, TO HIGH PLAINS RANCH IV, LLC, A DELAWARE LIMITED LIABILITY COMPANY, RECORDED ON SEPTEMBER 27, 2011, INSTRUMENT NO: 2011046577 OF OFFICIAL RECORDS OF SAN LUIS OBISPO COUNTY.

APN: 072-161-015

**TRACT 9: TWISSELMAN, 333393**

THE WEST ONE-HALF ( ½ ) OF SECTION 10, TOWNSHIP 30 SOUTH, RANGE 19 EAST, MOUNT DIABLO BASE AND MERIDIAN, IN THE COUNTY OF SAN LUIS OBISPO, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF.

EXCEPTING THEREFROM ALL MINERAL RIGHTS IN AND TO ALL OIL, GAS, MINERAL, COAL, HYDROCARBON, GEOTHERMAL RIGHTS ON THE ABOVE DESCRIBED PROPERTY AS RESERVED BY ADELIA O. SPERRY, VANCE CRAIGMILES OSMONT, JR. AKA VANCE CRAIGMIES OSMONT, JR, BETTY OSMONT SPARKS, FORMERLY BETTY OSMONT AND CROCKER FIRST NATIONAL BANK OF SAN FRANCISCO AND VANCE CRAIGMILES OSMONT, JR. AS TRUSTEES UNDER THE LAST WILL AND TESTAMENT OF VANCE CRAIGMILES OSMONT, DECEASED, RECORDED FEBRUARY 13, 1948 IN BOOK 462 PAGE 209 OF OFFICIAL RECORDS.

EXCEPTING THEREFROM ALL MINERAL RIGHTS IN AND TO ALL OIL, GAS, MINERAL, COAL, HYDROCARBON, GEOTHERMAL RIGHTS ON THE ABOVE DESCRIBED PROPERTY AS RESERVED BY ERNEST CHRISTIAN TWISSELMAN, ELEANOR CHRISTINE STILL, HENRY ARTHUR TWISSELMAN, CARL FREDERICK TWISSELMAN, THEODORE FRANKLIN TWISSELMAN AND DOROTHY MARIE TWISSELMAN BY DEED RECORDED NOVEMBER 20, 1952 IN BOOK 685 PAGE 521 OF OFFICIAL RECORDS AND RE-RECORDED NOVEMBER 30, 1953 IN BOOK 735 PAGE 219 OFFICIAL RECORDS.

EXCEPTING AND RESERVING THEREFROM ALL OIL, GAS AND OTHER HYDROCARBON SUBSTANCES, AS EXCEPTED AND RESERVED IN THE GRANT DEED FROM ROWLAND W. TWISSELMAN AND CATHERINE A. TWISSELMAN TO HIGH PLAINS RANCH IV, LLC, A DELAWARE LIMITED LIABILITY COMPANY, RECORDED ON SEPTEMBER 27, 2011, INSTRUMENT NO: 2011046578 OF OFFICIAL RECORDS OF SAN LUIS OBISPO COUNTY.

APN: 072-161-016

**TRACT 10: TWISSELMAN, 333396**

THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 11, TOWNSHIP 30 SOUTH, RANGE 19 EAST, M.D.B.&M.

EXCEPTING THEREFROM ALL MINERAL RIGHTS IN AND TO ALL OIL, GAS, MINERAL, COAL, HYDROCARBON, GEOTHERMAL RIGHTS ON THE ABOVE DESCRIBED PROPERTY AS RESERVED BY ADELIA O. SPERRY, VANCE CRAIGMILES OSMONT, JR. AKA VANCE CRAIGMIES OSMONT, JR, BETTY OSMONT SPARKS, FORMERLY BETTY OSMONT AND CROCKER FIRST NATIONAL BANK OF SAN FRANCISCO AND VANCE CRAIGMILES OSMONT, JR. AS TRUSTEES UNDER THE LAST WILL AND TESTAMENT OF VANCE CRAIGMILES OSMONT, DECEASED, RECORDED FEBRUARY 13, 1948 IN BOOK 462 PAGE 209 OF OFFICIAL RECORD.

EXCEPTING THEREFROM ALL MINERAL RIGHTS IN AND TO ALL OIL, GAS, MINERAL, COAL, HYDROCARBON, GEOTHERMAL RIGHTS ON THE ABOVE DESCRIBED PROPERTY AS RESERVED BY ERNEST CHRISTIAN TWISSELMAN, ELEANOR CHRISTINE STILL, HENRY ARTHUR TWISSELMAN, CARL FREDERICK TWISSELMAN, THEODORE FRANKLIN TWISSELMAN AND DOROTHY MARIE TWISSELMAN BY DEED RECORDED NOVEMBER 20, 1952 IN BOOK 685 PAGE 524 OF OFFICIAL RECORDS.

EXCEPTING AND RESERVING THEREFROM ALL OIL, GAS AND OTHER HYDROCARBON SUBSTANCES, AS EXCEPTED AND RESERVED IN THE GRANT DEED FROM KENNETH C. TWISSELMAN AND ROSEMARY TWISSELMAN, ET AL, TO HIGH PLAINS RANCH IV, LLC, A DELAWARE LIMITED LIABILITY COMPANY, RECORDED ON SEPTEMBER 27, 2011, INSTRUMENT NO:



APN: 072-161-017

**TRACT 11: TWISSELMAN, 333395**

THE NORTH HALF AND THE NORTH HALF OF THE SOUTHWEST QUARTER ALL IN SECTION 11, TOWNSHIP 30 SOUTH, RANGE 19 EAST, M.D.B.&M.

EXCEPTING THEREFROM ALL MINERAL RIGHTS IN AND TO ALL OIL, GAS, MINERAL, COAL, HYDROCARBON, GEOTHERMAL RIGHTS ON THE ABOVE DESCRIBED PROPERTY AS RESERVED BY ADELIA O. SPERRY, VANCE CRAIGMILES OSMONT, JR. AKA VANCE CRAIGMIES OSMONT, JR, BETTY OSMONT SPARKS, FORMERLY BETTY OSMONT AND CROCKER FIRST NATIONAL BANK OF SAN FRANCISCO AND VANCE CRAIGMILES OSMONT, JR. AS TRUSTEES UNDER THE LAST WILL AND TESTAMENT OF VANCE CRAIGMILES OSMONT, DECEASED, RECORDED FEBRUARY 13, 1948 IN BOOK 462 PAGE 209 OF OFFICIAL RECORDS.

EXCEPTING THEREFROM ALL MINERAL RIGHTS IN AND TO ALL OIL, GAS, MINERAL, COAL, HYDROCARBON, GEOTHERMAL RIGHTS ON THE ABOVE DESCRIBED PROPERTY AS RESERVED BY ERNEST CHRISTIAN TWISSELMAN, ELEANOR CHRISTINE STILL, HENRY ARTHUR TWISSELMAN, CARL FREDERICK TWISSELMAN, THEODORE FRANKLIN TWISSELMAN AND DOROTHY MARIE TWISSELMAN BY DEED RECORDED NOVEMBER 20, 1952 IN BOOK 685 PAGE 524 OF OFFICIAL RECORDS.

EXCEPTING AND RESERVING THEREFROM ALL OIL, GAS AND OTHER HYDROCARBON SUBSTANCES, AS EXCEPTED AND RESERVED IN THE GRANT DEED FROM ROWLAND W. TWISSELMAN AND CATHERINE A. TWISSELMAN TO HIGH PLAINS RANCH IV, LLC, A DELAWARE LIMITED LIABILITY COMPANY, RECORDED ON SEPTEMBER 27, 2011, INSTRUMENT NO: 2011046584 OF OFFICIAL RECORDS OF SAN LUIS OBISPO COUNTY.

APN: 072-161-018

**TRACT 12: BALOGH, 333401**

THE SOUTHWEST QUARTER OF SECTION 7, TOWNSHIP 30 SOUTH, RANGE 20 EAST, M.D.B.&M.

EXCEPTING THEREFROM ALL MINERAL RIGHTS IN AND TO ALL OIL, GAS, MINERAL, COAL, HYDROCARBON, GEOTHERMAL RIGHTS ON THE ABOVE DESCRIBED PROPERTY AS RESERVED BY ADELIA O. SPERRY, VANCE CRAIGMILES OSMONT, JR. AKA VANCE CRAIGMIES OSMONT, JR, BETTY OSMONT SPARKS, FORMERLY BETTY OSMONT AND CROCKER FIRST NATIONAL BANK OF SAN FRANCISCO AND VANCE CRAIGMILES OSMONT, JR. AS TRUSTEES UNDER THE LAST WILL AND TESTAMENT OF VANCE CRAIGMILES OSMONT, DECEASED, RECORDED FEBRUARY 13, 1948 IN BOOK 462 PAGE 209 OF OFFICIAL RECORDS AS TO THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER AND THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER.

EXCEPTING THEREFROM ALL MINERAL RIGHTS IN AND TO ALL OIL, GAS, MINERAL, COAL, HYDROCARBON, GEOTHERMAL RIGHTS ON THE ABOVE DESCRIBED PROPERTY AS RESERVED BY ERNEST CHRISTIAN TWISSELMAN, ELEANOR CHRISTINE STILL, HENRY ARTHUR TWISSELMAN, CARL FREDERICK TWISSELMAN, THEODORE FRANKLIN TWISSELMAN AND DOROTHY MARIE TWISSELMAN BY DEED RECORDED NOVEMBER 20, 1952 IN BOOK 685 PAGE 521 OF OFFICIAL RECORDS AND RE-RECORDED NOVEMBER 30, 1953 IN BOOK 735 PAGE 219 OFFICIAL RECORDS.

EXCEPTING AND RESERVING THEREFROM ALL OIL, GAS AND OTHER HYDROCARBON SUBSTANCES, AS EXCEPTED AND RESERVED IN THE GRANT DEED FROM KENNETH C. TWISSELMAN AND ROSEMARY TWISSELMAN, ET AL, TO HIGH PLAINS RANCH IV, LLC, A

DELAWARE LIMITED LIABILITY COMPANY, RECORDED ON SEPTEMBER 27, 2011, INSTRUMENT NO: 2011046587 OF OFFICIAL RECORDS OF SAN LUIS OBISPO COUNTY.

APN: 072-171-017

**TRACT 13: TWISSELMAN, 333406**

THE WEST ONE-HALF (  $\frac{1}{2}$  ) OF SECTION 18, TOWNSHIP 30 SOUTH, RANGE 20 EAST, MOUNT DIABLO BASE AND MERIDIAN, IN THE COUNTY OF SAN LUIS OBISPO, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF.

EXCEPTING THEREFROM ALL MINERAL RIGHTS IN AND TO ALL OIL, GAS, MINERAL, COAL, HYDROCARBON, GEOTHERMAL RIGHTS ON THE ABOVE DESCRIBED PROPERTY AS RESERVED BY ADELIA O. SPERRY, VANCE CRAIGMILES OSMONT, JR. AKA VANCE CRAIGMILES OSMONT, JR, BETTY OSMONT SPARKS, FORMERLY BETTY OSMONT AND CROCKER FIRST NATIONAL BANK OF SAN FRANCISCO AND VANCE CRAIGMILES OSMONT, JR. AS TRUSTEES UNDER THE LAST WILL AND TESTAMENT OF VANCE CRAIGMILES OSMONT, DECEASED, RECORDED FEBRUARY 13, 1948 IN BOOK 462 PAGE 209 OF OFFICIAL RECORDS.

EXCEPTING THEREFROM ALL MINERAL RIGHTS IN AND TO ALL OIL, GAS, MINERAL, COAL, HYDROCARBON, GEOTHERMAL RIGHTS ON THE ABOVE DESCRIBED PROPERTY AS RESERVED BY ERNEST CHRISTIAN TWISSELMAN, ELEANOR CHRISTINE STILL, HENRY ARTHUR TWISSELMAN, CARL FREDERICK TWISSELMAN, THEODORE FRANKLIN TWISSELMAN AND DOROTHY MARIE TWISSELMAN BY DEED RECORDED NOVEMBER 20, 1952 IN BOOK 685 PAGE 521 OF OFFICIAL RECORDS AND RE-RECORDED NOVEMBER 30, 1953 IN BOOK 735 PAGE 219 OFFICIAL RECORDS.

EXCEPTING AND RESERVING THEREFROM ALL OIL, GAS AND OTHER HYDROCARBON SUBSTANCES, AS EXCEPTED AND RESERVED IN THE GRANT DEED FROM KENNETH C. TWISSELMAN AND ROSEMARY TWISSELMAN, ET AL, TO HIGH PLAINS RANCH IV, LLC, A DELAWARE LIMITED LIABILITY COMPANY, RECORDED ON SEPTEMBER 27, 2011, INSTRUMENT NO: 2011046588 OF OFFICIAL RECORDS OF SAN LUIS OBISPO COUNTY.

APN: 072-171-018

**TRACT 14: TWISSELMAN, 333405**

THE EAST ONE-THIRD (  $\frac{1}{3}$  ) OF THE SOUTH  $\frac{1}{2}$  OF THE SOUTHEAST  $\frac{1}{4}$ ; AND THE NORTH ONE-HALF (  $\frac{1}{2}$  ) OF THE SOUTHEAST  $\frac{1}{4}$  OF SECTION 13, TOWNSHIP 30 SOUTH, RANGE 19 EAST, MOUNT DIABLO BASE AND MERIDIAN, IN THE SAN LUIS OBISPO COUNTY, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF.

EXCEPTING THEREFROM ALL MINERAL RIGHTS IN AND TO ALL OIL, GAS, MINERAL, COAL, HYDROCARBON, GEOTHERMAL RIGHTS ON THE ABOVE DESCRIBED PROPERTY AS RESERVED BY ADELIA O. SPERRY, VANCE CRAIGMILES OSMONT, JR. AKA VANCE CRAIGMILES OSMONT, JR, BETTY OSMONT SPARKS, FORMERLY BETTY OSMONT AND CROCKER FIRST NATIONAL BANK OF SAN FRANCISCO AND VANCE CRAIGMILES OSMONT, JR. AS TRUSTEES UNDER THE LAST WILL AND TESTAMENT OF VANCE CRAIGMILES OSMONT, DECEASED, RECORDED FEBRUARY 13, 1948 IN BOOK 462 PAGE 209 OF OFFICIAL RECORDS.

EXCEPTING THEREFROM ALL MINERAL RIGHTS IN AND TO ALL OIL, GAS, MINERAL, COAL, HYDROCARBON, GEOTHERMAL RIGHTS ON THE ABOVE DESCRIBED PROPERTY AS RESERVED BY ERNEST CHRISTIAN TWISSELMAN, ELEANOR CHRISTINE STILL, HENRY ARTHUR TWISSELMAN, CARL FREDERICK TWISSELMAN, THEODORE FRANKLIN TWISSELMAN

AND DOROTHY MARIE TWISSELMAN BY DEED RECORDED NOVEMBER 20, 1952 IN BOOK 685 PAGE 521 OF OFFICIAL RECORDS AND RE-RECORDED NOVEMBER 30, 1953 IN BOOK 735 PAGE 219 OFFICIAL RECORDS.

EXCEPTING AND RESERVING THEREFROM ALL OIL, GAS AND OTHER HYDROCARBON SUBSTANCES, AS EXCEPTED AND RESERVED IN THE GRANT DEED FROM ROWLAND W. TWISSELMAN AND CATHERINE A. TWISSELMAN TO HIGH PLAINS RANCH IV, LLC, A DELAWARE LIMITED LIABILITY COMPANY, RECORDED ON SEPTEMBER 27, 2011, INSTRUMENT NO: 2011046589 OF OFFICIAL RECORDS OF SAN LUIS OBISPO COUNTY.

APN: 072-221-010

**TRACT 15: TWISSELMAN, 333403**

THE NORTH ONE-HALF OF THE NORTHEAST QUARTER; IN SECTION 15, TOWNSHIP 30 SOUTH, RANGE 19 EAST, M.D.B.&M.

EXCEPTING THEREFROM ALL MINERAL RIGHTS IN AND TO ALL OIL, GAS, MINERAL, COAL, HYDROCARBON, GEOTHERMAL RIGHTS ON THE ABOVE DESCRIBED PROPERTY RESERVED BY ERNEST CHRISTIAN TWISSELMAN, ELEANOR CHRISTINE STILL, HENRY ARTHUR TWISSELMAN, CARL FREDERICK TWISSELMAN, THEODORE FRANKLIN TWISSELMAN AND DOROTHY MARIE TWISSELMAN BY DEED RECORDED NOVEMBER 20, 1952 IN BOOK 685 PAGE 521 OF OFFICIAL RECORDS AND RE-RECORDED NOVEMBER 30, 1953 IN BOOK 735 PAGE 219 OFFICIAL RECORDS.

EXCEPTING AND RESERVING THEREFROM ALL OIL, GAS AND OTHER HYDROCARBON SUBSTANCES, AS EXCEPTED AND RESERVED IN THE GRANT DEED FROM KENNETH C. TWISSELMAN AND ROSEMARY TWISSELMAN, ET AL, TO HIGH PLAINS RANCH IV, LLC, A DELAWARE LIMITED LIABILITY COMPANY, RECORDED ON SEPTEMBER 27, 2011, INSTRUMENT NO: 2011046592 OF OFFICIAL RECORDS OF SAN LUIS OBISPO COUNTY.

APN: 072-221-014

**TRACT 16: TWISSELMAN, 333404**

THE SOUTH HALF OF THE SOUTHWEST QUARTER AND THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 15, TOWNSHIP 30 SOUTH, RANGE 19 EAST, M.D.B.&M.

EXCEPTING THEREFROM ALL MINERAL RIGHTS IN AND TO ALL OIL, GAS, MINERAL, COAL, HYDROCARBON, GEOTHERMAL RIGHTS ON THE ABOVE DESCRIBED PROPERTY RESERVED BY ERNEST CHRISTIAN TWISSELMAN, ELEANOR CHRISTINE STILL, HENRY ARTHUR TWISSELMAN, CARL FREDERICK TWISSELMAN, THEODORE FRANKLIN TWISSELMAN AND DOROTHY MARIE TWISSELMAN BY DEED RECORDED NOVEMBER 20, 1952 IN BOOK 685 PAGE 521 OF OFFICIAL RECORDS AND RE-RECORDED NOVEMBER 30, 1953 IN BOOK 735 PAGE 219 OFFICIAL RECORDS.

EXCEPTING AND RESERVING THEREFROM ALL OIL, GAS AND OTHER HYDROCARBON SUBSTANCES, AS EXCEPTED AND RESERVED IN THE GRANT DEED FROM KENNETH C. TWISSELMAN AND ROSEMARY TWISSELMAN, ET AL, TO HIGH PLAINS RANCH IV, LLC, A DELAWARE LIMITED LIABILITY COMPANY, RECORDED ON SEPTEMBER 27, 2011, INSTRUMENT NO: 2011046595 OF OFFICIAL RECORDS OF SAN LUIS OBISPO COUNTY.

APN: 072-221-015

**TRACT 17: TWISSELMAN, 333402**

THE SOUTH HALF OF THE NORTH HALF; THE NORTH HALF OF THE SOUTH HALF; THE NORTH

HALF OF THE NORTHWEST QUARTER; THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER; ALL IN SECTION 15, TOWNSHIP 30 SOUTH, RANGE 19 EAST, M.D.B.&M.

EXCEPTING THEREFROM ALL MINERAL RIGHTS IN AND TO ALL OIL, GAS, MINERAL, COAL, HYDROCARBON, GEOTHERMAL RIGHTS ON THE ABOVE DESCRIBED PROPERTY RESERVED BY ERNEST CHRISTIAN TWISSELMAN, ELEANOR CHRISTINE STILL, HENRY ARTHUR TWISSELMAN, CARL FREDERICK TWISSELMAN, THEODORE FRANKLIN TWISSELMAN AND DOROTHY MARIE TWISSELMAN BY DEED RECORDED NOVEMBER 20, 1952 IN BOOK 685 PAGE 521 OF OFFICIAL RECORDS AND RE-RECORDED NOVEMBER 30, 1953 IN BOOK 735 PAGE 219 OFFICIAL RECORDS.

EXCEPTING AND RESERVING THEREFROM ALL OIL, GAS AND OTHER HYDROCARBON SUBSTANCES, AS EXCEPTED AND RESERVED IN THE GRANT DEED FROM GLENN A. MILLER AND MARJORIE A. MILLER TO HIGH PLAINS RANCH IV, LLC, A DELAWARE LIMITED LIABILITY COMPANY, RECORDED ON SEPTEMBER 27, 2011, INSTRUMENT NO: 2011046596 OF OFFICIAL RECORDS OF SAN LUIS OBISPO COUNTY.

APN: 072-221-016

**TRACT 18: TWISSELMAN EASEMENT 334143**

THE FOLLOWING EASEMENTS ARE APPURTENANT TO "TRACT 3", PARCELS 1 THROUGH 4 AS FURTHER DEFINED AND CREATED BY MEMORANDUM OF EASEMENT RECORDED SEPTEMBER 27, 2011, INSTRUMENT NO. 2011046598.

PARCEL 1: (Gen-Tie 3)

AN EASEMENT FOR CONSTRUCTING, PLACING, OPERATING, MAINTAINING, RECONSTRUCTING, REPLACING, REBUILDING, UPGRADING, REMOVING, INSPECTING, PATROLLING, USING, SUPPORTING, MODIFYING AND/OR REPAIRING (A) EQUIPMENT PADS FOR SWITCHING STATION FACILITIES RELATED TO OR NECESSITATED BY HPR'S SYSTEMS; (B) SURFACE AND SUBSURFACE UTILITIES RELATED TO OR NECESSITATED BY HPR'S SYSTEMS LOCATED ON THE DOMINANT ESTATE, WHICH UTILITIES MAY INCLUDE, WITHOUT LIMITATION, ELECTRICAL FACILITIES AND COMPONENTS AND TRANSMISSION LINES, COMMUNICATIONS LINES, TELEPHONE LINES AND FIBER OPTIC LINES AND RELATED FACILITIES; AND (C) ROADS FOR ACCESS, CONSISTING OF PAVED ROADS AND ALL OTHER NECESSARY FIXTURES AND APPURTENANCES, ALL TO BE BUILT OR ALREADY BUILT IN, OVER, UNDER AND UPON THE PRIMARY EASEMENT AREA ON, OVER, UNDER AND THROUGH:

ALL THAT PORTION OF SECTION 27 OF TOWNSHIP 29 SOUTH, RANGE 19 EAST, MOUNT DIABLO MERIDIAN, IN THE COUNTY OF SAN LUIS OBISPO, STATE OF CALIFORNIA, PER THE RECORD OF SURVEY FILED MARCH 10TH 2009 IN BOOK 101, AT PAGE 55 OF RECORDS OF SURVEYS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, DESCRIBED AS FOLLOWS;

COMMENCING AT THE SOUTH QUARTER CORNER OF SAID SECTION 27, THENCE ALONG THE WEST LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 27, NORTH 01° 25' 09" EAST 632.34 FEET;  
THENCE LEAVING SAID WEST LINE NORTH 36° 50' 59" EAST 851.27 FEET;  
THENCE NORTH 30° 24' 54" WEST 1579.04 FEET TO A POINT ON THE SOUTH LINE OF THE NORTHWEST QUARTER OF SAID SECTION 27, SAID POINT BEING THE POINT OF BEGINNING;  
THENCE NORTH 30° 24' 54" WEST 173.77 FEET;  
THENCE SOUTH 50°44'20" WEST 146.38 FEET;  
THENCE NORTH 39°15'40" WEST 120.00 FEET;  
THENCE NORTH 50°44'20" EAST 165.05 FEET;

THENCE NORTH 30°24'54" WEST 75.30 FEET;  
THENCE NORTH 50° 43' 52" EAST 2893.76 FEET;  
THENCE SOUTH 88° 54' 08" EAST 201.20 FEET;  
THENCE SOUTH 00° 59' 05" WEST 156.83 FEET;  
THENCE SOUTH 50° 43' 52" WEST 2731.65 FEET;  
THENCE SOUTH 30° 24' 54" EAST 309.73 FEET TO THE SOUTH LINE OF THE NORTHWEST QUARTER OF SAID SECTION 27;  
THENCE ALONG SAID SOUTH LINE OF THE NORTHWEST QUARTER OF SAID SECTION 27 NORTH 88° 54' 00" WEST 293.25 FEET TO THE POINT OF BEGINNING;

PARCEL 2: (Gentie Work area 20)

AN EASEMENT FOR CONSTRUCTING, PLACING, OPERATING, MAINTAINING, RECONSTRUCTING, REPLACING, REBUILDING, UPGRADING, REMOVING, INSPECTING, PATROLLING, USING, SUPPORTING, MODIFYING AND/OR REPAIRING (A) EQUIPMENT PADS FOR SWITCHING STATION FACILITIES RELATED TO OR NECESSITATED BY HPR'S SYSTEMS; (B) SURFACE AND SUBSURFACE UTILITIES RELATED TO OR NECESSITATED BY HPR'S SYSTEMS LOCATED ON THE DOMINANT ESTATE, WHICH UTILITIES MAY INCLUDE, WITHOUT LIMITATION, ELECTRICAL FACILITIES AND COMPONENTS AND TRANSMISSION LINES, COMMUNICATIONS LINES, TELEPHONE LINES AND FIBER OPTIC LINES AND RELATED FACILITIES; AND (C) ROADS FOR ACCESS, CONSISTING OF PAVED ROADS AND ALL OTHER NECESSARY FIXTURES AND APPURTENANCES, ALL TO BE BUILT OR ALREADY BUILT IN, OVER, UNDER AND UPON THE PRIMARY EASEMENT AREA ON, OVER, UNDER AND THROUGH:

ALL THAT PORTION OF THE NORTHWEST QUARTER OF SECTION 27 OF TOWNSHIP 29 SOUTH, RANGE 19 EAST, MOUNT DIABLO MERIDIAN, IN THE COUNTY OF SAN LUIS OBISPO, STATE OF CALIFORNIA, PER THE RECORD OF SURVEY FILED MARCH 10TH 2009 IN BOOK 101, AT PAGE 55 OF RECORDS OF SURVEYS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, DESCRIBED AS FOLLOWS;

COMMENCING AT THE SOUTHEAST CORNER OF SAID NORTHWEST QUARTER OF SAID SECTION 27, THENCE ALONG THE SOUTH LINE OF SAID NORTHWEST QUARTER OF SECTION 27, NORTH 88°54'00" WEST 207.26 FEET; THENCE NORTH 02°34'08" EAST 49.47 FEET; THENCE NORTH 31°50'39" WEST 666.23 FEET TO THE POINT OF BEGINNING; THENCE NORTH 59°33'21" EAST 62.17 FEET; THENCE NORTH 30°24'51" WEST 170.00 FEET; THENCE SOUTH 59°33'25" WEST 114.42 FEET; THENCE SOUTH 31°50'35" EAST 170.05 FEET; THENCE NORTH 59°33'21" EAST 48.01 FEET TO THE POINT OF BEGINNING.

PARCEL 3: (Access 3)

A NON-EXCLUSIVE EASEMENT FOR CONSTRUCTING, PLACING, OPERATING, MAINTAINING, RECONSTRUCTING, REPLACING, REBUILDING, UPGRADING, REMOVING, INSPECTING, PATROLLING, USING, SUPPORTING, MODIFYING AND/OR REPAIRING ROADS FOR ACCESS, CONSISTING OF PAVED ROADS AND/OR GRAVELED ROADS AND ALL OTHER NECESSARY FIXTURES AND APPURTENANCES ON, OVER, ALONG AND THROUGH:

ALL THAT PORTION OF SECTION 27 OF TOWNSHIP 29 SOUTH, RANGE 19 EAST, MOUNT DIABLO MERIDIAN, IN THE COUNTY OF SAN LUIS OBISPO, STATE OF CALIFORNIA, PER THE RECORD OF SURVEY FILED MARCH 10TH 2009 IN BOOK 101, AT PAGE 55 OF RECORDS OF SURVEYS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, DESCRIBED AS FOLLOWS;

COMMENCING AT THE SOUTH QUARTER CORNER OF SAID SECTION 27,  
THENCE ALONG THE WEST LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 27, NORTH 01° 25' 09" EAST 1334.69 FEET TO THE NORTHEAST CORNER OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 27;

THENCE ALONG THE NORTH LINE OF SAID SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 27, NORTH 88° 50' 31" WEST 15.16 FEET;  
THENCE NORTH 12° 12' 19" WEST 600.06 FEET;  
THENCE NORTH 25° 15' 17" WEST 344.49 FEET;  
THENCE NORTH 02° 34' 08" EAST 384.05 FEET;  
THENCE NORTH 30° 24' 54" WEST 68.14 FEET TO A POINT ON THE NORTH LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 27, SAID POINT BEING THE POINT OF BEGINNING;  
THENCE NORTH 30° 24' 54" WEST 370.51 FEET;  
THENCE NORTH 31° 51' 37" WEST 1408.07 FEET;  
THENCE NORTH 58° 09' 21" EAST 130.00 FEET;  
THENCE SOUTH 31° 50' 39" EAST 219.66 FEET;  
THENCE NORTH 58° 52' 02" EAST (L1) 26.74 FEET TO THE BEGINNING OF A CURVE CONCAVE NORTHWESTERLY WITH A RADIUS OF 475.00 FEET;  
THENCE NORTHEASTERLY ALONG SAID CURVE (C1) THROUGH A CENTRAL ANGLE OF 10° 11' 03" AN ARC DISTANCE OF 84.43 FEET;  
THENCE NORTH 48° 40' 59" EAST (L2) 236.31 FEET TO THE BEGINNING OF A CURVE CONCAVE SOUTHEASTERLY WITH A RADIUS OF 525.00 FEET;  
THENCE NORTHEASTERLY ALONG SAID CURVE (C2) THROUGH A CENTRAL ANGLE OF 20° 53' 24" AN ARC DISTANCE OF 191.41 FEET;  
THENCE NORTH 69° 20' 49" EAST (L3) 127.81 FEET;  
THENCE NORTH 74° 49' 37" EAST (L4) 195.77 FEET TO THE BEGINNING OF A CURVE CONCAVE SOUTHWESTERLY WITH A RADIUS OF 335.00 FEET;  
THENCE NORTHEASTERLY ALONG SAID CURVE (C3) THROUGH A CENTRAL ANGLE OF 39°08'58" AN ARC DISTANCE OF 228.90 FEET  
THENCE SOUTH 66°01'25" EAST (L5) 613.73 FEET TO THE BEGINNING OF A CURVE CONCAVE NORTHERLY WITH A RADIUS OF 115.00 FEET;  
THENCE SOUTHEASTERLY ALONG SAID CURVE (C4) THROUGH A CENTRAL ANGLE OF 61°18'54" AN ARC DISTANCE OF 123.07 FEET;  
THENCE NON TANGENT TO SAID CURVE NORTH 23°10'29" EAST (L6) 283.45 FEET  
THENCE NORTH 46°02'32" EAST (L7) 168.98 FEET;  
THENCE SOUTH 88°57'28" EAST (L8) 159.93 FEET;  
THENCE SOUTH 43°57'28" EAST (L9) 240.00 FEET;  
THENCE SOUTH 88°57'28" EAST (L10) 199.31 FEET;  
THENCE NORTH 61°02'32" EAST (L11) 377.81 FEET;  
THENCE SOUTH 88°54'08" EAST 224.10 FEET;  
THENCE SOUTH 11°47'58" EAST 181.87 FEET;  
THENCE SOUTH 61°02'32" WEST 420.03 FEET;  
THENCE NORTH 88°57'28" WEST (L12) 435.74 FEET;  
THENCE NORTH 43°57'28" WEST (L13) 268.28 FEET;' THENCE NORTH 88°57'28" WEST (L14) 50.11 FEET;  
THENCE SOUTH 34°55'55" WEST (L15) 323.67 FEET TO A POINT, SAID POINT BEING THE BEGINNING OF A NON TANGENT CURVE CONCAVE NORTHERLY WITH A RADIUS OF 200.00 FEET, A RADIAL LINE TO SAID POINT BEARS SOUTH 37°20'19" EAST;  
THENCE SOUTHWESTERLY ALONG SAID CURVE (C5) THROUGH A CENTRAL ANGLE OF 61°18'54" AN ARC DISTANCE OF 214.03 FEET;  
THENCE NORTH 66°01'25" WEST (L16) 613.73 FEET TO THE BEGINNING OF A CURVE CONCAVE SOUTHWESTERLY WITH A RADIUS OF 250.00 FEET;  
THENCE NORTHWESTERLY ALONG SAID CURVE (C6) THROUGH A CENTRAL ANGLE OF 39°08'58" AN ARC DISTANCE OF 170.82 FEET;  
THENCE SOUTH 74°49'37" WEST (L17) 195.77 FEET;  
THENCE SOUTH 85°27'01" WEST (L18) 124.79 FEET TO A POINT, SAID POINT BEING THE BEGINNING OF A NON TANGENT CURVE CONCAVE SOUTHEASTERLY WITH A RADIUS OF 475.00 FEET, A RADIAL LINE TO SAID POINT BEARS NORTH 20°25'37" WEST;  
THENCE SOUTHWESTERLY ALONG SAID CURVE (C7) THROUGH A CENTRAL ANGLE OF 20° 53' 24" AN ARC DISTANCE OF 173.18 FEET;  
THENCE SOUTH 48° 40' 59" WEST (L19) 236.31 FEET TO THE BEGINNING OF A CURVE

CONCAVE NORTHWESTERLY WITH RADIUS OF 525.00 FEET;  
THENCE SOUTHWESTERLY ALONG SAID CURVE (C8) THROUGH A CENTRAL ANGLE OF 10° 11' 03" AN ARC DISTANCE OF 93.32 FEET;  
THENCE SOUTH 58° 52' 02" WEST (L20) 26.12 FEET;  
THENCE SOUTH 31° 50' 39" EAST 1539.85 FEET;  
THENCE SOUTH 02° 34' 08" WEST 49.47 FEET TO THE SOUTH LINE OF THE NORTHWEST QUARTER OF SAID SECTION 27;  
THENCE ALONG SAID SOUTH LINE NORTH 88° 54' 00" WEST 132.14 FEET TO THE POINT OF BEGINNING;

PARCEL 4: (Gentle Access 21)

A NON-EXCLUSIVE EASEMENT FOR CONSTRUCTING, PLACING, OPERATING, MAINTAINING, RECONSTRUCTING, REPLACING, REBUILDING, UPGRADING, REMOVING, INSPECTING, PATROLLING, USING, SUPPORTING, MODIFYING AND/OR REPAIRING ROADS FOR ACCESS, CONSISTING OF PAVED ROADS AND/OR GRAVELED ROADS AND ALL OTHER NECESSARY FIXTURES AND APPURTENANCES ON, OVER, ALONG AND THROUGH:

ALL THAT PORTION OF THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER AND A PORTION OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 27 TOWNSHIP OF SECTION 27 OF TOWNSHIP 29 SOUTH, RANGE 19 EAST, MOUNT DIABLO MERIDIAN, IN THE COUNTY OF SAN LUIS OBISPO, STATE OF CALIFORNIA, PER THE RECORD OF SURVEY FILED MARCH 10TH 2009 IN BOOK 101, AT PAGE 55 OF RECORDS OF SURVEYS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID NORTHEAST QUARTER OF SAID SECTION 27, THENCE ALONG THE WEST LINE OF SAID NORTHEAST QUARTER OF SAID SECTION 27, NORTH 01°25'09" EAST 1654.21 FEET TO A POINT ON THE SOUTH LINE OF THAT "ACCESS 3" EASEMENT DESCRIBED AS PARCEL 3 HEREIN;  
THENCE ALONG SAID SOUTH LINE, SOUTH 66°01'25" EAST 409.25 FEET TO THE POINT OF BEGINNING AND THE BEGINNING OF A NON-TANGENT CURVE CONCAVE TO THE EAST AND HAVING A RADIUS OF 235.00 FEET, TO WHICH A RADIAL LINE BEARS NORTH 69°16'12" WEST; THENCE SOUTHERLY ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 28°04'50", AN ARC DISTANCE OF 115.17 FEET;  
THENCE SOUTH 07°21'02" EAST 301.38 FEET TO THE BEGINNING OF A CURVE CONCAVE TO THE WEST AND HAVING A RADIUS OF 65.00 FEET;  
THENCE SOUTHERLY ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 22°42'04", AN ARC DISTANCE OF 25.75 FEET;  
THENCE SOUTH 15°21'02" WEST 78.97 FEET;  
THENCE SOUTH 74°38'58" EAST 70.00 FEET;  
THENCE NORTH 15°21'02" 78.97 FEET TO THE BEGINNING OF A CURVE CONCAVE TO THE WEST AND HAVING A RADIUS OF 135.00 FEET;  
THENCE NORTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 22°42'04" AN ARC DISTANCE OF 53.49 FEET;  
THENCE NORTH 07°21'02" WEST 301.38 FEET TO THE BEGINNING OF A CURVE CONCAVE TO THE EAST AND HAVING A RADIUS OF 165.00 FEET;  
THENCE ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 27°47'44", AN ARC DISTANCE OF 80.05 FEET TO A POINT ON THE SOUTH LINE OF SAID ACCESS 3 EASEMENT, SAID POINT BEING THE BEGINNING OF A NON-TANGENT CURVE CONCAVE TO THE NORTHEAST AND HAVING A RADIUS OF 200.00 FEET, TO WHICH A RADIAL LINE BEARS SOUTH 13°48'07" WEST; THENCE ALONG SAID CURVE AND SOUTH LINE OF SAID ACCESS 3 EASEMENT, THROUGH A CENTRAL ANGLE OF 10°10'27" AN ARC DISTANCE OF 35.52 FEET;  
THENCE CONTINUING ALONG SAID SOUTH LINE NORTH 66°01'25" WEST 34.61 FEET TO THE POINT OF BEGINNING.

THE FOLLOWING EASEMENTS ARE APPURTENANT TO "TRACT 3", PARCELS 5 AND 6 AS FURTHER DEFINED AND CREATED BY MEMORANDUM OF TAP EASEMENT RECORDED SEPTEMBER 27, 2011, INSTRUMENT NO. 2011046599.

PARCEL 5: (Tap)

AN EASEMENT FOR CONSTRUCTING, PLACING, OPERATING, MAINTAINING, RECONSTRUCTING, REPLACING, REBUILDING, UPGRADING, REMOVING, INSPECTING, PATROLLING, USING, SUPPORTING, MODIFYING AND/OR REPAIRING (A) SURFACE AND SUBSURFACE UTILITIES AND TEMPORARY TAP AND SWITCHYARD FACILITIES RELATED TO OR NECESSITATED BY HPR'S SYSTEMS LOCATED ON THE DOMINANT ESTATE, WHICH UTILITIES MAY INCLUDE, WITHOUT LIMITATION, ELECTRICAL FACILITIES AND COMPONENTS AND TRANSMISSION LINES, COMMUNICATIONS LINES, TELEPHONE LINES AND FIBER OPTIC LINES AND RELATED FACILITIES; AND (B) ROADS FOR ACCESS, CONSISTING OF PAVED ROADS AND ALL OTHER NECESSARY FIXTURES AND APPURTENANCES, ALL TO BE BUILT OR ALREADY BUILT IN, OVER, UNDER AND UPON THE PRIMARY EASEMENT AREA ON, OVER, UNDER AND THROUGH:

ALL THAT PORTION OF THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 27 OF TOWNSHIP 29 SOUTH, RANGE 19 EAST, MOUNT DIABLO MERIDIAN, IN THE COUNTY OF SAN LUIS OBISPO, STATE OF CALIFORNIA, PER THE RECORD OF SURVEY FILED MARCH 10TH 2009 IN BOOK 101, AT PAGE 55 OF RECORDS OF SURVEYS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, DESCRIBED AS FOLLOWS:

COMMENCING AT A FOUND 1 INCH IRON PIPE WITH CAP STAMPED L.S. 5812 MARKING THE NORTHEAST CORNER OF SAID SECTION 27, SAID CORNER BEARS NORTH 01°41'43" EAST 1337.43 FEET FROM A FOUND 1 INCH IRON PIPE WITH CAP STAMPED L.S. 5812 AT THE SOUTHEAST CORNER OF THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 27, PER THE RECORD OF SURVEY FILED MARCH 10, 2009 IN BOOK 101, AT PAGE 55 OF RECORDS OF SURVEYS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, THE LINE BETWEEN THESE TWO POINTS BEING THE "BASIS OF BEARING" OF THIS DESCRIPTION;  
THENCE ALONG THE NORTH LINE OF SAID SECTION 27, NORTH 89°00'55" WEST 982.10 FEET;  
THENCE SOUTH 20°36'30" EAST 235.26 FEET TO THE POINT OF BEGINNING;  
THENCE SOUTH 88°55'33" EAST 72.20 FEET;  
THENCE SOUTH 00°59'05" WEST 264.02 FEET TO THE NORTHEAST CORNER OF THE "GEN-TIE 3" EASEMENT REFERRED TO AS PARCEL 1 HEREIN;  
THENCE ALONG THE NORTHERLY LINE OF SAID EASEMENT AND THE WESTERLY EXTENSION THEREOF,  
NORTH 88°54'08" WEST 223.38 FEET;  
THENCE NORTH 01°05'52" EAST 263.93 FEET;  
THENCE SOUTH 88°55'33" EAST 150.66 FEET TO THE POINT OF BEGINNING.

PARCEL 6: (Tap Access)

A NON-EXCLUSIVE EASEMENT FOR CONSTRUCTING, PLACING, OPERATING, MAINTAINING, RECONSTRUCTING, REPLACING, REBUILDING, UPGRADING, REMOVING, INSPECTING, PATROLLING, USING, SUPPORTING, MODIFYING AND/OR REPAIRING ROADS FOR ACCESS, CONSISTING OF PAVED ROADS AND/OR GRAVELED ROADS AND ALL OTHER NECESSARY FIXTURES AND APPURTENANCES ON, OVER, ALONG AND THROUGH:

ALL THAT PORTION OF THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 27 OF TOWNSHIP 29 SOUTH, RANGE 19 EAST, MOUNT DIABLO MERIDIAN, IN THE COUNTY OF SAN LUIS OBISPO, STATE OF CALIFORNIA, PER THE RECORD OF SURVEY FILED MARCH 10TH 2009 IN BOOK 101, AT PAGE 55 OF RECORDS OF SURVEYS, IN THE OFFICE OF THE COUNTY



RECORDER OF SAID COUNTY, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF THAT "ACCESS 3" EASEMENT REFERRED TO AS PARCEL 3 HEREIN, THENCE ALONG SAID NORTH LINE, OF SAID "ACCESS 3" EASEMENT, NORTH 88°54'08" WEST 35.86 FEET TO THE POINT OF BEGINNING, BEING THE BEGINNING OF A NONTANGENT CURVE CONCAVE TO THE NORTHEAST AND HAVING A RADIUS OF 228.00 FEET, TO WHICH A RADIAL LINE BEARS SOUTH 34°39'18" WEST;  
THENCE NORTHWESTERLY ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 61°58'48", AN ARC DISTANCE OF 246.64 FEET TO THE NORTH LINE OF THAT "GEN-TIE 3" EASEMENT" REFERRED AS PARCEL 1 HEREIN;  
THENCE ALONG SAID NORTH LINE NORTH 88°54'08" WEST 50.19 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE TO THE NORTHEAST AND HAVING A RADIUS OF 278.00 FEET, TO WHICH A RADIAL LINE BEARS NORTH 84°21'48" WEST;  
THENCE LEAVING SAID NORTH LINE, SOUTHEASTERLY ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 47°39'10", AN ARC DISTANCE OF 231.21 FEET TO THE NORTHERLY LINE OF SAID "ACCESS 3" EASEMENT;  
THEN ALONG SAID NORTHERLY LINE, SOUTH 88°54'08" EAST 76.91 FEET TO THE POINT OF BEGINNING.

APN: 072-121-006 (PORTION)

**TRACT 19: TWISSELMAN EASEMENT 334145**

THE FOLLOWING EASEMENTS ARE APPURTENANT TO "TRACT 3", PARCELS 1 THROUGH 10 AS FURTHER DEFINED AND CREATED BY MEMORANDUM OF EASEMENT RECORDED SEPTEMBER 27, 2011, INSTRUMENT NO. 2011046597.

PARCEL 1: (Gen-Tie 1)

AN EASEMENT FOR CONSTRUCTING, PLACING, OPERATING, MAINTAINING, RECONSTRUCTING, REPLACING, REBUILDING, UPGRADING, REMOVING, INSPECTING, PATROLLING, USING, SUPPORTING, MODIFYING AND/OR REPAIRING (A) SURFACE AND SUBSURFACE UTILITIES RELATED TO OR NECESSITATED BY HPR'S SYSTEMS LOCATED ON THE DOMINANT ESTATE, WHICH UTILITIES MAY INCLUDE, WITHOUT LIMITATION, ELECTRICAL FACILITIES AND COMPONENTS AND TRANSMISSION LINES, COMMUNICATIONS LINES, TELEPHONE LINES AND FIBER OPTIC LINES AND RELATED FACILITIES; AND (B) ROADS FOR ACCESS, CONSISTING OF PAVED ROADS AND ALL OTHER NECESSARY FIXTURES AND APPURTENANCES, ALL TO BE BUILT OR ALREADY BUILT IN, OVER, UNDER AND UPON THE PRIMARY EASEMENT AREA ON, OVER, UNDER AND THROUGH:

ALL THAT PORTION OF THE SOUTHEAST QUARTER OF SECTION 34 OF TOWNSHIP 29 SOUTH, RANGE 19 EAST, MOUNT DIABLO MERIDIAN, IN THE COUNTY OF SAN LUIS OBISPO, STATE OF CALIFORNIA, PER THE RECORD OF SURVEY FILED MARCH 10TH 2009 IN BOOK 101, AT PAGE 55 OF RECORDS OF SURVEYS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, DESCRIBED AS FOLLOWS;

BEGINNING AT A POINT ON THE SOUTH LINE OF SAID SECTION 34, SAID POINT BEARS SOUTH 88°40'38" EAST 848.05 FEET FROM THE SOUTH QUARTER CORNER OF SAID SECTION 34;  
THENCE NORTH 27°20'44" WEST 1347.96 FEET;  
THENCE NORTH 89°03'13 WEST 207.70 FEET TO THE WEST LINE OF SAID SOUTHEAST QUARTER OF SECTION 34;  
THENCE ALONG SAID WEST LINE, NORTH 01°01'00" EAST 1490.60 FEET TO THE NORTHWEST CORNER OF THE SOUTHEAST QUARTER OF SAID SECTION 34;  
THENCE ALONG THE NORTH LINE OF SAID SOUTHEAST QUARTER, SOUTH 88°43'44" EAST

201.03 FEET;  
THENCE SOUTH 00°56'51" WEST 952.96 FEET;  
THENCE SOUTH 27°20'44" EAST 1959.36 FEET TO THE SOUTH LINE OF SAID SECTION 34;  
THENCE ALONG THE SAID SOUTH LINE, NORTH 88°40'38" WEST 284.93 FEET TO THE POINT OF BEGINNING.

PARCEL 2: (Gen-tie 1A)

AN EASEMENT FOR CONSTRUCTING, PLACING, OPERATING, MAINTAINING, RECONSTRUCTING, REPLACING, REBUILDING, UPGRADING, REMOVING, INSPECTING, PATROLLING, USING, SUPPORTING, MODIFYING AND/OR REPAIRING (A) SURFACE AND SUBSURFACE UTILITIES RELATED TO OR NECESSITATED BY HPR'S SYSTEMS LOCATED ON THE DOMINANT ESTATE, WHICH UTILITIES MAY INCLUDE, WITHOUT LIMITATION, ELECTRICAL FACILITIES AND COMPONENTS AND TRANSMISSION LINES, COMMUNICATIONS LINES, TELEPHONE LINES AND FIBER OPTIC LINES AND RELATED FACILITIES; AND (B) ROADS FOR ACCESS, CONSISTING OF PAVED ROADS AND ALL OTHER NECESSARY FIXTURES AND APPURTENANCES, ALL TO BE BUILT OR ALREADY BUILT IN, OVER, UNDER AND UPON THE PRIMARY EASEMENT AREA ON, OVER, UNDER AND THROUGH:

ALL THAT PORTION OF SECTION 27 OF TOWNSHIP 29 SOUTH, RANGE 19 EAST, MOUNT DIABLO MERIDIAN, IN THE COUNTY OF SAN LUIS OBISPO, STATE OF CALIFORNIA, PER THE RECORD OF SURVEY FILED MARCH 10TH 2009 IN BOOK 101, AT PAGE 55 OF RECORDS OF SURVEYS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, DESCRIBED AS FOLLOWS;

BEGINNING AT THE SOUTH QUARTER CORNER OF SAID SECTION 27, THENCE ALONG THE WEST LINE OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 27, NORTH 01°25'09" EAST 632.34 FEET;  
THENCE NORTH 36°50'59" EAST 851.27 FEET;  
THENCE NORTH 30°24'54" WEST 1579.04 FEET TO THE NORTH LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 27;  
THENCE ALONG SAID NORTH LINE OF THE SOUTHWEST QUARTER SOUTH 88°54'00" EAST 293.25 FEET;  
THENCE SOUTH 30°24'54" EAST 1288.50 FEET;  
THENCE NORTH 58°05'04" EAST 248.91 FEET  
THENCE SOUTH 53°12'04" EAST 189.81 FEET;  
THENCE SOUTH 36°50'59" WEST 1383.95 FEET;  
THENCE SOUTH 00°56'51" WEST 472.97 FEET TO THE SOUTH LINE OF SAID SECTION 27;  
THENCE ALONG SAID SOUTH LINE OF SECTION 27 NORTH 88°47'02" WEST 197.81 FEET TO THE POINT OF BEGINNING

PARCEL 3: (Access 1)

A NON EXCLUSIVE EASEMENT FOR CONSTRUCTING, PLACING, OPERATING, MAINTAINING, RECONSTRUCTING, REPLACING, REBUILDING, UPGRADING, REMOVING, INSPECTING, PATROLLING, USING, SUPPORTING, MODIFYING AND/OR REPAIRING ROADS FOR ACCESS, CONSISTING OF PAVED ROADS AND/OR GRAVELED ROADS AND ALL OTHER NECESSARY FIXTURES AND APPURTENANCES ON, OVER, ALONG AND THROUGH:

A STRIP OF LAND OVER A PORTION OF THE SOUTHEAST QUARTER OF SECTION 34 OF TOWNSHIP 29 SOUTH, RANGE 19 EAST, MOUNT DIABLO MERIDIAN, IN THE COUNTY OF SAN LUIS OBISPO, STATE OF CALIFORNIA, PER THE RECORD OF SURVEY FILED MARCH 10TH 2009 IN BOOK 101, AT PAGE 55 OF RECORDS OF SURVEYS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, DESCRIBED AS FOLLOWS;

COMMENCING AT THE SOUTH QUARTER CORNER OF SAID SECTION 34,  
THENCE ALONG THE WEST LINE OF THE SAID SOUTHEAST QUARTER OF SECTION 34, NORTH 01° 01' 00" EAST 30.00 FEET TO THE POINT  
OF BEGINNING;  
THENCE CONTINUING ALONG SAID WEST LINE, NORTH 01° 01' 00" EAST 2641.96 FEET TO THE NORTH LINE OF SAID SOUTHEAST  
QUARTER OF SECTION 34;  
THENCE ALONG SAID NORTH LINE, SOUTH 88° 43' 44" EAST 50.00 FEET;  
THENCE SOUTH 01° 01' 00" WEST 48.79 FEET;  
THENCE SOUTH 00° 04' 37" WEST 2438.48 FEET;  
THENCE SOUTH 07° 36' 14" WEST 121.09 FEET;  
THENCE SOUTH 10° 24' 48" WEST 35.36 FEET;  
THENCE NORTH 88° 40' 38" WEST 70.33 FEET TO THE POINT OF BEGINNING;

PARCEL 4: (Access 1A)

A NON EXCLUSIVE EASEMENT FOR CONSTRUCTING, PLACING, OPERATING, MAINTAINING, RECONSTRUCTING, REPLACING,  
REBUILDING, UPGRADING, REMOVING, INSPECTING, PATROLLING, USING, SUPPORTING, MODIFYING AND/OR REPAIRING ROADS FOR  
ACCESS, CONSISTING OF PAVED ROADS AND/OR GRAVELED ROADS AND ALL OTHER NECESSARY FIXTURES AND APPURTENANCES  
ON, OVER, ALONG AND THROUGH:

A STRIP OF LAND OVER A PORTION OF SECTION 27 OF TOWNSHIP 29 SOUTH, RANGE 19 EAST, MOUNT DIABLO MERIDIAN, IN THE  
COUNTY OF SAN LUIS OBISPO, STATE OF CALIFORNIA, PER THE RECORD OF SURVEY FILED MARCH 10TH 2009 IN BOOK 101, AT PAGE  
55 OF RECORDS OF SURVEYS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, DESCRIBED AS FOLLOWS;

BEGINNING AT THE SOUTH QUARTER CORNER SAID SECTION 27,  
THENCE ALONG THE WEST LINE OF SOUTHEAST QUARTER OF A SAID SECTION 27, NORTH 10° 25' 09" EAST 1334.69 FEET;  
THENCE ALONG THE NORTH LINE OF SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 27, NORTH 88° 50' 31"  
WEST 15.16 FEET;  
THENCE NORTH 12° 12' 19" WEST 600.06 FEET;  
THENCE NORTH 25° 15' 17" WEST 344.49 FEET;  
THENCE NORTH 02° 34' 08" WEST 384.05 FEET;  
THENCE NORTH 30° 24' 54" WEST 68.14 FEET TO NORTH LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 27;  
THENCE ALONG SAID NORTH LINE OF THE SOUTHWEST QUARTER, SOUTH 88° 54' 00" EAST 132.14 FEET;  
THENCE SOUTH 02° 34' 08" WEST 343.21 FEET;  
THENCE SOUTH 18° 13' 25" EAST 429.87 FEET;  
THENCE SOUTH 12° 12' 19" EAST 741.38 FEET;  
THENCE SOUTH 01° 25' 09" WEST 555.96 FEET;  
THENCE SOUTH 18° 10' 41" EAST 163.98 FEET;  
THENCE SOUTH 01° 25' 09" WEST 336.08 FEET;  
THENCE TO THE SOUTH LINE OF SAID SECTION 27, SOUTH 29° 02' 13" WEST 172.58 FEET;  
THENCE ALONG THE SAID SOUTH LINE OF SECTION 27, NORTH 88° 47' 02" WEST 80.00 FEET TO THE POINT OF BEGINNING.

PARCEL 5: (Gen-Tie Access 18)

A NON EXCLUSIVE EASEMENT FOR CONSTRUCTING, PLACING, OPERATING, MAINTAINING, RECONSTRUCTING, REPLACING,  
REBUILDING, UPGRADING, REMOVING, INSPECTING, PATROLLING, USING, SUPPORTING, MODIFYING AND/OR REPAIRING ROADS FOR  
ACCESS, CONSISTING OF PAVED ROADS AND/OR GRAVELED ROADS AND ALL OTHER NECESSARY FIXTURES AND APPURTENANCES  
ON, OVER, ALONG AND THROUGH:

ALL THAT PORTION OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER AND THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 27 OF TOWNSHIP 29 SOUTH, RANGE 19 EAST, MOUNT DIABLO MERIDIAN, IN THE COUNTY OF SAN LUIS OBISPO, STATE OF CALIFORNIA, PER THE RECORD OF SURVEY FILED MARCH 10TH 2009 IN BOOK 101, AT PAGE 55 OF RECORDS OF SURVEYS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, DESCRIBED AS FOLLOWS;

COMMENCING AT THE SOUTHWEST CORNER OF SAID NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 27, THENCE ALONG THE WEST LINE OF SAID NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 27, NORTH 01°25'09" EAST 538.68 FEET;  
THENCE NORTH 88°34'51" WEST 58.28 FEET TO A POINT ON THE EAST LINE OF THAT "ACCESS 1A" EASEMENT REFERRED TO AS PARCEL 4 HEREIN, SAID POINT ALSO BEING THE POINT OF BEGINNING;  
THENCE LEAVING SAID EAST LINE SOUTH 35°04'41" EAST 38.56 FEET TO THE BEGINNING OF A CURVE CONCAVE TO THE NORTHEAST AND HAVING A RADIUS OF 87.00 FEET;  
THENCE SOUTHEASTERLY ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 17°15'19", AN ARC DISTANCE OF 26.00 FEET;  
THENCE SOUTH 52°20'00" EAST 98.64 FEET TO THE BEGINNING OF A CURVE CONCAVE TO THE SOUTHWEST AND HAVING A RADIUS OF 113.00 FEET;  
THENCE SOUTHEASTERLY ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 11°09'49", AN ARC DISTANCE OF 22.02 FEET;  
THENCE SOUTH 41°10'11" EAST 35.69 FEET;  
THENCE NORTH 53°20'48" EAST 6.70 FEET TO THE BEGINNING OF A CURVE CONCAVE TO THE SOUTHWEST AND HAVING A RADIUS OF 238.00 FEET;  
THENCE NORTHEASTERLY ALONG SAID CURVE, THROUGH CENTRAL ANGLE OF 69°57'31", AN ARC DISTANCE OF 290.60 FEET;  
THENCE SOUTH 56°41'41" EAST 32.33 FEET TO THE BEGINNING OF A CURVE CONCAVE TO THE SOUTHWEST AND HAVING A RADIUS OF 113.00 FEET;  
THENCE SOUTHEASTERLY ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 49°38'50", AN ARC DISTANCE OF 97.92 FEET;  
THENCE SOUTH 07°02'51" EAST 97.87 FEET;  
THENCE NORTH 82°47'09" EAST 299.93 FEET;  
THENCE SOUTH 09°11'17" EAST 36.02 FEET;  
THENCE SOUTH 82°47'09" WEST 300.94 FEET TO THE BEGINNING OF A NON TANGENT CURVE CONCAVE TO THE NORTHEAST AND HAVING A RADIUS OF 87.00 FEET, TO WHICH A RADIAL LINE BEARS SOUTH 77°55'35" WEST;  
THENCE SOUTHEASTERLY ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 30°06'31", AN ARC DISTANCE OF 45.72 FEET;  
THENCE SOUTH 42°10'56" EAST 207.77 FEET;  
THENCE SOUTH 47°49'04" WEST 26.00 FEET;  
THENCE NORTH 42°10'56" WEST 207.77 FEET TO THE BEGINNING OF A CURVE CONCAVE TO THE NORTHEAST AND HAVING A RADIUS OF 113.00 FEET;  
THENCE NORTHWESTERLY ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 35°08'06", AN ARC DISTANCE OF 69.29 FEET;  
THENCE NORTH 07°02'51" WEST 126.25 FEET TO THE BEGINNING OF A CURVE CONCAVE TO THE SOUTHWEST AND HAVING A RADIUS OF 87.00 FEET;  
THENCE NORTHWESTERLY ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 49°38'50", AN ARC DISTANCE OF 75.39 FEET;  
THENCE NORTH 56°41'41" WEST 32.33 FEET TO THE BEGINNING OF A CURVE CONCAVE TO THE SOUTH AND HAVING A RADIUS OF 212.00 FEET;  
THENCE WESTERLY ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 69°57'31", AN ARC DISTANCE OF 258.85 FEET;  
THENCE SOUTH 53°20'48" WEST 30.73 FEET;  
THENCE NORTH 41°10'11" WEST 59.72 FEET TO THE BEGINNING OF A CURVE CONCAVE TO

THE SOUTHWEST AND HAVING A RADIUS OF 87.00 FEET;  
THENCE NORTHWESTERLY ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 11°09'49", AN ARC DISTANCE OF 16.95 FEET;  
THENCE NORTH 52°20'00" WEST 98.64 FEET TO THE BEGINNING OF A CURVE CONCAVE TO THE NORTHEAST AND HAVING A RADIUS OF 113.00 FEET;  
THENCE NORTHWESTERLY ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 07°28'52", AN ARC DISTANCE OF 14.75 FEET TO SAID EAST LINE OF ACCESS 1A EASEMENT;  
THENCE ALONG SAID EAST LINE NORTH 12°12'19" WEST 62.67 FEET TO THE POINT OF BEGINNING.

PARCEL 6: (Gen-Tie Access 19)

A NON EXCLUSIVE EASEMENT FOR CONSTRUCTING, PLACING, OPERATING, MAINTAINING, RECONSTRUCTING, REPLACING, REBUILDING, UPGRADING, REMOVING, INSPECTING, PATROLLING, USING, SUPPORTING, MODIFYING AND/OR REPAIRING ROADS FOR ACCESS, CONSISTING OF PAVED ROADS AND/OR GRAVELED ROADS AND ALL OTHER NECESSARY FIXTURES AND APPURTENANCES ON, OVER, ALONG AND THROUGH:

A 26 FOOT WIDE STRIP OF LAND OVER A PORTION OF THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER AND THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 27 OF TOWNSHIP 29 SOUTH, RANGE 19 EAST, MOUNT DIABLO MERIDIAN, IN THE COUNTY OF SAN LUIS OBISPO, STATE OF CALIFORNIA, PER THE RECORD OF SURVEY FILED MARCH 10TH 2009 IN BOOK 101, AT PAGE 55 OF RECORDS OF SURVEYS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 27, THENCE ALONG THE WEST LINE OF THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 27, NORTH 01°25'09" EAST 555.96 FEET;  
THENCE LEAVING SAID WEST LINE NORTH 88°34'51" WEST 210.24 FEET TO A POINT ON THE EAST LINE OF THAT "ACCESS 1A" EASEMENT REFERRED TO AS PARCEL 4 HEREIN, SAID POINT ALSO BEING THE POINT OF BEGINNING;  
THENCE SOUTH 43°09'12" EAST 130.48 FEET;  
THENCE SOUTH 40°12'05" EAST 159.51 FEET TO THE BEGINNING OF A CURVE CONCAVE TO THE NORTHEAST AND HAVING A RADIUS OF 200.00 FEET;  
THENCE SOUTHEASTERLY ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 01°34'22", AN ARC DISTANCE OF 5.49 FEET;  
THENCE SOUTH 41°46'28" EAST 185.08 FEET.

THE SIDELINES OF SAID STRIP OF LAND TO BE LENGTHENED AND SHORTENED TO TERMINATE AT THE EAST LINE OF SAID ACCESS 1A EASEMENT.

PARCEL 7: (Gen-Tie Access 11)

A NON EXCLUSIVE EASEMENT FOR CONSTRUCTING, PLACING, OPERATING, MAINTAINING, RECONSTRUCTING, REPLACING, REBUILDING, UPGRADING, REMOVING, INSPECTING, PATROLLING, USING, SUPPORTING, MODIFYING AND/OR REPAIRING ROADS FOR ACCESS, CONSISTING OF PAVED ROADS AND/OR GRAVELED ROADS AND ALL OTHER NECESSARY FIXTURES AND APPURTENANCES ON, OVER, ALONG AND THROUGH:

A STRIP OF LAND 26 FEET WIDE OVER A PORTION OF THE SOUTHEAST QUARTER OF SECTION 34 OF TOWNSHIP 29 SOUTH, RANGE 19 EAST, MOUNT DIABLO MERIDIAN, IN THE COUNTY OF SAN LUIS OBISPO, STATE OF CALIFORNIA, PER THE RECORD OF SURVEY FILED MARCH 10TH 2009 IN BOOK 101, AT PAGE 55 OF RECORDS OF SURVEYS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, DESCRIBED AS FOLLOWS;

COMMENCING AT THE SOUTH QUARTER OF SECTION 34, THENCE ALONG THE WEST LINE OF SAID SOUTHEAST QUARTER OF SAID SECTION 34, NORTH 01°01'00" EAST 471.99 FEET;  
THENCE LEAVING SAID WEST LINE SOUTH 89°47'08"EAST 85.27 FEET TO A POINT ON THE  
EAST LINE OF THAT "ACCESS 1" EASEMENT REFERRED TO AS PARCEL 3 HEREIN, SAID POINT ALSO BEING THE POINT OF BEGINNING;  
THENCE SOUTH 89°47'08" EAST 137.05 FEET TO THE BEGINNING OF A CURVE CONCAVE TO THE NORTHWEST AND HAVING A RADIUS  
OF 100.00 FEET;  
THENCE NORTHEASTERLY ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 65°12'20", AN ARC DISTANCE OF 113.81 FEET;  
THENCE NORTH 25°00'32" EAST 429.96 FEET;  
THE SIDELINES OF SAID STRIP OF LAND TO BE LENGTHENED AND SHORTENED TO TERMINATE AT THE EAST LINE OF SAID ACCESS 1  
EASEMENT.

PARCEL 8: (Gen-Tie Access 10)

A NON EXCLUSIVE EASEMENT FOR CONSTRUCTING, PLACING, OPERATING, MAINTAINING, RECONSTRUCTING, REPLACING,  
REBUILDING, UPGRADING, REMOVING, INSPECTING, PATROLLING, USING, SUPPORTING, MODIFYING AND/OR REPAIRING ROADS FOR  
ACCESS, CONSISTING OF PAVED ROADS AND/OR GRAVELED ROADS AND ALL OTHER NECESSARY FIXTURES AND APPURTENANCES  
ON, OVER, ALONG AND THROUGH:

A 26 FOOT WIDE STRIP OF LAND OVER A PORTION OF THE SOUTHEAST QUARTER OF SECTION 34 OF TOWNSHIP 29 SOUTH, RANGE 19  
EAST, MOUNT DIABLO MERIDIAN, IN THE COUNTY OF SAN LUIS OBISPO, STATE OF CALIFORNIA, PER THE RECORD OF SURVEY FILED  
MARCH 10TH 2009 IN BOOK 101, AT PAGE 55 OF RECORDS OF SURVEYS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY,  
DESCRIBED AS FOLLOWS;

COMMENCING AT THE SOUTH QUARTER CORNER OF SAID SECTION 34, THENCE ALONG THE WEST LINE OF SAID SOUTHEAST  
QUARTER OF SECTION 34, NORTH 01°01'00" EAST 132.29 FEET;  
THENCE SOUTH 79°03'54" EAST 83.52 FEET TO A POINT ON THE EAST LINE OF THAT "ACCESS 1" EASEMENT REFERRED TO AS PARCEL 3  
HEREIN, SAID POINT ALSO BEING THE POINT OF BEGINNING;  
THENCE SOUTH 79°03'54" 43.15 FEET TO POINT "A";  
THENCE SOUTH 79°03'54" EAST 3.91 FEET TO THE BEGINNING OF A CURVE CONCAVE TO THE NORTH AND HAVING A RADIUS OF 150.00  
FEET;  
THENCE EASTERLY ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 09°40'38" AN ARC DISTANCE OF 25.34 FEET;  
THENCE SOUTH 88°44'31" EAST 587.75 FEET TO THE BEGINNING OF A CURVE CONCAVE TO THE NORTHWEST AND HAVING A RADIUS  
OF 150.00 FEET;  
THENCE NORTHEASTERLY ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 28°43'20", AN ARC DISTANCE OF 75.20 FEET;  
THENCE NORTH 62°32'08" EAST 95.09 FEET.

THE SIDELINES OF SAID STRIP OF LAND TO BE LENGTHENED AND SHORTENED TO TERMINATE AT THE EAST LINE OF SAID ACCESS 1  
EASEMENT.

PARCEL 9: (Gen-Tie Access 9)

A NON EXCLUSIVE EASEMENT FOR CONSTRUCTING, PLACING, OPERATING, MAINTAINING, RECONSTRUCTING, REPLACING,  
REBUILDING, UPGRADING, REMOVING, INSPECTING, PATROLLING, USING, SUPPORTING, MODIFYING AND/OR REPAIRING ROADS FOR  
ACCESS, CONSISTING OF PAVED ROADS AND/OR GRAVELED ROADS AND ALL OTHER NECESSARY FIXTURES AND APPURTENANCES  
ON, OVER, ALONG AND THROUGH:

A 26 FOOT WIDE STRIP OF LAND OVER A PORTION OF SECTION 34 OF TOWNSHIP 29 SOUTH, RANGE 19 EAST, MOUNT DIABLO MERIDIAN, IN THE COUNTY OF SAN LUIS OBISPO, STATE OF CALIFORNIA, PER THE RECORD OF SURVEY FILED MARCH 10TH 2009 IN BOOK 101, AT PAGE 55 OF RECORDS OF SURVEYS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, DESCRIBED AS FOLLOWS;

BEGINNING AT THE AFOREMENTIONED POINT "A" REFERRED TO IN PARCEL 8;  
THENCE SOUTH 10°56'06" WEST 40.58 FEET TO THE BEGINNING OF A CURVE CONCAVE TO THE EAST AND HAVING A RADIUS OF 100.00 FEET;  
THENCE SOUTHERLY ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 42°40'36", AN ARC DISTANCE OF 74.49 FEET TO THE SOUTH LINE OF SAID SECTION 34;  
THE SIDELINES OF SAID STRIP OF LAND TO BE LENGTHENED AND SHORTENED TO TERMINATE AT THE SOUTH LINE OF SAID SECTION 34.

PARCEL 10: (Gen-Tie Access 1B)

A NON EXCLUSIVE EASEMENT FOR CONSTRUCTING, PLACING, OPERATING, MAINTAINING, RECONSTRUCTING, REPLACING, REBUILDING, UPGRADING, REMOVING, INSPECTING, PATROLLING, USING, SUPPORTING, MODIFYING AND/OR REPAIRING ROADS FOR ACCESS, CONSISTING OF PAVED ROADS AND/OR GRAVELED ROADS AND ALL OTHER NECESSARY FIXTURES AND APPURTENANCES ON, OVER, ALONG AND THROUGH:

A STRIP OF LAND OVER A PORTION OF SECTION 27 OF TOWNSHIP 29 SOUTH, RANGE 19 EAST, MOUNT DIABLO MERIDIAN, IN THE COUNTY OF SAN LUIS OBISPO, STATE OF CALIFORNIA, PER THE RECORD OF SURVEY FILED MARCH 10TH 2009 IN BOOK 101, AT PAGE 55 OF RECORDS OF SURVEYS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, DESCRIBED AS FOLLOWS;

BEGINNING AT THE SOUTH QUARTER CORNER OF SAID SECTION 27, THENCE ALONG THE SOUTH LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 27, SOUTH 88°47'02" EAST 80.00 FEET TO THE SOUTHEAST CORNER OF THAT ACCESS 1A REFERRED TO AS PARCEL 4 HEREIN, AND THE POINT OF BEGINNING;  
THENCE, NORTH 48°46'59" EAST 303.67 FEET;  
THENCE, NORTH 42°23'54" EAST 352.97 FEET;  
THENCE, NORTH 58°24'22" EAST 300.18 FEET;  
THENCE, NORTH 26°26'07" EAST 80.04 FEET;  
THENCE, NORTH 16°12'03" WEST 163.28 FEET;  
THENCE, NORTH 32°35'06" WEST 261.97 FEET;  
THENCE, NORTH 45°34'59" WEST 249.54 FEET;  
THENCE, NORTH 34°54'22" WEST 211.44 FEET;  
THENCE, NORTH 25°00'31" WEST 289.15 FEET;  
THENCE, NORTH 46°42'05" WEST 342.60 FEET TO A POINT ON THE EASTERLY LINE OF ACCESS 1A;  
THENCE, ALONG THE EASTERLY LINE OF ACCESS 1A, SOUTH 12°12'19" EAST 127.13 FEET;  
THENCE, LEAVING THE EASTERLY OF ACCESS 1A, SOUTH 46°42'05" EAST 154.65 FEET;  
THENCE, SOUTH 36°06'00" EAST 133.31 FEET;  
THENCE, SOUTH 25°00'31" EAST 333.55 FEET;  
THENCE, SOUTH 45°34'59" EAST 357.83 FEET;  
THENCE, SOUTH 32°35'06" EAST 215.58 FEET;  
THENCE, SOUTH 02°41'31" EAST 174.30 FEET;  
THENCE, SOUTH 66°30'24" WEST 118.24 FEET;  
THENCE, SOUTH 42°23'54" WEST 412.82 FEET;  
THENCE, SOUTH 50°10'27" WEST 218.78 FEET TO A POINT ON THE EASTERLY LINE OF ACCESS 1A;  
THENCE, ALONG THE EASTERLY LINE OF ACCESS 1A, SOUTH 01°25'09" WEST 22.80 FEET;  
THENCE, CONTINUING ALONG THE EASTERLY LINE OF ACCESS 1A SOUTH 29°02'13" WEST 172.58 FEET TO THE POINT OF BEGINNING.

APN: 072-121-007 (PORTION)

**TRACT 20: FREEBORN 404320**

THE FOLLOWING EASEMENTS ARE APPURTENANT TO "TRACT 3" AS FURTHER DEFINED AND CREATED BY MEMORANDUM OF EASEMENT RECORDED SEPTEMBER 27, 2011, INSTRUMENT NO.2011046602.

**PARCEL 1: (GEN-TIE 2)**

AN EASEMENT FOR CONSTRUCTING, PLACING, OPERATING, MAINTAINING, RECONSTRUCTING, REPLACING, REBUILDING, UPGRADING, REMOVING, INSPECTING, PATROLLING, USING, SUPPORTING, MODIFYING AND/OR REPAIRING (A) SURFACE AND SUBSURFACE UTILITIES RELATED TO OR NECESSITATED BY HPR'S SYSTEMS LOCATED ON THE DOMINANT ESTATE, WHICH UTILITIES MAY INCLUDE, WITHOUT LIMITATION, ELECTRICAL FACILITIES AND COMPONENTS AND TRANSMISSION LINES, COMMUNICATIONS LINES, TELEPHONE LINES AND FIBER OPTIC LINES AND RELATED FACILITIES; AND (B) ROADS FOR ACCESS, CONSISTING OF PAVED ROADS AND ALL OTHER NECESSARY FIXTURES AND APPURTENANCES, ALL TO BE BUILT OR ALREADY BUILT IN, OVER, UNDER AND UPON THE PRIMARY EASEMENT AREA ON, OVER, UNDER AND THROUGH:

THAT PORTION OF THE NORTHEAST QUARTER OF SECTION 34, TOWNSHIP 29 SOUTH, RANGE 19 EAST, MOUNT DIABLO MERIDIAN, IN THE COUNTY OF SAN LUIS OBISPO, STATE OF CALIFORNIA, PER THE RECORD OF SURVEY FILED MARCH 10TH, 2009 IN BOOK 101 AT PAGE 55 OF RECORDS OF SURVEYS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF THE NORTHEAST QUARTER OF SAID SECTION 34, THENCE ALONG THE WEST LINE OF SAID NORTHEAST QUARTER, NORTH 01°01'00" EAST 2671.79 FEET TO THE NORTHWEST CORNER OF THE NORTHEAST QUARTER OF SAID SECTION 34;

THENCE ALONG SAID NORTH LINE, SOUTH 88°47'02" EAST 197.81 FEET;

THENCE SOUTH 00°56'51" WEST 2672.00 FEET TO THE SOUTH LINE OF SAID NORTHEAST QUARTER;

THENCE ALONG SAID SOUTH LINE NORTH 88°43'44" WEST 201.03 FEET TO THE POINT OF BEGINNING.

**PARCEL 2: (ACCESS 2)**

A NON-EXCLUSIVE EASEMENT FOR CONSTRUCTING, PLACING, OPERATING, MAINTAINING, RECONSTRUCTING, REPLACING, REBUILDING, UPGRADING, REMOVING, INSPECTING, PATROLLING, USING, SUPPORTING, MODIFYING AND/OR REPAIRING ROADS FOR ACCESS, CONSISTING OF PAVED ROADS AND ALL OTHER NECESSARY FIXTURES AND APPURTENANCES, ALL TO BE BUILT OR ALREADY BUILT IN, OVER, UNDER AND UPON THE PRIMARY EASEMENT AREA ON, OVER, UNDER AND THROUGH:

ALL THAT PORTION OF THE NORTHEAST QUARTER OF SECTION 34, TOWNSHIP 29 SOUTH, RANGE 19 EAST, MOUNT DIABLO MERIDIAN, IN THE COUNTY OF SAN LUIS OBISPO, STATE OF CALIFORNIA, PER THE RECORD OF SURVEY FILED MARCH 10TH, 2009 IN BOOK 101 AT PAGE 55 OF RECORDS OF SURVEYS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, DESCRIBED AS FOLLOWS;

BEGINNING AT THE SOUTHWEST CORNER OF SAID NORTHEAST QUARTER OF SECTION 34;

THENCE ALONG THE WEST LINE OF SAID NORTHEAST QUARTER, NORTH 01°01'00" EAST 2671.79 FEET TO THE NORTH LINE OF SAID NORTHEAST QUARTER OF SECTION 34;

THENCE ALONG SAID NORTH LINE, SOUTH 88°47'02" EAST 80.00 FEET;

THENCE SOUTH 02°33'42" WEST 927.09 FEET;



THENCE SOUTH 01°30'33" WEST 1745.01 FEET TO THE SOUTH LINE OF SAID NORTHEAST QUARTER;  
THENCE ALONG SAID SOUTH LINE, NORTH 88°43'44" WEST 40.00 FEET TO THE POINT OF BEGINNING.

APN: 072-121-028 (PORTION)

**TRACT 21: MARTIN, 448949**

LOTS 127 AND 128 IN UNIT 12, CALIFORNIA VALLEY, IN THE COUNTY OF SAN LUIS OBISPO, STATE OF CALIFORNIA, ACCORDING TO  
MAP RECORDED JANUARY 09, 1961, IN BOOK 11, AT PAGE 21 OF RECORD OF SURVEYS.

EXCEPTING THEREFROM A ONE-HALF (1/2) OF ALL SUB-SURFACE MINERAL RIGHTS, EXCEPT FOR ANY MINERALS WITHIN 100 FEET  
OF THE SURFACE AND GYPSUM AT ANY DEPTH, AS RESERVED IN THE DEED FROM AMATISTA CORPORATION TO CALIFORNIA  
GYPSUM COMPANY RECORDED FEBRUARY 27, 1980 AS BOOK 2224 PAGE 1 OF OFFICIAL RECORDS AND RERECORDED JUNE 25, 1980 IN  
BOOK 2248 PAGE 787 OF OFFICIAL RECORDS.


APN: 084-401-001 (Affects: Lot 127) and 084-401-002 (Affects: Lot 128)

J-22

Exhibit J  
Legal Description of Site

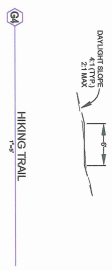
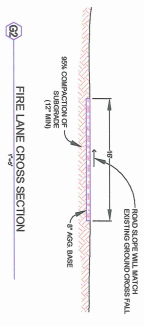
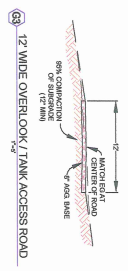
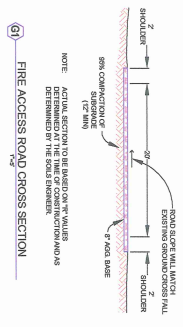
## SITE PLAN



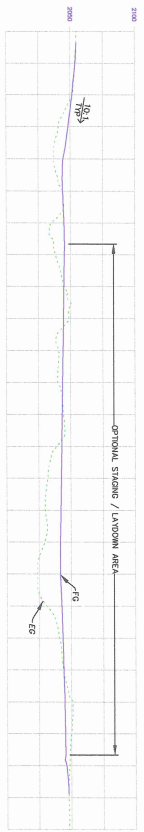
EXHIBIT K SHEET 3 OF 3	CALIFORNIA VALLEY SOLAR RANCH SAN LUIS OBISPO COUNTY, CA.  SITE PLAN	<div style="text-align: center;">  <b>NCE</b> NORTH COAST ENGINEERING, INC.  <small>CIVIL ENGINEERING • LAND SURVEYING • PROJECT DEVELOPMENT</small> </div> <div style="text-align: center;">         725 Creston Rd. - Suite B          Paso Robles, CA 93446          (805) 239-3127          (805) 927-8651  <small>FOR PROJECTS OUTSIDE OUR SERVICE AREA, CONTACT US AT 800-875-8751</small> </div>
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G5 SITE SECTION - OPERATIONS & MAINTENANCE



**C3.7**

REVISIONS

NO.	BY	DATE	DESCRIPTION

**CALIFORNIA VALLEY SOLAR RANCH**

PROPOSED  
GRADING DETAILS

**NCE** NORTH COAST ENGINEERING INC.

CIVIL ENGINEERING LAND SURVEYING PROJECT DEVELOPMENT

725 Creston Rd. - Suite B  
Palo Alto, CA 94306  
(805) 239-3127  
(805) 927-8851

**EXHIBIT L**

**SPECIFIED SUPPLIERS AND SPECIFIED SUBCONTRACTORS**

The Contractor shall supply a list of Specified Suppliers for each of the categories listed below to the Owner for review and approval.

**1. INVERTERS**

\*\*\*

**2. TRANSFORMERS**

\*\*\*

**3. SUBSTATION COMPONENTS**

\*\*\*

**4. SUBCONTRACTORS - PV INSTALLER / ELECTRICAL**

\*\*\*

**5. SUBCONTRACTORS - CIVIL / STRUCTURAL**

\*\*\*

**6. SUBCONTRACTORS - GRADING**

\*\*\*

**7. SUBCONTRACTORS - FENCING**

\*\*\*

**8. SUBCONTRACTORS - MEDIUM /HIGH VOLTAGE COMMISSIONING**

\*\*\*

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

EXHIBIT M

**COMMISSIONING PROCEDURES**

**1. PURPOSE AND SCOPE**

1.1 Purpose:

The PV Power Plant shall be commissioned in accordance with this policy.

1.3 Contractor shall perform, or cause to be performed, the commissioning services. As such:

- 1.3.1 The commissioning organization reports to the Project Manager but is separate from the project's construction management group.
- 1.3.2 The Project Manager retains ultimate authority and responsibility for the project including schedule, scope, budget, punch list close-out and delivery to the customer.
- 1.3.3 The provisions of Section 14 shall be followed.

**2. RESPONSIBILITIES**

Manager of Startup is responsible for functional oversight of commissioning personnel and activities for all projects:

Develop, maintain, and revise commissioning process.

Responsible for the performance of project commissioning team.

Responsible for staffing commissioning teams with personnel trained and proficient on this policy and it's implementing procedures.

Establish and implement a written process for the collection, retention and transmittal of commissioning turnover documents. The turnover documents are to be retained electronically and copied for retention.

Project Startup Manager - responsible for commissioning the project to which assigned.

Issue an approved commissioning plan in accordance with Appendix A.

Ensure commissioning personnel proficient on this policy and procedures (including test procedures) they will be implementing.

Review this policy with the Project Manager and Project Construction Manager.

Ensure the project commissioning team complies with the project safety program, including LOTO procedures.



Ensure written test procedures for electrical, functional, operational and performance testing are used for construction and commissioning; test results are reviewed, approved and documented; and test deficiencies are documented and dispositioned.

Determine inspection and retest requirements, and ensure inspection and retesting is performed following the correction of test deficiencies.

Prepare and maintain a resource loaded schedule of commissioning activities and ensure that all commissioning activities are properly integrated into the project schedule.

Report commissioning metrics as specified in the project commissioning plan.

Ensure commissioning books are prepared and maintained during the course of the project, turned over to Owner at the applicable contract milestone and an electronic copy placed in records.

Ensure the reviews, walk downs and tracking list actions are performed.

Select, contract, manage and train subcontractors as needed to perform project commissioning activities. This responsibility includes purchase order creation and approval as well invoice review, approval and tracking.

Develop a commissioning budget and monthly spend plan. Obtain Project Manager approval for the budget and spend plan.

Manage commissioning expenditures within the approved budget.

Establish onsite facilities as needed, including a working office, equipment storage, and vehicles.

Manage the customer relationship as it pertains to commissioning.

Manage the collection, analysis and distribution of commissioning testing results.

Support the development, approval and implementation of performance testing

Submit a written report to the Project Manager describing commissioning activities and status for inclusion in required periodic project reports.

Ensure operator training is developed and delivered as per Exhibit E Operating Personnel Training Program

#### Project Construction Manager

Review, understand and implement the Construction Manager responsibilities listed in

the project commissioning plan.

Submit recommended project commissioning plan changes to the Project Startup Manager and to Owner for review and approval.

Provide a signed system turnover package to the Project Startup Manager informing the Manager the work is ready for commissioning. Format of package shall be developed as part of the Commissioning Plan.

Disposition test deficiencies (commissioning or construction) that require physical rework or correction of documentation/resolution.

Ensure quality control inspections for a system to be commissioned are performed prior to submitting the signed construction system turnover package.

Ensure the construction team, including subcontractors, complies with the lock out, tag out process.

#### Project Manager/Senior Project Manager

Retain responsibility for the construction quality and ensuring the project is built to design and contract requirements. This responsibility shall not be delegated to the commissioning organization.

Review and approve the project commissioning plan and all revisions thereto.

Ensure the test deficiencies are assigned to either construction or engineering as applicable and that said deficiencies are resolved. Note that when a commissioning test identifies a design deficiency, the Project Manager shall take ownership to manage engineering resources to obtain timely corrective action.

Own the project punch list.

Ensure punch list items are coded whether they must be completed prior to commissioning system or a subsequent project milestone such as substantial completion/provision acceptance and final completion.

Include commissioning tracking list unresolved issues, step 4.9.2, on the project punch list when the project punch list is established.

Ensure project punch list items are completed/corrected in a timely manner.

Send notification to the Project Startup Manager in accordance with the project commissioning plan, when Substantial Completion has been achieved.

Retain responsibility for project closure. Responsibility for project closure shall not be

delegated.

## **OPERATING PROCEDURES AND RESPONSIBILITIES**

The Manager of Startup will assign a Project Startup Manager, who has overall responsibility for commissioning the project.

A commissioning plan following the outline in Appendix A shall be written, approved and maintained with revision control.

Project personnel shall be knowledgeable and proficient on this policy, the project commissioning plan, and the procedures (including test procedures) they will be implementing.

All electrical, functional, operational and performance testing shall be performed in accordance with written and approved procedures.

Test results shall be documented, reviewed and approved on forms containing the applicable information listed in Appendix B.

Test deficiencies and their resolution shall be documented.

Project commissioning activities shall be included in the project schedule and progress shall be reported in accordance with the metrics listed in the approved commissioning plan.

Commissioning system turnover packages shall be developed during the course of the project. An electronic copy of the commissioning turnover packages shall be provided to Owner.

Owner O&M representative, shall be provided training using written and approved lesson plans. The lesson plans shall be maintained with revision control and retained in records.

Work should not be turned over to the commissioning team until construction for the system to be commissioned is completed and documentation applicable for the system is provided to the commissioning team as follows:

Construction system turnover form signed by the Project Construction Manager.

Construction testing is completed. See Appendix C for an example of testing and inspection to be performed by construction (the approved list of testing is located in the project commissioning plan).

Quality assurance records provided:

Factory acceptance tests

Equipment/material receipt and inspection documents

Equipment storage and storage preventive maintenance records

Equipment vendor manuals

Test records (civil, electrical and mechanical)

Quality Assurance audits and QC inspection reports with documented corrective action taken

Non-conformance reports and documented corrective actions taken.

Red line as-built drawings

RFIs (open and closed)

Open, applicable punchlist items

The following activities shall be performed by the person responsible for commissioning the project prior to accepting a system for commissioning:

Verify the information is in conformance with design and test acceptance criteria requirements. The purpose for the review is to determine the system has been properly constructed and can be safely energized, safely operated and should perform to contract requirements (contract requirements include design requirements).

Perform a walk down of the system to visually observe that what is constructed matches the as-built drawings. Any discrepancies found during the walk down shall be listed on a punch list and coded whether they must be completed prior to commissioning the system or a subsequent project milestone such as substantial completion, provision acceptance, or final completion.

## **APPENDICES / GENERAL INFORMATION / PROCESS MAP**

### **Appendix A: Project Commissioning Plan**

#### **Revision Control**

The first approved revision shall be revision 0 with subsequent revision numbers 1, 2, 3, etc.

The header of each page in the plan shall contain the logo, current approved revision number and the effective date for the revision. Effective

date means the date the project plan becomes effective for use.

The footer of each page shall contain the name of the person who prepared the current revision, date the revision was prepared, the name of the approvers for the current revision and a date for each approver signature.

The Commissioning Manager shall retain an electronic copy of superseded revisions, but ensure that only the current approved revision, pdf, is available for project, includes commissioning, team use. The pdf file of the current approved revision shall include preparer and approver signatures.

## Approvals

The preparer shall submit revision 0 to the following for approval:

Project Startup Manager (the Project Startup Manager may also be the preparer).

Project Manager.

Project Senior Manager.

Owner

Revisions to the Project Commissioning Plan shall follow the same process specified in 8.1.2.1.

The commissioning plan will address the processes, procedures, and methodology to be used for commissioning the project and will contain the following:

Cover page with logo, project title and project number.

Revision log (list the each revision number, each revision effective date, and the changes each revision makes to the commissioning plan).

Table of Contents.

Roles and responsibilities.

Staffing Plan.

Applicable permit requirements for plant operations.

Commissioning walk down check list.

Commissioning system turnover book table of contents.

Transmittal process for documents to be provided to the customer.

Contract specific commissioning requirements not already listed.

Punch List administration

## Appendix B: Test Result Documentation

### Applicability

This appendix is applicable to all testing performed by or for the construction and commissioning organization.

### Testing Procedures and Data Records

SunPower Test and Commissioning Procedures (STCPs) and Standard Work Process Procedures (SWPPs) will be used to document test results on the appropriate data record forms. Test form content will include:

Title and revision number of the procedure used to perform the test.

The header of each page in the plan shall contain the logo.

Item being tested, Manufacturer & Model Number

Maintenance and Test Equipment (M&TE) Number

Calibration due date

Test results obtained

Signature of the person performing the test.

Date of test performance.

Signature and date of person reviewing and approving the test results, if required by procedure.

Calibration and control of Measuring and Test Equipment (M&TE) shall be documented per SunPower procedure. M&TE calibration records will include:

Equipment serial number, Manufacturer, Model Number

Calibration Certificates and Procedure Used

Calibration date

Calibration due date



Standard to which the instrument was calibrated

Test deficiencies will be documented and dispositioned.

Disposition of each test deficiency:

Accept as is - requires engineering and Owner approval.

Design revision so that test results are now acceptable - requires RFI number.

Correct, inspect, and retest - requires description of corrective action taken, inspection of corrective action (if applicable), and a new test form to document the retest and approval of retest results.

### **Electronic Data**

All data recorded electronically, such as string testing, I-V curve testing, module flash test data, and so on will be recorded and archived in a standard format, and data manipulation (e.g., averaging, filtering), if any, will be documented. The plant performance test report, including all supporting raw, filtered and calculated data will be provided in an electronic format. A final performance test report will be provided in a hard copy format, also.



## Appendix C: SAMPLE Project Test Inspection Plan

\*\*\*

[12 pages redacted]

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

EXHIBIT N

**EXAMPLE CALCULATION OF HOLDBACK RELEASE**

\*\*\*

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

N-1

Exhibit N  
Example Calculation of Holdback Release

**EXHIBIT O**

**EXAMPLE CALCULATIONS OF LIQUIDATED DAMAGES**

\*\*\*

[3 pages redacted]

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

O-1

Exhibit O  
Example Calculations of Liquidated Damages

**EXHIBIT P**

\*\*\*

[9 pages redacted]

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

P-1

Exhibit P  
\*\*\*

**EXHIBIT Q**

**ENVIRONMENTAL REPORT LIST**

\*\*\*

[4 pages redacted]

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

**EXHIBIT R**  
**MODULE WARRANTY TERMS AND CONDITIONS**

\*\*\*

[2 pages redacted]

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

R-1

Exhibit R  
Module Warranty Terms and Conditions

EXHIBIT S-1

**CHANGE IN WORK FORM**

(for use when the Parties mutually agree upon and execute the Change Order pursuant to Section 17)

PROJECT NAME:

OWNER: .

CHANGE ORDER NUMBER: \_\_\_\_\_

CONTRACTOR:

DATE OF CHANGE ORDER: \_\_\_\_\_

DATE OF AGREEMENT: \_\_\_\_\_, 2010

---

**The Agreement between the Parties listed above is changed as follows:** *(attach additional documentation if necessary)*

---

**Adjustment to Contract Price**

1. The original Contract Price was	\$ _____
2. Net change by previously authorized Change Orders (#_____)	\$ _____
3. The Contract Price prior to this Change Order was	\$ _____
4. The Contract Price will be (increased) (decreased) (unchanged) by this Change Order in the amount of	\$ _____
5. The new Contract Price including this Change Order will be	\$ _____

**Adjustment to dates in Project Schedule**

The following dates are modified *(list all dates per phase as modified; insert N/A if no dates modified)*:

The Guaranteed Phase\_\_\_\_\_Substantial Completion Date will be (increased)(decreased)(unchanged) by \_\_\_\_\_ (\_\_) Days.

The Guaranteed Phase\_\_\_\_\_Substantial Completion Date as of the date of this Change Order therefore is \_\_\_\_\_, 20\_\_.

The Guaranteed Final Completion Date will be (increased)(decreased)(unchanged) by \_\_\_\_\_ (\_\_) Days.

The Guaranteed Final Completion Date as of the date of this Change Order therefore is \_\_\_\_\_, 20\_\_.

*(attach additional documentation if necessary)*

Impact on Payment Progress Payment Schedule (include revised Progress Payment Schedule):

Impact on Minimum Performance Criteria and Performance Guarantees:

Impact on Design Basis:

Other impacts to liability or obligation of Contractor or Owner under the Agreement:

Upon execution of this Change Order by Owner and Contractor, the above-referenced change shall become a valid and binding part of the original Agreement without exception or qualification, unless noted in this Change Order. Except as modified by this and any previously issued Change Orders, all other terms and conditions of the Agreement shall remain in full force and effect. This Change Order is executed by each of the Parties' duly authorized representatives.

\_\_\_\_\_  
Owner

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date of Signing

\_\_\_\_\_  
Owner

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date of Signing



EXHIBIT S-2

**UNILATERAL CHANGE ORDER FORM**

(for use when only Owner executes the Change Order pursuant to Section 17)

**PROJECT NAME**  
**OWNER**

**CHANGE ORDER NUMBER:** \_\_\_\_\_

**CONTRACTOR:**

**DATE OF CHANGE ORDER:** \_\_\_\_\_

**DATE OF AGREEMENT:** \_\_\_\_\_, 2010

---

**You are hereby directed to make the following change(s) in this Agreement:** *(attach additional documentation if necessary)*

---

Compensation for the changes specified in this Change Order is on a time and materials basis as provided in Section 17 of the Agreement.

When signed by Owner and received and accepted by Contractor, this document becomes effective IMMEDIATELY as a unilateral Change Order, and Contractor shall commence with the performance of the change(s) described above within three (3) Business Days of its receipt unless another time is expressly stated above. This Change Order is signed by Owner's duly authorized representative.

---

Owner

---

Owner

---

Name

---

Name

---

Title

---

Title

---

Date of Signing

---

Date of Signing

S-2-1

Exhibit S-2  
Unilateral Change Order Form

EXHIBIT S-3

CONTRACTOR'S CHANGE ORDER REQUEST FORM

PROJECT NAME:

OWNER:

CHANGE ORDER REQUEST NUMBER: \_\_\_\_\_

CONTRACTOR:

DATE OF CHANGE ORDER REQUEST: \_\_\_\_\_

DATE OF AGREEMENT: \_\_\_\_\_, 2010

---

Contractor proposes the following change(s) in the Agreement: *(attach additional documentation, if necessary)*

---

Detailed Reasons for Proposed Change(s) *(provide detailed reasons for the proposed change, and attach all supporting documentation required under the Agreement)*

---

Proposed Adjustments to Agreement *(attach additional documentation, if necessary)*

Contract Price Adjustment:

Guaranteed Phase Substantial Completion Date Adjustment:

Guaranteed Final Completion Date Adjustment:

Adjustment to Progress Payment Schedule:

Adjustment to Minimum Performance Criteria and Performance Guarantees:

Adjustment to Design Basis:

Other adjustments to liability or obligations of Contractor or Owner under the Agreement:

This request for Change Order is signed by Contractor's duly authorized representative.

---

Owner

---

Name

---

Title

---

Date of Signing

---

Owner

---

Name

---

Title

---

Date of Signing

## EXHIBIT S-4

### PRICING FOR CHANGE ORDERS

This Exhibit S-4 (including the attached Exhibit S-1.1) shall be used: (i) by Contractor to develop its proposed adjustment to the Contract Price for a proposed Change Order submitted by Owner in accordance with Section 17.2 of the Agreement; (ii) by the Parties to determine the amount of compensation to which Contractor is entitled with respect to an unilateral Change Order executed by Owner in accordance with Section 17.2 of the Agreement; or (iii) by Contractor to develop its proposed adjustment to the Contract Price for any request for a proposed Change Order made by Contractor in accordance with Section 17.3 of the Agreement.

1. Contractor's Labor: The labor rates listed in Exhibit S-1.1 are all inclusive and include, among other things, wages and salaries paid to employees, holidays, vacation, sick leave, hospitalization and medical insurance, life insurance, payroll taxes, retirement and incentive programs, computer hardware and software, local communications, reproduction. Contractor shall be entitled to a total of a \*\*\* markup on top of published rates in Exhibit S-1.1.
2. Contractor's Equipment: If a Change Order results in Contractor's performance of changed Work at the Site utilizing Contractor's Equipment, the all-inclusive rates listed in Exhibit S-2.2 shall be used.
3. Subcontracted Work: If a Change Order will be performed in whole or part by a Subcontractor, Contractor shall be entitled to a total of a \*\*\* markup of the Subcontract amount for such changed Work. All Subcontracts for changed Work shall be on a lump sum basis and competitively bid, except where otherwise approved by Owner. If such changed Work performed by a Subcontractor is on a time and material basis, the man-hour rates for such Work shall be reasonable based on the location and type of Work performed by such Subcontractor.
4. Purchased Equipment: If a Change Order results in Contractor's purchase of Equipment, Contractor shall be entitled to a total of a \*\*\* markup on the actual cost of the Equipment.
5. Travel Expenses: If a Change Order results in Contractor incurring travel expenses necessary to the performance of the changed Work such travel expenses are reimbursable at the actual cost for such travel expenses.

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

**EXHIBIT S-1.1**

**CONTRACTOR'S PERSONNEL LABOR RATES**

<b>SUNPOWER 2011 RATE SCHEDULE</b>			
<b>Hourly Labor Rates</b>			
<b>Job Title</b>	<b>Normal</b>	<b>Overtime</b>	<b>Holiday</b>
Senior Project Manager	***	***	***
Project Manager	***	***	***
Design Engineer	***	***	***
CAD Operator	***	***	***
EE/Mechanical Engineer	***	***	***
Construction Manager	***	***	***
Administrative Assistant	***	***	***
Principals / Officers	***	***	***
* Rates for future years will be adjusted from 2011 prices by CPI			

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

S-1.1-1

Exhibit S-1.1  
Contractor's Personnel Labor Rates

## BLOCK DESCRIPTIONS

**As of 8/24/11**

### Commissioning Blocks (and Guaranteed Capacity)- MW AC

[illegible]

## Commissioning Blocks - MW DC

[illegible]

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

**Note:** Capacity values for Blocks subject to change based on final design, provided Phase and PV Power Plant capacity totals remain unchanged, and provided further that Block capacity value shall not change more than \*\*\*MW AC.

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

## EXHIBIT U

### FORM OF CONTRACTOR'S INVOICE

**PROJECT NAME:**  
**CONTRACTOR:**  
**DATE OF AGREEMENT:** \_\_\_\_\_, 201\_\_

**INVOICE NUMBER:** \_\_\_\_\_  
**DATE OF INVOICE:** \_\_\_\_\_, 201\_\_

This Invoice is for a monthly progress payment for Work performed during the period from \_\_\_\_\_, 201\_\_ to \_\_\_\_\_, 201\_\_ ("**Current Date**").

Contractor hereby makes application for payment to Owner as shown below in connection with the above referenced Agreement between the Parties.

1.	Original Contract Price (Section 5.1 of Agreement)	US\$	_____
2.	Net change by Change Orders (except for Owner Directives) (Exhibit I)	US\$	_____
3.	Contract Price to date (Line 1 + Line 2)	US\$	_____
4.	Total amounts to date from monthly Progress Payment Schedule (Exhibit I)	US\$	_____
5.	Total amounts to date on Owner Directives (Exhibit I)	US\$	_____
6.	Less previous Invoices (Line 7 from prior Invoice)	US\$	_____
7.	Current Month total amount (Line 4 less Line 5)	US\$	_____
	Carryover amount from previous invoice in excess of the Cumulative Maximum Amounts		
8.	(Exhibit I) (Line 12 from prior Invoice)	US\$	_____
9.	Total amount through the date of this Invoice (Line 7 + Line 8)	US\$	_____
	Cumulative Maximum Amounts allowed as of the date of this Invoice		
10.	(per Exhibit I of the Agreement)	US\$	_____
11.	<b>Current Payment Due</b> (the lesser of Line 9 and Line 10 less Line 6)	US\$	_____
	Amount in excess of the Cumulative Maximum Amounts to be carried		
12.	over to the next Invoice (Line 9 less Line 10)	US\$	_____
13.	Balance of Contract Price remaining (Line 3 less Lines 4 & 5)	US\$	_____

Contractor certifies to Owner, First American Title Insurance Company and Stewart Title Guaranty Company that (i) the Work described in or relating to this Invoice has been performed and supplied in full accordance with the Agreement, (ii) the referenced Work for which payments is requested is complete (iii) Contractor is entitled to payment of the amount set forth as "**Current Payment Due**" in this Invoice, and such Current Payment Due constitutes in full all amounts due and owing as of the Current Date, (iv) the Work and any portion thereof described in or relating to this Invoice and all previous invoices are free and clear of all Contractor Liens, except such Contractor Liens as are permitted under the Agreement, through the date of this Invoice, (iv) all Subcontractors have been paid the monies due and payable for Work performed in connection with the Project (except for any amounts owed such Subcontractors for Work billed under this Invoice), (v) as required by the Agreement, fully completed and executed lien waivers from Contractor and from all Major Subcontractors (referring to Bechtel and its "Major Subcontractors" as defined the Bechtel Subcontract, with respect to all work under the Bechtel Subcontract, and to all other "Major Subcontractors" as defined in this Agreement, with respect to work not under the Bechtel Subcontract) are attached to this Invoice, (vi) attached to this Invoice is all documentation supporting Contractor's request for payment as required under the Agreement, with written documentation of payments by the Contractor during this Invoice period to any Subcontractor(s) being paid directly by Contractor; (vii) a certification from Bechtel, substantially in the form attached as Exhibit U to the Bechtel Subcontract (a "Subcontractor Exhibit U Certification"); (viii) a Subcontractor Exhibit U Certification from each Major Subcontractor (as defined above) with respect to work not under the Bechtel Subcontract, other than the following Subcontractors whose existing Subcontracts do not require them to deliver Subcontractor Exhibit U Certifications: Beta Engineering, Hyundai, ENGEO, Fluor and North Coast Engineering; (ix) attached to this Invoice is a spreadsheet accurately summarizing the status of payments for the Contractor and all Major Subcontractors (as defined above) being paid directly by the Contractor and mechanics's lien waivers for the Contractor and all Major Subcontractors (as defined above), and (x) this Invoice is signed by an authorized representative of Contractor.

**CONTRACTOR**  
Signed: \_\_\_\_\_

U-1

Exhibit U  
Form of Contractor's Invoice

Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_, 201\_\_

**PV Power Plant**

INVOICE NUMBER \_\_\_\_\_ INVOICE DATE \_\_\_\_\_, 201\_\_

OWNER APPROVAL

AMOUNT APPROVED by Owner for Payment: US\$\_\_\_\_\_

OWNER  
Signed: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_, 200\_\_

The AMOUNT APPROVED by Owner is without prejudice to any rights of Owner under the Agreement.

Explanation is listed below or attached if the AMOUNT APPROVED is less than the amount requested by Contractor under this Invoice:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



**EXHIBIT V****SINGLE LINE ELECTRICAL DRAWINGS**

<u>Document Number</u>	<u>Revision Number</u>	<u>Title</u>
B552-E100	5	California Valley Solar Ranch Project 230/34.5 kV Main Substation SunPower Corporation One-Line Diagram
B552-E110	3	California Valley Solar Ranch Project 230 kV CVSR Tap Switching Station SunPower Corporation One-Line Diagram
E-1.0	A	California Valley Solar Ranch Array 1. Typical 1.52 MW Oasis DC & Eqpt Pad Single Line Diagram
E-1.0	A	California Valley Solar Ranch Array 2 (Serengeti). Typical 1MW Serengeti DC & Equip. Pad Single Line Diagram
25692-000-E1-0000-00001	C	Single Line Diagram Phase 1
25692-000-E1-0000-00002	C	Single Line Diagram Phase 2
25692-000-E1-0000-00003	B	Single Line Diagram Phase 3 - Sheet 1
25692-000-E1-0000-00004	B	Single Line Diagram Phase 3 - Sheet 2
25692-000-E1-0000-00005	C	Single Line Diagram Phase 4
SC4.1-1	A	SCADA Block Diagram Control Room and Switching Station
SC4.1-2	A	SCADA Block Diagram Generalized

V-1

Exhibit V  
Single Line Electrical Drawings

**EXHIBIT W**

**QUALITY ASSURANCE PROGRAM**

\*\*\*

[7 pages redacted]

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

W-1

Exhibit W  
Quality Assurance Program

**Exhibit X-1**  
**Form of Initial Block Substantial Completion Certificate**

**DATE:** \_\_\_\_\_

1. Contractor has delivered this Initial Block Substantial Completion Certificate completed, except for signature by Owner, to Owner's duly authorized representative on the above date. Capitalized terms used, but not otherwise defined, herein have the meanings set forth in that certain Engineering, Procurement and Construction Agreement between Contractor and Owner (the "Agreement"), dated as of \_\_\_\_\_.

2. Contractor certifies and represents to Owner that the following statements are true with respect to the initial Block of the PV Power Plant as of the date of delivery hereof to Owner:

- a. The initial Block has achieved Mechanical Completion;
- a. All Systems supporting the initial Block have been completed and accepted by Owner in accordance with Section 14.1;
- b. The Interconnection Facilities have been completed to such a point so as to permit the Block Substantial Completion Tests for the initial Block to be conducted;
- c. The Block Substantial Completion Tests for the initial Block have been Successfully Run;
- d. Owner has received all Contractor Deliverables required to be delivered in connection with the initial Block Substantial Completion;
- e. The Punch List for the initial Block has been prepared in accordance with Section 14.1.6;
- f. Contractor has delivered the applicable Waiver and Release Forms required to be delivered pursuant to Section 6.3(b) with respect to the initial Block;
- g. All training of Operating Personnel in accordance with the Agreement is complete; and
- h. Contractor has obtained, and Owner has received copies of, all Contractor Acquired Permits necessary for the commencement and ongoing operation of the initial Block in accordance with Applicable Law.

**[SIGNATURE PAGE FOLLOWS]**

X-1

Exhibit X  
Form of Initial Block Signature Completion Certificate

The person signing below is authorized to submit this Initial Block Substantial Completion Certificate to Owner for and on behalf of Contractor.

Contractor

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Owner agrees that Block Substantial Completion has been achieved with respect to the initial Block of the PV Power Plant as set forth herein. This certificate was received by Owner on the date first written above and is effective as of such date. By execution of this certificate, Owner does not waive any right it may have under the Agreement with respect to the PV Power Plant or its performance.

Owner

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

This form must be signed by the person authorized to sign this Certificate of Initial Block Substantial Completion for and on behalf of Owner.

**Exhibit X-1a**  
**Form of Block Substantial Completion Certificate**

**DATE:** \_\_\_\_\_

1. Contractor has delivered this Block Substantial Completion Certificate completed, except for signature by Owner, to Owner's duly authorized representative on the above date. Capitalized terms used, but not otherwise defined, herein have the meanings set forth in that certain Engineering, Procurement and Construction Agreement between Contractor and Owner (the "Agreement"), dated as of \_\_\_\_\_.

2. Contractor certifies and represents to Owner that the following statements are true with respect to Block \_\_\_ of the PV Power Plant as of the date of delivery hereof to Owner:

- a. The Block has achieved Mechanical Completion;
- b. All Systems supporting the Block have been completed and accepted by Owner in accordance with Section 14.1;
- c. The Interconnection Facilities have been completed to such a point so as to permit the Block Substantial Completion Tests for the Block to be conducted and the Block to be operated in conjunction with all other Blocks that previously achieved Block Substantial Completion;
- d. The Block Substantial Completion Tests for the Block have been Successfully Run;
- e. Owner has received all Contractor Deliverables required to be delivered in connection with the Block Substantial Completion;
- f. The Punch List for the Block has been prepared in accordance with Section 14.1.6;
- g. Contractor has obtained, and Owner has received copies of, all Contractor Acquired Permits necessary for the commencement and ongoing operation of the Block in accordance with Applicable Law; and
- h. Contractor has delivered all applicable Waiver and Release Forms required to be delivered pursuant to Section 6.3(b) with respect to the Block.

**[SIGNATURE PAGE FOLLOWS]**

X-1a-1

Exhibit X-1a  
Form of Initial Block Substantial Completion Certificate

The person signing below is authorized to submit this Initial Block Substantial Completion Certificate to Owner for and on behalf of Contractor.

Contractor

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Owner agrees that Block Substantial Completion has been achieved with respect to the Block \_\_ of the PV Power Plant as set forth herein. This certificate was received by Owner on the date first written above and is effective as of such date. By execution of this certificate, Owner does not waive any right it may have under the Agreement with respect to the PV Power Plant or its performance.

Owner

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

This form must be signed by the person authorized to sign this Certificate of Block Substantial Completion for and on behalf of Owner.

**Exhibit X-2**

**Form of Phase Substantial Completion Certificate**

**DATE:** \_\_\_\_\_

1. Contractor has delivered this Phase Substantial Completion Certificate completed, except for signature by Owner, to Owner's duly authorized representative on the above date. Capitalized terms used, but not otherwise defined, herein have the meanings set forth in that certain Engineering, Procurement and Construction Agreement between Contractor and Owner (the "Agreement"), dated as of \_\_\_\_\_.
2. Contractor certifies and represents to Owner that the following statements are true with respect to Phase \_\_\_ of the PV Power Plant as of the date of delivery hereof to Owner:
  - a. With respect to Phase 1, all of the conditions set forth in Section 15.1.1 have been satisfied (or have been waived by Owner), and, with respect to all Phases other than Phase 1, all of the conditions set forth in Section 15.1.2 have been satisfied (or have been waived by Owner) with respect to each of the Blocks comprising the Phase (including that all of the Blocks comprising such Phase have achieved Substantial Completion);
  - b. The Substantial Completion Tests for the Phase have been Successfully Run and Minimum Performance Guarantee for the Phase has been achieved;
  - c. Except with respect to Phase 1, Owner has received all Contractor Deliverables (if any) required to be delivered in connection with the Phase Substantial Completion Date;
  - d. All undisputed Delay Liquidated Damages with respect to the Phase then due and payable, if any, pursuant to Article 15 have been paid; and
  - e. All undisputed Performance Liquidated Damages with respect to the Phase that are due and payable, if any, pursuant to Article 15 have been paid.

[SIGNATURE PAGE FOLLOWS]

X-2-1

Exhibit X-2  
Form of Phase Substantial Completion Certificate

The person signing below is authorized to submit this Phase Substantial Completion Certificate to Owner for and on behalf of Contractor.

Contractor

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Owner agrees that Phase Substantial Completion has been achieved with respect to the Phase \_\_ of the PV Power Plant as set forth herein. This certificate was received by Owner on the date first written above and is effective as of such date. By execution of this certificate, Owner does not waive any right it may have under the Agreement with respect to the PV Power Plant or its performance.

Owner

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

This form must be signed by the person authorized to sign this Certificate of Phase Substantial Completion for and on behalf of Owner.



**Exhibit X-3**

**Form of PV Power Plant Substantial Completion Certificate**

**DATE:** \_\_\_\_\_

1. Contractor has delivered this PV Power Plant Substantial Completion Certificate completed, except for signature by Owner, to Owner's duly authorized representative on the above date. Capitalized terms used, but not otherwise defined, herein have the meanings set forth in that certain Engineering, Procurement and Construction Agreement between Contractor and Owner (the "Agreement"), dated as of \_\_\_\_\_.
2. Contractor certifies and represents to Owner that the following statements are true with respect to the PV Power Plant as of the date of delivery hereof to Owner:
  - a. Each Phase has achieved Phase Substantial Completion;
  - b. Substation completion has been achieved and all of the Work comprising electrical works required to provide an integrated electrical system from the point of interconnection to each individual Block with the requirements of the Agreement, and Contractor has delivered to Owner copies of all test reports and electrical schematics relating thereto required under the Agreement;
  - c. All civil works constituting a part of the Work are complete and meet the requirements of the Agreement;
  - d. The PV Power Plant Substantial Completion Tests for the PV Power Plant Substantial Completion have been Successfully Run and the PV Power Plant has achieved the Minimum Performance Guarantee;
  - e. Owner has received all Contractor Deliverables (if any) required to be delivered in connection with the PV Power Plant Substantial Completion Date;
  - f. Contractor shall have delivered all applicable Waiver and Release Forms required to be delivered pursuant to Section 6.3(b) with respect to the PV Power Plant and all Work; and
  - g. Contractor has obtained, and Owner has received copies of, all Contractor Acquired Permits necessary for the commencement and ongoing operation of the PV Power Plant in accordance with Applicable Law and otherwise required to be obtained by Contractor as of such time, the Contractor Acquired Permits are in full force and effect, and Contractor has completed all requirements under each Contractor Acquired Permit required to be completed, subject to any final Punch List items.

**[SIGNATURE PAGE FOLLOWS]**

X-3-1

Exhibit X-3  
Form of PV Power Plant Substantial Completion Certificate

The person signing below is authorized to submit this PV Power Plant Substantial Completion Certificate to Owner for and on behalf of Contractor.

Contractor

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Owner agrees that PV Power Plant Substantial Completion has been achieved as set forth herein. This certificate was received by Owner on the date first written above and is effective as of such date. By execution of this certificate, Owner does not waive any right it may have under the Agreement with respect to the PV Power Plant or its performance.

Owner

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

This form must be signed by the person authorized to sign this Certificate of PV Power Plant Substantial Completion for and on behalf of Owner.

**Exhibit X-4**  
**Form of Final Completion Certificate**

**DATE:** \_\_\_\_\_

1. Contractor has delivered this Final Completion Certificate completed, except for signature by Owner, to Owner's duly authorized representative on the above date. Capitalized terms used, but not otherwise defined, herein have the meanings set forth in that certain Engineering, Procurement and Construction Agreement between Contractor and Owner (the "Agreement"), dated as of \_\_\_\_\_.
2. Contractor certifies and represents to Owner that the following statements are true with respect to the PV Power Plant as of the date of delivery hereof to Owner:
  - a. Substantial Completion for each Phase comprising the PV Power Plant has been achieved;
  - b. Contractor has completed all items on each Punch List (except such items that remain the subject of a Dispute) related to the Blocks and Phases, as applicable, comprising the PV Power Plant;
  - c. All Contractor's and Subcontractors' personnel (except any personnel that is to perform operational services pursuant to a separate operation and maintenance contract, if any) have left the Site, and all surplus materials, waste materials, rubbish and construction facilities other than those to which Owner holds title have been removed from the Site, and any permanent facilities used by Contractor and the Site have been restored to the same condition that such permanent facilities and the Site were in on the date Work commenced hereunder, ordinary wear and tear excepted;
  - d. Upon Final Payment, Contractor shall have delivered the applicable Waiver and Release Forms contemplated by Section 6.7; and
  - e. Owner has received all Contractor Deliverables in relation to the PV Power Plant as set forth on the Contractor Deliverables Table.

**[SIGNATURE PAGE FOLLOWS]**

X-4-1

Exhibit X-4  
Form of Final Completion Certificate

The person signing below is authorized to submit this Final Completion Certificate to Owner for and on behalf of Contractor.

Contractor

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Owner agrees that Final Completion has been achieved with respect to the PV Power Plant as set forth herein. This certificate was received by Owner on the date first written above and is effective as of such date. By execution of this certificate, Owner does not waive any right it may have under the Agreement with respect to the PV Power Plant or its performance.

Owner

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

This form must be signed by the person authorized to sign this Certificate of Final Completion for and on behalf of Owner.

## **EXHIBIT Y**

\*\*\*

[10 pages redacted]

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

Y-1

Exhibit Y  
\*\*\*

**EXHIBIT Z**

**PROJECT LABOR AGREEMENT**

\*\*\*

[33 pages redacted]

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

Z-1

Exhibit Z  
\*\*\*

**EXHIBIT Z-1**

**ASSIGNMENT OF PLA**

\*\*\*

[3 pages redacted]

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

Z-1-1

Exhibit Z-1  
Assignment of PLA

## EXHIBIT AA

### DAVIS BACON ACT REQUIREMENTS

(a) **Definitions.** For purposes of this Exhibit AA, and as required by subparagraph (b)(8) below of this Exhibit AA, the definitions set forth in Section 5.2 of title 29 of the Code of Federal Regulations (CFR) are incorporated by reference herein, some of which are set forth below, except to the extent modified below, in addition to certain newly defined terms set forth below for purposes of Davis-Bacon Act compliance under Section 1705 of Title XVII:

(1) “Construction, prosecution, completion, or repair” or “performance of the Project” means the following:

(1) All Work, including Work at a facility which is deemed a part of the site of the work by laborers and mechanics employed by Contractor or any Subcontractor, including without limitation-

(i) Altering, remodeling, installation (where appropriate) on the site of the work of items fabricated off-site;

(ii) Painting and decorating;

(iii) Manufacturing or furnishing of materials, articles, supplies or equipment on the site of the work (or, under the United States Housing Act of 1937; the Housing Act of 1949; and the Native American Housing Assistance and Self-Determination Act of 1996 in the construction or development of the Project);

(iv) (A) Transportation between the site of the work and a facility which is dedicated to the Work and deemed a part of the site of the work; and

(B) Transportation of portion(s) of the Work between a site where a significant portion of such Work is constructed, which is a part of the site of the work, and the physical place or places where the Work will remain.

(2) Except as provided in paragraph (j)(1)(iv)(A) of 29 CFR 5.2, the transportation of materials or supplies to or from the site of the work by employees of the Contractor or any Subcontractor is not “construction, prosecution, completion, or repair.”

(2) “Contracting officer” means the individual, a duly appointed successor, or authorized representative who is designated and authorized to enter into contracts on behalf of the Federal agency or any representative designated by DOE to the Owner from time to time for purposes of Davis-Bacon Act compliance.

(3) “Laborer or mechanic” includes at least those workers whose duties are manual or physical in nature (including those workers who use tools or who are performing the work of a trade), as distinguished from mental or managerial. The term laborer or mechanic includes apprentices, trainees, and helpers. The term does not apply to workers whose duties are primarily administrative, executive, or clerical, rather than manual. Persons employed in a bona



bona fide executive, administrative, or professional capacity as defined in part 541 of title 29 of the Code of Federal Regulations are not deemed to be laborers or mechanics. Working foremen who devote more than 20 percent of their time during a workweek to mechanic or laborer duties, and who do not meet the criteria of part 541, are laborers and mechanics for the time so spent.

(4) “Loan Guarantee Agreement” means that certain Loan Guarantee Agreement among High Plains Ranch II, LLC, NRG Solar CVSR Holdings LLC, U.S. Department of Energy, and Midland Loan Services, Inc. dated [\_\_\_\_\_].

(5) “Site of the work” means:

(i) The Site; and any other site where a significant portion of the Work is constructed, provided that such site is established specifically for the performance of such Work;

(ii) Except as provided in subparagraph (a)(4)(iii) of this Exhibit AA, job headquarters, tool yards, batch plants, borrow pits, etc., provided they are dedicated exclusively, or nearly so, to performance of this Agreement or the Project, and provided they are adjacent or virtually adjacent to the site of the work as defined in subparagraph (a)(4)(i) of this Exhibit AA;

(iii) Not included in the site of the work are permanent home offices, branch plant establishments, fabrication plants, tool yards, etc., of Contractor whose location and continuance in operation are determined wholly without regard to a particular Federal or federally assisted contract, such as the Loan Guarantee Agreement, or the Project. In addition, fabrication plants, batch plants, borrow pits, job headquarters, tool yards, etc., of a commercial or material supplier, which are established by a Supplier before opening of bids and not on the site of the work as stated in subparagraph (a)(4)(i) of this Exhibit AA, are not included in the site of the work. Such permanent, previously established facilities are not part of the site of the work, even where the operations for a period of time may be dedicated exclusively, or nearly so, to the performance of this Agreement.

(6) “Wage determination” includes the original decision and any subsequent decisions modifying, superseding, correcting, or otherwise changing the provisions of the original decision. The application of the wage determination shall be in accordance with the provisions of Sec. 1.6 of title 29 of the CFR.

**(b) (1) Minimum wages.**

(i) All laborers and mechanics employed or working on the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto as Exhibit AA-1 and made a part hereof, regardless of any contractual relationship which may be alleged to exist between Contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of subparagraph (b)(1)(iv) of this Exhibit AA; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in paragraph (b)(4) below. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under subparagraph (b)(1)(ii) of this Exhibit AA) and the Davis-Bacon poster (WH-1321) shall be posted at all times by Contractor at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii) (A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the this Agreement shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If Contractor, the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event Contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination

within thirty (30) days of receipt and so advise the contracting officer or will notify the contracting officer within such 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (b)(1)(ii) (B) or (C) of this Exhibit AA, shall be paid to all workers performing Work in the classification under this Agreement from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in this Agreement for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If Contractor does not make payments to a trustee or other third person, Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program; provided, that the Secretary of Labor has found, upon the written request of Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require Owner to require Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

**(2) Withholding.** Contractor shall upon its own action or upon written request of Owner withhold or cause to be withheld so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed or working on the site of the work the full amount of wages required by this Agreement. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the required wages, Owner may, after written notice to Contractor take such action as may be necessary to cause the suspension of any further disbursement to Contractor until such violations have ceased, it being understood that any such suspension shall not affect disbursements that have been disbursed prior to the date of such suspension and remain outstanding as of such date.

**(3) Payrolls and basic records.**

(i) Payrolls and basic records relating thereto shall be maintained by Contractor during the course of the Work and preserved for a period of three (3) years thereafter for all of its laborers and mechanics employed or working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in

providing such benefits. If Contractor employs apprentices or trainees under approved programs, each shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii) (A) Contractor shall submit weekly for each week in which any Work is performed a copy of all payrolls to Owner. Contractor is responsible for the submission of copies of payrolls by all Subcontractors of all tiers. Unless otherwise directed by DOE, Owner shall submit weekly for each week in which any Work is performed a copy of all of its payrolls, as well as all payrolls of Contractor and any Subcontractors, to the DOE contracting officer. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under subparagraph (b)(3)(i) of this Exhibit AA, except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. Owner is responsible for the submission of copies of its own payrolls and the payrolls of Contractor and all Subcontractors, in each case, to the extent each employs laborers and mechanics in the performance of the Project. Contractor is responsible for the submission to Owner of copies of payrolls of all Subcontractors. Contractor shall maintain the full social security number and current address of each of its own covered workers, and shall provide them upon request to Owner, for transmission to the DOE or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this subparagraph (b)(3)(ii)(A) of this Exhibit AA for Owner to require Contractor, or Contractor to require any Subcontractor, to provide addresses and social security numbers to for its own records, without weekly submission to the DOE or Owner.

(B) Each payroll submitted by Contractor to Owner shall be accompanied by a "Statement of Compliance," signed by Contractor or his or her agent who pays or supervises the payment of the laborer or mechanic employed under this Agreement and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under subparagraph (b)(3)(ii) of this Exhibit AA, the appropriate information is being maintained under subparagraph (b)(3)(i) of this Exhibit AA, and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed under this Agreement during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the Loan

Guarantee Agreement and this Agreement.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by subparagraph (b)(3)(ii) (B) of this Exhibit AA.

(D) The falsification of any of the above certifications may subject Contractor to civil or criminal prosecution under section 1001 of title 18 and section 3729 of title 31 of the United States Code.

(iii) Contractor shall make available to Owner, and Owner shall make available to DOE, the records required under subparagraph (b)(3)(i) of this Exhibit AA available for inspection, copying, or transcription by authorized representatives of the DOE or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If Contractor fails to submit the required records or to make them available, the DOE may, after written notice to Owner take such action as may be necessary to cause the suspension of any further disbursement under the DOE-Guaranteed Loan, it being understood that any such suspension shall not affect the validity of the DOE Guarantee on the portions of the DOE-Guaranteed Loan that have been disbursed prior to the date of such suspension and remain outstanding as of such date. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

#### **(4) Apprentices and trainees.**

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first ninety (90) days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the Site in any craft classification shall not be greater than the ratio permitted to Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of Work actually performed. In addition, any apprentice performing Work on Site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the Work actually performed. Where Contractor is performing construction on a Project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in Contractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions

of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) **Trainees.** Except as provided in 29 CFR 5.16, trainees shall not be permitted to work at less than the predetermined rate for the Work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the Site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the Site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the Work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, or Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) **Equal employment opportunity.** The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

**(5) Compliance with Copeland Act requirements.** Contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this Agreement.

**(6) Subcontracts.** Contractor shall insert in any agreement with any Subcontractor the clauses contained in subparagraphs (b)(1) through (10) of this Exhibit AA and such other clauses as the DOE may by appropriate instructions require, and also a clause requiring the Subcontractor to include these clauses in any lower tier subcontract. Contractor shall be responsible for the compliance by any Subcontractor with all the contract clauses in (1) through (10) of this Exhibit AA.

**(7) Contract termination: debarment.** A breach of any of the clauses in (1) through

(10) of subparagraph (b) in this Exhibit AA may be considered a failure to perform a material provision of this Agreement by Contractor and, if Contractor fails to take action to cure such failure in accordance with Section 20.1 of the Agreement, shall constitute an Event of Default by Contractor and may be grounds for termination of this Agreement, and for debarment as a contractor, a subcontractor or other entity as provided in 29 CFR 5.12.

**(8) Compliance with Davis-Bacon and Related Act requirements.** All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 (other than Section 5.5(b) of 29 CFR part 5) are herein incorporated by reference in this Agreement.

**(9) Disputes concerning labor standards.** Disputes arising out of the labor standards provisions of this Agreement shall not be subject to the general disputes clause of this Agreement. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Owner or Contractor and DOE, the U.S. Department of Labor, or the employees or their representatives.

**(10) Certification of eligibility.**

(i) By entering into this Agreement, the Owner and Contractor each certifies that neither it (nor he or she) nor any person or firm who has an interest in Owner or Contractor is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this agreement shall be assigned or subcontracted, as the case may be, to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

**Exhibit AA-1**

**WAGE DETERMINATION**

This document sets forth the preliminary wage determination and shall be replaced with the final wage determination upon issuance.

**PRELIMINARY WAGE INFORMATION**

15 Aug 2011

**NOTE THE FOLLOWING:**

- All projects involving construction work financed in whole or in part by a loan guaranteed under Title XVII (a “Title XVII loan”) are required to comply with Davis-Bacon requirements.
- At this time, your project has not been financed in whole or in part with a Title XVII loan and therefore no official Davis-Bacon Act wage determination(s) has/have been selected by the Department of Energy (“DOE”) in connection with your project.
- The attached information is being provided to you at your request, is solely for informational purposes and is subject to change by DOE. Though DOE has attempted to provide you with accurate information, the official wage determination(s) will only be selected by DOE if your project should receive a Title XVII loan. Therefore, DOE makes no representation that the attached information will be the same as the official wage determination(s), if any.
- In providing the attached information, DOE makes no representation that your project will receive a Title XVII loan. The attached information is based solely on the facts that you provided to the DOE and the wage determination schedules published by the U.S. Department of Labor effective as of the date hereof. It should be noted that the job classifications and/or wage rates in these wage determination schedules change from time-to-time and you are encouraged to sign up for the Department of Labor's wage determination Alert Service [www.wdol.gov](http://www.wdol.gov) to keep track of any changes to the wage determination schedule.
- The official wage determination schedule to be incorporated into your Title XVII loan closing documents will contain the wage rates effective as of the closing date, consistent with DOL All-Agency Memorandum No. 207, available at <http://www.wdol.gov/aam.aspx>. The official schedule may contain different job classifications and wage rates than the preliminary schedule, and will apply on a prospective basis only from the date of the Title XVII loan closing, and not to construction that has occurred prior to such closing.
- In providing you with the attached information, DOE is not providing advice on how the Davis-Bacon Act applies to the particular facts and circumstances of your project. You may wish to consult with your own professional advisors if you determine such advice is needed.



SunPower Corporation LLC may consider the following PRELIMINARY wage determination for the Davis-Bacon Act construction performed on the project:

1. For all construction under the Engineering, Procurement and Construction (EPC) contract and other contracts for construction in effect at or prior to Title XVII loan guarantee closing, please use the CA19 Modification 26 (8/5/11) wage determination schedule found at <http://www.wdol.gov/wdol/scafiles/davisbacon/CA19.dvb>.

2. Regarding the Operations and Maintenance contract, if the work is performed after the construction contractor and subcontractors have finished, left the site, and the contracting agency has accepted the building, the work would not be covered by DBA.

3. Since you did not confirm that there are in fact batch plants/gravel pits/fabrication plants dedicated exclusively or nearly so to the project, DOE will proceed assuming there are no such plants.

4. We thought it would be helpful to provide links to examples of helpful DOE and Department of Labor (DOL) DBA guidance documents. The following are some very helpful resources, but do not substitute for legal and loan guarantee agreement requirements:

- DOE has published a “Desk Guide” and other DBA guidance, available at [http://www1.eere.energy.gov/wip/davis-bacon\\_act.html](http://www1.eere.energy.gov/wip/davis-bacon_act.html) applicable to other DOE financial assistance programs. The Desk Guide is at the top right of this webpage.
- DOL's Prevailing Wage Resource Book, in particular chapters 13-18 on the DBA, at <http://www.dol.gov/whd/recovery/pwrb/toc.htm>
- DOL's DBA Field Operations Handbook, available at: [http://www.dol.gov/whd/FOH/FOH\\_Ch15.pdf](http://www.dol.gov/whd/FOH/FOH_Ch15.pdf)

**Davis-Bacon Act Wage Determinations**

For construction (as defined in Department of Labor regulations at 29 CFR 5.2 and including installation where appropriate) to be performed under each Construction Contract, and subcontracts thereunder, incorporate the following wage determination schedule: CA19 Modification 29 (9/2/11), found at: <http://www.wdol.gov/wdol/scafiles/davisbacon/CA19.dvb> , and attached hereto. This wage determination schedule must also be applied to all construction as under any other contracts for construction effective as of the Guarantee Agreement Date. This is the currently effective wage determination schedule and applies on a prospective basis only from the Guarantee Agreement Date.

***See Attached.***

General Decision Number: CA100019 09/02/2011 CA19

Superseded General Decision Number: CA20080019

State: California

Construction Types: Building, Heavy (Heavy and Dredging) and Highway

County: San Luis Obispo County in California.

BUILDING, DREDGING (does not include hopper dredge work), HEAVY (does not include water well drilling, AND HIGHWAY CONSTRUCTION PROJECTS

Modification Number	Publication Date
0	03/12/2010
1	03/26/2010
2	04/02/2010
3	04/16/2010
4	06/04/2010
5	06/11/2010
6	07/02/2010
7	07/23/2010
8	08/13/2010
9	08/27/2010
10	09/03/2010
11	09/10/2010
12	12/03/2010
13	01/14/2011
14	02/18/2011
15	03/04/2011
16	04/08/2011
17	04/15/2011
18	04/29/2011
19	05/06/2011
20	05/20/2011
21	05/27/2011
22	06/03/2011
23	06/10/2011
24	07/22/2011
25	07/29/2011
26	08/05/2011

27 08/19/2011  
28 08/26/2011  
29 09/02/2011  
ASBE0005-002 06/28/2010  
Rates Fringes  
Asbestos Workers/Insulator  
(Includes the application of  
all insulating materials,  
protective coverings,  
coatings, and finishes to all  
types of mechanical systems).....\$ 32.79 16.31  
Fire Stop Technician  
(Application of Firestopping  
Materials for wall openings  
and penetrations in walls,  
floors, ceilings and curtain  
walls).....\$ 24.21 13.76

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ASBE0005-004 06/28/2010  
Rates Fringes  
Asbestos Removal  
worker/hazardous material  
handler (Includes  
preparation, wetting,  
stripping, removal,  
scrapping, vacuuming, bagging  
and disposing of all  
insulation materials from  
mechanical systems, whether  
they contain asbestos or not)....\$ 18.70 8.65

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BOIL0092-004 05/01/2011  
Area within a 25 mile radius of City of Santa Maria  
Rates Fringes  
BOILERMAKER.....\$ 41.26 25.27

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BOIL0549-007 01/01/2009  
Remainder of County outside a 25 mile radius of City of Santa  
Maria  
Rates Fringes  
BOILERMAKER.....\$ 37.01 22.25

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\* BRCA0004-006 05/01/2011  
Rates Fringes  
BRICKLAYER; MARBLE SETTER.....\$ 35.85 11.45  
\*The wage scale for prevailing wage projects performed in

Blythe, China lake, Death Valley, Fort Irwin, Twenty-Nine Palms, Needles and 1-15 corridor (Barstow to the Nevada State Line) will be Three Dollars (\$3.00) above the standard San Bernardino/Riverside County hourly wage rate

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BRCA0018-008 06/01/2008

Rates Fringes

MARBLE FINISHER.....\$ 25.52 9.08

TILE FINISHER.....\$ 21.07 7.88

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BRCA0018-011 08/01/2009

Rates Fringes

TILE LAYER.....\$ 30.04 10.84

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CARP0409-001 07/01/2010

Rates Fringes

CARPENTER

(1) Carpenter, Cabinet

Installer, Insulation

Installer, Hardwood Floor

Worker and acoustical

installer, and solar panels.\$ 37.35 11.08

(2) Millwright.....\$ 37.85 11.08

(3) Piledriver/Derrick

Bargeman, Bridge or Dock

Carpenter, Heavy Framer,

Rock Bargeman or Scowman,

Rockslinger, Shingler

(Commercial).....\$ 37.48 11.08

(4) Pneumatic Nailer,

Power Stapler.....\$ 37.60 11.08

(5) Sawfiler.....\$ 37.44 11.08

(6) Scaffold Builder.....\$ 28.55 11.08

(7) Table Power Saw

Operator.....\$ 37.45 11.08

FOOTNOTE: Work of forming in the construction of open cut sewers or storm drains, on operations in which horizontal lagging is used in conjunction with steel H-Beams driven or placed in pre- drilled holes, for that portion of a lagged trench against which concrete is poured, namely, as a substitute for back forms (which work is performed by piledrivers): \$0.13 per hour additional. Certified Welder - \$1.00 per hour premium.

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CARP0409-005 07/01/2010

Rates Fringes

Drywall  
DRYWALL INSTALLER/LATHER....\$ 37.35 11.08  
STOCKER/SCRAPPER.....\$ 10.00 6.67

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CARP0409-008 08/01/2010

Rates Fringes

Modular Furniture Installer.....\$ 17.00 7.41

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ELEC0011-002 07/25/2011

COMMUNICATIONS AND SYSTEMS WORK

Rates Fringes

Communications System

Installer.....\$ 27.25 11.35

Technician.....\$ 30.23 8.85+3%

SCOPE OF WORK:

Installation, testing, service and maintenance of systems utilizing the transmission and/or transference of voice, sound, vision and digital for commercial, educational, security and entertainment purposes for the following: TV monitoring and surveillance, background-foreground music, intercom and telephone interconnect, inventory control systems, microwave transmission, multi-media, multiplex, nurse call systems, radio page, school intercom and sound, burglar alarms, fire alarm (see last paragraph below) and low voltage master clock systems in commercial buildings. Communication Systems that transmit or receive information and/or control systems that are intrinsic to the above listed systems; inclusion or exclusion of terminations and testings of conductors determined by their function; excluding all other data systems or multiple systems which include control function or power supply; excluding installation of raceway systems, conduit systems, line voltage work, and energy management systems. Does not cover work performed at China Lake Naval Ordnance Test Station. Fire alarm work shall be performed at the current inside wireman total cost package.

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ELEC0639-001 06/01/2011

Rates Fringes

Electricians

Wireman/Technician.....\$ 33.70 3%+16.50

FOOTNOTES:

CABLE SPLICER: 10% additional per hour above

Wireman/Technician basic hourly rate.

Work from trusses, swinging scaffolds, open ladders, scaffolds, bosun chairs, stacks or towers, where subject to

a direct fall from the ground floor or support structure from a distance of fifty (50) feet to ninety (90) feet: to be paid time and one-half. Work from trusses, swinging scaffolds, open ladders, scaffolds, bosun chairs, stacks or towers, where subject to a direct fall from the ground floor or support structure from a distance over ninety (90) feet: to be paid double the regular straight time rate of pay. Where workers are required to work under compressed air or in areas where injurious gases, dust or fumes are present in amounts necessitating the use of gas masks or self-contained breathing apparatus (particle masks are not considered self-contained breathing apparatus) or where workers work on poles at a distance of seventy-five (75) feet or more from the ground: to be paid a bonus of straight time pay. This shall be at a minimum of one hour, and thereafter, each succeeding hour or fraction thereof shall constitute an hour at the bonus rate. Tunnel work: to be paid at the time and one-quarter hourly rate. All employers may request workmen to report direct to a job within a free zone to include everything west of ten (10) miles east of Highway 101, as the crow flies, and then (10) miles north and south of Highway 46, as the crow flies, to the junction of Highway 41 and Highway 46. Everything outside of this area shall be paid at full subsistence provide said job is of five (5) days duration or more and provide there is storage on the job for the Employee's tools. The Employer will be responsible for loss of tools under such circumstances. (Road: The most direct route on a surfaced road). On all jobs or projects outside the free zone, as stated above, Employees may be required to report to the job site in their own transportation at the regular starting time and remain on the job site until the regular quitting time and these shall be paid at thirty-eight dollars (\$38.00) per day or thirty-eight cents (\$0.38) per mile for each road mile from shop to job and job to shop (round trip). (Day worked shall mean at least four (4) hours on the job unless sent home on account of weather, emergency, sickness, or injury).

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ELEC1245-001 06/01/2010

Rates Fringes

LINE CONSTRUCTION

(1) Lineman; Cable splicer..\$ 46.14 13.41

(2) Equipment specialist

(operates crawler

tractors, commercial motor  
vehicles, backhoes,  
trenchers, cranes (50 tons  
and below), overhead &  
underground distribution  
line equipment).....\$ 36.85 12.36  
(3) Groundman.....\$ 28.19 12.10  
(4) Powderman.....\$ 41.20 12.53  
HOLIDAYS: New Year's Day, M.L. King Day, Memorial Day,  
Independence Day, Labor Day, Veterans Day, Thanksgiving Day  
and day after Thanksgiving, Christmas Day

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ELEV0008-003 01/01/2011

Rates Fringes

ELEVATOR MECHANIC.....\$ 56.14 21.785

FOOTNOTE:

PAID VACATION: Employer contributes 8% of regular hourly  
rate as vacation pay credit for employees with more than 5  
years of service, and 6% for 6 months to 5 years of service.

PAID HOLIDAYS: New Years Day, Memorial Day, Independence Day,  
Labor Day, Veterans Day, Thanksgiving Day, Friday after  
Thanksgiving, and Christmas Day.

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\* ENGI0012-003 07/01/2011

Rates Fringes

OPERATOR: Power Equipment  
(All Other Work)

GROUP 1.....\$ 36.13 20.77  
GROUP 2.....\$ 36.91 20.77  
GROUP 3.....\$ 37.20 20.77  
GROUP 4.....\$ 38.69 20.77  
GROUP 5.....\$ 40.49 20.77  
GROUP 6.....\$ 38.91 20.77  
GROUP 8.....\$ 39.02 20.77  
GROUP 9.....\$ 40.82 20.77  
GROUP 10.....\$ 39.14 20.77  
GROUP 11.....\$ 40.94 20.77  
GROUP 12.....\$ 39.31 20.77  
GROUP 13.....\$ 39.41 20.77  
GROUP 14.....\$ 39.44 20.77  
GROUP 15.....\$ 39.52 20.77  
GROUP 16.....\$ 39.64 20.77  
GROUP 17.....\$ 39.81 20.77  
GROUP 18.....\$ 39.91 20.77  
GROUP 19.....\$ 40.02 20.77  
GROUP 20.....\$ 40.14 20.77



GROUP 21.....\$ 40.31 20.77  
GROUP 22.....\$ 40.41 20.77  
GROUP 23.....\$ 40.52 20.77  
GROUP 24.....\$ 40.64 20.77  
GROUP 25.....\$ 40.81 20.77

OPERATOR: Power Equipment  
(Cranes, Piledriving &  
Hoisting)

GROUP 1.....\$ 37.48 20.77  
GROUP 2.....\$ 38.26 20.77  
GROUP 3.....\$ 38.55 20.77  
GROUP 4.....\$ 38.69 20.77  
GROUP 5.....\$ 38.91 20.77  
GROUP 6.....\$ 39.02 20.77  
GROUP 7.....\$ 39.14 20.77  
GROUP 8.....\$ 39.31 20.77  
GROUP 9.....\$ 39.48 20.77  
GROUP 10.....\$ 40.48 20.77  
GROUP 11.....\$ 41.48 20.77  
GROUP 12.....\$ 42.48 20.77  
GROUP 13.....\$ 43.48 20.77

OPERATOR: Power Equipment  
(Tunnel Work)

GROUP 1.....\$ 37.98 20.77  
GROUP 2.....\$ 38.76 20.77  
GROUP 3.....\$ 39.05 20.77  
GROUP 4.....\$ 39.19 20.77  
GROUP 5.....\$ 39.41 20.77  
GROUP 6.....\$ 39.52 20.77  
GROUP 7.....\$ 39.64 20.77

PREMIUM PAY:

\$3.75 per hour shall be paid on all Power Equipment Operator  
work on the followng Military Bases: China Lake Naval  
Reserve, Vandenberg AFB, Point Arguello, Seely Naval Base,  
Fort Irwin, Nebo Annex Marine Base, Marine Corp Logistics  
Base Yermo, Edwards AFB, 29 Palms Marine Base and Camp  
Pendleton

Workers required to suit up and work in a hazardous material  
environment: \$2.00 per hour additional. Combination mixer  
and compressor operator on gunite work shall be classified  
as a concrete mobile mixer operator.

SEE ZONE DEFINITIONS AFTER CLASSIFICATIONS

POWER EQUIPMENT OPERATORS CLASSIFICATIONS

GROUP 1: Bargeman; Brakeman; Compressor operator; Ditch  
Witch, with seat or similar type equipment; Elevator  
operator-inside; Engineer Oiler; Forklift operator

(includes loed, lull or similar types under 5 tons;  
Generator operator; Generator, pump or compressor plant operator; Pump operator; Signalman; Switchman  
GROUP 2: Asphalt-rubber plant operator (nurse tank operator); Concrete mixer operator-skip type; Conveyor operator; Fireman; Forklift operator (includes loed, lull or similar types over 5 tons; Hydrostatic pump operator; oiler crusher (asphalt or concrete plant); Petromat laydown machine; PJU side dum jack; Screening and conveyor machine operator (or similar types); Skiploader (wheel type up to 3/4 yd. without attachment); Tar pot fireman; Temporary heating plant operator; Trenching machine oiler  
GROUP 3: Asphalt-rubber blend operator; Bobcat or similar type (Skid steer); Equipment greaser (rack); Ford Ferguson (with dragtype attachments); Helicopter radioman (ground); Stationary pipe wrapping and cleaning machine operator  
GROUP 4: Asphalt plant fireman; Backhoe operator (mini-max or similar type); Boring machine operator; Boxman or mixerman (asphalt or concrete); Chip spreading machine operator; Concrete cleaning decontamination machine operator; Concrete Pump Operator (small portable); Drilling machine operator, small auger types (Texoma super economatic or similar types - Hughes 100 or 200 or similar types - drilling depth of 30' maximum); Equipment greaser (grease truck); Guard rail post driver operator; Highline cableway signalman; Horizontal Directional Drilling Machine; Hydra-hammer-aero stomper; Micro Tunneling (above ground tunnel); Power concrete curing machine operator; Power concrete saw operator; Power-driven jumbo form setter operator; Power sweeper operator; Rock Wheel Saw/Trencher; Roller operator (compacting); Screed operator (asphalt or concrete); Trenching machine operator (up to 6 ft.); Vacuum or much truck  
GROUP 5: Equipment Greaser (Grease Truck/Multi Shift).  
GROUP 6: Articulating material hauler; Asphalt plant engineer; Batch plant operator; Bit sharpener; Concrete joint machine operator (canal and similar type); Concrete planer operator; Dandy digger; Deck engine operator; Derrickman (oilfield type); Drilling machine operator, bucket or auger types (Calweld 100 bucket or similar types - Watson 1000 auger or similar types - Texoma 330, 500 or 600 auger or similar types - drilling depth of 45' maximum); Drilling machine operator; Hydrographic seeder machine operator (straw, pulp or seed), Jackson track maintainer, or similar type; Kalamazoo Switch tamper, or similar type; Machine tool operator; Maginnis internal full

slab vibrator, Mechanical berm, curb or gutter(concrete or asphalt); Mechanical finisher operator (concrete, Clary-Johnson-Bidwell or similar); Micro tunnel system (below ground); Pavement breaker operator (truck mounted); Road oil mixing machine operator; Roller operator (asphalt or finish), rubber-tired earth moving equipment (single engine, up to and including 25 yds. struck); Self-propelled tar pipelining machine operator; Skiploader operator (crawler and wheel type, over 3/4 yd. and up to and including 1-1/2 yds.); Slip form pump operator (power driven hydraulic lifting device for concrete forms); Tractor operator-bulldozer, tamper-scraper (single engine, up to 100 h.p. flywheel and similar types, up to and including D-5 and similar types); Tugger hoist operator (1 drum); Ultra high pressure waterjet cutting tool system operator; Vacuum blasting machine operator

GROUP 8: Asphalt or concrete spreading operator (tamping or finishing); Asphalt paving machine operator (Barber Greene or similar type); Asphalt-rubber distribution operator; Backhoe operator (up to and including 3/4 yd.), small ford, Case or similar; Cast-in-place pipe laying machine operator; Combination mixer and compressor operator (gunite work); Compactor operator (self-propelled); Concrete mixer operator (paving); Crushing plant operator; Drill Doctor; Drilling machine operator, Bucket or auger types (Calweld 150 bucket or similar types - Watson 1500, 2000 2500 auger or similar types - Texoma 700, 800 auger or similar types - drilling depth of 60' maximum); Elevating grader operator; Grade checker; Gradall operator; Grouting machine operator; Heavy-duty repairman; Heavy equipment robotics operator; Kalamazoo balliste regulator or similar type; Kolman belt loader and similar type; Le Tourneau blob compactor or similar type; Loader operator (Athey, Euclid, Sierra and similar types); Mobark Chipper or similar; Ozzie padder or similar types; P.C. slot saw; Pneumatic concrete placing machine operator (Hackley-Presswell or similar type); Pumpcrete gun operator; Rock Drill or similar types; Rotary drill operator (excluding caisson type); Rubber-tired earth-moving equipment operator (single engine, caterpillar, Euclid, Athey Wagon and similar types with any and all attachments over 25 yds. up to and including 50 cu. yds. struck); Rubber-tired earth-moving equipment operator (multiple engine up to and including 25 yds. struck); Rubber-tired scraper operator (self-loading paddle wheel type-John Deere, 1040 and similar single unit); Selfpropelled curb and gutter machine operator; Shuttle buggy;

Skiploader operator (crawler and wheel type over 1-1/2 yds. up to and including 6-1/2 yds.); Soil remediation plant operator; Surface heaters and planer operator; Tractor compressor drill combination operator; Tractor operator (any type larger than D-5 - 100 flywheel h.p. and over, or similar-bulldozer, tamper, scraper and push tractor single engine); Tractor operator (boom attachments), Traveling pipe wrapping, cleaning and bending machine operator; Trenching machine operator (over 6 ft. depth capacity, manufacturer's rating); trenching Machine with Road Miner attachment (over 6 ft depth capacity); Ultra high pressure waterjet cutting tool system mechanic; Water pull (compaction) operator

GROUP 9: Heavy Duty Repairman

GROUP 10: Drilling machine operator, Bucket or auger types (Calweld 200 B bucket or similar types-Watson 3000 or 5000 auger or similar types-Texoma 900 auger or similar types-drilling depth of 105' maximum); Dual drum mixer, dynamic compactor LDC350 (or similar types); Monorail locomotive operator (diesel, gas or electric); Motor patrol-blade operator (single engine); Multiple engine tractor operator (Euclid and similar type-except Quad 9 cat.); Rubber-tired earth-moving equipment operator (single engine, over 50 yds. struck); Pneumatic pipe ramming tool and similar types; Prestressed wrapping machine operator; Rubber-tired earth-moving equipment operator (single engine, over 50 yds. struck); Rubber tired earth moving equipment operator (multiple engine, Euclid, caterpillar and similar over 25 yds. and up to 50 yds. struck), Tower crane repairman; Tractor loader operator (crawler and wheel type over 6-1/2 yds.); Woods mixer operator (and similar Pugmill equipment)

GROUP 11: Heavy Duty Repairman - Welder Combination, Welder - Certified.

GROUP 12: Auto grader operator; Automatic slip form operator; Drilling machine operator, bucket or auger types (Calweld, auger 200 CA or similar types - Watson, auger 6000 or similar types - Hughes Super Duty, auger 200 or similar types - drilling depth of 175' maximum); Hoe ram or similar with compressor; Mass excavator operator less tha 750 cu. yards; Mechanical finishing machine operator; Mobile form traveler operator; Motor patrol operator (multi-engine); Pipe mobile machine operator; Rubber-tired earth- moving equipment operator (multiple engine, Euclid, Caterpillar and similar type, over 50 cu. yds. struck); Rubber-tired self- loading scraper operator (paddle-wheel-auger type

self-loading - two (2) or more units)

GROUP 13: Rubber-tired earth-moving equipment operator operating equipment with push-pull system (single engine, up to and including 25 yds. struck)

GROUP 14: Canal liner operator; Canal trimmer operator; Remote-control earth-moving equipment operator (operating a second piece of equipment: \$1.00 per hour additional); Wheel excavator operator (over 750 cu. yds.)

GROUP 15: Rubber-tired earth-moving equipment operator, operating equipment with push-pull system (single engine, Caterpillar, Euclid, Athey Wagon and similar types with any and all attachments over 25 yds. and up to and including 50 yds. struck); Rubber-tired earth-moving equipment operator, operating equipment with push-pull system (multiple engine-up to and including 25 yds. struck)

GROUP 16: Rubber-tired earth-moving equipment operator, operating equipment with push-pull system (single engine, over 50 yds. struck); Rubber-tired earth-moving equipment operator, operating equipment with push-pull system (multiple engine, Euclid, Caterpillar and similar, over 25 yds. and up to 50 yds. struck)

GROUP 17: Rubber-tired earth-moving equipment operator, operating equipment with push-pull system (multiple engine, Euclid, Caterpillar and similar, over 50 cu. yds. struck); Tandem tractor operator (operating crawler type tractors in tandem - Quad 9 and similar type)

GROUP 18: Rubber-tired earth-moving equipment operator, operating in tandem (scrapers, belly dumps and similar types in any combination, excluding compaction units - single engine, up to and including 25 yds. struck)

GROUP 19: Rotex concrete belt operator (or similar types); Rubber-tired earth-moving equipment operator, operating in tandem (scrapers, belly dumps and similar types in any combination, excluding compaction units - single engine, Caterpillar, Euclid, Athey Wagon and similar types with any and all attachments over 25 yds. and up to and including 50 cu. yds. struck); Rubber-tired earth-moving equipment operator, operating in tandem (scrapers, belly dumps and similar types in any combination, excluding compaction units - multiple engine, up to and including 25 yds. struck)

GROUP 20: Rubber-tired earth-moving equipment operator, operating in tandem (scrapers, belly dumps and similar types in any combination, excluding compaction units - single engine, over 50 yds. struck); Rubber-tired earth-moving equipment operator, operating in tandem (scrapers, belly dumps, and similar types in any

combination, excluding compaction units - multiple engine, Euclid, Caterpillar and similar, over 25 yds. and up to 50 yds. struck)

GROUP 21: Rubber-tired earth-moving equipment operator, operating in tandem (scrapers, belly dumps and similar types in any combination, excluding compaction units - multiple engine, Euclid, Caterpillar and similar type, over 50 cu. yds. struck)

GROUP 22: Rubber-tired earth-moving equipment operator, operating equipment with the tandem push-pull system (single engine, up to and including 25 yds. struck)

GROUP 23: Rubber-tired earth-moving equipment operator, operating equipment with the tandem push-pull system (single engine, Caterpillar, Euclid, Athey Wagon and similar types with any and all attachments over 25 yds. and up to and including 50 yds. struck); Rubber-tired earth-moving equipment operator, operating with the tandem push-pull system (multiple engine, up to and including 25 yds. struck)

GROUP 24: Rubber-tired earth-moving equipment operator, operating equipment with the tandem push-pull system (single engine, over 50 yds. struck); Rubber-tired earth-moving equipment operator, operating equipment with the tandem push-pull system (multiple engine, Euclid, Caterpillar and similar, over 25 yds. and up to 50 yds. struck)

GROUP 25: Concrete pump operator-truck mounted; Rubber-tired earth-moving equipment operator, operating equipment with the tandem push-pull system (multiple engine, Euclid, Caterpillar and similar type, over 50 cu. yds. struck)

#### CRANES, PILEDIVING AND HOISTING EQUIPMENT CLASSIFICATIONS

GROUP 1: Engineer oiler; Fork lift operator (includes loed, lull or similar types)

GROUP 2: Truck crane oiler

GROUP 3: A-frame or winch truck operator; Ross carrier operator (jobsite)

GROUP 4: Bridge-type unloader and turntable operator; Helicopter hoist operator

GROUP 5: Hydraulic boom truck; Stinger crane (Austin-Western or similar type); Tugger hoist operator (1 drum)

GROUP 6: Bridge crane operator; Cretor crane operator; Hoist operator (Chicago boom and similar type); Lift mobile operator; Lift slab machine operator (Vagtborg and similar types); Material hoist and/or manlift operator; Polar gantry crane operator; Self Climbing scaffold (or similar type); Shovel, backhoe, dragline, clamshell operator (over

3/4 yd. and up to 5 cu. yds. mrc); Tugger hoist operator  
GROUP 7: Pedestal crane operator; Shovel, backhoe, dragline, clamshell operator (over 5 cu. yds. mrc); Tower crane repair; Tugger hoist operator (3 drum)

GROUP 8: Crane operator (up to and including 25 ton capacity); Crawler transporter operator; Derrick barge operator (up to and including 25 ton capacity); Hoist operator, stiff legs, Guy derrick or similar type (up to and including 25 ton capacity); Shovel, backhoe, dragline, clamshell operator (over 7 cu. yds., M.R.C.)

GROUP 9: Crane operator (over 25 tons and up to and including 50 tons mrc); Derrick barge operator (over 25 tons up to and including 50 tons mrc); Highline cableway operator; Hoist operator, stiff legs, Guy derrick or similar type (over 25 tons up to and including 50 tons mrc); K-crane operator; Polar crane operator; Self erecting tower crane operator maximum lifting capacity ten tons

GROUP 10: Crane operator (over 50 tons and up to and including 100 tons mrc); Derrick barge operator (over 50 tons up to and including 100 tons mrc); Hoist operator, stiff legs, Guy derrick or similar type (over 50 tons up to and including 100 tons mrc), Mobile tower crane operator (over 50 tons, up to and including 100 tons M.R.C.); Tower crane operator and tower gantry

GROUP 11: Crane operator (over 100 tons and up to and including 200 tons mrc); Derrick barge operator (over 100 tons up to and including 200 tons mrc); Hoist operator, stiff legs, Guy derrick or similar type (over 100 tons up to and including 200 tons mrc); Mobile tower crane operator (over 100 tons up to and including 200 tons mrc)

GROUP 12: Crane operator (over 200 tons up to and including 300 tons mrc); Derrick barge operator (over 200 tons up to and including 300 tons mrc); Hoist operator, stiff legs, Guy derrick or similar type (over 200 tons, up to and including 300 tons mrc); Mobile tower crane operator (over 200 tons, up to and including 300 tons mrc)

GROUP 13: Crane operator (over 300 tons); Derrick barge operator (over 300 tons); Helicopter pilot; Hoist operator, stiff legs, Guy derrick or similar type (over 300 tons); Mobile tower crane operator (over 300 tons)

#### TUNNEL CLASSIFICATIONS

GROUP 1: Skiploader (wheel type up to 3/4 yd. without attachment)

GROUP 2: Power-driven jumbo form setter operator

GROUP 3: Dinkey locomotive or motorperson (up to and including 10 tons)

GROUP 4: Bit sharpener; Equipment greaser (grease truck); Slip form pump operator (power-driven hydraulic lifting device for concrete forms); Tugger hoist operator (1 drum); Tunnel locomotive operator (over 10 and up to and including 30 tons)

GROUP 5: Backhoe operator (up to and including 3/4 yd.); Small Ford, Case or similar; Drill doctor; Grouting machine operator; Heading shield operator; Heavy-duty repairperson; Loader operator (Athey, Euclid, Sierra and similar types); Mucking machine operator (1/4 yd., rubber-tired, rail or track type); Pneumatic concrete placing machine operator (Hackley-Presswell or similar type); Pneumatic heading shield (tunnel); Pumpcrete gun operator; Tractor compressor drill combination operator; Tugger hoist operator (2 drum); Tunnel locomotive operator (over 30 tons)

GROUP 6: Heavy Duty Repairman

GROUP 7: Tunnel mole boring machine operator

#### ENGINEERS ZONES

\$1.00 additional per hour for all of IMPERIAL County and the portions of KERN, RIVERSIDE & SAN BERNARDINO Counties as defined below:

That area within the following Boundary: Begin in San Bernardino County, approximately 3 miles NE of the intersection of I-15 and the California State line at that point which is the NW corner of Section 1, T17N,m R14E, San Bernardino Meridian. Continue W in a straight line to that point which is the SW corner of the northwest quarter of Section 6, T27S, R42E, Mt. Diablo Meridian. Continue North to the intersection with the Inyo County Boundary at that point which is the NE corner of the western half of the northern quarter of Section 6, T25S, R42E, MDM. Continue W along the Inyo and San Bernardino County boundary until the intersection with Kern County, as that point which is the SE corner of Section 34, T24S, R40E, MDM. Continue W along the Inyo and Kern County boundary until the intersection with Tulare County, at that point which is the SW corner of the SE quarter of Section 32, T24S, R37E, MDM. Continue W along the Kern and Tulare County boundary, until that point which is the NW corner of T25S, R32E, MDM. Continue S following R32E lines to the NW corner of T31S, R32E, MDM. Continue W to the NW corner of T31S, R31E, MDM. Continue S to the SW corner of T32S, R31E, MDM. Continue W to SW corner of SE quarter of Section 34, T32S, R30E, MDM. Continue S to SW corner of T11N, R17W, SBM. Continue E along south boundary of T11N, SBM to SW corner of T11N, R7W, SBM. Continue S to SW corner of T9N, R7W, SBM. Continue E along south boundary of T9N, SBM to SW corner of T9N, R1E, SBM.



Continue S along west boundary of R1E, SMB to Riverside County line at the SW corner of T1S, R1E, SBM. Continue E along south boundary of T1s, SBM (Riverside County Line) to SW corner of T1S, R10E, SBM. Continue S along west boundary of R10E, SBM to Imperial County line at the SW corner of T8S, R10E, SBM. Continue W along Imperial and Riverside county line to NW corner of T9S, R9E, SBM. Continue S along the boundary between Imperial and San Diego Counties, along the west edge of R9E, SBM to the south boundary of Imperial County/California state line. Follow the California state line west to Arizona state line, then north to Nevada state line, then continuing NW back to start at the point which is the NW corner of Section 1, T17N, R14E, SBM

\$1.00 additional per hour for portions of SAN LUIS OBISPO, KERN, SANTA BARBARA & VENTURA as defined below:

That area within the following Boundary: Begin approximately 5 miles north of the community of Cholame, on the Monterey County and San Luis Obispo County boundary at the NW corner of T25S, R16E, Mt. Diablo Meridian. Continue south along the west side of R16E to the SW corner of T30S, R16E, MDM. Continue E to SW corner of T30S, R17E, MDM. Continue S to SW corner of T31S, R17E, MDM. Continue E to SW corner of T31S, R18E, MDM. Continue S along West side of R18E, MDM as it crosses into San Bernardino Meridian numbering area and becomes R30W. Follow the west side of R30W, SBM to the SW corner of T9N, R30W, SBM. Continue E along the south edge of T9N, SBM to the Santa Barbara County and Ventura County boundary at that point which is the SW corner of Section 34. T9N, R24W, SBM, continue S along the Ventura County line to that point which is the SW corner of the SE quarter of Section 32, T7N, R24W, SBM. Continue E along the south edge of T7N, SBM to the SE corner to T7N, R21W, SBM. Continue N along East side of R21W, SBM to Ventura County and Kern County boundary at the NE corner of T8N, R21W. Continue W along the Ventura County and Kern County boundary to the SE corner of T9N, R21W. Continue North along the East edge of R21W, SBM to the NE corner of T12N, R21W, SBM. Continue West along the north edge of T12N, SBM to the SE corner of T32S, R21E, MDM. [T12N SBM is a think strip between T11N SBM and T32S MDM]. Continue North along the East side of R21E, MDM to the Kings County and Kern County border at the NE corner of T25S, R21E, MDM, continue West along the Kings County and Kern County Boundary until the intersection of San Luis Obispo County. Continue west along the Kings County and San Luis Obispo County boundary until the intersection with Monterey County. Continue West along the Monterey County and San Luis Obispo County boundary to the beginning point at the NW corner

of T25S, R16E, MDM.  
\$2.00 additional per hour for INYO and MONO Counties and the Northern portion of SAN BERNARDINO County as defined below:  
That area within the following Boundary: Begin at the intersection of the northern boundary of Mono County and the California state line at the point which is the center of Section 17, T10N, R22E, Mt. Diablo Meridian. Continue S then SE along the entire western boundary of Mono County, until it reaches Inyo County at the point which is the NE corner of the Western half of the NW quarter of Section 2, T8S, R29E, MDM. Continue SSE along the entire western boundary of Inyo County, until the intersection with Kern County at the point which is the SW corner of the SE ¼ of Section 32, T24S, R37E, MDM. Continue E along the Inyo and Kern County boundary until the intersection with San Bernardino County at that point which is the SE corner of section 34, T24S, R40E, MDM. Continue E along the Inyo and San Bernardino County boundary until the point which is the NE corner of the Western half of the NW quarter of Section 6, T25S, R42E, MDM. Continue S to that point which is the SW corner of the NW quarter of Section 6, T27S, R42E, MDM. Continue E in a straight line to the California and Nevada state border at the point which is the NW corner of Section 1, T17N, R14E, San Bernardino Meridian. Then continue NW along the state line to the starting point, which is the center of Section 18, T10N, R22E, MDM.

REMAINING AREA NOT DEFINED ABOVE RECIEVES BASE RATE

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ENGI0012-004 08/01/2009

Rates Fringes

OPERATOR: Power Equipment  
(DREDGING)

(1) Leverman.....	\$ 44.83	17.22
(2) Dredge dozer.....	\$ 40.36	17.22
(3) Deckmate.....	\$ 40.25	17.22
(4) Winch operator (stern winch on dredge).....	\$ 39.70	17.22
(5) Fireman-Oiler, Deckhand, Bargeman, Leveehand.....	\$ 39.16	17.22
(6) Barge Mate.....	\$ 39.77	17.22

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IRON0002-004 07/01/2010

Rates Fringes

Ironworkers:

Fence Erector.....	\$ 26.58	15.26
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Ornamental, Reinforcing

and Structural.....\$ 33.00 23.73

PREMIUM PAY:

\$6.00 additional per hour at the following locations:

China Lake Naval Test Station, Chocolate Mountains Naval Reserve-Niland,

Edwards AFB, Fort Irwin Military Station, Fort Irwin Training

Center-Goldstone, San Clemente Island, San Nicholas Island,

Susanville Federal Prison, 29 Palms - Marine Corps, U.S. Marine

Base - Barstow, U.S. Naval Air Facility - Sealey, Vandenberg AFB

\$4.00 additional per hour at the following locations:

Army Defense Language Institute - Monterey, Fallon Air Base,

Naval Post Graduate School - Monterey, Yermo Marine Corps

Logistics Center

\$2.00 additional per hour at the following locations:

Port Hueneme, Port Mugu, U.S. Coast Guard Station - Two Rock

LABO0300-001 07/01/2011

Rates Fringes

Brick Tender.....\$ 27.17 16.71

LABO0300-003 07/01/2011

Rates Fringes

LABORER (GUNITE)

GROUP 1.....\$ 30.04 14.20

GROUP 2.....\$ 29.09 14.20

GROUP 3.....\$ 25.55 14.20

LABORER (TUNNEL)

GROUP 1.....\$ 32.20 15.98

GROUP 2.....\$ 32.52 15.98

GROUP 3.....\$ 32.98 15.98

GROUP 4.....\$ 33.67 15.98

LABORER

GROUP 1.....\$ 26.33 16.00

GROUP 2.....\$ 26.88 16.00

GROUP 3.....\$ 27.43 16.00

GROUP 4.....\$ 28.98 16.00

GROUP 5.....\$ 29.33 16.00

FOOTNOTE: GUNITE PREMIUM PAY: Workers working from a

Bosn'n's Chair or suspended from a rope or cable shall

receive 40 cents per hour above the foregoing applicable

classification rates. Workers doing gunite and/or

shotcrete work in a tunnel shall receive 35 cents per hour

above the foregoing applicable classification rates, paid

on a portal-to-portal basis. Any work performed on, in or

above any smoke stack, silo, storage elevator or similar

type of structure, when such structure is in excess of

75'-0" above base level and which work must be performed in whole or in part more than 75'-0" above base level, that work performed above the 75'-0" level shall be compensated for at 35 cents per hour above the applicable classification wage rate.

#### LABORER CLASSIFICATIONS

GROUP 1: Cleaning and handling of panel forms; Concrete screeding for rough strike-off; Concrete, water curing; Demolition laborer, the cleaning of brick if performed by a worker performing any other phase of demolition work, and the cleaning of lumber; Fire watcher, limber, brush loader, piler and debris handler; Flag person; Gas, oil and/or water pipeline laborer; Laborer, asphalt-rubber material loader; Laborer, general or construction; Laborer, general clean-up; Laborer, landscaping; Laborer, jetting; Laborer, temporary water and air lines; Material hose operator (walls, slabs, floors and decks); Plugging, filling of shee bolt holes; Dry packing of concrete; Railroad maintenance, repair track person and road beds; Streetcar and railroad construction track laborers; Rigging and signaling; Scaler; Slip form raiser; Tar and mortar; Tool crib or tool house laborer; Traffic control by any method; Window cleaner; Wire mesh pulling - all concrete pouring operations

GROUP 2: Asphalt shoveler; Cement dumper (on 1 yd. or larger mixer and handling bulk cement); Cesspool digger and installer; Chucktender; Chute handler, pouring concrete, the handling of the chute from readymix trucks, such as walls, slabs, decks, floors, foundation, footings, curbs, gutters and sidewalks; Concrete curer, impervious membrane and form oiler; Cutting torch operator (demolition); Fine grader, highways and street paving, airport, runways and similar type heavy construction; Gas, oil and/or water pipeline wrapper - pot tender and form person; Guinea chaser; Headerboard person - asphalt; Laborer, packing rod steel and pans; Membrane vapor barrier installer; Power broom sweeper (small); Riprap stonepaver, placing stone or wet sacked concrete; Roto scraper and tiller; Sandblaster (pot tender); Septic tank digger and installer(lead); Tank scaler and cleaner; Tree climber, faller, chain saw operator, Pittsburgh chipper and similar type brush shredder; Underground laborer, including caisson bellower

GROUP 3: Buggymobile person; Concrete cutting torch; Concrete pile cutter; Driller, jackhammer, 2-1/2 ft. drill steel or longer; Dri-pak-it machine; Gas, oil and/or water pipeline wrapper, 6-in. pipe and over, by any method, inside and out; High scaler (including drilling of same); Hydro seeder

and similar type; Impact wrench multi-plate; Kettle person, pot person and workers applying asphalt, lay-kold, creosote, lime caustic and similar type materials ("applying" means applying, dipping, brushing or handling of such materials for pipe wrapping and waterproofing); Operator of pneumatic, gas, electric tools, vibrating machine, pavement breaker, air blasting, come-alongs, and similar mechanical tools not separately classified herein; Pipelayer's backup person, coating, grouting, making of joints, sealing, caulking, diapering and including rubber gasket joints, pointing and any and all other services; Rock slinger; Rotary scarifier or multiple head concrete chipping scarifier; Steel headerboard and guideline setter; Tamper, Barko, Wacker and similar type; Trenching machine, hand-propelled

GROUP 4: Asphalt raker, lute person, ironer, asphalt dump person, and asphalt spreader boxes (all types); Concrete core cutter (walls, floors or ceilings), grinder or sander; Concrete saw person, cutting walls or flat work, scoring old or new concrete; Cribber, shorer, lagging, sheeting and trench bracing, hand-guided lagging hammer; Head rock slinger; Laborer, asphalt- rubber distributor boot person; Laser beam in connection with laborers' work; Oversize concrete vibrator operator, 70 lbs. and over; Pipelayer performing all services in the laying and installation of pipe from the point of receiving pipe in the ditch until completion of operation, including any and all forms of tubular material, whether pipe, metallic or non-metallic, conduit and any other stationary type of tubular device used for the conveying of any substance or element, whether water, sewage, solid gas, air, or other product whatsoever and without regard to the nature of material from which the tubular material is fabricated; No-joint pipe and stripping of same; Prefabricated manhole installer; Sandblaster (nozzle person), water blasting, Porta Shot-Blast

GROUP 5: Blaster powder, all work of loading holes, placing and blasting of all powder and explosives of whatever type, regardless of method used for such loading and placing; Driller: All power drills, excluding jackhammer, whether core, diamond, wagon, track, multiple unit, and any and all other types of mechanical drills without regard to the form of motive power; Toxic waste removal

#### TUNNEL LABORER CLASSIFICATIONS

GROUP 1: Batch plant laborer; Bull gang mucker, track person; Changehouse person; Concrete crew, including rodger and spreader; Dump person; Dump person (outside); Swamper

(brake person and switch person on tunnel work); Tunnel materials handling person  
GROUP 2: Chucktender, cabletender; Loading and unloading agitator cars; Nipper; Pot tender, using mastic or other materials (for example, but not by way of limitation, shotcrete, etc.); Vibrator person, jack hammer, pneumatic tools (except driller)  
GROUP 3: Blaster, driller, powder person; Chemical grout jet person; Cherry picker person; Grout gun person; Grout mixer person; Grout pump person; Jackleg miner; Jumbo person; Kemper and other pneumatic concrete placer operator; Miner, tunnel (hand or machine); Nozzle person; Operating of troweling and/or grouting machines; Powder person (primer house); Primer person; Sandblaster; Shotcrete person; Steel form raiser and setter; Timber person, retimber person, wood or steel; Tunnel Concrete finisher  
GROUP 4: Diamond driller; Sandblaster; Shaft and raise work  
GUNITE LABORER CLASSIFICATIONS  
GROUP 1: Rodmen, Nozzlemen  
GROUP 2: Gunmen  
GROUP 3: Reboundmen

LABO0300-005 08/05/2009  
Rates Fringes  
LABORER  
PLASTER CLEAN-UP LABORER....\$ 26.65 15.95  
PLASTER TENDER.....\$ 29.20 15.95

LABO0882-002 01/01/2010  
Rates Fringes  
Asbestos Removal Laborer.....\$ 26.15 11.65  
SCOPE OF WORK: Includes site mobilization, initial site cleanup, site preparation, removal of asbestos-containing material and toxic waste, encapsulation, enclosure and disposal of asbestos- containing materials and toxic waste by hand or with equipment or machinery; scaffolding, fabrication of temporary wooden barriers and assembly of decontamination stations.

LABO1184-001 07/01/2011  
Rates Fringes  
Laborers: (HORIZONTAL DIRECTIONAL DRILLING)  
(1) Drilling Crew Laborer...\$ 28.01 11.48  
(2) Vehicle Operator/Hauler.\$ 28.18 11.48  
(3) Horizontal Directional

Drill Operator.....\$ 30.03 11.48

(4) Electronic Tracking

Locator.....\$ 32.03 11.48

Laborers: (STRIPING/SLURRY  
SEAL)

GROUP 1.....\$ 28.50 14.56

GROUP 2.....\$ 29.80 14.56

GROUP 3.....\$ 31.81 14.56

GROUP 4.....\$ 33.55 14.56

#### LABORERS - STRIPING CLASSIFICATIONS

GROUP 1: Protective coating, pavement sealing, including repair and filling of cracks by any method on any surface in parking lots, game courts and playgrounds; carstops; operation of all related machinery and equipment; equipment repair technician

GROUP 2: Traffic surface abrasive blaster; pot tender - removal of all traffic lines and markings by any method (sandblasting, waterblasting, grinding, etc.) and preparation of surface for coatings. Traffic control person: controlling and directing traffic through both conventional and moving lane closures; operation of all related machinery and equipment

GROUP 3: Traffic delineating device applicator: Layout and application of pavement markers, delineating signs, rumble and traffic bars, adhesives, guide markers, other traffic delineating devices including traffic control. This category includes all traffic related surface preparation (sandblasting, waterblasting, grinding) as part of the application process. Traffic protective delineating system installer: removes, relocates, installs, permanently affixed roadside and parking delineation barricades, fencing, cable anchor, guard rail, reference signs, monument markers; operation of all related machinery and equipment; power broom sweeper

GROUP 4: Striper: layout and application of traffic stripes and markings; hot thermo plastic; tape traffic stripes and markings, including traffic control; operation of all related machinery and equipment

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PAIN0036-007 01/01/2011

Rates Fringes

Painters:

(1) Repaint Including Lead

Abatement.....\$ 23.10 10.08

(2) High Iron & Steel.....\$ 29.39 10.08

(3) Journeyman Painter

including Lead Abatement....\$ 27.39 10.08  
(4) Industrial.....\$ 29.32 10.08  
(5) All other work.....\$ 27.39 10.08  
REPAINT of any previously painted structure. Exceptions: work  
involving the aerospace industry, breweries, commercial  
recreational facilities, hotels which operate commercial  
establishments as part of hotel service, and sports facilities.  
HIGH IRON & STEEL:  
Aerial towers, towers, radio towers, smoke stacks, flag poles  
(any flag poles that can be finished from the ground with a  
ladder excluded), elevated water towers, steeples and domes in  
their entirety and any other extremely high and hazardous work,  
cooning steel, bos'n chair, or other similar devices, painting  
in other high hazardous work shall be classified as high iron &  
steel

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PAIN0036-008 01/05/2011  
Rates Fringes  
DRYWALL FINISHER/TAPER.....\$ 33.22 12.94  
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PAIN0169-002 07/01/2011  
Rates Fringes  
GLAZIER.....\$ 27.07 9.98  
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PAIN1247-002 01/01/2010  
Rates Fringes  
SOFT FLOOR LAYER.....\$ 30.85 10.54  
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PLAS0200-001 08/01/2011  
Rates Fringes  
PLASTERER.....\$ 35.29 12.05  
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PLAS0500-002 07/16/2011  
Rates Fringes  
CEMENT MASON/CONCRETE FINISHER...\$ 30.75 11.45  
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PLUM0016-001 07/01/2011  
Rates Fringes  
PLUMBER/PIPEFITTER  
(1) Work on strip malls,  
light commercial, tenant  
improvement and remodel  
work.....\$ 30.79 16.70  
(2) Work on new additions  
and remodeling of bars,  
restaurant, stores and



commercial buildings not  
to exceed 5,000 sq. ft. of  
floor space.....\$ 38.30 18.37  
(3) All other work.....\$ 39.50 19.35

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PLUM0345-001 07/01/2011

Rates Fringes

PLUMBER

Landscape/Irrigation Fitter.\$ 27.35 16.34

Sewer & Storm Drain Work....\$ 26.82 18.18

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ROOF0036-002 08/01/2011

Rates Fringes

ROOFER.....\$ 34.65 10.71

FOOTNOTE: Pitch premium: Work on which employees are exposed  
to pitch fumes or required to handle pitch, pitch base or  
pitch impregnated products, or any material containing coal  
tar pitch, the entire roofing crew shall receive \$1.75 per  
hour "pitch premium" pay.

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SFCA0669-007 04/01/2011

Rates Fringes

SPRINKLER FITTER.....\$ 33.35 17.75

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SHEE0273-002 08/01/2011

Rates Fringes

SHEET METAL WORKER.....\$ 40.00 18.19

HOLIDAYS: New Year's Day, Martin Luther King Day, President's  
Day, Good Friday, Memorial Day, Independence Day, Labor  
Day, Veterans Day,Thanksgiving Day & Friday after,  
Christmas Day

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TEAM0011-002 07/01/2008

Rates Fringes

TRUCK DRIVER

GROUP 1.....\$ 26.44 18.24

GROUP 2.....\$ 26.59 18.24

GROUP 3.....\$ 26.72 18.24

GROUP 4.....\$ 26.91 18.24

GROUP 5.....\$ 26.94 18.24

GROUP 6.....\$ 26.97 18.24

GROUP 7.....\$ 27.22 18.24

GROUP 8.....\$ 27.47 18.24

GROUP 9.....\$ 27.67 18.24

GROUP 10.....\$ 27.97 18.24

GROUP 11.....\$ 28.47 18.24

GROUP 12.....\$ 28.90 18.24

WORK ON ALL MILITARY BASES:

PREMIUM PAY: \$3.00 per hour additional.

[29 palms Marine Base, Camp Roberts, China Lake, Edwards AFB,  
El Centro Naval Facility, Fort Irwin, Marine Corps  
Logistics Base at Nebo & Yermo, Mountain Warfare Training  
Center, Bridgeport, Point Arguello, Point Conception,  
Vandenberg AFB]

#### TRUCK DRIVERS CLASSIFICATIONS

GROUP 1: Truck driver

GROUP 2: Driver of vehicle or combination of vehicles - 2  
axles; Traffic control pilot car excluding moving heavy  
equipment permit load; Truck mounted broom

GROUP 3: Driver of vehicle or combination of vehicles - 3  
axles; Boot person; Cement mason distribution truck; Fuel  
truck driver; Water truck - 2 axle; Dump truck, less than  
16 yds. water level; Erosion control driver

GROUP 4: Driver of transit mix truck, under 3 yds.; Dumpcrete  
truck, less than 6-1/2 yds. water level

GROUP 5: Water truck, 3 or more axles; Truck greaser and tire  
person (\$0.50 additional for tire person); Pipeline and  
utility working truck driver, including winch truck and  
plastic fusion, limited to pipeline and utility work;  
Slurry truck driver

GROUP 6: Transit mix truck, 3 yds. or more; Dumpcrete truck,  
6-1/2 yds. water level and over; Vehicle or combination of  
vehicles - 4 or more axles; Oil spreader truck; Dump truck,  
16 yds. to 25 yds. water level

GROUP 7: A Frame, Swedish crane or similar; Forklift driver;  
Ross carrier driver

GROUP 8: Dump truck, 25 yds. to 49 yds. water level; Truck  
repair person; Water pull - single engine; Welder

GROUP 9: Truck repair person/welder; Low bed driver, 9 axles  
or over

GROUP 10: Dump truck - 50 yds. or more water level; Water  
pull - single engine with attachment

GROUP 11: Water pull - twin engine; Water pull - twin engine  
with attachments; Winch truck driver - \$1.25 additional  
when operating winch or similar special attachments

GROUP 12: Boom Truck 17K and above

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WELDERS - Receive rate prescribed for craft performing  
operation to which welding is incidental.

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Unlisted classifications needed for work not included within  
the scope of the classifications listed may be added after

award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

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In the listing above, the "SU" designation means that rates listed under the identifier do not reflect collectively bargained wage and fringe benefit rates. Other designations indicate unions whose rates have been determined to be prevailing.

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**WAGE DETERMINATION APPEALS PROCESS**

1.) Has there been an initial decision in the matter? This can be:

- \* an existing published wage determination
- \* a survey underlying a wage determination
- \* a Wage and Hour Division letter setting forth a position on a wage determination matter
- \* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations  
Wage and Hour Division  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative

Review Board (formerly the Wage Appeals Board). Write to:  
Administrative Review Board  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210  
4.) All decisions by the Administrative Review Board are final.

=====

END OF GENERAL DECISION

AA-9

Exhibit AA  
Davis Bacon Act Wage Determination

**EXHIBIT BB**

**FORM OF ESCROW AGREEMENT**

**ESCROW AGREEMENT**

among

High Plains Ranch II, LLC

and

Escrow Associates, LLC

and

SunPower Corporation, Systems

and

SunPower Corporation

BB-1

Exhibit BB  
Form of Escrow Agreement

## **ESCROW AGREEMENT**

This Escrow Agreement (this “Agreement”) is made and entered into as of September [\_\_\_], 2011 (the “Effective Date”) by and among High Plains Ranch II, LLC, a Delaware limited liability company (“HPR II” or “Customer”), a Escrow Associates, LLC (“Agent”), SunPower Corporation, Systems, a Delaware corporation (“Supplier”) and SunPower Corporation, a Delaware corporation (“Owner”).

### **RECITALS**

**WHEREAS**, HPR II is developing a 250 MW AC design capacity photovoltaic power plant in San Luis Obispo County, California (the “PV Power Plant”);

**WHEREAS**, Customer is party to that certain Engineering, Procurement, and Construction Agreement dated September [\_\_\_], 2011 (the “EPC Contract”), pursuant to which Customer engaged Supplier to engineer and construct the PV Power Plant and to deliver amongst other things photovoltaic modules and related engineered systems for incorporation into the PV Power Plant;

**WHEREAS**, pursuant to the terms of the EPC Contract, Supplier is required to arrange for having certain documents (the “Documents”), as more particularly defined in Exhibit A attached hereto, placed in escrow (the “Contract Escrow”) in accordance with the terms of this Agreement;

**WHEREAS**, Owner is the proprietor of the Documents;

**WHEREAS**, Agent is a nationally recognized escrow agent; and

**WHEREAS**, Customer, Supplier, Owner and Agent desire that Agent maintain the Contract Escrow.

**NOW, THEREFORE**, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Customer, Supplier, Owner and Agent hereby agree as follows:

### **AGREEMENT**

1. **Escrow Agent.**

a. Owner shall deliver the Documents to Agent within one (1) month after the first delivery of photovoltaic modules under the Supply Agreement. Agent shall hold the Documents for the benefit of Customer as provided hereunder.

b. Owner agrees that if any modifications or alterations are made to the Documents, Owner shall deliver to Agent revised and amended versions of the Documents reflecting such modifications or alterations which shall subsequently be placed in the Contract Escrow.

2. **Escrow Content.** Upon the request of Customer, Agent shall issue to Customer a detailed list of the Documents in the Contract Escrow.

3. **Release of Documents.**

a. Agent shall release the Documents to Customer in the event one or more of the following conditions has occurred and has been continuing for more than ninety (90) days:

i. Supplier or Owner are adjudged bankrupt under applicable bankruptcy laws by a court of competent jurisdiction and neither of the following have happened: (i) the bankruptcy estate of Supplier or the bankruptcy estate of Owner has entered into this Agreement on behalf of Supplier; or (ii) an agreement has been made between Customer and the bankruptcy estate of Supplier or the bankruptcy estate of Owner which ensures that Supplier's remaining contractual obligations to Customer under the EPC Contract (if the EPC Contract is then in effect) will be fulfilled;

ii. Insolvency, receivership, reorganization, bankruptcy, or similar proceedings shall have been commenced against Supplier or Owner and such proceedings remain undismissed or unstayed for a period of ninety (90) days, provided that Customer and the bankruptcy estate of Supplier or the bankruptcy estate of Owner have not entered into an agreement which ensures that Supplier's remaining contractual obligations under the EPC Contract will be fulfilled; or

iii. Supplier or Owner have permanently ceased to do business within the solar energy industry and have not transferred their businesses to an alternative supplier.

b. Agent shall in no event deliver the Documents to Customer if Agent receives an arbitration award or court order to the contrary issued by a tribunal having competent jurisdiction.

c. Each of Customer and Agent acknowledges and agrees that Supplier and Owner will suffer irreparable harm to their business and operations in the event that release of the Documents to Customer pursuant to the terms hereof is caused by an inaccurate Release Request Notice (defined below), and that notwithstanding any other provisions of this Agreement, Supplier and Owner may petition a court of competent jurisdiction for injunctive relief solely to prevent the release of the Documents not in conformance with the terms hereof.

4. **Release Procedure.** If Customer considers itself entitled to affect the release of the Documents from the Contract Escrow, the following procedures shall apply:

a. Customer shall send a notice in the form set forth in Exhibit B (a "Release Request Notice") to Agent (with a copy to Owner and Supplier). Such Release Request Notice shall describe in detail the release conditions that have occurred and the Documents Customer desires Agent to release.

b. Within five (5) Business Days of receipt of the Release Request Notice, Agent shall send a copy of the Release Request Notice to Owner.

c. If Owner consents in writing to the request for release or if Owner does not respond to Agent within ten (10) calendar days from the date of receipt of the copy of the Release Request Notice, then Agent shall deliver the Documents set forth in such Release Request Notice to Customer immediately following the expiration of such ten (10) calendar day period.

d. If Owner objects to the release of the Documents within ten (10) calendar days from the date of its receipt of the copy of the Release Request Notice, and if Customer maintains its demands, the matters shall be resolved in accordance with the procedures set forth Section 14(e). In this case, Agent shall not deliver the Documents to Customer, but shall await the order of the arbitration panel.

e. All notices required under this Section 4 shall comply with the requirements of Section 14(c).

5. **License.** Customer's right to use the Documents released to it (the "Released Documents") is subject to a limited license. Owner hereby grants to Customer a perpetual, non-exclusive, non-transferable license to use, copy, and adapt the Released Documents but only for internal use for the operation and maintenance of the PV Power Plant. CUSTOMER ASSUMES ALL RISK FROM ITS USE OF THE RELEASED MATERIALS. OWNER DISCLAIMS ALL WARRANTIES REGARDING THE RELEASED MATERIALS INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE DOCUMENTS.

6. **Confidentiality.**

a. Customer acknowledges that the Documents and the information contained therein are confidential and proprietary to Owner, constitute trade secrets and derive independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from their disclosure or use.

b. Customer shall protect the Released Documents against unauthorized use or disclosure with the same degree of protection the Customer uses to protect its own confidential information, but no less than reasonable care. Customer shall use the Released Documents only as expressly permitted by this Agreement, and shall limit the disclosure of Released Documents to consultants, auditors, employees, contractors, subcontractors or agents of the Customer who have a need to know such information for purposes expressly authorized by this Agreement and who are (i) bound in writing by confidentiality terms no less restrictive than those contained herein or (ii) bound by ethical requirements of their profession to keep such Released Documents confidential. The Customer shall, upon request by the Supplier or Owner, provide Supplier and/or Owner with a list of the parties to whom it has disclosed Released Documents, including a list of the documents so released and, if applicable, copies of the written confidentiality agreements with such parties. Notwithstanding anything contained herein, Customer shall not disclose, or cause to be disclosed, any Released Documents to any entity that designs, manufactures or maintains photovoltaic modules or an affiliate of any such entity (other than Supplier, Owner or their affiliates).



c. Notwithstanding anything to the contrary contained herein, the Customer may disclose Released Documents to the extent required to comply with an order of a court or legislative or regulatory body with appropriate jurisdiction (collectively “Governmental Authority”) or as required to be disclosed under law, provided that the Customer (i) provides reasonable prior written notice and a copy of the order of the Governmental Authority to the Supplier and Owner, (ii) cooperates with the Supplier and Owner if either seek to obtain a protective order or other remedy preventing or limiting disclosure, and (iii) seeks confidential treatment of any Released Documents required to be disclosed before disclosure. The Customer shall not disclose any Released Documents that it is not legally required to disclose in order to comply with the order of a Governmental Authority or applicable law.

d. Customer acknowledges that Supplier and Owner believe that the Released Documents are unique property of extreme value, and the unauthorized use or disclosure thereof would cause Supplier and Owner irreparable harm that could not be compensated by monetary damages. Accordingly, Customer agrees that Supplier or Owner may seek, from any court of competent jurisdiction, injunctive and preliminary relief to remedy any actual or threatened unauthorized use or disclosure of the Released Documents, and Customer shall not plead in defense thereto that there would be an adequate remedy at law.

e. The covenants and obligations contained in this Section 6 shall survive release of the Documents and termination of this Agreement.

7. **Rights, Duties and Immunities of Agent.** The acceptance by Agent of its duties under this Agreement is subject to the following terms and conditions, which all parties to this Agreement hereby agree shall govern and control the rights, duties and immunities of Agent:

a. The duties and obligations of Agent shall be determined solely by the express provisions of this Agreement and Agent shall not be liable except for the performance of such duties and obligations as are specifically set out in this Agreement;

b. Agent shall not be liable for the correctness or completeness of the Documents;

c. Agent shall not be obliged to release anything except the Documents;

d. Agent shall not be responsible for acting in accordance with any notice or instructions which Agent in good faith believes to have been signed by the proper party; and

e. Agent shall only be liable for its gross negligence or wilful misconduct.

8. **Resignation of Agent.**

a. Agent shall have the right to resign after providing ninety (90) days written notice to Owner, Supplier and Customer.

b. In the event of such resignation, Owner, Supplier and Customer shall mutually agree and appoint a successor of Agent and notify Agent of such successor within such ninety (90) day notice period.

c. If no such successor can be mutually agreed by Owner, Supplier and Customer, Agent shall deposit the Documents with one of the leading banks in California. Such transfer and deposit shall be made for the account and at the expense of Customer and the Documents shall only be released (i) to Owner if Customer fails to make timely payment to such bank of any fees, costs or expenses charged by such bank to Customer or (ii) to Customer upon presentation to such bank of the documentation listed in Section 3.

d. Within thirty (30) calendar days following the receipt of the notification of the successor, Agent shall arrange for transferring the Documents to the custody of the successor. The costs of such transfer, including the payment of any new or additional escrow fees, shall be for the account and at the expense of Customer.

e. Subsequent to such complete transfer of the Documents, Agent shall be released from any and all of its obligations hereunder.

9. **Escrow Fee.** In consideration of the Contract Escrow being established and maintained as set forth herein, Customer shall pay to Agent the amount of (a) Three Thousand Two Hundred Fifty dollars (\$3250) for establishment of the Contract Escrow and the first year of the Term, and (b) Two Thousand Two Hundred Fifty dollars (\$2250) per year for each additional year of the Term (collectively, the “Escrow Fee”). Within fifteen (15) business days of the Effective Date, Customer shall pay to Agent the entire Escrow Fee in advance for the full Term.

10. **Term.** This Contract Escrow deposit is made for a period of twenty (20) years from the date of the commencement of commercial operations of the PV Power Plant and shall remain in force unless expired or until such time as this Agreement has been terminated by one of the parties hereto and the notice period applicable to any such termination has expired (the “Term”).

11. **Termination.**

a. This Agreement can be terminated at any time by Customer or jointly by Customer, Supplier and Owner.

b. Termination shall be in writing and effective after three (3) months notice.

c. Owner may terminate this Agreement (i) if Customer is in material breach of its obligations under this Agreement and such failure is not cured within fifteen (15) days following receipt of written notice thereof, (ii) immediately upon the bankruptcy, suspension of payments, insolvency or compulsory composition of Customer or any permitted assignee of rights in the PV Power Plant, (iii) immediately upon any dismantling of the PV Power Plant or (iv) immediately upon an assignment of this Agreement by Customer in violation of the provisions of Section 14(a).

12. **Consequences of Expiration or Termination.**

a. Upon expiration of this Agreement, the Documents shall be released by Agent to Owner. If Owner cannot be located, Agent shall destroy the Documents.

b. If Customer disagrees as to whether Owner or Supplier is entitled to terminate this Agreement, this Agreement shall not be terminated until Owner and/or Supplier's right to terminate has been documented by settlement or a final arbitration award.

13. **Indemnification.** Each party shall defend, indemnify and hold harmless the others, their corporate affiliates and their respective officers, directors, employees, and agents and their respective successors and assigns from and against any and all losses, liabilities, damages, and expenses (including, without limitation, reasonable attorneys' fees) arising from claims asserted by third parties as a result of the negligent or intentional acts or omissions of the indemnifying party or its subcontractors, or the officers, directors, employees, agents, successors and assigns of any of them. In no event shall any indemnifying party's indemnification obligations under this agreement exceed Fifty Thousand dollars (\$50,000).

14. **Rules of Interpretation.**

a. **Headings.** The section headings have been inserted for convenience of reference only and shall not in any manner affect the construction, meaning or effect of anything herein contained nor govern the rights and liabilities of the parties.

b. **Negative Obligations.** Any obligation not to do something shall be deemed to include an obligation not to suffer, permit or cause that thing to be done.

c. **Entire Agreement.** The terms and conditions set forth herein constitute the complete and exclusive statement of the agreement of the parties hereto relating to the subject matter of this Agreement, superseding all previous negotiations and understandings, and may not be contradicted by evidence of any prior or contemporaneous agreement.

d. **Modification or Amendment.** This Agreement may only be modified or amended by an instrument in writing duly executed and delivered by the parties or their duly authorized representatives.

e. **Severability.** In the event that any of the provisions, or portions or applications thereof, of this Agreement are held to be unenforceable or invalid by any court of competent jurisdiction, the validity and enforceability of the remaining provisions or portions or applications thereof shall not be effected thereby and the parties shall meet and negotiate, in good faith, an equitable adjustment in the provisions of this Agreement which most nearly reflect the original intent of the parties.

f. **Construction.** Every term and provision of this Agreement shall be construed simply according to its fair meaning and not strictly for or against any party hereto.

g. **Waiver.** Any delay, waiver or omission by a party hereto to exercise any right or power arising from any breach or default by the other party/parties of any of the terms or provisions of this Agreement shall not be construed to be a waiver of the delay, waiver or omission of the party of any subsequent breach or default of the same or other terms or provisions on the part of the other party/parties.

15. **Miscellaneous Provisions.**

a. Successors and Assigns. This Agreement shall not be assigned by any party hereto without the prior written approval of the other parties except as expressly set forth herein. Any proposed assignment by Customer to a purchaser of the PV Power Plant shall not be unreasonably withheld provided that (i) any letter(s) of credit issued in favor of Supplier in connection with the EPC Contract shall remain in full force and effect until Supplier is issued and accepts a replacement letter of credit and (ii) the proposed assignee or transferee (or any of its affiliates) is not engaged in the business of designing, manufacturing or servicing photovoltaic modules or their related parts or components. Notwithstanding the foregoing, (A) Customer may assign this Agreement to an affiliate to whom it transfers the PV Power Plant other than an affiliate engaged in the business of designing, manufacturing or servicing photovoltaic modules or their related parts or components provided that Customer shall give prompt written notice to Supplier and Owner of any such assignment, and (B) Supplier and Owner may each assign their respective rights and obligations under this Agreement to any of their respective affiliates or to any Person in connection with any merger or consolidation of Supplier or Owner, as the case may be, with or into such Person, or any sale, lease or transfer of all or substantially all of the assets of Supplier or Owner, as the case may be, to such Person. Notwithstanding the foregoing, Customer may assign all of its right, title and interest in, or make a collateral assignment of, this Agreement to one or more of the following: 1) any lender providing construction, interim or long-term financing (including any other refinancing thereof) in connection with the EPC Contract, any lessor under a leveraged or single-investor lease transaction, and any trustee or agent acting on their behalf, and 2) any equity investor providing financing or refinancing for the EPC Contract (collectively, the "Financing Parties"). Agent shall execute a consent to such collateral assignment, in form and substance reasonably acceptable to the Financing Parties which shall be signed by Customer and such other relevant parties such as lender and/or Financing Parties.

b. Certain Fees and Expenses. In the event that Owner, Supplier or Agent incurs any costs or expenses (including attorneys' fees or fees of accountants, consultants or other advisors) in connection with any collateral assignment to or cooperation with any person providing financial assistance or other funds to support the PV Power Plant, Customer shall reimburse Owner, Supplier and Agent for such reasonable costs and expenses upon demand therefor.

c. Notices. Any notice or communication given in connection with this Agreement shall be in writing and shall be deemed given if (i) delivered personally; (ii) sent by certified mail, return receipt requested; or (iii) sent by a recognized overnight mail or courier service, with delivery receipt requested to the addresses set forth below. Invoices are not considered notices herein and shall be sent via first class mail. Notices shall be deemed given on the date of actual receipt or if such date is a non-working day, then on the next working day thereafter.

If to Customer:	High Plains Ranch II, LLC c/o NRG Solar LLC 5790 Fleet Street Suite 200 Carlsbad, CA 92008 Attention: Vice President Asset Management
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With a copy to: NRG Energy, Inc.  
211 Carnegie Center  
Princeton, New Jersey 08540  
Attn: General Counsel

If to Agent: Escrow Associates, LLC  
8302 Dunwoody Place, Suite 150  
Atlanta, Georgia 30350  
Attention: Contracts Administration

If to Supplier: SunPower Corporation, Systems  
1414 Harbour Way South  
Richmond, CA 94804  
Attention: Contract Administrator

With a copy to: SunPower Corporation, Systems  
1414 Harbour Way South  
Richmond, CA 94804  
Attention: Jeffrey Dasovitch

If to Owner: SunPower Corporation  
1414 Harbour Way South  
Richmond, CA 94804  
Attention: President, UPP

d. Law and Jurisdiction. This Agreement shall be governed by the laws of the State of California, without regard to its conflict of laws rules.

e. Arbitration. Should any dispute arise under or relating to this Agreement, the parties shall attempt to resolve such dispute through good faith negotiations between their duly authorized representatives. If the dispute cannot be resolved through such negotiations, either party may submit the dispute to arbitration. The arbitration proceedings shall (i) take place in Los Angeles, California; (ii) be conducted in accordance with Construction Industry Rules then in effect of the American Arbitration Association; (iii) consist of an arbitration panel composed of (x) an individual experienced in and knowledgeable of the engineering, procurement and construction of energy generating facilities selected by Customer, (y) an individual experienced in and knowledgeable of the engineering, procurement and construction of energy generating facilities selected by Owner and (z) an individual experienced in and knowledgeable of the engineering, procurement and construction of energy generating facilities selected by each of the individuals selected by Customer and Owner in clauses (x) and (y), respectively. Any decision or award of the arbitration panel shall be bound by all provisions of this Agreement and the arbitration panel shall have no authority or power to enter an award which is in conflict with any of the provisions of this Agreement. The decision or award shall be in writing and shall contain a reasoned statement of decision including findings of fact on which it is based. Absent fraud,

collusion, mistake or manifest error such findings of fact shall be final. Any decision or award of the arbitration panel may be enforced or confirmed in a court of competent jurisdiction.

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BB-10

Exhibit BB  
Form of Escrow Agreement

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed as of the Effective Date.

**HIGH PLAINS RANCH II, LLC**

By: \_\_\_\_\_  
Name: [•]  
Title: [•]

**SUNPOWER CORPORATION, SYSTEMS**

By: \_\_\_\_\_  
Name: [•]  
Title: [•]

**SUNPOWER CORPORATION**

By: \_\_\_\_\_  
Name: [•]  
Title: [•]

**ESCROW ASSOCIATES, LLC**

By: \_\_\_\_\_  
Name: [•]  
Title: [•]

**Exhibit A**

**Escrow Documents**

The Documents consist of the following:

\*\*\*

All escrow Documents will be submitted electronically on CD-ROM and/or DVD unless otherwise agreed.

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

BB-12

Exhibit BB  
Form of Escrow Agreement



**Exhibit B**

**RELEASE REQUEST NOTICE**

Escrow Associates, LLC  
8302 Dunwoody Place, Suite 150  
Atlanta, Georgia 30350  
Attn: Contracts Administration

[Date]

Re: Release Request (Contract Escrow no. XXXX)

Reference is made to Contract Escrow no. XXXX entered into between High Plains Ranch II, LLC, SunPower Corporation, Systems, SunPower Corporation and Escrow Associates, LLC.

We, the Customer, hereby claim the Documents in escrow set forth below released to us, based on the following facts and circumstances:

[Insert description of facts and circumstances],

which means that release condition 3(a)(\_) [insert relevant number] has occurred and has been occurring for ninety (90) days.

The Documents to be released include:  
[\_\_\_\_\_].

We have with this Release Request Notice enclosed copies of any and all such evidence on which we rely on in making this claim.

We hereby declare that the use of the Documents shall solely be in accordance with the conditions of the Escrow Agreement.

Signed,

High Plains Ranch II, LLC

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT CC**

**COUNTY FISCAL AGREEMENT**

**AGREEMENT FOR IMPLEMENTATION OF FINANCIAL OBLIGATIONS UNDER  
CONDITIONAL USE PERMIT DRC2008-00097  
FOR  
CALIFORNIA VALLEY SOLAR RANCH PROJECT**

This Agreement For Implementation Of Financial Obligations Under Conditional Use Permit

DRC2008-00097 (“Agreement”) is entered into on the Effective Date, as set forth in Section 8.B, below, by and between High Plains Ranch II, LLC, a Delaware limited liability company (“HPR-II”) and the County of San Luis Obispo, a general law county within the State of California (the “County”).

**Recitals**

This Agreement is based on the following facts:

- A. HPR-II is a subsidiary of SunPower Corporation, Systems, a Delaware corporation, and is the applicant for a Conditional Use Permit DRC2008-00097 (“CUP”) authorizing the California Valley Solar Ranch project, a solar PV electricity generation facility and related infrastructure within San Luis Obispo County (“CVSR Project”).
- B. The County is a public entity and a subdivision of the State of California, having all the powers granted to counties by the California Constitution and statutes, including but not limited to the power to regulate land uses, approve or deny land use permits, and enforce conditions in such land use permits.
- C. The County has approved and issued the CUP, subject to certain Conditions of Approval, including Condition of Approval No. 12 requiring that HPR-II and County execute an agreement covering the matters set forth in this Agreement. This Agreement is intended to fulfill that Condition of Approval.
- D. The purpose of this Agreement is to definitively set forth and confirm certain Financial Obligations (defined in Section 7, below) that HPR-II is required to and has agreed to meet, to specify the timing and mechanism for compliance with such Financial Obligations, to provide for enforcement of such Financial Obligations if they are not met as required herein, to confirm that HPR-II accepts and will not challenge the Financial Obligations, and to confirm that HPR- II's performance as set forth herein will fully satisfy the Financial Obligations.

**Terms**

NOW, THEREFORE, in consideration of the foregoing Recitals and the mutual promises and agreements set forth in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the County and HPR-II hereby agree as follows:

## **1. Minimum Sales and Use Tax Revenue Receipts.**

A. Situs. HPR-II shall take the following actions to maximize the County's receipt of sales and use taxes (the "CVSR Sales/Use Tax Revenues," as further defined below) paid in connection with the construction of the CVSR Project or otherwise attributable to the CVSR Project construction ("EPC Activities"):

(1) EPC Contract Requirements. HPR-II shall contractually require that its engineering, procurement and construction contractor ("EPC Contractor") perform all of the following to the extent permitted by law:

(a) Register as a Seller with the State Board of Equalization ("BOE") and designate the CVSR Project jobsite as the business location (or sub-location) for reporting all local sales and use taxes payable that are attributable to the CVSR Project on the EPC Contractor's Sales and Use Tax Returns for all EPC Activities or, if already registered as a Seller, register for a Sub-permit for the CVSR Project jobsite. The EPC Contractor shall be required to provide a copy of its Seller's Permit or Sub-permit, showing the CVSR Project jobsite as the business location (or sub-location), to HPR-II within ten (10) days of the effective date of the EPC. contract.

(b) Accrue and report all sales and use taxes payable that are attributable to the CVSR Project on the EPC Contractor's Sales and Use Tax Returns for all EPC Activities and attribute all such sales and use taxes to San Luis Obispo County on Schedule C of BOE Form 530.

(c) Issue Resale Certificates and report to the CVSR business location (or sub-location) all sales of fixtures and equipment furnished in connection with the CVSR Project to the jobsite.

(d) Authorize the County to share with HPR-II all information reported to the County concerning sales and use taxes paid by the EPC Contractor related to the CVSR Project.

(e) Report to HPR-II not later than forty-five (45) days after the end of each calendar quarter during which it has engaged in EPC Activities the amount of sales and use taxes reported on its Combined State and Local Sales and Use Tax Return related to the CVSR Project for that calendar quarter.

(2) Large Subcontract Requirements. HPR-II shall contractually require that its EPC Contractor require the following in any subcontract for EPC Activities for the CVSR Project ("EPC Subcontract") that has an estimated value in excess of Five Million dollars (\$5,000,000.00), and in any such smaller EPC Subcontract as HPR-II, in its discretion and to the extent allowable by law, may determine to apply these requirements:

(a) Fixtures and Equipment. If the EPC Subcontract involves furnishing fixtures and equipment (as defined in applicable BOE regulations), that the EPC Subcontractor perform all of the following to the extent permitted by law:

(i) Register as a Seller with the BOE and designate the CVSR Project jobsite as the business location (or sub-location) for reporting all local sales and use taxes payable that are attributable to CVSR Project on the EPC Subcontractor's Sales and Use Tax Returns for all EPC Activities or, if already registered as a Seller, register for a Sub-permit for the CVSR Project jobsite. The EPC Subcontractor shall be required to provide a copy of its Seller's Permit or Sub-permit, showing the CVSR Project jobsite as the business location (or sub-location), to HPR-II and the EPC Contractor within ten (10) days of the effective date of the EPC Subcontract.

(ii) Accrue and report all sales and use taxes payable that are attributable to the CVSR Project on the EPC Subcontractor's Sales and Use Tax Returns for all EPC Activities and attribute all such sales and use taxes to San Luis Obispo County on Schedule C of BOE Form 530.

(iii) Issue Resale Certificates and report to the CVSR business location (or sub-location) all sales of fixtures and equipment furnished in connection with the CVSR Project to the jobsite.

(iv) Authorize the County to share with HPR-II and the EPC Contractor all information reported to the County concerning sales and use taxes paid by the EPC Subcontractor related to the CVSR Project.

(v) Report to HPR-II and the EPC Contractor each quarter the amount of sales and use taxes reported on their Combined State and Local Sales and Use Tax Return related to the CVSR Project. Report to HPR-II not later than forty-five (45) days after the end of each calendar quarter during which it has engaged in EPC Activities the amount of sales and use taxes reported on its Combined State and Local Sales and Use Tax Return related to the CVSR Project for that calendar quarter.

(b) Materials. If the EPC Subcontract involves furnishing of materials (as defined in applicable BOE regulations), that the EPC Subcontractor perform all of the following to the extent permitted by law:

(i) Register either as Consumer or Seller with the BOE and designate the CVSR Project jobsite as the business location (or sub-location) for reporting all local sales and use taxes payable that are attributable to the CVSR Project on the EPC Subcontractor's Sales and Use Tax Returns for all EPC Activities or, if already registered as a Consumer or Seller, obtain a second Consumer Use Tax Account with the CVSR Project jobsite as the business location (or sub-location). The EPC Subcontractor shall be required to provide a copy of its Seller's or Consumer's Permit or Sub-permit, showing the CVSR Project jobsite as the business location (or sub-location), to HPR-II and the EPC Contractor within ten (10) days of the effective date of the EPC Subcontract.

(ii) Accrue and report all use taxes payable that are attributable to the CVSR Project on the EPC Subcontractor's Sales and Use Tax Returns for all EPC Activities as follows:

(1) If registered as a Consumer, accrue and report all purchases related to the CVSR Project that are subject to use tax on the EPC Subcontractor's Sales and Use Tax Returns for all EPC Activities and attribute all such use taxes to San Luis Obispo County; and for all purchases of tangible personal property in connection with the CVSR Project that are not subject to use tax, make all such purchases from vendors with a business location in unincorporated San Luis Obispo County to the maximum extent commercially reasonable.

(2) If registered as a Seller:

(a) If the EPC Subcontract is on a lump sum or fixed price basis, follow the requirements set forth in Section 1.A.(2)(a)(ii), above; and

(b) If the EPC Subcontract is on a time and materials plus tax basis, follow the requirements set forth in Section 1.A.(2)(a)(iii), above.

(iii) Authorize the County to share with HPR-II and the EPC Contractor all information reported to the County concerning use taxes paid by the EPC Subcontractor related to the CVSR Project.

(iv) Report to HPR-II and the EPC Contractor not later than forty-five (45) days after the end of each calendar quarter during which it has engaged in EPC Activities the amount of use taxes reported on its Combined State and Local Sales and Use Tax Return related to the CVSR Project for that calendar quarter.

(c) Fixtures/Equipment and Materials. If the EPC Subcontract involves furnishing of both fixtures/equipment and materials (as defined in applicable BOE regulations), that the EPC Subcontractor perform all of the requirements set forth in Sections 1.A.(2)(a) and (b) to the extent permitted by law.

(3) Small Subcontract Requirements. HPR-II shall contractually require that its EPC Contractor require the following in any EPC Subcontract that has an estimated value less than or equal to Five Million (\$5,000,000.00), unless, at HPR-II's discretion, such EPC Subcontract is subjected to the Large Subcontract Requirements set forth in Section 1.A.(2), above:

(a) If the EPC Subcontractor already is registered as a Seller with the BOE, that the EPC Subcontractor:

(i) Register for a Sub-permit for the CVSR Project jobsite and designate the CVSR Project jobsite as the business location (or sub-location) for reporting all local sales and use taxes payable that are attributable to the CVSR Project on the EPC Subcontractor's Sales and Use Tax Returns for all EPC Activities. The EPC Subcontractor shall be required to provide a copy of its Seller's Sub-permit, showing the CVSR Project jobsite as the business location (or sub-location), to HPR-II and the EPC Contractor within ten (10) days of the effective date of the EPC Subcontract.

(ii) Accrue and report all sales and use taxes payable that are attributable to the CVSR Project on the EPC Subcontractor's Sales and Use Tax Returns for all EPC Activities and attribute all such sales and use taxes to San Luis Obispo County on Schedule C of BOE Form 530.

(iii) Authorize the County to share with HPR-II and the EPC Contractor all information reported to the County concerning sales and use taxes paid by the EPC Subcontractor related to the CVSR Project.

(iv) Report to HPR-II and the EPC Contractor each quarter the amount of sales and use taxes reported on their Combined State and Local Sales and Use Tax Return related to the CVSR Project.

(b) If the EPC Subcontractor is not already registered as a Seller with the BOE, that the EPC Subcontractor make all purchases of tangible personal property in connection with the CVSR Project from vendors with a business location in unincorporated San Luis Obispo County to the maximum extent commercially reasonable.

(4) Sub-Subcontractors. HPR-II shall contractually require that its EPC Contractor ensure that the above-stated requirements for EPC Subcontractors also are required of any sub-subcontractors.

B. Minimum Tax Revenues; True-Up Obligations.

HPR-II shall ensure receipt by the County of sales and use tax revenues as follows:

(1) CVSR Minimum Tax Revenues; CVSR True-Up Obligation.

(a) HPR-II shall ensure that the cumulative total CVSR Sales/Use Tax Revenues, as defined below, are at least Eight Million dollars (\$8,000,000.00) ("Minimum CVSR Tax Revenues") on or before the True-Up Date (defined below). If, as of the True-Up Date, the CVSR Sales/Use Tax Revenues received by County are less than the Minimum CVSR Tax Revenues, then HPR-II shall make a payment to the County in the amount of the difference (the "CVSR True-Up Obligation").

(b) For purposes of this Agreement, the CVSR Sales/Use Tax Revenues shall include receipts into the following funds: The City and County Operations Fund (0.75% of the sales/use tax and referenced herein as the "Bradley Burns Tax"), the State Fiscal Recovery Fund (0.25% of the sales/use tax and referenced herein as the "Triple-Flip Tax"), and the State Local Public Safety Fund (0.50% of the sales/use tax, excluding the portion of such receipts that are required by State law to be allocated to cities within the County, referenced herein as the "Proposition 172 Tax"). The CVSR Sales/Use Tax Revenues shall be calculated and accounted for in accordance with Sections I.B.(6) and (7), below.

(2) Single Solar Project True-Up Obligation. If, as of the True-Up Date, no building permit for construction of any portion of the Topaz Solar Farm Project, another solar PV electricity generation facility proposed to be located approximately five miles from the CVSR Project site ("Topaz Project"), which is the subject of a pending Conditional Use Permit

DRC2008-00009, has been issued by the County, then HPR-II shall make a payment to the County in the amount of Two Million Five Hundred Thousand dollars (\$2,500,000.00; the “Single Solar Project Minimum Tax Revenues”), less the amount, if any, by which the cumulative total CVSR Sales/Use Tax Revenues exceed the Minimum CVSR Tax Revenues (the “Single Solar Project True-Up Obligation”), to assure that, in this event, the County receives a total of Ten Million Five Hundred Thousand dollars (\$10,500,000.00) in CVSR Sales/Use Tax Revenues.

(3) True-Up Date. The True-Up Date shall be three (3) years after final sign-off on all building permits issued for construction of the CVSR Project; provided, however, that HPR-II in its sole discretion may designate an earlier True-Up Date; and provided further that in no event shall the True-Up Date be later than December 31, 2016.

(4) True-Up Payment Amount. On or before the True-Up Payment Date, HPR-II shall pay to County the sum of: The CVSR True-Up Obligation, if applicable, and the Single Solar Project True-Up Obligation, if applicable.

(5) True-Up Payment Date. Payment of the CVSR True-Up Obligation, if applicable, and the Single Solar Project True-Up Obligation, if applicable, shall be due ninety (90) days after True-Up Date (the “True-Up Payment Date”). Payment shall be made by check drawn upon a U.S.-based bank or similar financial institution, paid in U.S. dollars, payable to “County of San Luis Obispo” and delivered to the County Administrative Officer by overnight courier or by wire funds. The County Administrative Officer shall provide wire instructions in writing upon HPR-II's written request.

(6) Calculation of the CVSR Sales/Use Tax Revenues.

(a) The amount of the CVSR Sales/Use Tax Revenues, for the purposes of establishing the amount of the CVSR True-Up Obligation, if any shall be determined using the following calculation:

(i) The cumulative total amount of the Bradley Burns Tax portion of the CVSR Sales/Use Tax Revenues as of the True-Up Date using the accounting and reporting methods described in Section 1.B.(7), below; plus

(ii) The cumulative total amount of Triple-Flip Tax portion of the CVSR Sales/Use Tax Revenues as of the True-Up Date using the accounting and reporting methods described in Section 1B.(7), below; plus

(iii)

(1) Unless Section 1.B.(6)(d), below, applies, the sum of Section 1 .B.(6)(a)(i) and (ii), above, times a multiplier of 0.38, representing the minimum cumulative total amount of the Proposition 172 Tax portion of the CVSR Sales/Use Tax Revenues expected to be recovered by the County from the total Proposition 172 taxes attributable to the construction of the CVSR Project paid to the State (excluding the portion of such receipts that are required by State law to be allocated to cities within the County); or,

(2) If Section 1.B.(6)(d), below, applies, the cumulative total County CVSR Proposition 172 Tax Revenues (as defined and calculated pursuant to that subsection).

(b) In the event that any new taxes are established which are paid in connection with EPC Activities for the CVSR Project and which the County receives that are not otherwise accounted for in this Agreement (“New Tax”), such New Tax shall be considered additional CVSR Sales/Use Tax Revenues and the parties shall negotiate the proper amount or calculation to be used to account for the New Tax in determining the CVSR Sales/Use Tax Revenues.

(c) In the event that the Single Solar Project True-Up Obligation is required, the amount of that obligation shall be determined using the following calculation:

(i) Two Million Five Hundred Thousand dollars (\$2,500,000.00); minus

(ii) the amount, if any, by which the cumulative total CVSR Sales/Use Tax Revenues, calculated pursuant to Section 1.B.(6)(a), above (and, if applicable, Section 1.B.(6)(d), below), exceeds the Minimum CVSR Tax Revenues.

(d) The parties acknowledge that the amount of the Proposition 172 Tax portion of the CVSR Sales/Use Tax Revenues recovered by the County cannot be directly tracked due to the State's method for allocation of these tax payments. Accordingly, for purposes of this Agreement, where the CVSR True-Up Obligation or the Single Solar True-Up Obligation would be required if the CVSR Sales/Use Tax Revenues are calculated pursuant to Section 1.B.(6)(a)(i), (ii) and (iii)(I), and where HPR-II has so elected, in lieu of calculating the cumulative total amount of the Proposition 172 Tax portion of the CVSR Sales/Use Tax Revenues recovered by the County pursuant to Section 1.B.(6)(a)(iii)(I), the County shall calculate those revenues as described in this subsection.

(i) Definitions. For purposes of this Section 1.B.(6)(d), the following definitions shall apply:

(1) “County Taxable Measure” means the dollar amount of San Luis Obispo County countywide taxable sales and purchases subject to use tax in a calendar year, determined from the sources of data described in Section 1.B.(7)(a), (b) and (d), below.

(2) “Statewide Taxable Measure” means the dollar amount of California statewide taxable sales and purchases subject to use tax in a calendar year, determined from the sources of data described in Section 1.B.(7)(a), (b) and (d), below.

(3) “Proposition 172 Factor” means the ratio calculated by dividing the County Taxable Measure by the Statewide Taxable Measure for a calendar year.



(4) “CVSR Taxable Measure” means the dollar amount of taxable sales and purchases subject to use tax in a calendar year, attributable to construction of the CVSR Project, derived from the sources of data described in Section I.B.(7)(a), (b) and (d), below.

(5) “No-CVSR County Taxable Measure” means the County Taxable Measure minus the CVSR Taxable Measure for a calendar year.

(6) “No-CVSR Statewide Taxable Measure” means the Statewide Taxable Measure minus the CVSR Taxable Measure for a calendar year.

(7) “No-CVSR Proposition 172 Factor” means the ratio calculated by dividing the No-CVSR County Taxable Measure by the No-CVSR Statewide Taxable Measure for a calendar year.

(8) “Statewide Proposition 172 Tax Revenues” means the Proposition 172 tax revenues received by the state for a fiscal year.

(9) “County Proposition 172 Tax Revenues” means the Proposition 172 tax revenues received by the County for a fiscal year, excluding the portion of such revenues that are required by State law to be allocated to cities within the County.

(10) “County No-CVSR Proposition 172 Tax Revenues” means the portion of the County Proposition 172 Tax Revenues received by the County for a fiscal year that are not attributable to the construction of the CVSR Project.

(11) “County CVSR Proposition 172 Tax Revenues” means the portion of the County Proposition 172 Tax Revenues received by the County for a fiscal year that are attributable to the construction of the CVSR Project.

(ii) Calculation. The County CVSR Proposition 172 Tax Revenues shall be calculated as follows:

For each fiscal year, from the first fiscal year in which the County receives CVSR Sales/Use Tax Revenues, through the next fiscal year following the calendar year in which final sign-off on all building permits issued for construction of the CVSR Project occurs, the County Proposition 172 Tax Revenues shall be compared to a simulated scenario under which the CVSR Taxable Measure is excluded in order to determine the increase in the County Proposition 172 Tax Revenues that constitute the County CVSR Proposition 172 Tax Revenues.

The simulated scenario involves several steps, which are described below:

Step 1: The Proposition 172 Factor is calculated by the State Controller's Office with the results being provided to the County. To calculate the factor for a fiscal year, the State Controller's Office divides the County Taxable Measure for the calendar year prior to the start of that fiscal year into the Statewide Taxable Measure for the calendar year prior to the start of that fiscal year. (For example, the County Taxable Measure and the Statewide

Taxable Measure for calendar year 2009 is used to calculate the Proposition 172 Factor that will be applied for fiscal year July 1, 2010 - June 30, 2011.)

Step 2: The State Controller's Office then multiplies the Statewide Proposition 172 Tax Revenues each month by the Proposition 172 Factor to determine the County Proposition 172 Tax Revenues for the month. The State Controller's Office then prepares and publishes on its website a schedule showing the Proposition 172 Factor, each month's Proposition 172 Tax Revenues, and the fiscal year-to-date total Proposition 172 Tax Revenues for each county.

Step 3: Determine the No-CVSR Statewide Taxable Measure for the calendar year prior to the fiscal year being calculated and the No-CVSR County Taxable Measure for the calendar year prior to the fiscal year being calculated, and calculate the No-CVSR Proposition 172 Factor.

Step 4: Multiply the No-CVSR Proposition 172 Factor times the Statewide Proposition 172 Revenues to calculate the "County No-CVSR Proposition 172 Tax Revenues."

Step 5: Subtract the County No-CVSR Proposition 172 Tax Revenues from the County Proposition 172 Tax Revenues to determine the County CVSR Proposition 172 Tax Revenues for that fiscal year.

After completing the above steps for each applicable fiscal year, the amounts calculated in Step 5 for each such fiscal year shall be summed, and the resulting sum shall be deemed to be the cumulative total County CVSR Proposition 172 Tax Revenues, which shall be used in lieu of the 0.38 multiplier, described in Section I.B.(6)(a)(iii)(I), above, for the purposes of establishing the amount of the CVSR True-Up Obligation, if any.

(7) Accounting and Reporting CVSR Sales/Use Tax Revenues.

County shall track and report its receipt of all CVSR Sales/Use Tax Revenues and shall use its best efforts to identify all CVSR Sales/Use Tax Revenues, including the following:

(a) County shall procure reports from private tax analysis vendors (such as The HdL Companies) pertaining to the CVSR Project, the EPC Contractor and EPC Subcontractors, and shall review such reports, together with reports received from BOE and information submitted by HPR-II, to identify all CVSR Sales/Use Tax Revenues actually received by the County. Any amount of CVSR Sales/Use Tax Revenues withheld by the State as an administrative or processing fee shall not be identified as having been received by the County. County also shall review and verify with the State that sales or use tax payments made by the EPC Contractor and EPC Subcontractors have not been misallocated to the State pool.

(b) Within sixty (60) days after the end of each calendar quarter commencing upon issuance of the CUP and concluding in the calendar quarter in which the True-Up Date occurs, County shall provide HPR-II (at the address set forth for Notices in Section 8.N, below) a Quarterly Report listing all CVSR Sales/Use Tax Revenues received within the past calendar quarter and a cumulative total of all such funds received through the end of the reporting quarter. If CVSR Sales/Use Tax Revenues were received by the County and

documented in accordance with this section as received by the County prior to the first Quarterly Report, that first Quarterly Report shall report all such funds actually received by the County prior to that date, even if such funds were received prior to the reporting quarter, provided that the County is not required to include any such funds in its first Quarterly Report that it cannot document as having been received by the County. The last Quarterly Report shall report all funds received in the portion of the reporting quarter up to the True-Up Date; the last Quarterly Report shall be issued within sixty (60) days after the True-Up Date and shall cover the period to and including the True-Up Date. Each Quarterly Report shall separately list the CVSR Sales/Use Tax Revenues for the reporting quarter by contractor or subcontractor and shall be accompanied by copies of appropriate supporting documentation pertaining to funds received; provided, however, that nothing herein shall require the County to disclose information that is prohibited by law, except where authorization for release of information has been provided by the EPC Contractor and EPC Subcontractors as described in Section 1.A, above. Such supporting documentation shall include reports received by the County from BOE and reports procured by the County from private tax analysis vendors (such as The HdL Companies) pertaining to the CVSR Project, the EPC Contractor and EPC Subcontractors.

(c) Until the final Quarterly Report, the County shall account for the Proposition 172 Tax portion of the CVSR Sales/Use Tax Revenues using the calculation set forth in Section 1.B.(6)(a)(iii)(I). In the final Quarterly Report, the County shall account for the Proposition 172 Tax portion in the same manner, unless the CVSR True-Up Obligation or the Single Solar True-Up Obligation would be required if the CVSR Sales/Use Tax Revenues are calculated pursuant to Section 1.B.(6)(a)(i), (ii) and (iii)(I), and HPR-II has made its election pursuant to Section 1.B.(6)(d), in which case the County shall account in the final Quarterly Report using that calculation for the cumulative total amount of Proposition 172 Tax portion of the CVSR Sales/Use Tax Revenues as provided in Section 1.B.(6)(d).

(d) To assist County's identification of CVSR Sales/Use Tax Revenues, within fifteen (15) days after the end of each calendar quarter for which a Quarterly Report is required, HPR-II shall provide County a list identifying the EPC Contactor and all EPC Subcontractors who may have paid sales or use tax that would produce CVSR Sales/Use Tax Revenues, together with the information reported to it by the EPC Contractor and EPC Subcontractors as to the amount of sales and use taxes they have reported on their Combined State and Local Sales and Use Tax Return related to the CVSR Project for the preceding calendar quarter, as described in Section 1.A, above.

(8) Assurance of True-Up Payment. HPR-II shall secure payment of the CVSR True-Up Obligation and the Single Solar Project True-Up Obligation by providing the County with Letters of Credit (collectively, the "Tax LoCs;" individually, the "CVSR Tax LoC" and the "Single Solar Project Tax LoC," respectively), issued by California banks or by non-California banks and subject to presentment at a California location, as follows:

(a) The Tax LoCs shall be provided prior to the issuance of the first construction permit for the CVSR Project ("Tax LoCs Delivery Date") as follows:

(i) If, as of the Tax LoC Delivery Date, no building permit for construction of any portion of the Topaz Project has been issued, the initial amount of

the Single Solar Tax LoC shall be the amount of the Single Solar Project Minimum Tax Revenues (Two Million Five Hundred Thousand dollars (\$2,500,000.00)). If, prior to the Tax LoC Delivery Date, a building permit for construction of any portion of the Topaz Project has been issued, the Single Solar Tax LoC shall not be provided.

(ii) The initial amount of the CVSR Tax LoC shall be the amount of the Minimum CVSR Tax Revenues (Eight Million dollars (\$8,000,000.00)), minus the cumulative total amount of CVSR Sales/Use Tax Revenues reported on the most recent Quarterly Report delivered by HPR-II to the CVSR Tax LOC issuer prior to the Tax LoCs Delivery Date.

(b) The amount of the CVSR Tax LoC shall be reduced quarterly by the amount of CVSR Sales/Use Tax Revenues reported in the Quarterly Report for the most recent calendar quarter, with each such reduction effective upon delivery by HPR- II to the CVSR Tax LoC issuer of that Quarterly Report.

(c) The Tax LoCs may be cancelled or extinguished upon, and shall be maintained until, the occurrence of the following:

(i) For the CVSR Tax LoC, delivery by HPR-II to the CVSR Tax LoC issuer of: (1) a Quarterly Report showing receipt by the County of the Minimum CVSR Tax Revenues prior to the True-Up Date; or (2) evidence of the payment of the CVSR True-Up Obligation, together with a Quarterly Report showing cumulative total CVSR Sales/Use Tax Revenues that, together with such payment, equal the Minimum CVSR Tax Revenues.

(ii) For the Single Solar Tax LoC, delivery by HPR-II to the Single Solar Tax LoC issuer of: (1) a copy of a building permit for construction of any portion of the Topaz Project prior to the True-Up Date; or (2) evidence of payment of the Single Solar Project True-Up Obligation, together with a Quarterly Report showing cumulative total CVSR Sales/Use Tax Revenues in excess of the Minimum CVSR Tax Revenues that, together with such payment, equal the Single Solar Project Minimum Tax Revenues.

(iii) For both the CVSR Tax LoC and the Single Solar Tax LoC, not less than two (2) weeks advance notice by HPR-II to the County.

(d) In the event that the CVSR True-Up Obligation and/or the Single Solar Project True-Up Obligation are owed and are not paid as of the True-Up Payment Date, the County may present a demand for payment to the issuer(s) of the Tax LOCs not sooner than fifteen (15) days after the True-Up Payment Date. If not earlier cancelled or extinguished, the Tax LoCs shall automatically expire if the County has not made presentation within sixty (60) days after the True-Up Payment Date.

(e) HPR-II may replace the Tax LoCs with substitute Tax LoCs, provided that each replacement LoC meets all applicable requirements of this Section 1.B.(8).

(9) Conditional Obligation. HPR-II's obligation to pay the CVSR True-Up Obligation and the Single Solar Project True-Up Obligation shall not arise unless construction of the CVSR Project (ground disturbance) has commenced.

(10) Reduced Size CVSR Project. The CVSR True-Up Obligation and the Single Solar Project True-Up Obligation have been calculated based on an assumed project size of 250 MW-AC. If the CVSR Project size is reduced due to circumstances beyond HPR-II's control, the parties may negotiate a proportionate reduction of the amount of the CVSR True-Up Obligation and the Single Solar Project True-Up Obligation, provided that the County's costs of providing services attributable to the CVSR Project are recovered in any event.

C. Dispute Resolution.

Notwithstanding any other provision of this Agreement, prior to the provision of a Notice of Default under Section 6.A, below, the parties agree to attempt in good faith to resolve any dispute as to the calculation of the CVSR Sales/Use Tax Revenues, the CVSR True-Up Obligation, the Single Solar Project True-Up Obligation, or otherwise arising under the provisions of this Section 1, through direct negotiation before pursuing litigation or any other dispute resolution procedure or remedy.

**2. Financial Assurances for Decommissioning.**

A. HPR-II shall establish a Decommissioning Fund, as further described below, to provide financial assurance that HPR-II will timely complete decommissioning and restoration activities to implement the Final Closure Plan for the CVSR Project site, required under CUP Condition of Approval No. 40(j), and to restore the Project site to its pre-Project conditions.

B. The Decommissioning Fund shall consist of a series of four (4) Letters of Credit ("Decom LoCs") issued by California banks or by non-California banks and subject to presentment at a California location. One (1) Decom LoC shall be provided to the County prior to the completion of each of the four (4) CVSR Project phases. The phases, and the time at which their corresponding Decom LoCs shall be provided, are as follows:

<u>Phase</u>	<u>Megawatts of capacity energized</u>	<u>Deadline for Decom LoC to be provided to County</u>
Phase 1	21 MWac	Prior to final construction permit sign-off for the CVSR Project substation
Phase 2	63 MWac	Prior to commencement of delivery of electricity from the phase
Phase 3	126 MWac	Prior to commencement of delivery of electricity from the phase
Phase 4	40 MWac	Prior to commencement of delivery of electricity from the phase

HPR-II shall provide County with not less than two (2) weeks advance notice prior to commencement of delivery of electricity for Phases 2, 3 and 4.

C. The amount of the Decommissioning Fund shall be calculated to fully implement the Final Closure Plan submitted to the County prior to the issuance of a construction permit as part of the HRRP pursuant to CUP Condition of Approval No. 40(j) and to restore the Project site to its pre-Project conditions. HPR-II shall pay for the County to retain a third party expert to review the submitted Final Closure Plan and confirm the adequacy of the Decommissioning Fund based on the cost estimate in the Final Closure Plan and any other considerations required to assure that the Project site is restored to its pre-Project conditions. For purposes of determining the amount of each of the Decom LoCs, the Final Closure Plan shall allocate the Decommissioning Fund based on the cost of the decommissioning and restoration activities for each of the four (4) CVSR Project phases.

D. The Decommissioning Fund shall be adjusted for inflation every three (3) years, based on the Producer Price Index for New Industrial Building Construction published by the U.S. Bureau of Labor Statistics and also shall be adjusted for any updates to the Final Closure Plan.

E. The County shall be entitled to use the Decommissioning Fund to implement the Final Closure Plan and to restore the Project site to its pre-Project conditions in the event that HPR-II does not timely or properly implement the Final Closure Plan or restore the Project site to its pre-Project conditions. The term “reasonable time” as used in this Section 2.E shall mean no more than nine (9) months after the County notifies HPR-II in writing that decommissioning of the CVSR Project is required; provided, however, that such notice may not be given prior to (i) expiration of the CUP, (ii) permanent cessation of operations for the CVSR Project, or (iii) a final decision by the County to revoke the CUP pursuant to San Luis Obispo County Code § 22.74.160 (or any successor provision).

F. The County may present a demand for payment to the issuer(s) of the Decomm LoCs not sooner than fifteen (15) days after notice to HPR-II that it has failed to timely or properly implement the Final Closure Plan or restore the Project site to its pre-Project conditions. If not earlier cancelled or extinguished, the Tax LoCs shall automatically expire if the County has not made presentation within sixty (60) days after such notice.

G. The Decomm LoCs may be cancelled or extinguished upon, and shall be maintained until, delivery by HPR-II or County to the issuer(s) of the Decomm LoCs of evidence that the County has approved the completion of the Final Closure Plan and restoration of the Project site to pre-Project conditions.

H. HPR-II may replace the Decom LoCs with substitute Decom LoCs, provided that each replacement LoC meets all applicable requirements of this Section 2.

I. In the event that HPR-II does not timely or properly implement the Final Closure Plan or restore the Project site to pre-Project conditions for whatever reason, the County undertakes to do so, and the Decommissioning Fund is inadequate to fully complete implementation of that plan and restoration of the site, HPR-II shall be liable for any amount expended by the County over the Decommissioning Fund balance.

### **3. Calculation and Payment of Impact Fees.**

The County has determined that certain elements of the CVSR Project require payment of impact fees pursuant to the following County Ordinances or other laws: (i) Inclusionary Housing Fees (“IHF”), pursuant to San Luis Obispo County Code § 22.12.080 and Title 29; (ii) Public Facilities Fees (“PFF”), pursuant to San Luis Obispo County Code Title 18 and Ordinances adopted thereunder; and applicable School Fees (collectively, “Impact Fees”). Except as expressly set forth in this Agreement or in the Conditions of Approval of the CUP, as of the date of approval of the CUP, there are no other currently existing County impact fee Ordinances applicable to the CVSR Project.

The parties agree, and the Planning Director has determined, that the following Project Elements are subject to Impact Fees and shall be characterized according to the following Impact Fee Schedule:

<u>Project Element</u>	<u>Applicable Impact Fee and Category.</u>		
	<u>Est.</u> <u>Sq. Ft.</u>	<u>IHF</u>	<u>PFF</u>
Drive motors	71,054	n/a	Industrial
Equipment Pads (inverters/transformers)	60,900	n/a	Industrial
Tracker Pier Foundations	17,279	n/a	Industrial
O & M Building	5,000	Comm'l Services/Offices	Office
Substation	3,000	n/a	Industrial
Water Tank	1,800	n/a	Industrial
Gen-tie Line Towers	848	n/a	Industrial
Reverse Osmosis Building	500	Industrial / Warehouse	Industrial

No other elements of the CVSR Project are currently subject to Impact Fees.

The square footage estimates set forth above shall be adjusted for actual square footage of structures. These amounts shall be calculated based on square footages shown on approved construction plans for the applicable building permit.

The amount of the Impact Fees for each Project Element subject to such fees, as listed above, shall be calculated based on the fee rates per square foot adopted by the County and in effect at time of issuance of the applicable building permit for that Project Element according to the land use characterization set forth above. The date for payment of each portion of the Impact Fees shall be the latest date that such payment is otherwise due under the then-applicable County regulations for the fee, unless HPR-II elects to pay earlier.

Notwithstanding the foregoing, the parties acknowledge that School Fees are assessed by the Atascadero School District and are not within the County's control.

### **4. Covenant Not To Challenge; Waiver.**

HPR-II and County agree that this Agreement and the Conditions of Approval in the CUP requiring this Agreement are a valid exercise of the County's land use regulatory authority. HPR-II covenants and agrees that it shall not, under any circumstances, assert any challenge to the legality of this Agreement or the Conditions of Approval in the CUP requiring this

Agreement as an invalid exercise of the County's land use regulatory authority in any civil or writ proceeding and hereby waives and relinquishes any right it may have to do so. Additionally, HPR-II waives any right to appeal the designation of the Project Elements or characterization of the Project Elements, set forth in Section 3, for calculation of the Impact Fees.

**5. Agreement Part of Permit; Assignment and Assumption.**

A. From and after the Effective Date, this Agreement shall be deemed automatically to be a part of the CUP and shall be deemed to be assigned to any successor holder of the CUP as of the effective date of transfer of the CUP.

B. Prior to any transfer of the CUP to any successor holder, HPR-II and such successor shall execute an Assignment and Assumption Agreement with respect to this Agreement, pursuant to which the successor agrees to be bound by all obligations, responsibilities and duties of HPR-II hereunder, and shall deliver a copy thereof to the County; provided, however, that the failure to comply with this Section 5.B shall not modify the effect of Section 5.A, above. The parties agree that the execution of an Assignment and Assumption Agreement in the form attached hereto as Exhibit 1 will satisfy this Section 5.B.

C. Any other assignment of this Agreement shall require the express consent of the parties.

**6. Enforcement; Default.**

A. Notice of Default. Failure or unreasonable delay in the performance of any material provision herein shall constitute a default under this Agreement. In the event of a default, the party alleging such default shall give the defaulting party not less thirty (30) days' written notice of default ("Notice of Default"). The Notice of Default shall specify the nature of the alleged default and a reasonable manner and period of time in which said default may be satisfactorily cured. A Notice of Default shall be given in the manner set forth in Section 8.N, below.

B. Cure Period. Within thirty (30) days of the date a Notice of Default is given, the defaulting party shall provide evidence establishing it was never, in fact, in default or shall cure the default; provided, however, that if the nature of the alleged default is such that it cannot be reasonably cured within such 30-day period, the commencement of the cure within such time period and the diligent prosecution to completion of the cure shall be deemed a cure within such period. During any period of curing, the party charged shall not be considered in default for purposes of enforcement of this Agreement. If the default is cured, then no default shall exist or be deemed to have existed and the noticing party shall take no further action. After proper notice and the expiration of such cure period without cure, enforcement may be undertaken as set forth herein.

C. Enforcement. This Agreement may be enforced as a contract with all applicable remedies at law or equity. In addition to any other remedies available to the County, County may enforce this Agreement as part of the CUP in the same manner and to the same extent as may be applied to the enforcement of a Condition of Approval in the CUP pursuant to



applicable law. Either party may avail themselves of the remedies provided herein or otherwise available at law or equity.

D. Enforced Delay: Extension of Time of Performance. No party shall be deemed in default of its obligations under this Agreement where a delay or default is due to an act of God, natural disaster, accident, breakage or failure of equipment, enactment of conflicting federal or state laws or regulations, third-party litigation, strikes, lockouts or other labor disturbances or disputes of interruption of services by suppliers thereof, unavailability of materials or labor, rationing or restrictions on the use of utilities or public transportation whether due to energy shortages or other causes, war, civil disturbance, riot, or by any other severe and unforeseeable occurrence that is beyond the control of that party (collectively, "Enforced Delay"); provided, however, the parties agree a delay that results solely from unforeseen economic circumstances shall not constitute an Enforced Delay for purposes of this Section 6.D. Performance by a party of its obligations under this Agreement shall be excused during, and extended for a period of time equal to, the period (on a day-for-day basis) for which the cause of such Enforced Delay is in effect.

7. **No Other Financial Obligations; Satisfaction of Condition of Approval No. 12.**

The monies received by the County under this Agreement, including the CVSR Sales/Use Tax Revenues, True-Up Payment, and Assurance of True-Up Payment described in Section 1, the payments into the Decommission Fund described in Section 2, and the Impact Fees described in Section 3 shall constitute the total and exclusive amount of payments and other financial obligations owed by HPR-II to County pursuant to Condition of Approval No. 12 of the CUP. The Financial Obligations of HPR-II under this Agreement shall consist of: (a) the CVSR True-Up Obligation, if applicable, and the Single Solar Project True-Up Obligation, if applicable; (b) the Tax LoC; (c) the Decom LoCs; (d) the payment under Section 2(I), if applicable; and (e) the payment of the Impact Fees.

The execution of this Agreement fully satisfies Condition of Approval No. 12 of the CUP.

8. **Miscellaneous.**

A. Recitals are true; exhibits are incorporated. The Recitals to this Agreement are true and correct, and are a part of this Agreement. Any exhibits to the Agreement are fully incorporated into and are an integral part of this Agreement.

B. Effective Date. This Agreement shall be effective on and as of June 17, 2011 (the "Effective Date"). Unless lawfully terminated earlier or unless extended, this Agreement shall terminate upon completion of the decommissioning of the CVSR Project or reimbursement therefore pursuant to Section 2 of this Agreement.

C. Governing law, jurisdiction, and venue. The interpretation, validity, and enforcement of this Agreement shall be governed by and interpreted in accordance with the laws of the State of California. Any suit, claim, or legal proceeding of any kind related to this

Agreement shall be filed and heard in a court of competent jurisdiction in the County of San Luis Obispo, State of California.

D. Modification. This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by all parties.

E. Waivers. Waiver of breach or default under this Agreement shall not constitute a continuing waiver of a subsequent breach of the same or any other provision of this Agreement.

F. Severability. If any term of this Agreement (including any phrase, provision, covenant, or condition) is held by a court of competent jurisdiction, or other judicial official, to be invalid or unenforceable, the Agreement shall be construed as not containing that term, and the remainder of this Agreement shall remain in full force and effect; provided, however, this subsection shall not be applied to the extent that it would result in a frustration of the parties' intent under this Agreement.

G. Invalidity of Agreement. If this Agreement in its entirety is finally determined by a court to be invalid or unenforceable under State law, this Agreement shall automatically terminate as of the date of final entry of judgment, including any appeals. In this event, the parties agree to negotiate in good faith and to enter into a new agreement that would most closely match the expressed intent of this Agreement and complies with the requirements of Condition 12 of the CUP without the portion(s) of this Agreement that was determined by the court to cause the Agreement to be invalid or unenforceable.

H. Entire Agreement. This Agreement, including all documents incorporated herein by reference, comprises the entire integrated understanding between the parties. This Agreement supersedes all prior negotiations, agreements, and understandings regarding this matter, whether written or oral.

I. Authorship. Each party and counsel for each party has reviewed and revised this Agreement, which shall be deemed to have been equally drafted by each of the parties. Accordingly, the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any amendment of it.

J. Binding Successors. This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the parties.

K. No Third Party Beneficiaries. No person other than the parties hereto and their successors and assigns shall have any rights, interest or claims hereunder or be entitled to any benefits under or on account of this Agreement.

L. Signatures. The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of the respective legal entities on whose behalf they are signing. This Agreement may be executed in counterparts and shall be fully effective as if signed by all parties

whether or not the signatures of all the parties appear on the original or on any one copy of this Agreement and a facsimile signature shall be enforceable as an original.

M. Captions. The caption headings provided herein are for the convenience of the parties only and shall not affect the construction of this Agreement.

N. Notices. Any notice allowed or required to be provided by one party to the other party hereunder shall be in writing, sent by overnight courier (signature required) or U.S. Mail (Certified and Return Receipt), and addressed as follows:

To HPR-II: Legal Department  
SunPower Corporation, Systems  
1414 Harbour Way South  
Richmond, CA 94804

To County: County Counsel  
San Luis Obispo County  
1055 Monterey Street  
San Luis Obispo, CA 93408

A notice shall be deemed to have been given on the second business day following deposit. A party may provide notice of a change of address in writing.

O. Attorney's fees. In any legal action to enforce this Agreement, the parties shall bear their own attorneys' fees and costs.

[Remainder of this page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have executed the foregoing Agreement to be effective as of the Effective Date.

**High Plains Ranch II, LLC**

By: \_\_\_\_\_  
Paul McMillan  
Its: President

By: \_\_\_\_\_  
Name:  
Its:

**County of San Luis Obispo**

By: [Graphic appears here] \_\_\_\_\_  
Adam Hill  
Chair of the Board of Supervisors

Approved as to form and legal effect:  
WARREN R. JENSEN, County Counsel

By: [Graphic appears here] \_\_\_\_\_  
Chief Deputy County Counsel

**Exhibit List:**

- 1. Assignment and Assumption of Agreement form

IN WITNESS WHEREOF, the parties hereto have executed the foregoing Agreement to be effective as of the Effective Date.

**High Plains Ranch II, LLC**

By: [Graphic appears here]

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Paul McMillan Its:  
President

**County of San Luis Obispo**

By: \_\_\_\_\_  
Adam Hill  
Chair of the Board of Supervisors

By: [Graphic appears here]  
Name:  
Its:

Approved as to form and legal effect:  
WARREN R. JENSEN, County Counsel

By: \_\_\_\_\_  
Chief Deputy County Counsel

### Exhibit List:

- ## 1. Assignment and Assumption of Agreement form

Exhibit 1  
ASSIGNMENT AND ASSUMPTION AGREEMENT

This ASSIGNMENT AND ASSUMPTION AGREEMENT (this “Assignment”) is entered into on [effective date], by and between [name of Assignor], a [type of entity and jurisdiction of formation] (“Assignor”), and [name of Assignee], a [type of entity and jurisdiction of formation] (“Assignee”).

WHEREAS, Assignor is a party to that Agreement For Implementation Of Financial Obligations Under Conditional Use Permit DRC2008-00097, dated , 2011, by and among High Plains Ranch II, LLC, a Delaware limited liability company ( “HPR-II”) and the County of San Luis Obispo, a general law county within the State of California (the “County”), [Insert further Recital(s) reporting any amendments and/or prior assignments of the Agreement.]

WHEREAS, Assignor desires to assign to Assignee and Assignee desires to assume from Assignor, all of the right, title, interest, liability and obligation of Assignor under the Agreement, on the terms and subject to the conditions set forth in this Assignment.

NOW, THEREFORE, for value received and intending to be legally bound, the parties agree as follows:

1. Assignor hereby sells, assigns, transfers and sets over to Assignee all of Assignor's right, title and interest in and under the Agreement.
2. Assignee hereby accepts the foregoing assignment, and hereby assumes, agrees and undertakes to pay, perform and discharge all liabilities and obligations of Assignor under the Agreement.
3. Assignee hereby agrees to indemnify, defend and hold harmless Assignor, its shareholders, directors, officers, advisors, consultants, representatives, employees, agents and successors and assigns (“Assignor's Agents”) from and against any and all losses, claims, suits, proceedings, damages, judgments, penalties, and liabilities arising out of, resulting from or in any way related to the obligations of Assignor under the Agreement, whether such obligations arose, were caused by or existed prior to the effective date of this Assignment.
4. Each of the parties hereto agrees to execute and deliver all such further transfers, assignments, conveyances and assurances, and to use reasonable efforts to obtain such consents, as may reasonably be requested by the other party in order to effect the full assignment of the Agreement to Assignee as contemplated herein.
5. This Assignment shall be binding upon and inure to the benefit of the respective successors and assigns of the parties hereto.

6. The County of San Luis Obispo shall be deemed and considered to be a third party beneficiary of this Assignment.
7. None of the provisions of this Assignment may be waived, changed or altered except in a writing signed by all of the parties hereto, and this Agreement may not be changed or altered without the express written consent of the County of San Luis Obispo.
8. This Assignment shall be governed by and construed in accordance with the laws of the State of California without regard to principles of conflict of laws.
9. In the event of a conflict between the terms and conditions of this Assignment and the terms and conditions of the Agreement, the terms and conditions of the Agreement shall govern, supersede, and prevail.
10. This Assignment may be executed in any number of counterparts, each of which shall be an original, and all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the undersigned have caused this Assignment to be duly executed as of the day and year first above written.

**[Assignor]**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**[Assignor]**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT DD**

**FORM OF SUBORDINATION AGREEMENT**

Recording requested by and when recorded  
return to:

U.S. Department of Energy LP 10  
1000 Independence Avenue, SW  
Washington D.C. 20585

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(Space above for Recorder's Use)

NOTICE: THIS AGREEMENT RESULTS IN YOUR LIEN OR RIGHTS TO A LIEN BECOMING SUBJECT TO AND OF LOWER PRIORITY THAN THE INTEREST ACQUIRED BY THE PARTIES TO THE INSTRUMENTS DESCRIBED HEREIN AND ANY AMENDMENTS THERETO.

THE STATE OF CALIFORNIA

COUNTY OF SAN LUIS OBISPO

**SUBORDINATION AGREEMENT**

THIS SUBORDINATION AGREEMENT (this "Agreement") is executed on the date set forth below to be effective as of \_\_\_\_\_, 2011 (the "Effective Date") by **SUNPOWER CORPORATION, SYSTEMS** (the "Contractor"), whose address is 1414 Harbor Way South, Richmond, California 94804, for the benefit of **PNC BANK, NATIONAL ASSOCIATION, doing business as MIDLAND LOAN SERVICES, a division of PNC BANK, NATIONAL ASSOCIATION, as Collateral Agent** (in such capacity, and together with its successors and assigns in such capacity, the "Beneficiary"), whose address is \_\_\_\_\_, as beneficiary under that certain CONSTRUCTION AND PERMANENT LEASEHOLD DEED OF TRUST WITH ASSIGNMENT OF RENTS AND FIXTURE FILING (the "Deed of Trust"), recorded concurrently herewith in the Official Public Records of San Luis Obispo County, California. Capitalized terms used but not defined herein have the meanings given to such terms in the Loan Guarantee Agreement (as defined below).

DD-1

Exhibit DD  
Form of Subordination Agreement



WITNESSETH:

WHEREAS, High Plains Ranch II, LLC, a Delaware limited liability company (the “Borrower”), is the lessee or easement grantee of that certain real property located in San Luis Obispo County, California (the “Property”) as described on Exhibit A attached hereto, all as more particularly described in the Deed of Trust for the use of the Property for solar electrical generation purposes, including but not limited to converting solar energy into electrical energy, and collecting and transmitting such electrical energy through underground and overhead lines as provided therein;

WHEREAS, Borrower, the U.S. Department of Energy, as guarantor, and as loan servicer (the “DOE”) have entered into that certain Loan Guarantee Agreement, dated [\_\_\_\_\_, 2011] (the “Loan Guarantee Agreement”), whereby Borrower has requested that the Federal Financing Bank, a body corporate and instrumentality of the United States of America (the “FFB”), make advances to Borrower with respect to the Project (as defined below) pursuant to the Financing Documents upon the terms and subject to the conditions set forth therein, pursuant to which Borrower's obligations shall be secured by the Deed of Trust;

WHEREAS, Borrower desires to develop, finance, construct, own and operate an approximately 250 MW AC gross megawatt photovoltaic power plant, known as California Valley Solar Ranch (the “Project”) on the Property;

WHEREAS, Borrower has engaged Contractor, to provide design, engineering, procurement, construction, management, commissioning and start up services for the Project upon the Property, including all equipment, facilities, materials, and supplies to be installed thereon (the “Improvements”) as set forth in that certain Engineering, Procurement and Construction Agreement, dated August [\_\_\_], 2011, by and between Borrower and Contractor (the “EPC Contract”);

WHEREAS Contractor and Beneficiary desire to confirm their understanding with respect to the priority of lien rights under the EPC Contract and the Deed of Trust;

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, the parties hereto agree as follows:

1. Subordination. For good and valuable consideration, and in consideration of the agreement by DOE to guaranty loans made by FFB to Borrower for the Project, Contractor hereby unconditionally and irrevocably agrees (and, acting herein by and through its duly authorized agent, hereby agrees) that any and all liens, rights and interests (whether choate or inchoate and including, without limitation, all mechanic's and materialman's liens under the Constitution or statutes of the State of California) owned, claimed or held, and all liens, rights and interests to be owned, claimed or held by Contractor in and to the Property, the Project and/or the Improvements, whether pursuant to the EPC Contract or otherwise, whether now or hereafter constructed thereon, or any part thereof, and whether real or personal property, affixed to or severed or severable from the Property, the Project and/or the Improvements are and shall be in all things second, subordinate and inferior to all liens and security interests now existing or hereafter created for the benefit of the Beneficiary, its successors and assigns, and securing payment of the indebtedness under the Loan Guarantee Agreement or the FFB Promissory Notes issued thereunder (collectively, the "Indebtedness"), or any renewal, extension or rearrangement of any of same, and including, without limitation, those created under and by virtue of the Deed of Trust or any other deed of trust executed or to be executed by Borrower as security for the Indebtedness, and covering and affecting the Property and recorded or to be recorded in the Official Public Records of San Luis Obispo County, California.

2. General Provisions.

- (a) Each party shall, from time to time, take such actions, execute, file and record such documents and agreements, and provide such certificates, as any other party may reasonably request to carry out and permit the exercise and performance of the rights and obligations, as are contemplated hereunder, and to effectuate the purpose and intent of this Agreement.
- (b) This Agreement shall be governed by and construed under the laws of the State of California,

except as required by mandatory provisions of law. This Agreement may not be amended or modified except by an agreement in writing signed by the party to be charged. This Agreement may be executed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument.

**[Signature Page Follows]**

DD-4

Exhibit DD  
Form of Subordination Agreement

IN WITNESS WHEREOF, the Contractor, through its officers or other representatives thereunto duly authorized, has executed this Agreement as of the date set forth below to be effective as of the Effective Date.

SUNPOWER CORPORATION, SYSTEMS  
a Delaware corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Dated: \_\_\_\_\_, 2011

DD-5

Exhibit DD  
Form of Subordination Agreement

STATE OF CALIFORNIA)

) ss.

COUNTY OF \_\_\_\_\_)

On \_\_\_\_\_, 2011, before me, \_\_\_\_\_, personally appeared \_\_\_\_\_ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public

[SEAL]

DD-6

Exhibit DD  
Form of Subordination Agreement

**EXHIBIT A**

**LEGAL DESCRIPTION OF THE PROPERTY**

DD-7

Exhibit DD  
Form of Subordination Agreement

**EXHIBIT EE**

**FORM OF MATERIALS AND EQUIPMENT SUPPLY AGREEMENT**

**MATERIALS AND EQUIPMENT SUPPLY AGREEMENT**

between

HIGH PLAINS RANCH II, LLC

and

SUNPOWER CORPORATION, SYSTEMS

for

The supply of certain PV Modules and Inverter Equipment for the  
250 MW AC design capacity California Valley Solar Ranch photovoltaic power project

Dated as of [\_\_\_\_\_] \_\_, 2011

Exhibit EE  
Form of Materials and Equipment Supply Agreement

## TABLE OF CONTENTS

1.	Defined Terms	1
2.	Scope of PV Plant Hardware Delivered	1
3.	Scope of Agreement	2
4.	Provision of Separate PV Plant Hardware Components	2
5.	Payment	3
6.	Termination	3
7.	Title and Freight	3
8.	Limitations of Liability and Remedies	3
9.	Governing Law	4
10.	Validity	4
11.	Taxes	4
12.	No Oral Modifications	4
13.	Captions	4
14.	Counterparts	5
15.	Authority	5
16.	Complete Agreement	5

## SCHEDULES

Schedule A - Owner Notice

Schedule B - Separate PV Plant Hardware Components

Schedule C - Amount and Timing of Payment



**[Form of] MATERIALS AND EQUIPMENT SUPPLY AGREEMENT**

This Materials and Equipment Supply Agreement (this "Agreement") is made effective as of [\_\_\_\_\_, 2011 (the "Effective Date") between High Plains Ranch II, LLC ("Owner") and SunPower Corporation, Systems ("Supplier"). (Owner and Supplier are sometimes referred to individually as "Party" and collectively as "Parties".)

WHEREAS, Owner and Supplier (the latter in its capacity as Contractor) have entered into that certain Engineering, Procurement and Construction Agreement dated [\_\_\_\_\_, 2011 (the "EPC Contract") for the construction of the Plant, including the supply of PV Plant Hardware (as defined in the EPC Contract).

WHEREAS, Owner and Supplier, have agreed certain PV modules that satisfy the requirements of Section 9.5 of the EPC Contract ("PV Modules") and/or certain inverter equipment that satisfies the requirements of Section 9.4 of the EPC Agreement ("Inverter Equipment"), which are part of the PV Plant Hardware to be incorporated into the Plant, will be procured by Supplier for Owner under this Agreement, rather than under the EPC Contract, on the terms hereunder.

NOW THEREFORE, for valuable consideration, the receipt and sufficiency of which each Party acknowledges, the Parties agree as follows:

1. DEFINED TERMS

Unless otherwise defined herein, all capitalized terms shall have the meaning given such terms in the EPC Contract.

2. SCOPE OF PLANT HARDWARE DELIVERED

(a) Consistent with that certain written notice from Owner to Supplier, originally dated \_\_\_\_\_, 2011 provided pursuant to Section 9.6.1 of the EPC Agreement (the "Owner Notice"), attached to this Agreement as Schedule A, Supplier shall supply and deliver to Owner, or shall cause the separate delivery and sale to Owner from the vendor of PV Modules and/or Inverter Equipment having an aggregate purchase price specified in the Owner Notice, which PV Modules and/or Inverter Equipment are to be incorporated into such Phase(s) of the PV Power Plant as described in the Owner Notice.

(b) Supplier hereby specifies in Schedule B attached to this Agreement (and the Owner Notice is deemed amended to reflect this specification) that quantity of PV Modules and/or Inverter Equipment (collectively, the "Separate PV Plant Hardware Components") required to be separately sold under this Agreement in order to result in the net aggregate price of such Separate PV Plant Hardware Components to equal the amounts specified below for each Phase:

Phase I: \*\*\*

Phase II: \*\*\*, and

Phase III: \*\*\*, and

Phase IV: \*\*\*.

Supplier shall take sufficient steps to identify each item of Separate PV Plant Hardware Component by

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

specific serial number and to maintain that specific identification (including the ability to track the location and use of each Separate PV Plant Hardware Component) for the Separate PV Plant Hardware Components to be incorporated into each Phase, including specifically identifying such Separate PV Plant Hardware Components by separate serial number during delivery to, storage at and delivery from any warehouse agreed to pursuant to Section 4 of this Agreement.

### 3. SCOPE OF AGREEMENT

Except as specifically set forth herein, the obligations of the Parties relating to the procurement, delivery and installation of, and payment for, the Separate PV Plant Hardware Components, as well as all warranty obligations related to the Separate PV Plant Hardware Components, shall be performed in accordance with the terms and conditions of the EPC Contract. Except as specifically set forth herein, nothing herein shall limit or expand the rights, duties or obligations, including warranty obligations related to the Separate PV Plant Hardware Components, of either Party under the EPC Contract. The Parties agree that where there is a conflict between the provisions of this Agreement and the EPC Contract (including, without limitation, the passage of title and risk of loss and applicable limitations upon remedies and damages), the provisions of this Agreement shall control.

### 4. PROVISION OF SEPARATE PV PLANT HARDWARE COMPONENTS

Supplier hereby agrees to deliver, or cause delivery, of the Separate PV Plant Hardware Components to a warehouse or other location as shall be reasonably agreed to by Owner and Supplier not later than \*\*\* months following the time that payment is made for the relevant Separate PV Plant Hardware Components pursuant to Section 5 of this Agreement. To the extent that such delivery is to a bonded warehouse within or outside of the United States or the manufacturing facility of an affiliate of the Supplier, the parties agrees that such warehouse or affiliate will act as a warehouseman bailee for the Owner. \*\*\*

### 5. PAYMENT

The amount and timing of payment due for the Separate PV Plant Hardware Components is set forth in Schedule C of this Agreement (the "Separate PV Plant Hardware Component Price"). The payments made hereunder are exclusive of any sales, use, gross receipts and compensating Taxes, the liability for which shall be determined under Section 11 of this Agreement. All amounts paid under this Agreement, excluding any payment or reimbursement for sales, use, gross receipts and compensating Taxes, shall be credited toward the Contract Price under the EPC Contract. For the avoidance of doubt, none of Owner, its Affiliates or assignees of this Agreement shall retain any kind of security interest over the payments made for the Separate PV Plant Hardware Components.

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

## 6. TERMINATION

This Agreement shall be deemed automatically terminated upon any termination of the EPC Contract in respect of any Separate PV Plant Hardware Components for which no payment has been made pursuant to Section 5 of this Agreement. For the avoidance of doubt, this Agreement shall not terminate, but shall continue, in respect of those Separate PV Plant Hardware Components for which Owner has made any payment under Section 5 of this Agreement, notwithstanding the termination of the EPC Contract or the resulting termination for any Separate PV Plant Hardware Components for which no payment has been made by Owner, pursuant to the first sentence of this Section 6. Owner shall not have the remedy of returning any nonconforming PV Modules or Inverter Equipment for a full refund upon breach or cancellation of this Agreement.

## 7. TITLE AND RISK OF LOSS

Owner shall take title to the PV Modules and/or Inverter Equipment sold to it under this Agreement upon delivery of the PV Modules and/or Inverter Equipment to the warehouse or other agreed-upon storage location, as set forth in Section 4 of this Agreement, and Owner shall assume risk of loss, damage or destruction, for such PV Modules and/or Inverter Equipment upon that delivery. Supplier shall be responsible for any loss or damage to PV Modules and/or Inverter Equipment that are separately sold under this Agreement due to the failure of the Supplier to properly preserve, package, or handle those PV Modules or Inverter Equipment.

## 8. LIMITATIONS OF LIABILITY AND REMEDIES

(a) The aggregate damages or liability incurred by a Party in respect of its obligations under this Agreement shall be determined as provided under the EPC Contract; *provided* that in no event shall any limitation on such aggregate damages or liability in respect of breach of an obligation under this Agreement be less than \*\*\* of the amount due and payable to Supplier for the Separate PV Plant Hardware Components under Section 5 of this Agreement; and *provided, further*, that in the event payment of damages or liability under this Section 8(a) would otherwise cause the aggregate damages or liability incurred by a Party in respect of its obligations under both this Agreement and under the EPC Contract to exceed the maximum amounts provided under the EPC Contract, the relevant damages payable or liability under Section 8(a) shall not be reduced, but the relevant damages payable or liability due under the EPC Contract shall be reduced dollar-for-dollar by such excess amount; and

(b) Supplier shall have no responsibility for Owner's obtaining the Cash Grant and under no circumstances shall Supplier incur any liability, including direct or consequential damages, as a result of Owner's failure to apply for, obtain, or continue to be eligible for the Cash Grant, except to the extent provided in the EPC Contract.

## 9. GOVERNING LAW

Interpretation of this Agreement and performance thereof shall be determined by the internal laws of the State of California, excluding any of its conflicts of laws provisions that would require the application of the laws of another jurisdiction. Any dispute or matter in question between the Parties arising out of or related to this Agreement shall be resolved pursuant to the procedures set forth in Section 33.2 of the EPC Contract.

## 10. VALIDITY/DIVISIBILITY

The Parties intend that this Agreement (a) constitute a binding written contract for purposes of the

Cash Grant Guidance, and (b) not constitute an option to acquire or sell property for purposes of the Cash Grant Guidance, and shall be interpreted and applied in a manner consistent with the Cash Grant Guidance. If one or more of the provisions of this Agreement shall be found, by a court with proper jurisdiction, to be illegal, invalid or unenforceable, it shall not affect the legality, validity or enforceability of any of the remaining provisions of this Agreement. The Parties agree to attempt to substitute for any illegal, invalid or unenforceable provision a legal, valid or enforceable provision that achieves to the greatest extent possible the economic objectives of the illegal, invalid or unenforceable provision. For the avoidance of doubt, the Parties agree that the obligations and rights under this Agreement are divisible from the Work and Services provided and/or sold under the EPC Agreement. The Parties also agree that this Agreement is divisible in respect of the obligations and rights for each Separate PV Plant Hardware Component sold under this Agreement.

11. TAXES

Liability for all Taxes relating to the deliveries, payments and performance of other obligations under the Agreement shall be determined as if such deliveries, payments and performance of obligations were made as part of the EPC Contract, and not under this separate Agreement.

12. NO ORAL MODIFICATIONS

No modification of any provisions of this Agreement shall be valid unless in writing and signed by authorized representatives of the party against whom such modification is ought to be enforced.

13. CAPTIONS

The captions in this Agreement are for convenience and reference only and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

14. COUNTERPARTS

This Agreement may be executed in counterparts which, taken together, shall constitute a single instrument.

15. AUTHORITY

Each individual executing this Agreement on behalf of Owner and Supplier represents and warrants that he or she is duly authorized to execute and deliver this Agreement on behalf of said party and that this Agreement is binding upon said party in accordance with its terms.

16. COMPLETE AGREEMENT

This Agreement and the EPC Contract constitute the complete and entire Agreement between the Parties with respect to the Plant and the Work, and supersedes any previous communications, representations or agreements, whether oral or written, with respect to the subject matter hereof. There are no additions to, or deletions from, or changes in, any of the provisions hereof, and no understandings, representations or agreements concerning any of the same, which are not expressed herein, unless stated below. THE PARTIES HEREBY AGREE THAT NO TRADE USAGE UNDER THIS AGREEMENT SHALL BE A PART OF THIS AGREEMENT OR SHALL BE USED IN THE INTERPRETATION OR CONSTRUCTION OF THIS AGREEMENT.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date written above.

**SUNPOWER CORPORATION, SYSTEMS**

**HIGH PLAINS RANCH II, LLC**

By: \_\_\_\_\_

By: \_\_\_\_\_

Exhibit EE  
Form of Materials and Equipment Supply Agreement

Schedule A

Section 9.6.1 EPC Agreement Owner Notice

EE-1

Exhibit EE  
Form of Materials and Equipment Supply Agreement

Schedule B

SEPARATE PLANT HARDWARE COMPONENTS

Exhibit EE  
Form of Materials and Equipment Supply Agreement

Schedule C

AMOUNT AND TIMING OF PAYMENT

Exhibit EE  
Form of Materials and Equipment Supply Agreement



**EXHIBIT FF**

**CONTRACTOR LETTER OF CREDIT**

[Form of Letter of Credit]

**IRREVOCABLE STANDBY LETTER OF CREDIT**

Deutsche Bank AG, New York Branch      Letter Of Credit No. [\_\_\_\_\_]   
 60 Wall Street, 22nd floor      Irrevocable Standby Letter Of Credit   
 New York, NY 10005

Date of Issue: [\_\_\_\_\_] , 20\_\_      Stated Expiration Date: December 26, 2011

Applicant:      Stated Amount: USD \$\*\*\*   
 SunPower Corporation, Systems   
 1414 Harbour Way South   
 Richmond, CA 94804

Beneficiary:   
 High Plains Ranch II, LLC   
 c/o NRG Solar LLC   
 1301 McKinney Street; Suite 2300   
 Houston, TX 77010   
 Attn: Director, Procurement

Credit Available With: [\_\_\_\_\_]

Ladies and Gentlemen:

At the request and for the account of SunPower Corporation, Systems (the "Applicant"), we hereby establish in favor of High Plains Ranch, II, LLC (the "Beneficiary"), in connection with the Equipment, Procurement, & Construction Agreement dated on or about September 28, 2011 (as amended, restated, amended and restated or otherwise modified, the "Agreement"), by and between the Applicant and the Beneficiary, this Irrevocable Standby Letter of Credit no. [\_\_\_\_\_] (this "Letter of Credit") expiring on December 26, 2011 (the "Stated Expiration Date").

We irrevocably authorize you to draw on this Letter of Credit, in accordance with the terms and conditions hereinafter set forth, in any amount up to the Available Amount (as defined below) available against presentation of a dated drawing request drawn on Deutsche Bank AG, New York Branch manually signed by a purported authorized officer of the Beneficiary completed in the form of Annex 1 hereto (a "Drawing Request"). Partial drawings are allowed under this Letter of Credit. Each Drawing Request honored by us shall immediately reduce the amount available to be drawn hereunder by the amount of the payment made in satisfaction of such Drawing Request (each, an "Automatic Reduction").

On any given date, the Stated Amount (as set forth on the first page of this Letter of Credit) minus any Automatic Reductions plus any amounts reinstated pursuant to the terms hereof plus any amounts increased pursuant to the terms and conditions hereto shall be the aggregate amount

FF-1

Exhibit FF   
 Contractor's Letter of Credit

available hereunder (the "Available Amount").

Drawing Requests and all communications with respect to this Letter of Credit shall be in writing, addressed or presented in person to us at: 60 Wall Street, 22nd Floor, New York, NY 10005, Attn: Trade Services Department, referencing this Letter of Credit No. [\_\_\_\_]. In addition, presentation of a Drawing Request may also be made by fax transmission to (212) \*\*\*, or such other fax number identified by us in a written notice to you. To the extent a Drawing Request is made by fax transmission, you must (i) provide telephone notification to us at (212) \*\*\* prior to or simultaneously with the sending of such fax transmission and (ii) send the original of such Drawing Request to us by overnight courier, at the same address provided above; provided, however, that our receipt of such telephone notice or original documents shall not be a condition to payment hereunder. Presentation of the original of this Letter of Credit shall only be required for any drawing of the entire Available Amount.

If a Drawing Request is presented in compliance with the terms of this Letter of Credit to us at such address or facsimile number by 11:00 a.m., New York City time, on any Business Day, payment will be made not later than the close of business, New York City time, on such Business Day and if such Drawing Request is so presented to us after 11:00 a.m., New York City time, on any Business Day, payment will be made on the following Business Day not later than the close of business, New York City time. Payment under this Letter of Credit shall be made in immediately available funds by wire transfer to such account as is set forth below.

As used in this Letter of Credit, "Business Day" means any day other than a Saturday, Sunday or other day on which commercial banks are authorized or required by law to remain closed in the State of New York.

This Letter of Credit shall expire on the earliest to occur of (1) our receipt of written confirmation from the Beneficiary authorizing us to cancel this Letter of Credit accompanied by the original of this Letter of Credit; (2) the close of business, New York time, on the date (the "Early Expiration Date") specified in a notice of early expiration in the form of Annex 2 hereto sent by us to the Beneficiary and the Applicant by courier, mail delivery or delivery in person or facsimile transmission and stating that this Letter of Credit shall terminate on such date, which date shall be no less than thirty (30) days after the date of such notice, with the Beneficiary remaining authorized to draw on us prior to such Early Expiration Date in accordance with the terms hereof; or (3) the Stated Expiration Date. It is a condition of this letter of credit that it shall be deemed automatically extended without an amendment for a one year period beginning on the present expiry date hereof and upon each anniversary of such date but not to extend beyond \*\*\*, unless at least sixty (60) days prior to any such expiry date we have sent you written notice ( the "Notice of Non-Renewal") by regular, registered mail, facsimile, or courier service that we elect not to permit this letter of credit to be so extended beyond, and will expire on its then current expiry date. No presentation made under this letter of credit after such expiry date will be honored. To the extent a Notice of Non-Renewal has been provided to the Beneficiary and Applicant in accordance herewith the Beneficiary is authorized to draw on us up to the Available Amount of this Letter of Credit, by presentation to us, in the manner and at the address specified in the third preceding paragraph, of a Drawing Request completed in the form of Annex 1 hereto and sent and purportedly signed by the Beneficiary's authorized officer.

This Letter of Credit is effective immediately.

In the event that a Drawing Request fails to comply with the terms of this Letter of Credit, we shall provide the Beneficiary prompt notice of same stating the reasons therefor and shall upon receipt of the Beneficiary's instructions, hold any nonconforming Drawing Request and other documents at your disposal or return any non-conforming Drawing Request and other documents to the Beneficiary at the address set forth above by delivery in person or facsimile transmission. Upon being notified that the drawing was not effected in compliance with this Letter of Credit, the Beneficiary may attempt to correct such non-complying Drawing Request in accordance with the terms of this Letter of Credit.

This Letter of Credit sets forth in full the terms of our undertaking and this undertaking shall not in any way be modified, amended, limited or amplified by reference to any document, instrument or agreement referred to herein, and any such reference shall not be deemed to incorporate herein by reference any document, instrument, or agreement except for Drawing Requests and certificates.

This Letter of Credit is transferable, in its entirety upon presentation to us of a signed transfer certificate in the form of Annex 3 accompanied by this Letter of Credit, in which the Beneficiary irrevocably transfers to its successor all of its rights hereunder, whereupon we will either issue a substitute letter of credit to such successor or endorse such transfer on the reverse of this Letter of Credit.

You have notified us that the Beneficiary has collaterally assigned this Letter of Credit to PNC BANK, NATIONAL ASSOCIATION, doing business as MIDLAND LOAN SERVICES, a division of PNC BANK, NATIONAL ASSOCIATION, as Collateral Agent, acting on behalf of the Secured Parties, as defined in that certain Loan Guarantee Agreement, dated on or about September 28, 2011, between the Borrower, the Department of Energy, in its capacity as guarantor and the Department of Energy, in its capacity as loan servicer. We hereby consent to such collateral assignment.

We further consent, that, upon the presentation by the Beneficiary of the Drawing Request on terms and conditions set forth in this Letter of Credit, we will wire the amounts requested in such Drawing Request to the following account:

PNC Bank, N.A.

ABA: \*\*\*

Account No.: \*\*\*

Account Name: Midland Loan Services for High Plains Ranch II, LLC, DOE as Loan Servicer

Reference: MLS In#\*\*\* for further credit to Construction Sub Acct (Account #\*\*\*)

Any voluntary reduction hereunder shall be in the form of Annex 4 hereto.

All banking charges are for the account of the Applicants.

All Drawing Requests under this Letter of Credit must bear the clause: "Drawn under

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

Exhibit FF  
Contractor's Letter of Credit

Deutsche Bank AG, New York Branch, Letter of Credit Number [\_\_\_\_\_] dated [\_\_\_\_\_].”

This Letter of Credit shall not be amended except with the written concurrence of Deutsche Bank AG, New York Branch, the Applicant and the Beneficiary.

We hereby engage with you that a Drawing Request drawn strictly in compliance with the terms of this Letter of Credit and any amendments thereto shall be honored.

This Letter of Credit is subject to the rules of the “International Standby Practices 1998” published by the Institute of International Banking Law and Practice (“ISP 98”) and, as to matters not governed by ISP 98, shall be governed by and construed in accordance with the laws of the State of New York.

We irrevocably agree with you that any legal action or proceeding with respect to this Letter of Credit shall be brought in the courts of the State of New York in the County of New York or of the United States of America in the Southern District of New York. You and we irrevocably submit to the nonexclusive jurisdiction of such courts solely for the purposes of this Letter of Credit. You and we hereby waive to the fullest extent permitted by law any objection either of us may now or hereafter have to the laying of venue in any such action or proceeding in any such court.

DEUTSCHE BANK AG, NEW YORK BRANCH

Authorized signature

ANNEX 1  
[Letterhead of Beneficiary]

Drawn under [insert name of Issuing Bank],  
Letter of Credit Number [\_\_\_\_\_] dated [\_\_\_\_\_]

DRAWING REQUEST  
[Date]  
[name and address of Issuing Bank]

Ladies and Gentlemen:

The undersigned, a duly authorized officer of the Beneficiary hereby draws on [insert name of Issuing Bank], Irrevocable Standby Letter of Credit No. [\_\_\_\_\_] (the “Letter of Credit”) dated [\_\_\_\_\_] issued by you in favor of us. Any capitalized term used herein and not defined herein shall have its respective meaning as set forth in the Letter of Credit.

In connection with this drawing, we hereby certify that:

A) This drawing in the amount of US\$\_\_\_\_\_ is being made pursuant to the Letter of

Exhibit FF  
Contractor's Letter of Credit

Credit;

[Use one or more of the following forms of paragraph B, as applicable]

B-1) There is a default under the Agreement and Beneficiary is authorized to make a drawing under this Letter of Credit or

B-2) The Letter of Credit will expire within [sixty (60)] days of the date of this Drawing Request pursuant to a Notice of Non-Renewal and the Applicants have failed to provide a replacement letter of credit from an acceptable credit provider and satisfying the requirements of the Agreement;

or

B-3) [insert name of Issuing Bank] has delivered an Early Expiration Notice and such Early Expiration Notice has not been rescinded and the Applicants have not replaced the Letter of Credit; or

B-4) The rating accorded to the [insert name of Issuing Bank] 's U.S. dollar denominated long term senior unsecured debt obligations by [\_\_\_\_\_] or by [\_\_\_\_\_] has fallen below [\_\_] or [\_\_] respectively, and Obligor has not furnished a replacement letter of credit conforming to the requirements of the Agreement within [\_\_\_\_] (\_\_\_\_) days of such downgrade.

; and

C) You are directed to make payment of the requested drawing to:

PNC Bank, N.A.

ABA: \*\*\*

Account No.: \*\*\*

Account Name: Midland Loan Services fbo High Plains Ranch II, LLC, DOE as Loan Servicer

Reference: MLS ln#\*\*\* for further credit to Construction Sub Acct (Account #\*\*\*)

\_\_\_\_\_ [insert bank name, address and account number].

IN WITNESS WHEREOF, the undersigned has executed and delivered this request on this \_\_\_\_ day of \_\_\_\_\_.

[Beneficiary]

By: \_\_\_\_\_

Name:

Title:

cc:

[Applicant name and address]

ANNEX 2  
NOTICE OF EARLY EXPIRATION

[Date]

[Beneficiary name and address]

Ladies and Gentlemen:

Reference is made to that Irrevocable Standby Letter of Credit No. [\_\_\_\_\_] (the “Letter of Credit”) dated [\_\_\_\_\_] issued by [Issuing Bank] in favor of [\_\_\_\_\_] (the “Beneficiary”). Any capitalized term used herein and not defined herein shall have its respective meaning as set forth in the Letter of Credit.

This constitutes our notice to you pursuant to the Letter of Credit that the Letter of Credit shall terminate on\_\_\_\_\_, \_\_\_\_ [insert a date which is thirty (30) or more days after the date of this notice of early expiration] (the “Early Expiration Date”).

Pursuant to the terms of the Letter of Credit, the Beneficiary is authorized to draw (pursuant to one or more drawings), prior to the Early Expiration Date, on the Letter of Credit in an aggregate amount that does not exceed the then Available Amount (as defined in the Letter of Credit).

IN WITNESS WHEREOF, the undersigned has executed and delivered this request on this \_\_\_\_ day of \_\_\_\_\_.

[ISSUING BANK]

By: \_\_\_\_\_

Name:

Title:

cc:

[Applicant name and address]

ANNEX 3

REQUEST FOR TRANSFER OF LETTER OF CREDIT IN ITS ENTIRETY

Deutsche Bank AG,                      Date: \_\_\_\_\_  
New York Branch  
60 Wall Street  
24th Floor  
New York, NY 10005-2858

Exhibit FF  
Contractor's Letter of Credit

Attn: Trade Services Department

Re: Deutsche Bank AG, New York Branch, Irrevocable Standby Letter of Credit No.

\*\*\*

For value received, the undersigned beneficiary hereby irrevocably transfers to:

NAME OF TRANSFEREE \_\_\_\_\_  
ADDRESS OF TRANSFEREE \_\_\_\_\_  
CITY, STATE/COUNTRY ZIP \_\_\_\_\_

(hereinafter, the “transferee”) all rights of the undersigned beneficiary to draw under above letter of credit, in its entirety.

By this transfer, all rights of the undersigned beneficiary in such Letter of Credit are transferred to the transferee and the transferee shall have the sole rights as beneficiary hereof, including sole rights relating to any amendments, whether increases or extensions or other amendments and whether now existing or hereafter made. All amendments are to be advised directly to the transferee without necessity of any consent of or notice to the undersigned beneficiary.

The original of such letter of credit is returned herewith, and we ask you to endorse the transfer on the reverse thereof, and forward it directly to the transferee with your customary notice of transfer.

In payment of your transfer commission in amount equal to a minimum of \$250.00 and maximum of \$1,000.00.

Select one of the following:

\_\_\_\_ we enclose a cashier's/certified check  
\_\_\_\_ we have wired funds to you through \_\_\_\_\_ bank  
\_\_\_\_ we authorize you to debit our account # \_\_\_\_\_ with you, and in addition thereto, we agree to pay you on demand any expenses which may be incurred by you in connection with this transfer

Very truly yours,  
[BENEFICIARY NAME]

\_\_\_\_\_  
Authorized Signature

The signature(s) of \_\_\_\_\_ with title(s) as stated conforms to those

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

on file with us; are authorized for the execution of such instrument; and the beneficiary has been approved under our bank's Customer Identification Program. Further, pursuant to Section 326 of the USA Patriot Act and the applicable regulations promulgated thereunder, we represent and warrant that the undersigned bank: (i) is subject to a rule implementing the anti-money laundering compliance program requirements of 31 U.S.C. section 5318(h); (ii) is regulated by a Federal functional regulator [as such term is defined in 31 C.F.R. section 103.120(a)(2)]; and (iii) has a Customer Identification Program that fully complies with the requirements of the regulations.

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(Signature of Authenticating Bank)

(Name of Bank)

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(Printed Name/Title)

(Date)

IN WITNESS WHEREOF, the undersigned has executed and delivered this request on this \_\_\_\_ day of \_\_\_\_\_.

[Beneficiary name]

By: \_\_\_\_\_

Name:

Title:

cc:

[insert name and address of Transferee]

[insert name and address of Applicant]

#### ANNEX 4

#### VOLUNTARY REDUCTION REQUEST CERTIFICATE

[Date]

[insert name of Issuing Bank]

[insert address of Issuing Bank]

Ladies and Gentlemen:

Reference is made to that Irrevocable Standby Letter of Credit No. [\_\_\_\_\_] (the “Letter of Credit”) dated [\_\_\_\_\_] issued by you in favor of [\_\_\_\_\_] (the “Beneficiary”). Any capitalized term used herein and not defined herein shall have its respective meaning as set forth in the Letter of Credit.

The undersigned, a duly authorized officer of the Beneficiary, having been so directed by [\_\_\_\_\_] (the “Applicant”), hereby requests that the Stated Amount (as such term is defined in the Letter of Credit) of the Letter of Credit be reduced by \$[\_\_\_\_\_] to \$[\_\_\_\_\_].

Exhibit FF  
Contractor's Letter of Credit



We hereby certify that the undersigned is a duly authorized officer of the Beneficiary.

IN WITNESS WHEREOF, the undersigned has executed and delivered this request on  
this \_\_\_\_ day of \_\_\_\_\_.

[Beneficiary name]

By: \_\_\_\_\_

Name:

Title:

cc:

[Applicant name and address]

Exhibit FF  
Contractor's Letter of Credit

## CERTIFICATIONS

I, Thomas H. Werner, 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 2, 2012

/S/ THOMAS H. WERNER

Thomas H. Werner  
President, Chief Executive Officer and Director  
(Principal Executive Officer)

## CERTIFICATIONS

I, Charles D. Boynton, 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 2, 2012

/S/ CHARLES D. BOYNTON

Charles D. Boynton  
Executive Vice President and Chief Financial Officer  
(Principal Executive 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 September 30, 2012 as filed with the Securities and Exchange Commission on the date hereof (the “Report”), each of Thomas H. Werner and Charles D. Boynton 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.

Dated: November 2, 2012

/S/ THOMAS H. WERNER

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Thomas H. Werner  
President, Chief Executive Officer and Director  
(Principal Executive Officer)

/S/ CHARLES D. BOYNTON

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Charles D. Boynton  
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.

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