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

FORM 10-Q

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

For the quarterly period ended April 1, 2007

OR

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

Commission file number 000-51593

SunPower Corporation
(Exact name of registrant as specified in its charter)

Delaware	**94-3008969**
(State or other jurisdiction of incorporation or organization)	***(I.R.S. Employer Identification No.)***

3939 North First Street, San Jose, California 95134
(Address of principal executive offices and zip code)

(408) 240-5500
(Registrant's telephone number, including area code)

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

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

Large accelerated filer ☐ Accelerated filer ☒ Non-accelerated filer ☐

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

The total number of outstanding shares of the registrant's class A common stock as of May 4, 2007 was 30,641,178. The total number of outstanding shares of the registrant's class B common stock as of May 4, 2007 was 44,533,287.

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PART I. FINANCIAL INFORMATION

Item 1. Financial Statements

SunPower Corporation

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

	April 1, 2007	December 31, 2006
Assets		
Current assets:		
Cash and cash equivalents	$ 209,462	$ 165,596
Restricted cash	5,128	—
Short-term investments	—	16,496
Accounts receivable, net	82,768	51,680
Costs and estimated earnings in excess of billings	19,096	—
Inventories	73,232	22,780
Deferred project costs	31,136	—
Prepaid expenses and other current assets	29,260	16,655
Current portion of advances to suppliers	13,700	15,394
Total current assets	463,782	288,601
Property, plant and equipment, net	254,021	202,428
Goodwill	178,045	2,883
Intangible assets, net	86,638	14,049
Advances to suppliers, net of current portion	72,578	62,242
Other long-term assets	21,272	6,633
Total assets	$1,076,336	$ 576,836
Liabilities and Stockholders' Equity		
Current liabilities:		
Accounts payable	$ 92,283	$ 26,534
Accounts payable to Cypress	5,791	2,909
Accrued liabilities	44,657	18,585
Billings in excess of costs and estimated earnings	38,387	—
Current portion of customer advances	10,197	12,304
Total current liabilities	191,315	60,332
Convertible debt	200,000	—
Deferred tax liability	19,138	46
Customer advances, net of current portion	22,315	27,687
Other long-term liabilities	7,499	—
Total liabilities	440,267	88,065
Commitments and contingencies (Note 13)		
Stockholders' Equity:		
Preferred stock, $0.001 par value per share; 10,042,490 shares authorized; none issued and outstanding	—	—
Common stock, $0.001 par value; 375,000,000 shares authorized; 74,942,172 and 69,849,369 shares issued and outstanding at April 1, 2007 and December 31, 2006, respectively	74	70
Additional paid-in capital	668,082	522,819
Accumulated other comprehensive loss	(1,310)	(2,101)
Accumulated deficit	(30,777)	(32,017)
Total stockholders' equity	636,069	488,771
Total liabilities and stockholders' equity	$1,076,336	$ 576,836

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

SunPower Corporation

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

	Three Months Ended	
	April 1, 2007	April 2, 2006
Revenue:		
Systems	$ 78,495	$ —
Components	63,852	41,958
	142,347	41,958
Costs and expenses:		
Cost of systems revenue	62,443	—
Cost of components revenue	47,479	36,266
Research and development	2,936	1,996
Sales, general and administrative	22,371	4,381
Purchased in-process research and development	9,575	—
Total costs and expenses	144,804	42,643
Operating loss	(2,457)	(685)
Interest income	1,984	1,173
Interest expense	(1,119)	(339)
Other income, net	274	137
Income (loss) before income taxes	(1,318)	286
Income tax provision (benefit)	(2,558)	31
Net income	$ 1,240	$ 255
Net income per share:		
Basic	$ 0.02	$ 0.00
Diluted	$ 0.02	$ 0.00
Weighted-average shares:		
Basic	73,732	61,126
Diluted	79,126	66,932

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

SunPower Corporation

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

	Three Months Ended	
	April 1, 2007	April 2, 2006
Cash flows from operating activities:		
Net income	$ 1,240	$ 255
Adjustments to reconcile net income to net cash used in operating activities:		
Depreciation	5,724	3,327
Amortization of intangibles	6,911	1,175
Amortization of debt issue costs	178	—
Stock-based compensation	10,603	1,412
Purchased in-process research and development	9,575	—
Deferred income taxes and other tax liabilities	(3,165)	—
Changes in operating assets and liabilities, net of effects of acquisition:		
Accounts receivable	8,992	(6,477)
Costs and estimated earnings in excess of billings	(9,960)	—
Inventories	(22,187)	(4,101)
Prepaid expenses and other assets	4,035	(1,020)
Deferred project costs	(6,204)	—
Advances to suppliers	(8,642)	(12,441)
Accounts payable and accrued liabilities	(4,769)	9,522
Accounts payable to Cypress	2,882	290
Billings in excess of costs and estimated earnings	2,500	—
Advances from customers	(7,479)	1,428
Net cash used in operating activities	(9,766)	(6,630)
Cash flows from investing activities:		
Increase in restricted cash	(417)	—
Purchase of property and equipment	(56,208)	(20,254)
Proceeds from sale of marketable securities	16,496	—
Cash paid for acquisition, net of cash acquired	(98,645)	—
Net cash used in investing activities	(138,774)	(20,254)
Cash flows from financing activities:		
Proceeds from issuance of convertible debt	200,000	—
Convertible debt issuance costs	(6,030)	—
Principal payments on line of credit and notes payable	(3,563)	—
Proceeds from exercise of stock options	1,999	410
Net cash provided by financing activities	192,406	410
Net increase (decrease) in cash and cash equivalents	43,866	(26,474)
Cash and cash equivalents at beginning of period	165,596	143,592
Cash and cash equivalents at end of period	$ 209,462	$ 117,118
Non-cash investing and financing activities:		
Issuance of common stock for purchase acquisition	$ 111,266	—
Stock options assumed in relation to acquisition	21,280	—

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

SunPower Corporation

Notes to Condensed Consolidated Financial Statements

Note 1. The Company and Basis of Presentation

The Company

SunPower Corporation (the "Company" or "SunPower"), a majority-owned subsidiary of Cypress Semiconductor Corporation ("Cypress"), was originally incorporated in the State of California on April 24, 1985. In October 1988, the Company organized as a business venture to commercialize high-efficiency or solar cell technologies. The Company designs, develops, manufactures, markets and sells solar electric power products, systems and services based on its proprietary processes and technologies. In addition, the Company offers imaging detectors and infrared detectors based on its solar power technology.

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

In November 2005, the Company raised net proceeds of $145.6 million in an initial public offering of 8.8 million shares of common stock at a price of $18.00 per share. In June 2006, the Company completed a follow-on public offering of 7.0 million shares of its common stock, at a per share price of $29.50, and received net proceeds of $197.4 million.

In January 2007, the Company completed the acquisition of PowerLight Corporation ("PowerLight"), a privately-held leading provider of large-scale solar power systems for commercial, government and utility customers worldwide. As a result of the acquisition, PowerLight became an indirect wholly owned subsidiary of the Company. The Company believes the acquisition will enable the Company to develop the next generation of solar products and solutions that will accelerate solar system cost reductions to compete with retail electric rates without incentives and simplify and improve customer experience. The total consideration for the transaction was $334.4 million, consisting of $120.7 million in cash and $213.7 million in common stock and related acquisition costs (see Note 6).

In February 2007, the Company issued $200 million in principal amount of its 1.25% senior convertible debentures (see Note 15).

Cypress made a significant investment in the Company in 2002. On November 9, 2004, Cypress completed a reverse triangular merger with the Company in which all of the outstanding minority equity interest of SunPower was retired, effectively giving Cypress 100% ownership of all of our then outstanding shares of capital stock but leaving its unexercised warrants and options outstanding. After completion of the Company's initial public offering in November 2005 ("IPO"), Cypress held, in the aggregate, 52,033,287 shares of class B common stock. As of April 1, 2007, including the effect of the secondary public offering in June 2006, Cypress held approximately 70% of the Company's total outstanding shares of common stock, or approximately 64% on a fully diluted basis after taking into account outstanding stock options, and holds approximately 94% of the voting power of the Company's total outstanding capital stock. On May 4, 2007, Cypress completed the sale of 7,500,000 shares of the Company's class B common stock in an offering pursuant to Rule 144 of the Securities Act. Such shares converted to 7,500,000 shares of class A common stock upon the sale. Following the sale, Cypress owns 44,533,287 shares of the Company's class B common stock or approximately 55% on a fully diluted basis after taking into account outstanding stock options, and holds approximately 91% of the voting power of the Company's total outstanding capital stock.

The financial statements include allocations of certain Cypress expenses, including centralized legal, tax, treasury, information technology, employee benefits and other Cypress corporate services and infrastructure costs. The expense allocations have been determined based on a method that Cypress and the Company considered to be reasonable reflections of the utilization of services provided or the benefit received by the Company. The financial information included herein may not be indicative of the consolidated financial position, operating results, and cash flows of the Company in the future, or what they would have been had the Company been a separate stand-alone entity during the periods presented. See Note 8 for additional information on the transactions with Cypress.

As of April 1, 2007, the Company had an accumulated deficit of $30.8 million and, with the exception of fiscal 2006 to date, has a history of operating losses. The Company is subject to a number of business risks including, but not limited to, integration difficulties as a result of the acquisition of PowerLight, an industry-wide shortage of polysilicon, an essential raw material in the production of solar cells, limited suppliers for capital equipment, concentration of revenue among few customers, competition from other companies with a longer operating history and significantly greater financial resources, dependency on a third-party subcontractor, the ability to obtain adequate financing to fund operating activities, dependence on key employees, and the ability to attract and retain additional qualified personnel.

Fiscal Year

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 2006 and 2007 consist of 52 weeks. The first quarter of fiscal 2007 ended on April 1, 2007 and the first quarter of fiscal 2006 ended on April 2, 2006.

Significant Accounting Policies

The Company's significant accounting policies are disclosed in the Company's Form 10-K for the year ended December 31, 2006 and have not changed materially as of April 1, 2007, with the exception of the following:

In connection with the acquisition of PowerLight on January 10, 2007, the following accounting policies were adopted for the quarter ended April 1, 2007.

Revenue and Cost Recognition

Construction Contracts

The Company recognizes revenues from fixed price contracts under AICPA Statement of Position ("SOP") 81-1, "Accounting for Performance of Construction-Type and Certain Production-Type Contracts," using the percentage-of-completion method of accounting. Under this method, revenue is recognized as work is performed based on the percentage of incurred costs to estimated total forecasted costs utilizing the most recent estimates of forecasted costs.

Incurred costs include all direct material, labor, subcontract costs, and those indirect costs related to contract performance, such as indirect labor, supplies, tools, and repairs. Job material costs are included in incurred costs when the job materials have been installed. Where contracts stipulate that title to job materials transfers to the customer before installation has been performed, revenue is deferred and recognized upon installation, in accordance with the percentage-of-completion method of accounting. Job materials are considered installed materials when they are permanently attached or fitted to the solar power system as required by the job's engineering design.

Due to inherent uncertainties in estimating cost, job costs estimates are reviewed and/or updated by management working with its projects department. The projects department determines the completed percentage of installed job materials at the end of each month; generally this information is also reviewed with the customer's on-site representative. The completed percentage of installed job materials is then used for each job to calculate the month-end job material costs incurred. Direct labor, subcontractor, and other costs are charged to contract costs as incurred. Provisions for estimated losses on uncompleted contracts, if any, are recognized in the period in which the loss first becomes probable and reasonably estimable. Contracts may include profit incentives such as milestone bonuses. These profit incentives are included in the contract value when their realization is reasonably assured.

As of April 1, 2007, the asset "Costs and estimated earnings in excess of billings," which represents revenues recognized in excess of amounts billed, was $19.1 million. The liability "Billings in excess of costs and estimated earnings," which represents billings in excess of revenues recognized, was $38.4 million.

Cash in Restricted Accounts

Cash in restricted accounts represents collateral for letters of credit issued by a commercial bank in favor of two of the Company's suppliers and one customer. The funds will be released upon payment to the suppliers and the successful completion of the customer contracts.

Deferred Project Costs

Deferred project costs represent uninstalled materials on contracts for which title had transferred to the customer. Because these materials cannot be recognized as contract costs, they are recognized as deferred assets until installation. As of April 1, 2007, deferred project costs were $31.1 million.

Foreign Currency Translation

Assets and liabilities of PowerLight's wholly-owned foreign subsidiaries are translated from their respective functional currencies at exchange rates in effect at the balance sheet date, and revenues and expenses are translated at average exchange rates prevailing during the applicable period. The resulting translation adjustment for the three months ended April 1, 2007 of $336,000 is reflected as a component of accumulated other comprehensive loss in stockholders' equity.

Basis of Presentation

The accompanying condensed consolidated interim financial statements have been prepared pursuant to the rules and regulations of the Securities and Exchange Commission regarding interim financial reporting. The year-end condensed balance sheet data was derived from audited financial statements. Accordingly, these financial statements do not include all of the information and footnotes required by generally accepted accounting principles for complete financial statements and should be read in conjunction with the Financial Statements and notes thereto included in the Company's Annual Report on Form 10-K for the year ended December 31, 2006. In the opinion of management, the accompanying condensed consolidated financial statements contain all adjustments, consisting only of normal recurring adjustments, which the Company believes are necessary for a fair statement of the Company's financial position as of April 1, 2007 and its results of operations for the three months ended April 1, 2007 and April 2, 2006, respectively. These condensed consolidated financial statements are not necessarily indicative of the results to be expected for the entire year.

Recent Accounting Pronouncements

In June 2006, the Financial Accounting Standards Board ("FASB") issued FASB Interpretation No. 48, "Accounting for Uncertainty in Income Taxes, and Related Implementation Issues" ("FIN 48"). FIN 48 clarifies the accounting for uncertainty in income taxes recognized in a Company's financial statements in accordance with FASB 109, "Accounting for Income Taxes." FIN 48 prescribes a recognition threshold and measurement attribute for a tax position taken or expected to be taken in a tax return. FIN 48 also provides guidance on derecognition, classification, interest and penalties, accounting in interim periods, disclosure, and transition. The Company adopted FIN 48 in the first quarter of fiscal 2007 (see Note 11).

In September 2006, the FASB issued Statement of Financial Accounting Standards ("SFAS") No. 157, "Fair Value Measurements ("SFAS No. 157"). SFAS No. 157 defines fair value, establishes a framework for measuring fair value in accordance with generally accepted accounting principles, and expands disclosures about fair value instruments. This statement does not require any new fair value measurements; rather, it applies under other accounting pronouncements that require or permit fair value measurements. The provisions of this statement are to be applied prospectively as of the beginning of the fiscal year in which this statement is initially applied, with any transition adjustment recognized as a cumulative effect adjustment to the opening balance of retained earnings. The provisions of SFAS No. 157 are effective for fiscal years beginning after November 15, 1007; therefore, the Company anticipates adopting this standard as of January 1, 2008. The Company has not determined the effect, if any, the adoption of this statement will have on its consolidated financial statements.

In February 2007, the FASB issued SFAS No. 159, "The Fair Value Option for Financial Assets and Financial Liabilities," which provides companies an option to report selected financial assets and liabilities at fair value. SFAS no. 159 requires companies to provide information helping financial statement users to understand the effect of a company's choice to use fair value on its earnings, as well as to display the fair value of the assets and liabilities a company has chosen to use fair value for on the face of the balance sheet. Additionally, SFAS No. 159 establishes presentation and disclosure requirements designed to simplify comparisons between companies that choose different measurement attributes for similar types of assets and liabilities. The statement is effective as of the beginning of an entity's first fiscal year beginning after November 15, 2007. The Company has not determined the effect, if any, the adoption of this statement will have on its consolidated financial statements.

Note 2. Balance Sheet Components

(In thousands)	April 1, 2007	December 31, 2006
Inventories:		
Raw materials	$ 43,433	$ 8,703
Work-in-process	1,261	79
Finished goods	28,538	13,998
	$ 73,232	$ 22,780
Prepaid expenses and other current assets:		
Deferred tax asset, current portion	$ 7,915	$ 1,446
Note receivable	—	10,000
Unbilled earned rebates	5,779	—
Prepaid materials	4,147	—
VAT receivable, current portion	2,746	48
Prepaid corporate insurance	1,638	460
Other prepaid expenses	7,035	4,701
	$ 29,260	$ 16,655
Property, plant and equipment:		
Land and buildings	$ 7,482	$ 7,304
Manufacturing equipment	124,903	120,104
Computer equipment	3,925	2,496
Furniture and fixtures	159	83
Leasehold improvements	48,542	45,175
Construction-in-process (manufacturing facility in the Philippines)	100,720	53,252
	285,731	228,414
Less: Accumulated depreciation and amortization	(31,710)	(25,986)
	$254,021	$ 202,428
Intangible assets:		
Patents and purchased technology	$ 51,398	$ 21,950
Tradenames	17,138	1,603
Backlog	11,787	—
Customer relationships and other	23,193	463
	103,516	24,016
Accumulated amortization of intangible assets:		
Patents and purchased technology	(11,665)	(8,973)
Tradenames	(1,304)	(548)
Backlog	(2,619)	—
Customer relationships and other	(1,290)	(446)
	(16,878)	(9,967)
	$ 86,638	$ 14,049

The estimated future amortization expense related to intangible assets as of April 1, 2007 is as follows:

2007 (remaining nine months)	$ 22,904
2008	18,457
2009	17,847
2010	16,335
2011 and beyond	11,095
	$ 86,638

(In thousands)	April 1, 2007	December 31, 2006
Other long-term assets:		
Investment in joint venture	$ 4,903	$ 4,994
Debt issue cost	5,852	—
VAT receivable, net of current portion	10,043	—
Other	474	1,639
	$21,272	$ 6,633
Accrued liabilities:		
Warranty reserve, current portion	$ 7,541	$ 3,446
Employee compensation and employee benefits	11,446	3,961
Foreign exchange derivative liability	4,034	4,849
Income taxes payable	5,725	1,995
Accrued acquisition costs	2,804	—
Other	13,107	4,334
	$44,657	$ 18,585
Long-term liabilities:		
Warranty reserve, net of current portion	$ 6,019	$ —
Other	1,480	—
	$ 7,499	$ —

Note 3. Investments

Cash and cash equivalents and short-term investments classified as available-for-sale securities were comprised of the following:

	April 1, 2007				December 31, 2006			
(In thousands)	Cost	Gross Gains	Gross Losses	Fair Value	Cost	Gross Gains	Gross Losses	Fair Value
Corporate securities	$ —	$ —	$ —	$	$ 13,400	$ —	$ —	$ 13,400
Money market securities	186,489	—	—	186,489	135,298	—	—	135,298
Commercial paper	—	—	—		28,739	—	(4)	28,735
Total available-for-sale securities	$ 186,489	$ —	$ —	$ 186,489	$ 177,437	$ —	$ (4)	$ 177,433

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

(In thousands)	April 1, 2007	December 31, 2006
Included in:		
Cash and cash equivalents	$ 186,489	$ 160,937
Short-term investments	—	16,496
	$ 186,489	$ 177,433
Contractual maturities:		
Due in less than one year	$ 186,489	$ 164,033
Due from one to 30 years	—	13,400
	$ 186,489	$ 177,433

From time to time the Company invests in auction rate securities, which are bought and sold in the marketplace through a bidding process sometimes referred to as a “Dutch Auction,” and which are classified as short-term investments and carried at their market values. After the initial issuance of the securities, the interest rate on the securities resets periodically, at intervals set at the time of issuance (e.g., every seven, twenty-eight, or thirty-five days; every six months; etc.), based on the market demand

at the reset period. The "stated" or "contractual" maturities for these securities, however, generally are 20 to 30 years. Despite the long-term maturities, the Company has the ability and intent, if necessary, to liquidate any of these investments in order to meet the Company's working capital needs within its normal operating cycles. At April 1, 2007, the Company did not have outstanding auction rate securities.

The Company classifies these investments as available-for-sale securities under Statement of Financial Accounting Standards No. 115 "Accounting for Investment in Certain Debt and Equity Securities" (SFAS No. 115). As these securities trade at their par values, no gains or losses are recorded in comprehensive income.

Note 4. Net Income per Share

Basic net income per share is computed using the weighted-average common shares outstanding. Diluted net income per share is computed using the weighted-average common shares outstanding plus any potentially dilutive securities outstanding during the period using the treasury stock method, except when their effect is anti-dilutive. In computing dilutive net income per share, the average stock price for the period is used in determining the number of shares assumed to be purchased from the exercise of stock options or warrants. Dilutive securities include stock options, restricted stock, and warrants.

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

	As of	
(In thousands)	April 1, 2007	April 2, 2006
Stock options	335	65

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

	Three Months Ended	
(In thousands)	April 1, 2007	April 2, 2006
Basic weighted-average common shares	73,732	61,126
Effect of dilutive securities:		
Stock options	5,023	5,790
Restricted stock	371	16
Weighted-average common shares for diluted computation	79,126	66,932

Basic weighted-average common shares includes 1.1 million shares of class A common stock issued in relation to the acquisition of PowerLight which are subject to certain transfer restrictions and a repurchase option by the Company, both of which lapse over a two-year period.

Note 5. Comprehensive Income (Loss)

Comprehensive income (loss) is defined as the change in equity of a business enterprise during a period from transactions and other events and circumstances from non-owner sources. Comprehensive income (loss) includes unrealized gains and losses on the Company's available-for-sale investments, derivatives and cumulative translation adjustments.

The components of comprehensive income (loss), net of tax, were as follows:

	Three Months Ended	
(In thousands)	April 1, 2007	April 2, 2006
Net income	$ 1,240	$ 255
Cumulative translation adjustment	336	—
Unrealized income (loss) on derivatives, net of tax	455	(876)
Total comprehensive income (loss)	$ 2,031	$ (621)

Note 6. Business Combinations

PowerLight Acquisition

On January 10, 2007 ("the Effective Date"), the Company completed its merger transaction (the "Merger") involving PowerLight. The results of PowerLight have been included in the consolidated results of the Company from January 10, 2007. As a result of the Merger, all of the outstanding shares of PowerLight, and a portion of each vested option to purchase shares of PowerLight, were cancelled, and all of the outstanding options to purchase shares of PowerLight (other than the portion of each vested option that was cancelled) were assumed by the Company in exchange for aggregate consideration of (i) approximately $120.7 million in cash plus (ii) a total of 5,708,723 shares of the Company's class A common stock, inclusive of (a) 1,601,839 shares of the Company's class A common stock which may be issued upon the exercise of assumed vested and unvested PowerLight stock options, which options vest on the same schedule as the assumed PowerLight stock options, and (b) 1,145,643 shares of the Company's class A common stock issued to employees of the PowerLight business in connection with the Merger which, along with 530,238 of the shares issuable upon exercise of assumed PowerLight stock options, are subject to certain transfer restrictions and a repurchase option by the Company, both of which lapse over a two-year period under the terms of certain equity restriction agreements. The Company under the terms of the Merger agreement also issued an additional 204,623 shares of restricted class A common stock to certain employees of the PowerLight business, which shares are subject to certain transfer restrictions which will lapse over 4 years.

The total consideration related to the acquisition is as follows:

(In thousands)	Shares	Fair Value
Purchase consideration:		
Cash	—	$120,694
Common stock	2,961	111,266
Stock options assumed that are fully vested	618	21,280
Direct transaction costs	—	2,958
Total purchase consideration	3,579	256,198
Future stock compensation:		
Restricted stock	1,146	43,046
Stock options assumed that are unvested	984	35,126
Total future stock compensation	2,130	78,172
Total purchase consideration and future stock compensation	5,709	$334,370

Purchase Price Allocation

Under the purchase method of accounting, the total purchase price as shown in the table above was allocated to PowerLight's net tangible and intangible assets based on their estimated fair values as of the Effective Date. The purchase price has been allocated based on management's best estimates. The fair value of the Company's common stock issued was determined based on the average closing prices for a range of trading days around the announcement date (November 15, 2006) of the transaction. The fair value of stock options assumed was estimated using the Black-Scholes model with the following assumptions: volatility of 90%, expected life ranging from 2.7 years to 6.3 years, and risk-free interest rate of 4.6%.

The allocation of the purchase price and the estimated useful lives associated with certain assets is as follows:

(In thousands)	Amount	Estimated Useful Life
Net tangible assets	$ 13,925	n.a.
Patents and purchased technology	29,448	4 years
Tradenames	15,535	5 years
Backlog	11,787	1 year
Customer relationships	22,730	6 years
In-process research and development	9,575	n.a.
Unearned stock compensation	78,172	n.a.
Deferred tax liability	(21,964)	n.a.
Goodwill	175,162	n.a.
Total purchase consideration and future stock compensation	$334,370	

Net tangible assets acquired consisted of the following:

(In thousands)	Amount
Cash and cash equivalents	$ 22,049
Restricted cash	4,711
Accounts receivable, net	40,080
Costs and estimated earnings in excess of billings	9,136
Inventories	28,146
Deferred project costs	24,932
Prepaid expenses and other assets	23,740
Total assets acquired	152,794
Accounts payable	(60,707)
Billings in excess of costs and estimated earnings	(35,887)
Other accrued expenses and liabilities	(42,275)
Total liabilities assumed	(138,869)
Net assets acquired	$ 13,925

Acquired identifiable intangible assets. The fair value attributed to purchased technology and patents was determined using the relief from royalty method, which calculated the present value of the royalty savings by applying a royalty rate of 2.5% and a discount rate of 25% to the appropriate revenue streams. The fair value of purchased technology and patents is being amortized over 4 years on a straight-line basis. Amortization expense for the three months ended April 1, 2007 was as follows:

(In thousands)	Amount
Cost of systems revenue	$4,948
Selling, general and administrative	842
Total amortization expense	$5,790

The fair value of tradenames was determined using the royalty savings approach method, using a royalty rate of 1% and a discount rate of 25%. The fair value of tradenames is being amortized over 5 years on a straight-line basis.

The fair value attributed to customer relationships was determined using the multi-period excess earnings method with a discount rate of 18%. The fair value of customer relationships is being amortized over 6 years on a straight-line basis.

The fair value attributed to order backlog was determined using the multi-period excess earnings method with a discount rate of 16%. The fair value of order backlog is being amortized over 1 year on a straight-line basis.

In-process research and development. PowerLight's in-process research and development primarily represents partially developed roof integrated system and fixed-tilt system designs that have not yet reached technological feasibility and have no alternative future uses.

Goodwill. Approximately $175.2 million has been allocated to goodwill within the systems business segment, which represents the excess of the purchase price over the fair value of the underlying net tangible and intangible assets of PowerLight. PowerLight designs, assembles, markets and sells solar electric power system technology that integrates solar cells and solar panels from SunPower and other suppliers to convert sunlight to electricity compatible with the utility network. The acquisition will enable SunPower to extend its leadership and participation in more diversified applications and markets, develop the next generation of solar products and solutions that will accelerate solar system cost reductions to compete with retail electric rates without incentives, and simplify and improve customer experience. These factors primarily contributed to a purchase price that resulted in goodwill. In accordance with SFAS No. 142, "Goodwill and Other Intangible Assets," goodwill will not be amortized but instead will be tested for impairment at least annually (more frequently if certain indicators are present). In the event that management determines that the value of goodwill has become impaired, the Company will incur an accounting charge for the amount of the impairment during the fiscal quarter in which the determination is made. Goodwill that resulted from the acquisition of PowerLight is not deductible for tax purposes.

Of the cash and shares issued in the acquisition, approximately $20.2 million in cash and 824,000 shares, with a total aggregate value of $48.8 million as of January 10, 2007, are being held in escrow as security for the indemnification obligations of certain former PowerLight shareholders and will be released over a period of five years from the date of acquisition. In addition, the Company issued an additional 204,623 shares of restricted class A common stock to certain employees of the PowerLight business, which shares are subject to certain transfer restrictions that lapse over four years.

In conjunction with the acquisition, Cypress entered into a commitment letter with SunPower during the fourth quarter of fiscal 2006 under which Cypress agreed to lend to SunPower up to $130 million in cash in order to facilitate the financing of the acquisition or working capital requirements. In February 2007, Cypress and SunPower mutually terminated the commitment letter. No borrowings were outstanding at the termination date.

The Company accounted for its acquisition of PowerLight in accordance with SFAS 141 “Business Combinations.” Accordingly, all intercompany receivables and payables related to PowerLight were eliminated in purchase accounting effective January 10, 2007.

Supplemental information on an unaudited pro forma basis, as if the PowerLight acquisition were completed at the beginning of the years 2007 and 2006, is as follows:

	Three Months Ended	
	April 1, 2007	April 2, 2006
(In thousands, except per share amounts)	(Unaudited)	
Revenue	$ 144,661	$ 66,639
Net loss	$ (868)	$ (22,080)
Basic net loss per share	$ (0.01)	$ (0.34)

The unaudited pro forma supplemental information is based on estimates and assumptions, which the Company believes are reasonable. The average foreign exchange rates during years 2007 and 2006 were used in preparing the supplemental information. The unaudited pro forma supplemental information prepared by management is not necessarily indicative of the condensed consolidated financial position or results of income in future periods or the results that actually would have been realized had the Company and PowerLight been a combined company during the specified periods.

In-Process Research and Development (“IPR&D”) Charge

In connection with the acquisition of PowerLight, the Company recorded an IPR&D charge of $9.6 million in the first quarter of fiscal 2007, as technological feasibility associated with the in-process research and development projects had not been established and no alternative future use existed.

The Company identified in-process research and development projects in areas for which technological feasibility had not been established and no alternative future use existed. These in-process research and development projects consist of two components: design automation tool and tracking systems and other. In assessing the projects, the Company considered key characteristics of the technology as well as its future prospects, the rate technology changes in the industry, product life cycles, and various projects’ stage of development.

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

Projects	Estimated Stage of Completion as of Acquisition Date	Total Cost Incurred as of Acquisition Date	Total Estimated Costs to Complete	Estimated Completion Dates
Design Automation Tool	5%	$ 0.2 million	$ 2.6 million	Dec 2010
Tracking Systems and Other	30%	$ 0.2 million	$ 0.8 million	Jul 2007

Status of In-Process Research and Development Projects:

To date, there have been no significant differences between the actual and estimated results of the in-process research and development projects related to PowerLight. As of April 1, 2007, the Company has incurred total post-acquisition costs of approximately $0.6 million related to the in-process research and development projects and estimate that an additional investment of approximately $3.1 million will be required to complete the projects. The Company expects to complete the projects within the original estimated timeframe.

The development of these technologies remains a significant risk due to factors including the remaining efforts to achieve technical viability, rapidly changing customer markets, uncertain standards for new products, and competitive threats. The nature of the efforts to develop these technologies into commercially viable products consists primarily of planning, designing, experimenting, and testing activities necessary to determine that the technologies can meet market expectations, including functionality and technical requirements. Failure to bring these products to market in a timely manner could result in a loss of market share or a lost opportunity to capitalize on emerging markets and could have a material adverse impact on our business and operating results.

Note 7. Advances to Suppliers and Other Current Assets

The Company has entered into agreements with various polysilicon, ingot, wafer, solar cells and solar module vendors and manufacturers. These agreements specify future quantities and pricing of products to be supplied by the vendors for periods up to 12 years. Certain agreements also provide for penalties or forfeiture of advanced deposits in the event the Company terminates the arrangements (see Note 13).

Furthermore, under certain of these agreements, the Company is required to make prepayments to the vendors over the terms of the arrangements. In January 2007, the Company paid an advance of $10 million in accordance with the terms of an existing supply agreement. The Company may also, from time to time, make advance payments in connection with purchases of services and manufacturing equipment from a variety of vendors and suppliers. As of April 1, 2007, advances to suppliers totaled $86.3 million, the current portion of which is $13.7 million.

The Company's future prepayment obligations as of April 1, 2007 related to these agreements is as follows (in thousands):

2007 (remaining nine months)	$ 38,300
2008	18,300
2009	11,100
2010	11,100
	$ 78,800

On April 2, 2007, the Company paid an additional advance of $10 million in accordance with the terms of an existing supply agreement.

Note 8. Transactions with Cypress

Purchases of Imaging and Infrared Detector Products from Cypress

The Company purchases wafers from Cypress at intercompany prices which are consistent with Cypress' internal transfer pricing methodology.

Manufacturing Services in Texas

The Company originally made its imaging and infrared detector and solar power products at its former Sunnyvale, California facility. In May 2002, the Company installed certain tenant improvements to build a pilot wafer fabrication line for a newly designed solar cell in a Cypress facility located in Texas. The Company then paid pro rata costs for materials and Cypress personnel to operate the facility which made the Company's pre-commercial production solar cells until the Philippines facility came on line in November 2004. In late 2004, the Company moved its imaging and infrared detector production lines to the Cypress Texas facility and continues to pay the costs of materials and Cypress personnel to operate the facility.

Administrative Services Provided by Cypress

Cypress has seconded employees and consultants to the Company for different time periods for which the Company pays their fully-burdened compensation. In addition, Cypress personnel render services to the Company to assist with administrative functions such as centralized legal, tax, treasury, information technology, employee benefits and other Cypress corporate services and infrastructure. Cypress bills the Company for a portion of the Cypress employees' fully-burdened compensation. In the case of the Philippines subsidiary, which entered into a services agreement for such secondments and other consulting services in January 2005, the Company pays the fully-burdened compensation plus 10%. Amounts paid for these services are recorded as general and administrative expenses in the accompanying statements of operations.

Leased Facility in the Philippines

In 2003, the Company and Cypress reached an understanding that the Company would build out and occupy a building owned by Cypress for its wafer fabrication facility in the Philippines. The Company entered into a lease agreement for this facility, which expires in July 2021. Under the lease, the Company will pay Cypress at a rate equal to the cost to Cypress for that facility (including taxes, insurance, repairs and improvements) until the earlier of November 2015 or a change in control of the Company occurs, which includes such time as Cypress ceases to own at least a majority of the aggregate number of shares of all classes of the Company's common stock then outstanding. Thereafter, the Company will pay market rate rent for the facility. The Company will have the right to purchase the facility from Cypress at any time at Cypress' original purchase price of approximately $8.0 million, plus interest computed on a variable index starting on the date of purchase by Cypress until the sale to the Company, unless such purchase option is exercised after a change of control of the Company, in which case the purchase price shall be at a market rate, as reasonably determined by Cypress. The lease agreement also contains certain indemnification and exculpation provisions by the Company for the benefit of Cypress as lessor.

Leased Facility in California

On May 15, 2006, the Company entered into a lease agreement for its 43,732 square foot headquarters, which is located in a building owned by Cypress in San Jose, California, for $6.0 million over the five-year term of the lease. In the event Cypress decides to sell the building, the Company has the right of first refusal to purchase the building at a fair market price which will be based on comparable sales in the area.

Purchases of imaging and infrared detector products from Cypress, manufacturing services provided by Cypress in Texas, administrative services provided by Cypress and the facilities leased from Cypress in the Philippines and in California aggregated $1.5 million for the three months ended April 1, 2007 and $2.8 million for the three months ended April 2, 2006.

2005 Separation and Service Agreements

On October 6, 2005, SunPower entered into a series of separation and services agreements with Cypress. Among these agreements are a master separation agreement, a sublease of the land and a lease for the building in the Philippines (see above); a three-year wafer manufacturing agreement for detector products at inter-company pricing; a three-year master transition services agreement under which Cypress would allow SunPower to continue to utilize services provided by Cypress such as corporate accounting, legal, tax, information technology, human resources and treasury administration at Cypress' cost; an asset lease under which Cypress will lease certain manufacturing assets from SunPower; an employee matters agreement under which the Company's employees would be allowed to continue to participate in certain Cypress health insurance and other employee benefits plans; an indemnification and insurance matters agreement; an investor rights agreement; and a tax sharing agreement. All of these agreements, except the tax sharing agreement and the manufacturing asset lease agreement, became effective at the time of completion of the Company's initial public offering in November 2005.

Master Separation Agreement

In October 2005, the Company entered into a master separation agreement containing the framework with respect to the Company's separation from Cypress. The master separation agreement provides for the execution of various ancillary agreements that further specify the terms of the separation.

Wafer Manufacturing Agreement

The Company has entered into an agreement with Cypress to continue to make infrared and imaging detector products for the Company at prices consistent with the then current Cypress transfer pricing, which is equal to the forecasted cost to Cypress to manufacture the wafers, for the earlier of the next three years or until a change in control of the Company occurs, which includes until

such time as Cypress ceases to own at least a majority of the aggregate number of shares of all classes of the Company common stock then outstanding, after which a new supply agreement may be negotiated or the Company and Cypress will negotiate a reasonable winding-up procedure. In addition, the Company may use other Cypress fabs for development work on a cost per activity basis.

The Company will indemnify Cypress for any liabilities that arise only to the extent that they are based on claims of infringement based on the Company's design specifications that the Company submits to Cypress for the manufacture of the Company's products. Cypress will indemnify the Company for liabilities that arise only to the extent that they are based on claims that the manufacturing, assembling, product testing or packaging process that Cypress uses for the Company's products infringes or violates upon the intellectual property rights of third parties or Cypress' unauthorized use of the Company's design specifications or proprietary information.

Master Transition Services Agreement

The Company has also entered into a master transition services agreement which would govern the provisions of services to us by Cypress, such as: financial services, human resources, legal matters, training programs, and information technology.

For a period of three years following the Company's November 2005 initial public offering of 8.8 million shares of class A common stock ("IPO") or earlier if a change of control of the Company occurs, Cypress would provide these services and the Company would pay Cypress for services provided to the Company, at Cypress' cost (which, for purposes of the master transition services agreement, will mean an appropriate allocation of Cypress' full salary and benefits costs associated with such individuals as well as any out-of-pocket expenses that Cypress incurs in connection with providing the Company with those services) or at the rate negotiated with Cypress. Cypress will have the ability to deny requests for services under this agreement if, among other things, the provisions of such services creates a conflict of interest, causes an adverse consequence to Cypress, requires Cypress to retain additional employees or other resources or the provision of such services become impracticable as a result or cause outside of the control of Cypress. In addition, Cypress will incur no liability in connection with the provision of these services. The master transition services agreement also contains certain indemnification provisions by the Company for the benefit of Cypress.

Lease for Manufacturing Assets

In 2005 the Company entered into a lease with Cypress under which Cypress leases from the Company certain manufacturing assets owned by the Company and located in Cypress' Texas manufacturing facility. The term of the lease is 27 months and it expires on December 31, 2007. Under this lease, Cypress is reimbursing the Company's cost of approximately $0.7 million of the net book value of the assets divided over the life of the leasehold improvements.

Employee Matters Agreement

The Company entered into an employee matters agreement with Cypress to allocate assets, liabilities and responsibilities relating to its current and former U.S. and international employees and its employees' participation in the employee benefits plans that Cypress sponsors and maintains.

The Company's eligible employees generally remain able to participate in Cypress' benefit plans, as they may change from time to time. The Company is responsible for all liabilities incurred with respect to the Cypress plans by the Company as a participating company in such plans. The Company intends to have its own benefit plans established by the time its employees no longer are eligible to participate in Cypress' benefit plans. Once the Company has established its own benefit plans, the Company will have the ability to modify or terminate each plan in accordance with the terms of those plans and our policies. It is the Company's intent that employees not receive duplicate benefits as a result of participation in its benefit plans and the corresponding Cypress benefit plans.

All of the Company's eligible employees are able to continue to participate in Cypress' health plans, life insurance and other benefit plans as they may change from time to time, until the earliest of, (1) a change of control of the Company occurs, which includes such time as Cypress ceases to own at least a majority of the aggregate number of shares of all classes of our common stock then outstanding, (2) such time as the Company's status as a participating company under the Cypress plans is not permitted by a Cypress plan or by applicable law, (3) such time as Cypress determines in its reasonable judgment that the Company's status as a participating company under the Cypress plans has or will adversely affect Cypress, or its employees, directors, officers, agents, affiliates or its representatives, or (4) such earlier date as the Company and Cypress mutually agree. However, to avoid redundant benefits, the Company's employees will generally be precluded from participating in Cypress' stock option plans and stock purchase plans.

With respect to the Cypress 401(k) Plan, the Company is obligated to establish its own 401(k) Plan within 90 days of separation from Cypress, and Cypress will transfer all accounts in the Cypress 401(k) Plan held by the Company's employees to our 401(k) Plan.

Indemnification and Insurance Matters Agreement

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

The indemnification and insurance matters agreement and the master transition services agreement also contain provisions governing the Company's insurance coverage, which are under the Cypress insurance policies (other than the Company's directors and officers insurance, for which we have our own separate policy) until the earliest of (1) a change of control of the Company, which includes such time as Cypress ceases to own at least a majority of the aggregate number of shares of all classes of the Company's common stock then outstanding, (2) the date on which Cypress' insurance carriers do not permit the Company to remain on Cypress policies, (3) the date on which Cypress' cost of insurance under any particular insurance policy increases, directly or indirectly, due to the Company's inclusion or participation in such policy, (4) the date on which our coverage under the Cypress policies causes a real or potential conflict of interest or hardship for Cypress, as determined solely by Cypress or (5) the date on which Cypress and the Company mutually agree to terminate this arrangement. Prior to that time, Cypress will maintain insurance policies on the Company's behalf, and the Company shall reimburse Cypress for expenses related to insurance coverage during this period. The Company will work with Cypress to secure additional insurance if desired and cost effective.

Investor Rights Agreement

The Company has entered into an investor rights agreement with Cypress providing for specified (1) registration and other rights relating to the Company's shares of the Company's common stock, (2) information and inspection rights, (3) coordination of auditing practices and (4) approval rights with respect to certain transactions.

Tax Sharing Agreement

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

After the date the Company ceases to be a member of Cypress' consolidated group for federal income tax purposes or state income tax purposes, as and to the extent that the Company becomes entitled to utilize on the Company's separate tax returns portions of those credit or loss carryforwards existing as of such date, the Company will distribute to Cypress the tax effect, estimated to be 34% for federal income tax purposes, of the amount of such tax loss carryforwards so utilized, and the amount of any credit carryforwards so utilized. The Company will distribute these amounts to Cypress in cash or in the Company's shares, at the Company's option. As of December 31, 2006, the Company has approximately $50.6.million of federal net operating loss carryforwards and approximately $4.8 million of California net operating loss carryforwards meaning that such potential future payments to Cypress, which would be made over a period of several years, would therefore aggregate approximately $15.0 million.

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

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

If Cypress distributes the Company's class B common stock to Cypress stockholders in a transaction intended to qualify as a tax-free distribution under Section 355 of the Code, Cypress intends to obtain an opinion of counsel and/or a ruling from the Internal Revenue Service to the effect that such distribution qualifies under Section 355 of the Code. Despite such an opinion or ruling, however, the distribution may nonetheless be taxable to Cypress under Section 355(e) of the Code if 50% or more of the Company's voting power or economic value is acquired as part of a plan or series of related transactions that includes the distribution of the Company's stock. The tax sharing agreement includes the Company's obligation to indemnify Cypress for any liability incurred as a result of issuances or dispositions of the Company's stock after the distribution, other than liability attributable to certain dispositions of the Company's stock by Cypress, that cause Cypress' distribution of shares of the Company's stock to its stockholders to be taxable to Cypress under Section 355(e) of the Code.

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

Note 9. Foreign Currency Derivatives

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

As of April 1, 2007, the Company's hedge instruments consisted of foreign currency option contracts and foreign currency forward exchange contracts. The Company calculates the fair value of its option and forward contracts based on market volatilities, spot rates and interest differentials from published sources.

In accordance with Statement of Financial Accounting Standards No. 133, "Accounting for Derivative Instruments and Hedging Activities," the Company accounts for its hedges of forecasted foreign currency revenues as cash flow hedges and hedges of firmly committed purchase contracts denominated in foreign currency as fair value hedges.

Cash Flow Hedges: Hedges of forecasted foreign currency denominated revenues are designated as cash flow hedges and changes in fair value of the effective portion of hedge contracts are recorded in accumulated other comprehensive loss in stockholders' equity in the Condensed Consolidated Balance Sheets. Amounts deferred in accumulated other comprehensive loss are reclassified into the Condensed Consolidated Statement of Operations in the periods in which the hedged exposure impacts earnings. The effective portion of unrealized gains (losses) recorded in accumulated other comprehensive loss, net of tax, were losses of $455,000 and $876,000 for the three months ended April 1, 2007 and April 2, 2006, respectively. As of April 1, 2007 and December 31, 2006, the Company had outstanding cash flow hedge forward contracts with an aggregate notional value of $54.8 million and $89.6 million, respectively. As of April 1, 2007 and December 31, 2006, the Company had outstanding option contracts with an aggregate notional value of $69.2 million and $16.0 million, respectively. The maturity dates of the outstanding contracts ranged from April 2007 to January 2008.

Fair Value Hedges: On occasion, the Company commits to purchase equipment in foreign currency, predominantly Euros. When these purchases are hedged and qualify as firm commitments under SFAS No. 133, they are designated as fair value hedges and changes in the fair value of the firm commitment derivative contract are recognized in the Condensed Consolidated Statement of Operations. Under fair value hedge treatment, the changes in the firm commitment on a spot to spot basis are recorded in property and equipment, net, in the Condensed Consolidated Balance Sheet and in other income (expense), net in the Condensed Consolidated Statement of Operations.

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

In addition, the Company began hedging the net balance sheet effect of Euro denominated assets and liabilities in 2005 primarily for Euro denominated receivables from customers, prepayments to suppliers and advances received from customers. The Company records its hedges of foreign currency denominated monetary assets and liabilities at fair value with the related gains or losses recorded in other income. The gains or losses on these contracts are substantially offset by transaction gains or losses on the underlying balances being hedged. As of April 1, 2007 and December 31, 2006, the Company held forward contracts with an aggregate notional value of $32.8 million and $37.6 million, respectively, to hedge the risks associated with Euro foreign currency denominated assets and liabilities.

Note 10. Stock-Based Compensation

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

	Three Months Ended	
(In thousands)	April 1, 2007	April 2, 2006
Employee stock options	$ 4,746	$ 1,439
Restricted stock	5,976	35
Amounts capitalized in inventory	(119)	(62)
Total stock-based compensation expense	$ 10,603	$ 1,412

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

	Three Months Ended	
(In thousands)	April 1, 2007	April 2, 2006
Cost of revenue	$ 2,250	$ 193
Research and development	501	420
Sales, general and administrative	7,852	799
Total stock-based compensation expense	$ 10,603	$ 1,412

As stock-based compensation expense recognized in the Condensed Consolidated Statements of Operations is based on awards ultimately expected to vest, it has been reduced for estimated forfeitures. SFAS No. 123(R) requires forfeitures to be estimated at the time of grant and revised, if necessary, in subsequent periods if actual forfeitures differ from those estimates.

Consolidated net cash proceeds from the issuance of shares under the Company's employee stock plans were $2.0 million for the three months ended April 1, 2007 and $0.4 million for the three months ended April 2, 2006. No income tax benefit was realized from stock option exercises during the three months ended April 1, 2007 and April 2, 2006. As required, the Company presents excess tax benefits from the exercise of stock options, if any, as financing cash flows rather than operating cash flows.

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

(In thousands, except years)	As of April 1, 2007	Weighted-Average Amortization Period (in years)
Stock options	$ 34,342	2.0
Restricted stock	4,473	3.5
Shares subject to revesting restrictions	37,254	1.8
Total unrecognized stock-based compensation balance	$ 76,069	2.0

Equity Incentive Program

On May 4, 2007, the Company's stockholders approved an additional increase in the number of shares available for future issuance by 925,000 shares under the Company's 2005 Incentive Stock Option Plan under which the Company may issue incentive or non-statutory stock options or stock purchase rights to employees and consultants to purchase common stock .

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

	Three Months Ended April 1, 2007	
(In thousands, except per share data)	Shares	Weighted Average Exercise Price Per Share
Options outstanding as of December 31, 2006	4,980	$ 3.97
Options exchanged/assumed in connection with PowerLight acquisition	1,602	5.54
Exercised	(720)	2.78
Forfeited	(33)	19.13
Options outstanding as of April 1, 2007	5,829	4.47
Options exercisable as of April 1, 2007	2,112	2.85

Information regarding the Company's outstanding stock options as of April 1, 2007 was as follows:

	Options Outstanding				Options Exercisable			
Range of Exercise Price	Shares (in thousands)	Weighted-Average Remaining Contractual Life (in years)	Weighted-Average Exercise Price per Share	Aggregate Intrinsic Value (in thousands)	Shares (in thousands)	Weighted-Average Remaining Contractual Life (in years)	Weighted-Average Exercise Price per Share	Aggregate Intrinsic Value (in thousands)
$ 0.04—0.75	1,270	4.74	$ 0.28	$ 57,438	607	4.84	$ 0.34	$ 27,418
0.88—2.66	482	7.47	1.98	20,987	223	7.19	1.86	9,744
3.30—4.95	3,211	7.63	3.32	135,416	1,157	7.62	3.31	48,798
7.00—16.20	455	8.39	8.30	16,923	98	8.37	8.06	3,668
17.00—41.15	411	9.21	25.03	8,416	27	8.48	28.35	471
	5,829	7.16	4.47	$ 239,180	2,112	6.82	2.85	$ 90,099

The aggregate intrinsic value in the preceding table represents the total pre-tax intrinsic value, based on the Company's closing stock price of $45.50 at April 1, 2007, which would have been received by the option holders had all option holders exercised their options as of that date. The total number of in-the-money options exercisable was 2.1 million shares as of April 1, 2007.

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

	Stock Options		Restricted Stock	
(In thousands, except per share amounts)	Shares	Weighted-Average Grant Date Fair Value per Share	Shares	Weighted-Average Grant Date Fair Value per Share
Outstanding as of December 31, 2006	3,141	$ 4.45	229	$ 35.40
Granted	1,602	5.54	269	41.68
Vested	(994)	2.75	(16)	33.34
Forfeited	(32)	2.78	(4)	39.86
Outstanding as of April 1, 2007	3,717	5.39	478	38.97

Stock Unit Plan:

As of April 1, 2007, the Company has granted approximately 158,000 units to approximately 1,230 employees in the Philippines at an average unit price of $27.90 in relation to its 2005 Stock Unit Plan, under which participants are awarded the right to receive cash payments from the Company in an amount equal to the appreciation in the Company's common stock between the award date and the date the employee redeems the award. A maximum of 300,000 stock units may be subject to stock unit awards granted under the 2005 Stock Unit Plan. For the three months ended April 1, 2007, total compensation expense associated with the 2005 Stock Unit Plan was $0.4 million.

Note 11. Income Taxes

The Company's effective rate of income tax benefit was 194% for the three months ended April 1, 2007 and the effective rate of income tax provision was 11% for the three months ended April 2, 2006. The tax benefit for the first quarter of fiscal 2007 was primarily attributable to the recognition of deferred tax assets as a result of the Company's acquisition of PowerLight and amortization of a deferred tax liability associated with purchased intangible assets, partially offset by non-U.S. taxes on income earned in certain countries that was not offset by current year net operating losses in other countries. The tax provision for the first quarter of fiscal 2006 was attributable to non-U.S. taxes on income earned in certain countries that was not offset by current year net operating losses in other countries.

Unrecognized Tax Benefits

The Company adopted the provisions of FIN 48 on January 1, 2007. As of January 1, 2007, the total amount of unrecognized tax benefits recorded in the Condensed Consolidated Balance Sheet was approximately $1.1 million, which, if accrued, would affect the Company's effective tax rate. The additional amount of unrecognized tax benefits recognized during the first quarter of fiscal 2007 was $0.3 million. Management believes that events that could occur in the next 12 months and cause a change in unrecognized tax benefits include, but are not limited to, the following:

- completion of examinations of the Company's tax returns by the U.S. or foreign taxing authorities; and
- expiration of statue of limitations on the Company's tax returns.

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

Classification of Interest and Penalties

The Company's policy is to classify interest expense and penalty, if any, as components of income tax provision in the Condensed Consolidated Statements of Operations. No material amount has been accrued through the first quarter of fiscal 2007.

Tax Years and Examination

The following table summarizes the Company's major tax jurisdictions and the tax years that remain subject to examination by these jurisdictions as of January 1, 2007:

Tax Jurisdictions	Tax Years
The United States	2003 and onward
California	2002 and onward

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

Note 12. Segment and Geographical Information

Prior to fiscal year 2007, the Company operated in one business segment comprising the design, manufacture and sale of solar electric power products, or solar power products, imaging and infrared detectors based on its proprietary processes and technologies. Effective January 10, 2007, the Company operated in two business segments: systems and components. The systems business segment generally represents sales of engineering, procurement, construction and other services relating to solar electric power systems that integrate our solar panels and balance of systems components, as well as materials sourced from other manufactures. The components business segment primarily represent sales of our solar cells, solar panels and inverters to solar systems installers and other resellers. In addition, our components segment includes sales of imaging and infrared detectors to OEMs. Revenue associated with the Company solar panels sold through PowerLight is recognized in the systems business segment. The Chief Operating Decision Maker (CODM), as defined by SFAS No. 131, "Disclosures about Segments of an Enterprise and Related Information" (SFAS No. 13), assesses the performance of each operating segment using information about its revenue and gross margin.

Intersegment revenue of $11.4 million for the three months ended April 1, 2007 was comprised of sales by the components business segment to the systems business segment and were eliminated per the Company's financial results.

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

	Three Months Ended	
	April 1, 2007	April 2, 2006
Revenue by geography:		
United States	39%	36%
Germany	14%	44%
Spain		—
	22%	%
Rest of Europe	15%	13%
Asia	10%	4%
Others	— %	3%
	100%	100%
Revenue by segment:		
Systems	55%	— %
Components	45%	100%
	100%	100%
Gross margin by segment:		
Systems	20%	— %
Components	26%	14%
Significant customers:		
Conergy AG	10%	22%
Solon AG	12%	28%
Elecnor	19%	— %

(In thousands)	April 1, 2007	December 31, 2006
Property, plant and equipment by geography:		
United States	$ 9,235	$ 8,051
Philippines	244,786	192,335
China	—	2,042
	$ 254,021	$ 202,428

Note 13. Commitments and Contingencies

Operating Lease Commitments

The Company leases its San Jose, California facility under a non-cancelable operating lease from Cypress, which expires on April 30, 2011 (see Note 8). The lease also requires the Company to pay property taxes, insurance and certain other costs. The Company also leases its wafer fabrication facility in the Philippines from Cypress, which expires in July 2021 (see Note 8). In December 2005, the Company entered into a 5-year operating lease from an unaffiliated third party for an additional building in the Philippines. The Company also has lease arrangements for its PowerLight offices in Berkeley, California under various lease arrangements which expire between 2007 and 2009, as well as for a field office in New Jersey, which expires in 2011. In December 2006, PowerLight entered into an eleven-year lease agreement for a facility in Richmond, California, which the Company expects to move into in the fourth quarter of 2007. Future minimum obligations under all non-cancelable operating leases as of April 1, 2007 are as follows (in thousands):

2007 (remaining nine months)	$ 1,823
2008	3,380
2009	3,520
2010	3,546
2011	2,535
Thereafter	15,940
	$30,744

Purchase Commitments

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

The Company also has agreements with several suppliers of polysilicon, ingots, wafers, solar cells and solar panels and which specify future quantities and pricing of products to be supplied by the vendors for periods up to 12 years and provide for certain consequences, such as forfeiture of advanced deposits and penalty payments relating to previous purchases, in the event that the Company terminates the arrangements (see Note 7).

At April 1, 2007, total obligations related to such supplier agreements was $1.3 billion of which $250 million was related to a joint venture (as discussed below). The Company's non-cancelable purchase orders related to equipment and building improvements totaled approximately $63.1 million.

Future minimum obligations under supplier agreements and non-cancelable purchase orders as of April 1, 2007 are as follows (in thousands):

2007 (remaining nine months)	$ 220,802
2008	265,088
2009	238,113
2010	232,658
2011	242,848
Thereafter	151,883
	$ 1,351,392

Joint Venture

In the third quarter of fiscal 2006, the Company entered into an agreement with Woongjin Coway Co., Ltd. ("Woongjin"), a provider of environmental products located in Korea, to form Woongjin Energy Co., Ltd ("Woongjin Energy"), a joint venture to manufacture mono-crystalline silicon ingots. Under the joint venture, the Company and Woongjin will fund the joint venture through capital investments. In addition, Woongjin Energy will obtain a $33.0 million loan to be guaranteed by Woongjin. Additionally, the

Company will supply polysilicon and technology required for the silicon ingot manufacturing to the joint venture, and procure the manufactured silicon ingots from the joint venture. Woongjin Energy is expected to begin manufacturing in the fourth quarter of fiscal 2007, and the Company expects to purchase approximately $250 million of silicon ingots from Woongjin Energy through a five-year agreement.

The Company has invested $5.0 million in the joint venture comprised of a 19.9% equity investment valued at $1.7 million and a $3.3 million convertible note that is convertible at the Company's option into an additional 20.1% equity ownership in the joint venture. The entire $5.0 million is classified as "Other Long-Term Assets" in the April 1, 2007 consolidated balance sheet. Neither party has contractual obligations to provide any additional funding to the joint venture. As of April 1, 2007, the joint venture was in the development stage and had no operations.

Product Warranties

The Company warrants or guarantees the performance of its solar panels at certain levels of conversion efficiency for extended periods, often as long as 25 years. It also warrants or guarantees the functionality of solar cells and imaging detectors for at least one year. Therefore, the Company maintains warranty reserves to cover potential liability that could result from these guarantees. The Company's potential liability is generally in the form of product replacement. Warranty reserves are based on the Company's best estimate of such liabilities and are recognized as a cost of revenue. The Company continuously monitors product returns for warranty failures and maintains a reserve for the related warranty expenses based on historical experience of similar products as well as various other assumptions that are considered reasonable under the circumstances. During the three months ended April 1, 2007 our estimated warranty reserve provision rates were higher than during the same period in 2006, based on specific potential warranty exposures and increased warranty provision rates due to results of our testing that simulates adverse environmental conditions and potential failure rates our solar panels could experience during their 25-year warranty period. Warranty charges were $4.1 million and $0.2 million during the three month periods ended April 1, 2007 and April 2, 2006, respectively.

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

The following summarizes activity within accrued warranty:

(In thousands)	Three Months Ended	
	April 1, 2007	April 2, 2006
Balance at December 31, 2006	$ 3,446	$ 574
PowerLight accrued balance at date of acquisition	6,542	—
Accruals for warranties during the period	4,147	231
Settlements made during the period	(575)	(163)
Balance at April 1, 2007	$ 13,560	$ 642

In February 2004, one of PowerLight's major panel suppliers at the time, AstroPower, Inc., filed for bankruptcy. PowerLight had installed systems incorporating over 30,000 AstroPower panels, and approximately 27,000 of these panels incorporated into systems that are still under warranty by it. The majority of these warranties expire by 2008, and all expire by 2010. While PowerLight has not experienced a significant number of warranty or other claims related to installed AstroPower panels, it may in the future incur significant unreimbursable expenses in connection with the repair or replacement of these panels, which could have a material adverse effect on our business and results of operations. In addition, another major supplier of solar panels notified PowerLight of a product defect that may affect a substantial number of panels installed by PowerLight during the period 2002 through September 2006. If the supplier does not perform its contractual obligations to remediate the defective panels, we will be exposed to those costs it would incur under the warranty with PowerLight's customers.

Indemnifications

The Company is a party to a variety of agreements pursuant to which it may be obligated to indemnify the other party with respect to certain matters. Typically, these obligations arise in connection with contracts and license agreements or the sale of assets, under which the Company customarily agrees to hold the other party harmless against losses arising from a breach of warranties, representations and covenants related to such matters as title to assets sold, negligent acts, damage to property, validity of certain intellectual property rights, non- infringement of third-party rights, and certain tax related matters. In each of these circumstances, payment by the Company is typically subject to the other party making a claim to the Company pursuant to the procedures specified

in the particular contract. These procedures usually allow the Company to challenge the other party's claims or, in case of breach of intellectual property representations or covenants, to control the defense or settlement of any third-party claims brought against the other party. Further, the Company's obligations under these agreements may be limited in terms of activity (typically to replace or correct the products or terminate the agreement with a refund to the other party), duration and/or amounts. In some instances, the Company may have recourse against third parties and/or insurance covering certain payments made by the Company.

Note 14. Line of Credit

In December 2005, SunPower entered into a $25.0 million three-year revolving credit facility (the "Facility") with affiliates of Credit Suisse Securities (USA) LLC and Lehman Brothers, Inc. The Facility is collateralized by substantially all of our assets, including the stock of our foreign subsidiaries. Borrowings under the Facility are conditioned upon customary conditions as well as (1) with respect to the first $10.0 million drawn on the facility, maintenance of cash collateral to the extent of outstanding borrowings (excluding amounts borrowed), and (2) with respect to the remaining $15.0 million of the Facility, satisfaction of a coverage test which is based on the ratio of our cash flow to capital expenditures. The Facility contains customary covenants and defaults including limitations on dividends, incurrence of indebtedness and liens, and mergers and acquisitions. The Facility bears interest at a rate of the greater of the prime rate or federal funds rate for U.S. dollar draws, or the LIBOR plus 1% for Euro dollar draws on the first $10.0 million of borrowings and the greater of the prime rate plus 2% or federal funds rate plus 2% for U.S. dollar draws, or LIBOR plus 3% for Euro dollar draws on any borrowings over $10.0 million. The interest rate for Euro dollar borrowings would have been 6.4% on the first $10.0 million of borrowings and 8.4% on any borrowings over $10.0 million at April 1, 2007. The interest rate U.S. dollar borrowings would have been 8.3% on the first $10.0 million of borrowings and 10.3% on any borrowings over $10.0 million at April 1, 2007. To date there have been no borrowings under the Facility.

In connection with the PowerLight acquisition on January 10, 2007, the Company assumed a line of credit with an outstanding balance of approximately $3.6 million. During the first quarter of fiscal 2007, the Company paid off the outstanding balance in full.

On January 10, 2007, PowerLight amended and restated its loan agreement with a commercial bank. The amended and restated loan agreement provided for a $10 million trade finance credit facility, which was scheduled to expire on April 30, 2007. This facility allows PowerLight to issue commercial and standby letters of credit, but does not provide for any loans. All of the assets of PowerLight secure this trade finance facility. In addition, the agreement required that PowerLight maintain cash equal to the value of letter of credits outstanding in restricted accounts as collateral for letters of credit issued by the bank. As of April 1, 2007, the Company had $5.1 million in restricted cash related to such loan agreement. On April 27, 2007, PowerLight entered into an amendment to the loan agreement to, among other things, extend the maturity date to July 31, 2007, and remove the requirement to have cash collateral for letters of credit. The Company guaranteed $10.5 million to the commercial bank in connection with the April 27, 2007 amendment for the $10 million trade credit facility, and a separate $0.5 million credit card facility through the commercial bank.

Note 15. Senior Convertible Debentures

In February 2007, the Company issued $200.0 million in principal amount of its 1.25% senior convertible debentures ("Debentures"). Interest on the Debentures will be payable on February 15 and August 15 of each year, commencing August 15, 2007. The Debentures will mature on February 15, 2027. Holders may require the Company to repurchase all or a portion of their 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. Any repurchase of the Company's Debentures pursuant to these provisions will be for cash at a price equal to 100% of the principal amount of the Debentures to be repurchased plus accrued and unpaid interest. In addition, the Company may redeem some or all of the Debentures on or after February 15, 2012 for cash at a redemption price equal to 100% of the principal amount of the Debentures to be redeemed plus accrued and unpaid interest.

Holders of the Debentures may, under certain circumstances at their option, convert the Debentures into cash and, if applicable, shares of the Company's class A common stock initially at a conversion rate of 17.6211 shares (equivalent to an initial conversion price of approximately $56.75 per share), at any time on or prior to maturity. The applicable conversion rate will be subject to customary adjustments in certain circumstances.

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

Share Lending Agreement

Concurrent with the offering of Debentures, the Company lent 2.9 million shares of its class A common stock, all of which are being borrowed by an affiliate of Lehman Brothers Inc. ("LBIE"), one of the underwriters of the Debentures. The Company did not receive any proceeds from that offering of class A common stock, but received a nominal lending fee of $0.001 per share for each share of common stock that is loaned pursuant to the share lending agreement described below.

Share loans under the share lending agreement will terminate and the borrowed shares must be returned to the Company under the following circumstances: (i) LBIE may terminate all or any portion of a loan at any time; (ii) the Company may terminate any or all of the outstanding loans upon a default by LBIE under the share lending agreement, including a breach by LBIE of any of its representations and warranties, covenants or agreements under the share lending agreement, or the bankruptcy of LBIE; or (iii) if the Company enters into a merger or similar business combination transaction with an unaffiliated third party (as defined in the agreement), all outstanding loans will terminate on the effective date of such event.

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

While the share lending agreement does not require cash payment upon return of the shares, physical settlement is required (i.e., the loaned shares must be returned at the end of the arrangement). In view of this and the contractual undertakings of LBIE in the share lending agreement, which have the effect of substantially eliminating the economic dilution that otherwise would result from the issuance of the borrowed shares, the borrowed shares will not be considered outstanding for the purpose of computing and reporting earnings per share. Notwithstanding the foregoing, the shares will nonetheless be issued and outstanding and will be eligible for trading on The Nasdaq Global Market.

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 of SunPower Corporation and its subsidiaries ("SunPower" or the "Company", "Us", "We" or "Our") contains forward-looking statements. This Quarterly Report on Form 10-Q also includes data, including forward-looking information, pertaining to PowerLight Corporation, our wholly-owned subsidiary, which we acquired on January 10, 2007. All statements in this Quarterly Report on Form 10-Q, including those made by the management of SunPower, other than statements of historical fact, are forward-looking statements. These forward-looking statements are made pursuant to safe harbor provisions of the Private Securities Litigation Reform Act of 1995. Examples of forward-looking statements include statements regarding SunPower's ability to obtain polysilicon ingots or wafers, future financial results, operating results, business strategies, projected costs, products, competitive positions, management's plans and objectives for future operations, and industry trends. These forward-looking statements are based on management's estimates, projections and assumptions as of the date hereof and include the assumptions that underlie such statements. Forward-looking statements may contain words such as "may," "will," "should," "could," "would," "expect," "plan," "anticipate," "believe," "estimate," "predict," "potential," and "continue," the negative of these terms, or other comparable terminology. Any expectations based on these forward-looking statements are subject to risks and uncertainties and other important factors, including those discussed below and in the section titled "PART II – OTHER INFORMATION, ITEM 1A. RISK FACTORS." Other risks and uncertainties are disclosed in SunPower's prior Securities and Exchange Commission ("SEC") filings, including its 2006 Annual Report on Form 10-K and current filings on Form 8-K. These and many other factors could affect SunPower's future financial condition and operating results and could cause actual results to differ materially from expectations based on forward-looking statements made in this document or elsewhere by SunPower or on its behalf. SunPower undertakes no obligation to revise or update any forward-looking statements.

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

Overview

We design, develop, manufacture, market and sell solar electric power products, systems and services. Our products are based on our proprietary processes and technologies. We have spent more than 15 years developing high performance solar cells, which are semiconductor devices that directly convert sunlight into electricity. We believe our solar cells have the highest conversion efficiency, a measurement of the amount of sunlight converted by the solar cell into electricity, available for the mass market. We also believe our solar cells provide the following benefits compared with conventional solar cells:

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

We offer solar power products, including solar cells, solar panels and inverters, which convert sunlight to electricity compatible with the utility network. Our initial solar sales efforts have been focused on residential and commercial applications where the high performance and superior aesthetics of our solar power products provide compelling customer benefits. We are also selling products for multi-megawatt solar power plant applications that mount our products on moving structures that track the sun. We sell our products in many countries, principally in regions where government incentives have accelerated solar power adoption.

We produce our solar cells at our manufacturing facility in the Philippines. We currently operate four solar cell manufacturing lines in the Philippines, with a total rated manufacturing capacity of approximately 108 megawatts per year. We have recently started construction on a second solar cell manufacturing facility in the Philippines, which is designed to house up to ten additional manufacturing lines. We expect three manufacturing lines in the new facility to be operational by the end of 2007, which would give us an aggregate rated solar cell manufacturing capacity of approximately 207 megawatts per year. Currently, most of our solar panels are assembled for us by a third-party subcontractor in China. We supplement this capacity with in-house production at our automated panel assembly factory located in the Philippines. We expect to produce up to 30 megawatts of solar panels per year from our first manufacturing line. The solar panel assembly factory has sufficient space to expand capacity to 90 megawatts per year. Our systems in North America also include branded inverters manufactured for us by multiple suppliers.

In addition, we offer imaging detectors based on our solar power technology primarily for medical imaging applications. Our imaging detectors are manufactured for us by Cypress Semiconductor Corporation ("Cypress") and are processed and tested in our San Jose, California facility. We sell our imaging detectors to OEMs. We also offer infrared detectors based on our high performance all back contact technology primarily for use in computing and mobile phone applications.

Acquisition of PowerLight Corporation

On January 10, 2007, we completed our merger transaction (the "Merger") involving PowerLight Corporation ("PowerLight"). Upon the completion of the Merger, all of the outstanding shares of PowerLight, and a portion of each vested option to purchase shares of PowerLight, were cancelled, and all of the outstanding options to purchase shares of PowerLight (other than the portion of each vested option that was cancelled) were assumed by us in exchange for aggregate consideration of (i) approximately $120.7 million in cash plus (ii) a total of 5,708,723 shares of class A common stock, inclusive of (a) 1,145,643 shares of class A common stock which may be issued upon the exercise of assumed vested and unvested PowerLight stock options and (b) 1,675,881 shares of class A common stock issued to employees of the PowerLight business in connection with the Merger which, along with 530,238 of the shares issuable upon exercise of assumed PowerLight stock options, are subject to certain transfer restrictions and a repurchase option of the Company, both of which lapse over a two-year period under the terms of equity restriction agreements. Under the terms of the Merger agreement, the Company also issued an additional 204,623 shares of restricted class A common stock to certain employees of the PowerLight business, which shares are subject to certain transfer restrictions which will lapse over 4 years.

PowerLight is a leading global provider of large-scale solar power systems. PowerLight designs, assembles, markets and sells solar electric power system technology that integrates solar cells and solar panels from SunPower and other suppliers to convert sunlight to electricity compatible with the utility network. PowerLight also provides solar power systems to end customers on a turn-key whole-solution basis by developing, engineering, procuring permits and equipment for, managing construction of, offering access to financing for, and providing monitoring, operations and maintenance services for large-scale roof-mounted and ground-mounted solar power applications. PowerLight's customers include industrial, commercial and public sector entities, investors, utilities and production home builders. PowerLight's solar power systems generate electricity over a system design life typically exceeding 25 years. PowerLight's solar systems are principally designed to be used in large-scale applications exceeding 300 kilowatts, including the development of solar production home communities. PowerLight has completed or is in the process of completing over 300 projects worldwide, rated in aggregate at over 100 megawatts peak capacity for PowerLight customers in North America, Europe and Asia. In the U.S., PowerLight typically sells solar systems rated up to one megawatt of capacity to provide a supplemental, distributed source of electricity for a customer's facility. In Europe and South Korea, PowerLight's products and systems are often purchased by third-party investors as central station solar power plants, typically rated from one to 20 megawatts, which generate electricity for sale under tariff to regional and public utilities.

PowerLight designs and engineers complete solar power systems that combine its roof-mounted or ground-mounted products with electrical inverters and other standard components that connect to the customer's existing electrical system or directly to the utility network. PowerLight solar system technology integrates solar cells and solar panels manufactured by SunPower and other suppliers, such as ErSol Solar Energy AG, Evergreen Solar, Inc., JingAo Solar Company, Ltd., Mitsui Comtek Corp., a distributor for Sanyo Electronics Co., Ltd., or Sanyo, and SunTech Power Co., Ltd., Q-Cells Aktiengesellschaft, Schott Solar, Inc., Sharp Electronics Corporation and Sharp Electronics (Europe) GmbH, which support their products with long-term manufacturing warranties of up to 25 years. PowerLight has contracted with some of these suppliers for multi-year supply agreements.

The total consideration related to the acquisition is as follows:

(In thousands)	Shares	Fair Value
Purchase consideration:		
Cash	—	$ 120,694
Common stock	2,961	111,266
Stock options assumed that are fully vested	618	21,280
Direct transaction costs	—	2,958
Total purchase consideration	3,579	256,198
Future stock compensation:		
Restricted stock	1,146	$ 43,046
Stock options assumed but that are unvested	984	35,126
Total future stock compensation	2,130	78,172
Total purchase consideration and future stock compensation	5,709	$ 334,370

Purchase Price Allocation

Under the purchase method of accounting, the total purchase price as shown in the table above was allocated to PowerLight's net tangible and intangible assets based on their estimated fair values as of the Effective Date. The purchase price has been allocated based on management's best estimates. The fair value of the Company's common stock issued was determined based on the average closing prices for a range of trading days around the announcement date (November 15, 2006) of the transaction. The fair value of stock options assumed was estimated using the Black-Scholes model with the following assumptions: volatility of 90%, expected life ranging from 2.7 years to 6.3 years, and risk-free interest rate of 4.6%. The allocation of the purchase price and the estimated useful lives associated with certain assets is as follows:

(In thousands)	Amount	Estimated Useful Life
Net tangible assets	$ 13,925	n.a.
Patents and purchased technology	29,448	4 years
Tradenames	15,535	5 years
Backlog	11,787	1 year
Customer relationships	22,730	6 years
In-process research and development	9,575	n.a.
Unearned stock compensation	78,172	n.a.
Deferred tax liability	(21,964)	n.a.
Goodwill	175,162	n.a.
Total purchase consideration and future stock compensation	$334,370	

Relationship with Cypress Semiconductor Corporation

Cypress Semiconductor Corporation ("Cypress") made a significant investment in SunPower in 2002. On November 9, 2004, Cypress completed a reverse triangular merger with us in which all of the outstanding minority equity interest of SunPower was retired, effectively giving Cypress 100% ownership of all of our then outstanding shares of capital stock but leaving our unexercised warrants and options outstanding.

On May 4, 2007, Cypress sold 7,500,000 shares of our class B common stock in an offering pursuant to Rule 144 of the Securities Act. Such shares converted to 7,500,000 shares of class A common stock upon the sale. Following this sale, Cypress owns 44,533,287 shares of our Class B common stock, representing approximately 59% of our total outstanding shares of common stock. Cypress also holds approximately 91% of the voting power of our total outstanding capital stock, as our class B common stock has 8 votes per share compared to one vote per share for our class A common. Cypress may convert into class A common stock at any time. Cypress has advised us that it does not have any current plans to distribute to its stockholders the shares of our class B common stock that it beneficially owns, although it may elect to effect such a distribution in the future.

Critical Accounting Policies

The Company's critical accounting policies are disclosed in the Company's Form 10-K for the year ended December 31, 2006 and have not changed materially as of April 1, 2007, with the exception of the following:

Revenue and Cost Recognition

Construction Contracts

The Company recognizes revenues from fixed price contracts under AICPA Statement of Position ("SOP") 81-1, "Accounting for Performance of Construction-Type and Certain Production-Type Contracts," using the percentage-of-completion method of accounting. Under this method, revenue is recognized as work is performed based on the percentage that incurred costs bear to estimated total forecasted costs utilizing the most recent estimates of forecasted costs.

Incurred costs include all direct material, labor, subcontract costs, and those indirect costs related to contract performance, such as indirect labor, supplies, tools, and repairs. Job material costs are included in incurred costs when the job materials have been installed. Where contracts stipulate that title to job materials transfers to the customer before installation has been performed, revenue is deferred and recognized upon installation, in accordance with the percentage-of-completion method of accounting. Job materials are considered installed materials when they are permanently attached or fitted to the solar power system as required by the job's engineering design.

Due to inherent uncertainties in estimating cost, job costs estimates are reviewed and/or updated by management working with its projects department. The projects department determines the completed percentage of installed job materials at the end of each month; generally this information is also reviewed with the customer's on-site representative. The completed percentage of installed job materials is then used for each job to calculate the month-end job material costs incurred. Direct labor, subcontractor, and other costs are charged to contract costs as incurred. Provisions for estimated losses on uncompleted contracts, if any, are recognized in the period in which the loss first becomes probable and reasonably estimable. Contracts may include profit incentives such as milestone bonuses. These profit incentives are included in the contract value when their realization is reasonably assured.

As of April 1, 2007, the asset, "Costs and estimated earnings in excess of billings," which represents revenues recognized in excess of amounts billed, was $19.1 million. The liability, "Billings in excess of costs and estimated earnings," which represents billings in excess of revenues recognized, was $38.4 million.

Cash in Restricted Accounts

Cash in restricted accounts represents collateral for letters of credit issued by a commercial bank in favor of two of the Company's suppliers and one customer. The funds will be released upon payment to the suppliers and the successful completion of the customer contracts.

Deferred Project Costs

Deferred project costs represent uninstalled materials on contracts for which title had transferred to the customer. Because these materials cannot be recognized as contract costs, they are recognized as deferred assets until installation. As of April 1, 2007, deferred project costs was $31.1 million.

Foreign Currency Translation

Assets and liabilities of PowerLight's wholly-owned foreign subsidiaries are translated from their respective functional currencies at exchange rates in effect at the balance sheet date, and revenues and expenses are translated at average exchange rates prevailing during the applicable period. The resulting translation adjustment for the three months ended April 1, 2007 of $336,000 is reflected as a component of accumulated other comprehensive loss in stockholders' equity.

Purchase Accounting

We record all assets and liabilities acquired in purchase acquisitions, including goodwill, identified intangible assets and in-process research and development, at fair value as required by SFAS No. 141, "Business Combinations." The initial recording of goodwill, identified intangible assets and in-process research and development requires requires certain estimates and assumptions especially concerning the determination of the fair values and useful lives of the acquired intangible assets. The judgments made in the context of the purchase price allocation can materially impact our future results of operations. Accordingly, for significant acquisitions, we obtain assistance from third party valuation specialists. The valuations are based on information available at the acquisition date. Goodwill is not amortized but is subject to annual tests for impairment or more often if events or circumstances indicate they may be impaired. Other identified intangible assets are amortized over their estimated useful lives and are subject to impairment if events or circumstances indicate a possible inability to realize the carrying amount.

In-Process Research and Development ("IPR&D") Charge

In connection with the acquisition of PowerLight, we recorded an IPR&D charge of $9.6 million in the first quarter of fiscal 2007, as technological feasibility associated with the in-process research and development projects had not been established and no alternative future use existed.

We identified in-process research and development projects in areas for which technological feasibility had not been established and no alternative future use existed. These in-process research and development projects consist of two components: design automation tool and tracking systems and other. In assessing the projects, we considered key characteristics of the technology as well as its future prospects, the rate technology changes in the industry, product life cycles, and various projects' stage of development.

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

Projects	Estimated Stage of Completion as of Acquisition Date	Total Cost Incurred as of Acquisition Date	Total Estimated Costs to Complete	Estimated Completion Dates
Design Automation Tool	5%	$ 0.2 million	$ 2.6 million	Dec 2010
Tracking Systems and Other	30%	$ 0.2 million	$ 0.8 million	Jul 2007

Status of In-Process Research and Development Projects:

To date, there have been no significant differences between the actual and estimated results of the in-process research and development projects related to PowerLight. As of April 1, 2007, we incurred total post-acquisition costs of approximately $0.6 million related to the in-process research and development projects and estimate that an additional investment of approximately $3.1 million will be required to complete the projects. We expect to complete the projects within the original estimated timeframe.

The development of these technologies remains a significant risk due to factors including the remaining efforts to achieve technical viability, rapidly changing customer markets, uncertain standards for new products, and competitive threats. The nature of the efforts to develop these technologies into commercially viable products consists primarily of planning, designing, experimenting, and testing activities necessary to determine that the technologies can meet market expectations, including functionality and technical requirements. Failure to bring these products to market in a timely manner could result in a loss of market share or a lost opportunity to capitalize on emerging markets and could have a material adverse impact on our business and operating results.

Results of Operations for Three-Month Periods Ended April 1, 2007 and April 2, 2006

The following table sets forth the percentage relationship of certain items to the Company's revenue during the periods shown:

Revenue

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

(dollars in thousands)	Three Months Ended April 1, 2007	Three Months Ended April 2, 2006	Year-over-Year Change
Systems revenue	$ 78,495	$ —	100%
Components revenue	63,852	41,958	52%
Total revenue	$142,347	$41,958	239%

We generate revenue from two business segments, as follows:

1. Systems Segment – This segment represents sales of engineering, procurement, construction and other services relating to solar electric power systems that integrate our solar panels and balance of systems components, as well as materials sourced from other manufactures. Systems segment revenues for the three months ended April 1, 2007 were $78.5 million, which accounted for 55% of our total revenue for the period. Systems revenues relate predominantly to our PowerLight subsidiary which was acquired on January 10, 2007. Accordingly, we had no systems revenue for the three months ended April 2, 2006. Our systems revenue will be largely dependent on the timing of revenue recognition on large construction projects and, accordingly, will fluctuate from period to period. Gross margin for the system segment was $16.1 million, or 20% of segment revenue, for the three months ended April 1, 2007.
2. Components Segment – This segment primarily represents sales of our solar cells, solar panels and inverters to solar systems installers and other resellers. In addition, our components segment includes sales of imaging and infrared detectors to OEMs. Components segment revenues to unaffiliated customers and to the systems segment were $63.9 million and $11.4 million, respectively, for the three months ended April 1, 2007. After elimination of intersegment revenues to the systems segment, the components segment accounted for 45% of our total revenue the three months ended April 1, 2007 and 100% of our revenue for the three months ended April 2, 2006. Gross margin for the components segment was $16.4 million, or 26% of segment revenue, for the three months ended April 1, 2007 as compared to $5.7 million, or 14% of revenue, for the three months ended April 2, 2006.

During the three-month period ended April 1, 2007, our revenue of approximately $142.3 million represented an increase of 239% from revenue reported in the comparable period of 2006. The marked increase in revenue during the three-month period ended April 1, 2007 compared to the same period of 2006 resulted from the combination of an increase in components revenue of approximately $21.9 million and the addition of $78.5 million in systems revenue resulting from the acquisition of PowerLight. The increase in components revenue is attributable to the continued increase in the demand for our solar cells and solar panels since we began commercial production in late 2004 and continued increases in unit production and unit shipments of both solar cells and solar panels as we have expanded our solar manufacturing capacity. During the first three quarters of 2006, we had three solar cell manufacturing lines in operation with an approximate annual production capacity of 75 megawatts. Since then, we added a fourth 33 megawatt line during the fourth quarter of 2006 and we expect to commence commercial production in our 5th, 6th, and 7th solar cell lines in the second half of 2007. Each of these lines is expected to have a rated solar cell production capacity of approximately 33 megawatts per year.

From 2005 through the first quarter of 2007, we have experienced a modest increase in average selling prices for our solar products primarily due to the strength of end-market demand. However, we expect average selling prices for our solar power products to decline over time as the market becomes more competitive, as new products are introduced and as manufacturers are able to lower their manufacturing costs and pass on some of the savings to their customers, similar to our experience historically in our imaging products.

We have three customers that each accounted for more than 10 percent of our total revenue in one or more of the three-month periods ended April 1, 2007 and April 2, 2006, as follows:

(percentage of total revenue)		Three Months Ended	
Customer	Business Segment	April 1, 2007	April 2, 2006
Conergy AG	Components	10%	22%
Solon AG	Components	12%	28%
Elecnor	Systems	19%	— %

International sales represent the majority of revenue for both our systems and components business segments. International sales represented approximately 61% and 64% of our total revenue for the three months ended April 1, 2007 and April 2, 2006, respectively, and we expect international sales to remain a significant portion of overall sales for the foreseeable future.

Cost of Revenue

Our component segment's cost of revenue consists primarily of silicon ingots and wafers for the production of solar cells, along with other materials such as chemicals and gases that are needed to transform silicon wafers into solar cells. Other factors contributing to cost of revenue include amortization of intangible assets, depreciation, salaries, personnel-related costs, facilities expenses and manufacturing supplies associated with solar cell fabrication. For our solar panels, our cost of revenue includes raw materials such as glass, frame, backing and other materials, as well as the assembly costs we pay to our third-party subcontractor in China. Additionally, we recently began production within our own solar panel assembly facility in the Philippines which will incur labor, depreciation, utilities and other occupancy costs. For our detector products, our cost of revenue includes the cost of silicon wafers, which is charged to us by our manufacturing contractor, Cypress, and our packaging and test costs. We expect cost of revenue to increase in absolute dollars as we bring on additional capacity and increase our product volume. We anticipate continued increases in our cost of polysilicon during the remainder of 2007 which will also contribute to higher cost of revenue. Despite the absolute increase in cost of revenue dollars, we expect our cost of revenue to fluctuate as a percentage of revenue depending on many factors such as capacity utilization, production yields and product sales mix.

On January 10, 2007, we acquired PowerLight Corporation for aggregate total purchase consideration of $334.4 million, which includes future stock-based compensation for some of PowerLight's executives and employees. In connection with the acquisition there were $79.5 million of identifiable purchased intangible assets, of which $56.8 million will be amortized to cost of revenues on a straight-line basis over periods ranging from one to six years. These acquired assets include patents, technology, trade names and backlog.

On November 9, 2004, Cypress acquired us in a transaction that effectively gave Cypress 100% ownership of all of our then outstanding shares of capital stock but left our unexercised warrants and options outstanding. As a result of that transaction, we were required to record Cypress' cost of acquiring us in our financial statements, including its equity investment and pro rata share of our losses by recording intangible assets, including purchased technology, patents, trademarks and a distribution agreement. The fair value for these intangibles is being amortized as a component of cost of revenue over two to six years on a straight-line basis. During each of the first quarters of 2007 and 2006, amortization of these intangible assets was $1.2 million.

Our gross profit each quarter is affected by a number of factors, including average selling prices for our products, our product mix, our actual manufacturing costs, the utilization rate of our wafer fabrication facility and changes in amortization of intangible assets. To date demand for our solar power products has been robust and our production output has increased allowing us to spread a significant amount of our fixed costs over relatively high production volume, thereby reducing our per unit fixed cost. We currently operate four solar cell manufacturing lines with total production capacity of 108 megawatts per year. We purchased a building in the Philippines that is expected to eventually house 10 solar cell production lines with a total factory output capacity of over 300 megawatts per year. As we build additional manufacturing lines or facilities, our fixed costs will increase, and the overall utilization rate of our wafer fabrication facilities could decline, which could negatively impact our gross profit. This decline may continue until a line's manufacturing output reaches its rated practical capacity.

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

Our systems segment cost of revenue consists primarily of solar panels, mounting systems, inverters and subcontractor costs. Other factors contributing to cost of revenue include depreciation, salaries, personnel-related costs, royalties, and manufacturing supplies associated with contracting revenues. The cost of solar panels is the single largest cost element in our systems business' cost of revenue. We expect our systems segment cost of revenue to fluctuate as a percentage of revenue depending on many factors such as the cost of solar panels, the cost of inverters, subcontractor costs, and other project related costs. Our systems segment cost of revenue will also fluctuate from period to period due to the mix of projects completed and recognized as revenue, in particular between large projects and large commercial installation projects that may or may not include solar panels. Our gross profit each quarter is affected by a number of factors, including the types of projects in process and their various stages of completion, the gross margins estimated for those projects in progress, and the actual system group department overhead costs. Generally, revenues from materials-only sales contracts and sales to large commercial installation projects generate higher gross profits for PowerLight than sales under construction contracts.

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

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

(dollars in thousands)	Three Months Ended April 1, 2007	Three Months Ended April 2, 2006	Year-over - Year Change
Cost of systems revenue	$ 62,443	$ —	100%
Cost of components revenue	47,479	36,266	31%
Total cost of revenue	$109,922	$36,266	203%
Total cost of revenue as a percentage of revenue	77%	86%	
Total gross margin percentage	23%	14%	

Detail to cost of revenue by segment is as follows:

(dollars in thousands)	Three Months Ended April 1, 2007 Systems	Three Months Ended April 1, 2007 Components	Three Months Ended April 2, 2006 Systems	Three Months Ended April 2, 2006 Components
Amortization of purchased intangible assets	$ 4,946	$ 1,123	$ —	1,175
Stock-based compensation	2,034	335	—	255
Inventory overhead	(37)	(82)	—	(62)
Factory pre-operating costs	—	1,216		
All other cost of revenue	55,500	44,887	—	34,898
Total cost of revenue	$ 62,443	$ 47,479	$ —	$ 36,266
Total cost of revenue as a percentage of revenue	80%	74%	—	86%
Total gross margin percentage	20%	26%	—	14%

Overall, our cost of revenues during the three months ended April 1, 2007 were substantially higher than during the first quarter of 2006 primarily as a result of increased cost of revenues associated with operating more production lines and producing substantially higher unit volume in our components segment, as well as the inclusion of PowerLight's cost of revenues for the period subsequent to January 10, 2007. As a percentage of revenue our cost of revenues has declined to 77% in the first quarter of 2007 compared with 87% in the first quarter of 2006. The decrease in cost of revenues as a percentage of revenue is reflective of improved manufacturing economies of scale associated with markedly higher production volume and improved yields. In the first quarter of 2007, our systems segment gross margin was substantially higher than we expect in future periods as a result of a favorable mix of business than is typical of this business. Overall, we believe this favorable mix of business improved our overall gross margin by approximately six percentage points above what we expected from our systems segment. In addition, during the three months ended April 1, 2007, we received a $2.7 million settlement from one of our suppliers in connection with defective materials sold to us during 2006. This settlement was reflected as a reduction to cost of revenues in the quarter ended April 1, 2007.

Our improvement in cost of revenue as a percentage of revenue during the first quarter of 2007 compared to the first quarter of 2006 was offset partially by a $5.7 million increase in amortization of intangible assets associated with our acquisition of PowerLight. Also during the three months ended April 1, 2007 our estimated warranty reserve provision rates were higher than during the same period in 2006, based on specific potential warranty exposures and increased warranty provision rates due to results of our testing that simulates adverse environmental conditions and potential failure rates our solar panels could experience during their 25-year warranty period. Warranty charges were $4.1 million and $0.2 million during the three month periods ended April 1, 2007 and April 2, 2006, respectively. Additionally in the first quarter of 2007, we incurred pre-operating costs associated with our new solar cell manufacturing facility that is expected to begin initial production in the third quarter of 2007. Such pre-operating costs totaled $1.2 million and included compensation and training costs for factory workers and utilities and consumable materials associated with preproduction activities.

Our gross margin is likely to fluctuate based on changes in the relative proportion of components versus systems segment revenues in a particular period. Our components segment gross margin will fluctuate in the future depending on unit demand, change in the average selling prices of our products, the mix of products and services that we sell, our actual manufacturing costs, our factory performance particularly with respect to volume and yields and changes in amortization of intangible assets. Our system segment, including our solar system engineering, procurement and construction contract cost of revenues is highly dependent on the market price of materials used in construction, particularly the cost of solar panels and steel. We may also be faced with inventory write-offs or write-downs depending on current or projected demand for our products.

Research and Development Expense

	Three Months Ended		Year-over - Year Change
(dollars in thousands)	**April 1, 2007**	**April 2, 2006**	
Research & development expense	$ 2,936	$ 1,996	47%
Purchased in-process research & development expense	9,575	—	100%
Total research & development as a percentage of revenue	9%	5%	

During the three-month period ended April 1, 2007, our total research and development expenses was $12.5 million, which represents an increase of 527% from research and development expenses reported in the comparable period of 2006. The increase in research and development spending during the three-month period of 2007 compared to the same period of 2006 resulted primarily from increases in: (i) salaries, benefits and stock-based compensation costs as a result of increased headcount, including headcount additions attributable to the acquisition of PowerLight; (ii) stock-based compensation and amortization of intangibles related to the PowerLight acquisition; and (iii) additional material and equipment costs incurred for the development of our next generation of more efficient solar cells and thinner polysilicon wafers for solar cell manufacturing, as well as development of new processes to automate solar panel assembly operations. These increases were partially offset by a decrease in consulting service fees as well as by cost reimbursements received from various government entities in the U.S.

Research and development expense consists primarily of $9.6 million of purchased in-process research and development expense resulting from the acquisition of PowerLight as well as salaries and related personnel costs, depreciation and the cost of solar cells and solar panel materials and services used for the development of products, including experiment and testing. Payments received under governmental research and development cost sharing contracts are credited as an offset our research and development expense. Such billings totaled approximately $0.2 million for each of the three months ended April 1, 2007 and April 2, 2006. Subject to final negotiations with the government agencies involved, our existing governmental contracts are expected to offset approximately $5.0 million to $8.0 million of our research and development expenses in each of 2007, 2008 and 2009.

We expect our research and development expense to increase in absolute dollars as we continue to develop new processes to further improve the conversion efficiency of our solar cells and reduce their manufacturing cost, and as we develop new products to diversify our product offerings. In addition, in the first quarter of 2007 SunPower and PowerLight were selected for an award, pending finalization of the award agreement, under the Department of Energy's Solar America Initiative (SAI), for up to $10.5 million in the first budgeting period following negotiation of the agreement.

Sales, General and Administrative

	Three Months Ended		Year-over - Year Change
(dollars in thousands)	**April 1, 2007**	**April 2, 2006**	
Sales, general & administrative	$22,371	$4,381	411%
As a percentage of revenue	16%	10%	

During the three-month period ended April 1, 2007, our sales, general and administrative expenses were $22.4 million, which represents an increase of 411% from sales, general and administrative expenses reported in the comparable periods of 2006. The increase in our sales, general and administrative expenses in the three-month period of 2007 compared to the same period of 2006 is a result of both the acquisition and integration of PowerLight and higher spending to support the growth of our business, particularly increased headcount and payroll related costs, including stock-based compensation, in all areas of sales, marketing, finance and information technology, as well as increased outside professional fees for legal and accounting services. Also contributing to

our increased selling, general and administrative expenses in the first quarter of 2007 compared to the first quarter of 2006 are substantial increases in headcount and sales and marketing spending to expand our value added reseller channel and global branding initiatives. As a percentage of revenue, sales, general and administrative expenses increased from 10% in the first three months of 2006 to 16% in the first three months of 2007 because these expenses increased at a substantially lower rate than the rate of growth in our revenues.

Interest and Other Income (Expense), Net

(dollars in thousands)	Three Months Ended April 1, 2007	Three Months Ended April 2, 2006	Year-over - Year Change
Interest income	$ 1,984	$ 1,173	69%
As a percentage of revenue	1%	3%	
Interest expense	$ 1,119	$ 339	230%
As a percentage of revenue	1%	1%	
Other income (expense), net	$ 274	$ 137	100%
As a percentage of revenue	— %	— %	

During the three-month period ended April 1, 2007 and April 2, 2006, respectively, our net interest income represents primarily interest income earned on our cash equivalents during the period. Interest expense relates to interest paid on a customer advance payments, convertible debt and existing notes payable. Other income and expense for all periods primarily represents gains and losses from foreign currency transactions.

Income Taxes

(dollars in thousands)	Three Months Ended April 1, 2007	Three Months Ended April 2, 2006	Year-over - Year Change
Income tax provision (benefit)	$(2,558)	$ 31	n.a.
As a percentage of revenue	(2%)	— %	

In the three-month period ended April 1, 2007, our income tax benefit was primarily attributable to foreign income taxes in jurisdictions where our operations are profitable for tax purposes, offset by a release of the valuation allowance against our deferred tax asset due to the effect of the acquisition of PowerLight. The Company's interim period tax provisions are estimated based on the expected annual worldwide tax rate and takes into account the tax effect of discrete items, including the acquisition of PowerLight. As described in Note 8, we will pay federal and state income taxes in accordance with the tax sharing agreement with Cypress. Since the completion of our follow-on public offering of common stock in June 2006, we are no longer considered to be a member of Cypress' consolidated group for federal income tax purposes. Accordingly, we will be required to pay Cypress for any federal income tax credit or net operating loss carryforwards utilized in our federal tax returns in subsequent periods.

For financial reporting purposes, income tax expense and deferred income tax balances were calculated as if we were a separate entity and had prepared our own separate tax return. Deferred tax assets and liabilities are recognized for temporary differences between financial statement and income tax bases of assets and liabilities. Valuation allowances are provided against net deferred tax assets when management cannot conclude that it is more likely than not that all or a portion of our net deferred tax assets will be realized. As of April 1, 2007, there was no valuation allowance as the Company was in a net deferred tax liability position. As of December 31, 2006, we had federal net operating loss carryforwards of approximately $50.6 million. These federal net operating loss carryforwards expire at various dates from 2011 through 2026, if not utilized. We had California state net operating loss carryforwards of approximately $4.8 million as of December 31, 2006.

Liquidity and Capital Resources

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

(In thousands)	Three Months Ended April 1, 2007	Three Months Ended April 2, 2006
Net cash used in operating activities	$ (9,766)	$ (6,630)
Net cash used in investing activities	(138,774)	(20,254)
Net cash provided by financing activities	192,406	410
Net increase (decrease) in cash and cash equivalents	$ 43,866	$ (26,474)

From 2002 until the closing of our initial public offering of 8.8 million shares of class A common stock on November 22, 2005, we financed our operations primarily through sale of equity to and borrowings from Cypress totaling approximately $142.8 million. We received net proceeds from our IPO of approximately $145.6 million and in a follow-on offering of 7.0 million shares of common stock in June 2006 we received net proceeds of approximately $197.4 million. In February 2007, we raised $194.0 million net proceeds from the issuance of 1.25% senior convertible debentures. As of April 1, 2007, we had approximately $214.6 million in cash, cash equivalents and restricted cash.

Net cash used in operating activities of $9.8 million for the three months ended April 1, 2007 was primarily the result of net income of $1.2 million, plus non-cash items included in net income, including depreciation of $5.7 million related to property and equipment, amortization of intangibles of $6.9 million, purchased in-process research and development of $9.6 million and stock-based compensation expense of $10.6 million, which included $7.1 million in amortization of deferred compensation charges related to the acquisition of PowerLight. Also contributing to cash used in operating activities were increases in costs and estimated earnings in excess of billings of $10.0 million; inventories of $22.2 million; deferred project costs of $6.2 million; advance payments to suppliers totaling $8.6 million; as well as decreases in advances from customers of $7.5 million and in accounts payable and accrued liabilities of $6.0 million. These items were partially offset by an increase in accounts receivable of $9.0 million; and in prepaids and other assets of $4.0 million. The significant increases in substantially all of our current assets and current liabilities resulted from the acquisition of PowerLight, as well as our substantial revenue increase in the first three months of 2007 compared to previous quarters which impacted net income and working capital.

Net cash used in operating activities of $6.6 million for the three months ended April 2, 2006 was the result of the payment of 10.5 million Euro (approximately $12.4 million) advance to a supplier and an increase in accounts receivable of $6.5 million and an increase in inventories of $4.1 million, mainly due to increasing revenues. These items were mainly offset by an increase in accounts payable of $10.0 million resulting from the timing of payment of inventory and capital purchases, as well as net income of $255,000, plus non-cash items included in net income, including depreciation of $3.3 million related to property and equipment, amortization of intangibles of $1.1 million and stock-based compensation expense of $1.4 million, which was the effect of the adoption of SFAS No. 123(R) during the period.

Net cash used in investing activities of $138.8 million and $20.3 million for the three months ended April 1, 2007 and April 2, 2006, respectively, primarily relate to capital expenditures of $56.2 million and $20.3 million incurred during the three months ended April 1, 2007 and April 2, 2006, respectively. Capital expenditures in both periods were mainly associated with manufacturing capacity expansion in the Philippines. During the three months ended April 1, 2007, we received proceeds of $16.5 million resulting from the sale of auction rate securities which are classified as short-term investments on our consolidated balance sheet. Although the timing of our capital expansion plans may shift depending on many factors, we currently expect 2007 capital expenditures to be between approximately $170 million and $190 million, primarily related to continued expansion of our manufacturing capacity. During the three months ended April 1, 2007, we paid $98.6 million in cash for the acquisition of PowerLight, net of cash acquired.

Net cash provided by financing activities for the three months ended April 1, 2007 reflects $194.0 million in net proceeds from the issuance of $200.0 million in principal amount of 1.25% senior convertible debentures in February 2007. Interest on the Debentures will be payable on February 15 and August 15 of each year, commencing August 15, 2007. The Debentures will mature on February 15, 2027. Holders may require us to repurchase all or a portion of their Debentures on each of February 15, 2012, February 15, 2017 and February 15, 2022, or if we experience certain types of corporate transactions constituting a fundamental change. Any repurchase of the Debentures pursuant to these provisions will be for cash at a price equal to 100% of the principal amount of the Debentures to be repurchased plus accrued and unpaid interest. In addition, we may redeem some or all of the Debentures on or after February 15, 2012 for cash at a redemption price equal to 100% of the principal amount of the Debentures to be redeemed plus accrued and unpaid interest. Also during the three months ended April 1, 2007, we paid $3.6 million on an outstanding line of credit and received $2.0 million in proceeds from stock option exercises.

Net cash provided by financing activities for the three months ended April 2, 2006 primarily reflects proceeds from the exercise of stock options.

In December 2005, we entered into a $25.0 million three-year revolving credit facility (the "Facility") with affiliates of Credit Suisse Securities (USA) LLC and Lehman Brothers, Inc. The Facility is collateralized by substantially all of our assets, including the stock of our foreign subsidiaries. Borrowings under the Facility are conditioned upon customary conditions as well as: (1) with respect to the first $10.0 million drawn on the facility, maintenance of cash collateral to the extent of outstanding borrowings (excluding amounts borrowed); and (2) with respect to the remaining $15.0 million of the Facility, satisfaction of a coverage test which is based on the ratio of our cash flow to capital expenditures. The Facility contains customary covenants and defaults including limitations on dividends, incurrence of indebtedness and liens, and mergers and acquisitions. The Facility bears interest at a rate of the greater of the prime rate or federal funds rate for U.S. dollar draws, or the LIBOR plus 1% for Euro dollar draws on the first $10.0 million of borrowings and the greater of the prime rate plus 2% or federal funds rate plus 2% for U.S. dollar draws, or LIBOR plus 3% for Euro dollar draws on any borrowings over $10.0 million. The interest rate for Euro dollar borrowings would have been 6.4% on the first $10.0 million of borrowings and 8.4% on any borrowings over $10.0 million at April 1, 2007. The interest rate for U.S. dollar borrowings would have been 8.3% on the first $10.0 million of borrowings and 10.3% on any borrowings over $10.0 million at April 1, 2007. To date there have been no borrowings under the Facility.

On January 10, 2007, PowerLight amended and restated its loan agreement with a commercial bank. The amended and restated loan agreement provided for a $10 million trade finance credit facility, which was scheduled to expire on April 30, 2007. This facility allows PowerLight to issue commercial and standby letters of credit, but does not provide for any loans. All of the assets of PowerLight secure this trade finance facility. In addition, the agreement required that PowerLight maintain cash equal to the value of letter of credits outstanding in restricted accounts as collateral for letters of credit issued by the bank. On April 27, 2007, PowerLight entered into an amendment to the loan agreement to, among other things, extend the maturity date to July 31, 2007, and remove the requirement to have cash collateral for letters of credit. The Company guaranteed $10.5 million to the commercial bank in connection with the April 27, 2007 amendment for the $10 million trade credit facility, and a separate $0.5 million credit card facility through the commercial bank.

In conjunction with the acquisition of PowerLight, we entered into a commitment letter with Cypress during the fourth quarter of fiscal 2006 under which Cypress agreed to lend us up to $130 million in cash in order to facilitate the financing of acquisitions or working capital requirements. In February 2007, the commitment letter was terminated. No borrowings were utilized and no borrowings were outstanding at the termination date.

We believe that our current cash and cash equivalents and funds available from the Facility and the loan agreement will be sufficient to meet our working capital and capital expenditure commitments for at least the next 12 months. However, if our financial results or operating plans change from our current assumptions, we may not have sufficient resources to support our business plan. If our capital resources are insufficient to satisfy our liquidity requirements, we may seek to sell additional equity securities or debt securities or obtain other debt financing. The sale of additional equity securities or convertible debt securities would result in additional dilution to our stockholders. Additional debt would result in increased expenses and would require us to abide by covenants under the Facility or other debt agreements that would restrict our operations. Financing arrangements may not be available to us, or may not be available in amounts or on terms acceptable to us.

We expect to experience growth in our operating expenses, including our research and development, sales and marketing and general and administrative expenses, for the foreseeable future to execute our business strategy. We may also be required to purchase polysilicon in advance to secure our wafer supplies or purchase third-party solar modules and materials in advance to support systems projects. We intend to fund these activities with existing cash and cash equivalents, cash generated from operations and if necessary, borrowings under our $25.0 million revolving credit facility. These anticipated increases in operating expenses may not result in an increase in our revenue and our anticipated revenue may not be sufficient to support these increased expenditures. We anticipate that operating expenses, working capital and capital expenditures will constitute a significant use of our cash resources.

In January 2007, pursuant to the terms of the acquisition of PowerLight, all of the outstanding shares of PowerLight, and a portion of each vested option to purchase shares of PowerLight, were cancelled, and all of the outstanding options to purchase shares of PowerLight (other than the portion of each vested option that was cancelled) were assumed by the Company in exchange for aggregate consideration of: (i) approximately $120.7 million in cash plus (ii) a total of 5,708,723 shares of class A common stock, inclusive of: (a) 1,601,839 shares of class A common stock which may be issued upon the exercise of assumed vested and unvested PowerLight stock options, and (b) 1,675,881 shares of class A common stock issued to certain employees of the PowerLight business in connection with the acquisition, which shares are subject to certain transfer restrictions and a repurchase option of the Company, both of which lapse over a two-year period under the terms of equity restriction agreements with employees of the PowerLight business.

The following summarizes our contractual obligations at April 1, 2007:

	Payments Due by Period				
(In thousands)	Total	2007 (remaining 9 months)	2008 -2009	2010 -2011	Beyond 2011
Obligation to Cypress	$ 5,791	$ 5,791	$ —	$ —	$ —
Customer advances	32,513	8,194	16,204	8,115	—
Interest on customer advances	3,738	1,608	1,879	251	—
Convertible debt	200,000	—	—	—	200,000
Interest on convertible debt	49,632	1,875	5,000	5,000	37,757
Lease commitments	30,744	1,823	6,900	6,081	15,940
Non-cancelable purchase orders	63,091	63,091	—	—	—
Purchase commitments under agreements	1,288,301	157,711	503,201	475,506	151,883
Total	$1,673,810	$240,093	$533,184	$494,953	$ 405,580

Purchase commitments under agreements relate to arrangements entered into with suppliers of polysilicon, ingots, wafers, solar cells and solar modules. These agreements specify future quantities and pricing of products to be supplied by the vendors for periods up to 12 years and there are certain consequences, such as forfeiture of advanced deposits and penalty payments relating to previous purchases, in the event that we terminate the arrangements (see Note 13). Customer advances relate to advance payments received from customers for future purchases of solar power products. Non-cancelable purchase orders relate to purchase commitments for equipment and building improvements for the Company's manufacturing facilities. Lease commitments primarily relate to our 5-year lease agreement with Cypress for our headquarters in San Jose, California, a 15-year lease agreement with Cypress for our manufacturing facility in the Philippines, a 5-year lease agreement with an unaffiliated third party for a second facility in the Philippines and other leases for various office space including our office in Berkeley, California.

In December 2006, PowerLight entered into an eleven-year lease agreement for a 175,000 square foot facility in Richmond, California, for office, light industrial and research and development use. PowerLight's move to the new facility is scheduled for the fourth quarter of 2007.

Recent Accounting Pronouncements

In June 2006, the Financial Accounting Standards Board ("FASB") issued FASB Interpretation No. 48, "Accounting for Uncertainty in Income Taxes, and Related Implementation Issues" ("FIN 48"). FIN 48 clarifies the accounting for uncertainty in income taxes recognized in a Company's financial statements in accordance with FASB 109, "Accounting for Income Taxes." FIN 48 prescribes a recognition threshold and measurement attribute for a tax position taken or expected to be taken in a tax return. FIN 48 also provides guidance on derecognition, classification, interest and penalties, accounting in interim periods, disclosure, and transition. We adopted FIN 48 in the first quarter of fiscal 2007 (see Note 11 of notes to condensed consolidated financial statements).

In September 2006, the FASB issued Statement of Financial Accounting Standards ("SFAS") No. 157, "Fair Value Measurements ("SFAS No. 157"). SFAS No. 157 defines fair value, establishes a framework for measuring fair value in accordance with generally accepted accounting principles, and expands disclosures about fair value instruments. This statement does not require any new fair value measurements; rather, it applies under other accounting pronouncements that require or permit fair value measurements. The provisions of this statement are to be applied prospectively as of the beginning of the fiscal year in which this statement is initially applied, with any transition adjustment recognized as a cumulative effect adjustment to the opening balance of retained earnings. The provisions of SFAS No. 157 are effective for fiscal years beginning after November 15, 1007; therefore, we anticipate adopting this standard as of January 1, 2008. We have not determined the effect, if any, the adoption of this statement will have on our consolidated financial statements.

In February 2007, the FASB issued SFAS No. 159, "The Fair Value Option for Financial Assets and Financial Liabilities," which provides companies an option to report selected financial assets and liabilities at fair value. SFAS no. 159 requires companies to provide information helping financial statement users to understand the effect of a company's choice to use fair value on its earnings, as well as to display the fair value of the assets and liabilities a company has chosen to use fair value for on the face of the balance sheet. Additionally, SFAS No. 159 establishes presentation and disclosure requirements designed to simplify comparisons between companies that choose different measurement attributes for similar types of assets and liabilities. The statement is effective as of the beginning of an entity's first fiscal year beginning after November 15, 2007. We have not determined the effect, if any, the adoption of this statement will have on our consolidated financial statements.

Item 3. Quantitative and Qualitative Disclosure About Market Risk

Interest Rate Risk

Our exposure to market risks for changes in interest rates relates primarily to our cash equivalents and short-term investment portfolio. As of April 1, 2007, our investment portfolio consisted of cash equivalents comprised of money market funds. Due to the short-term nature of our investment portfolio, we do not believe that an immediate 10% increase in interest rates would have a material effect on the fair market value of our portfolio. Since we believe we have the ability to liquidate this portfolio, we do not expect our operating results or cash flows to be materially affected to any significant degree by a sudden change in market interest rates on our investment portfolio.

Foreign Currency Exchange Risk

Our exposure to adverse movements in foreign currency exchange rates is primarily related to sales to European customers that are denominated in Euros and procurement of certain capital equipment in Euros. During each of the three months ended April 1, 2007 and April 2, 2006, approximately 61% and 64%, respectively, of our total revenue was generated outside the United States. A hypothetical change of 10% in foreign currency exchange rates could impact our consolidated financial statements or results of operations by $16.0 million based on our outstanding forward contracts of $54.8 million and outstanding option contracts of $69.2 million as of April 1, 2007. We currently conduct hedging activities, which involve the use of currency forward contracts. We cannot predict the impact of future exchange rate fluctuations on our business and operating results. In the past, we have experienced an adverse impact on our revenue and profitability as a result of foreign currency fluctuations. We believe that we may have increased risk associated with currency fluctuations in the future.

Our PowerLight subsidiary, acquired on January 10, 2007, also has substantial purchases and sales denominated in Euros and is, therefore, subject to similar foreign currency exchange risk as our historical business.

Item 4. Controls and Procedures

Evaluation of Disclosure Controls and Procedures

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

Based on their evaluation as of the end of the period covered by this Quarterly Report on Form 10-Q, our Chief Executive Officer and Chief Financial Officer have concluded that, subject to the limitations noted above, our disclosure controls and procedures were effective to ensure that material information relating to us, including our consolidated subsidiaries, is made known to them by others within those entities, particularly during the period in which the Quarterly Report on Form 10-Q was being prepared.

Changes in Internal Control over Financial Reporting

There was no change in our internal control over financial reporting (as defined in Rule 13a-15(f) under the Exchange Act) identified in connection with the evaluation described above that occurred during our last fiscal quarter that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

PART II—OTHER INFORMATION

ITEM 1A: *RISK FACTORS*

We are operating in a market environment that involves significant risks, many of which are beyond our control. The following risk factors may adversely impact our results of operations, cash flows and the market price of our stock. Although we believe that we have identified and discussed below the key risk factors affecting our business, there may be additional risks and uncertainties that are not presently known or that are not currently believed to be significant that may adversely affect our performance or financial condition.

Risks Related to Our Recent Merger with PowerLight

Although we expect the Merger to be beneficial for us, such benefits may not be realized because of integration difficulties or other challenges.

On January 10, 2007, we completed our previously announced merger, or the Merger, with PowerLight Corporation. PowerLight has global operations that will need to be integrated successfully in order for us to realize the benefits anticipated from the Merger. Realizing these benefits will require the meshing of technology, operations and personnel of SunPower and PowerLight into a single organization. We expect the integration to be a complex, time-consuming and expensive process that, even with proper planning and implementation, could cause significant disruption. The challenges that we may face include, but are not limited to, the following:

- consolidating operations, including rationalizing corporate information technology and administrative infrastructures;
- our management gaining sufficient experience with technologies and markets in which the PowerLight business is involved, which may be necessary to successfully operate and integrate the business;
- coordinating sales and marketing efforts between the two companies:
- overcoming any perceived adverse changes in business focus or model;
- realizing synergies necessary to meet our long-term margin targets, given PowerLight's historical margins;
- coordinating and harmonizing research and development activities to accelerate introduction of new products and technologies with reduced cost;
- preserving customer, supplier, distribution and other important relationships of SunPower and PowerLight and resolving any potential conflicts that may arise;
- retaining key employees and maintaining employee morale;
- addressing differences in the business cultures of SunPower and PowerLight;
- coordinating and combining operations, relationships and facilities outside of the United States, which may be subject to additional constraints imposed by geographic distance, local laws and regulations; and
- creating a consolidated internal control over financial reporting structure so that we and our independent auditors can report on the effectiveness of our internal controls over financial reporting.

We may not be able to successfully integrate the operations of PowerLight in a timely manner, or at all. In addition, we may not realize the anticipated benefits and synergies of the Merger to the extent or when anticipated. Even if the integration of SunPower's and PowerLight's operations, products and personnel is successful, it may place a significant burden on our management resources. The diversion of management's attention and any difficulties encountered in the transition and integration process could harm our business, financial condition and operating results.

The Merger could cause certain solar cell and panel suppliers to reduce or terminate their business relationship with our PowerLight business, which could adversely affect the ability of our PowerLight business to meet customer demand for its solar power systems and materially adversely affect our results of operations and financial condition.

As a result of the Merger, we now directly compete with certain suppliers of solar cells and panels to our PowerLight business. As a result, the Merger could cause one or more solar cell and panel suppliers to reduce or terminate their business relationship with our PowerLight business. After the Merger closed, we discontinued our purchasing relationship with one supplier, which was supplying panels to PowerLight under a purchase order relationship. This supplier will not supply solar panels to PowerLight beyond the first quarter of 2007. Other reductions or terminations, which may be significant, could occur. Any such reductions or terminations could adversely affect the ability of our PowerLight business to meet customer demand for its solar power systems, and materially adversely affect its results of operations and financial condition, which would likely materially adversely affect our results of operations and financial condition.

We will use commercially reasonable efforts to replace any lost solar cells or panels with our own inventory to mitigate the impact on the PowerLight business. However, such replacements may not be sufficient to fully address solar supply shortfalls experienced by our PowerLight business, and in any event could negatively impact our revenue and earnings as it forgoes selling such inventory to third parties.

The Merger could cause our customers to reduce or terminate their business relationship with us, which could adversely affect our ability to distribute our products and materially adversely affect our results of operations and financial condition.

PowerLight directly competes, as a distributor of solar panels and systems, with many of our customers. For instance, both Conergy AG and Solon AG, two of our largest customers, actively compete with our PowerLight business in the large-scale solar power plant market. The Merger could cause these customers to be concerned that we will reduce our level of business with them and perform a significant portion of our integration activities through our PowerLight business, thereby competing with certain of our customers. As a result, customers might reduce or terminate their business relationships with us, making it more difficult for us to sell our products and expand our business. Any such outcome could have a material adverse effect on our revenue and earnings.

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

PowerLight's former stockholders made representations and warranties to us in the Merger agreement, including those relating to the accuracy of its financial statements, the absence of litigation and environmental matters and the consents needed to transfer permits, licenses and third-party contracts in connection with our acquisition of PowerLight. To the extent that we are harmed by a breach of these representations and warranties, PowerLight's former stockholders have agreed to indemnify us for monetary damages from an escrowed proceeds account. In most cases we are required to absorb approximately the first $2.4 million before we are entitled to indemnification. The escrowed proceeds account is limited to $20.2 million in cash and 824,000 shares of our class A common stock, of which approximately one-half of the original escrow will be released (less any pending claims) at the first anniversary of the closing date. Our rights to recover damages under several provisions of the Merger agreement will also expire on the first anniversary of the closing date. After the first anniversary of the closing date we will be entitled to recover only limited types of losses, and our recovery will be limited to the amount available in the escrow fund at the time of a claim. The amount available in the escrow fund will be progressively reduced to zero over the period from the first to the fifth anniversaries of the closing date. We may incur liabilities from this acquisition which are not covered by the representations and warranties set forth in the agreement or which are non-monetary in nature. Consequently, our acquisition of PowerLight may expose us to liabilities for which we are not entitled to indemnification or our indemnification rights are insufficient.

We expect to continue to incur significant costs in connection with the Merger.

Our direct transaction costs totaled approximately $3.0 million in connection with the Merger, which will be capitalized as purchase price. We believe that we will also incur charges to operations during 2007 to reflect the costs of integrating the two companies, but cannot reasonably estimate those costs at this time. There can be no assurance that we will not incur additional material charges in subsequent quarters to reflect additional costs associated with the Merger.

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

In accordance with generally accepted accounting principles in the United States, or U.S. GAAP, we accounted for the Merger using the purchase method of accounting. Further, a portion of the purchase price paid in the Merger has been allocated to in-process research and development. Under the purchase method of accounting, we allocated the total purchase price to PowerLight's net tangible assets and intangible assets based on their fair values as of the date of completion of the Merger and recorded the excess of the purchase price over those fair values as goodwill. We will incur amortization expense over the useful lives of amortizable intangible assets acquired in connection with the Merger. In addition, to the extent the value of goodwill and long lived assets becomes impaired, we may be required to incur material charges relating to the impairment of those assets. Further, we may be impacted by nonrecurring charges related to reduced gross profit margins from the requirement to adjust PowerLight's inventory to fair value. Finally, we will incur ongoing compensation charges associated with assumed options, equity held by employees of PowerLight and subjected to equity restriction agreements, and restricted stock granted to employees of our PowerLight business. We estimate that these charges will aggregate approximately $78.2 million, majority of which will be recognized in the first two years and lesser amounts in the succeeding two years. Any of the foregoing charges could have a material impact on our results of operations.

Risks Related to Our Business

SunPower and PowerLight share several risk factors common to both businesses. The following provides an integrated discussion of risk factors for SunPower and PowerLight. Where appropriate, the title heading to the risk factor indicates the business to which the risk relates.

The solar power industry is currently experiencing an industry-wide shortage of polysilicon. The prices that we pay for polysilicon have increased over the last several quarters and we expect prices to remain at or above current levels for the foreseeable future, which may constrain the revenue growth and decrease gross margins and profitability for both SunPower and PowerLight.

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

There is currently an industry-wide shortage of polysilicon, which has resulted in significant price increases. We expect that the average price of polysilicon will continue to increase. Increases in polysilicon prices have in the past increased our manufacturing costs and may impact our manufacturing costs and net income in the future. As demand for solar cells has increased, many of our principal competitors have announced plans to add additional manufacturing capacity. As this manufacturing capacity becomes operational, it will increase the demand for polysilicon and further exacerbate the current shortage. Polysilicon is also used in the semiconductor industry generally and any increase in demand from that sector will compound the shortage. The production of polysilicon is capital intensive and adding additional capacity requires significant lead time. While we are aware that several new facilities for the manufacture of polysilicon are under construction, we do not believe that the supply imbalance will be remedied in the near term. We expect that polysilicon demand will continue to outstrip supply throughout 2007 and potentially for a longer period.

Although we have contracted with vendors for what we believe will be an adequate supply of silicon ingots through 2007, our estimates regarding our supply needs may not be correct and our purchase orders and contracts may be cancelled by our suppliers. The volume and pricing associated with these purchase orders and contracts may be changed by our suppliers based on market conditions. Our purchase orders are generally non-binding in nature. If our suppliers were to cancel our purchase orders or change the volume or pricing associated with these purchase orders and/or contracts, we may be unable to meet customer demand for our products, which could cause us to lose customers, market share and revenue. This would have a material negative impact on our business and operating results. If our manufacturing yields decrease significantly, we add manufacturing capacity faster than currently planned or our suppliers cancel or fail to deliver, we may not have made adequate provision for our polysilicon needs for the balance of the year. In addition, we currently purchase polysilicon and make advances to suppliers to secure future polysilicon supply, which adversely affects our liquidity. These advances may in the future take the form of equity issuances, which would result in additional dilution to our stockholders.

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

There are a limited number of polysilicon suppliers. Many of our competitors also purchase polysilicon from our suppliers. Since we have only been purchasing polysilicon in bulk for slightly more than one year, which is a shorter period than our competitors, these other competitors have longer and perhaps stronger relationships with our suppliers than we do. Many of them also have greater buying power than we do. Some of our competitors also have inter-locking board members with their polysilicon suppliers or have entered into joint ventures with their suppliers. Additionally, a substantial amount of our future polysilicon requirements are expected to be sourced by new suppliers that have not yet proven their ability to manufacture large volumes of polysilicon. In some cases we expect that new entrants will provide us with polysilicon and ingots. The failure of these new entrants to produce adequate supplies of polysilicon and/or ingots in the quantities and quality we require could adversely affect our ability to grow production volumes and revenues and could also result in a decline in our gross profit margin. Since we have committed to significantly increase our manufacturing output, an inadequate supply of polysilicon would harm us more than it would harm many of our competitors.

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

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

Even though our customer base is expected to increase and our revenue streams to diversify as a result of the Merger, a substantial portion of our net revenues will likely continue to depend on sales to a limited number of customers. During the first fiscal quarter of 2007, sales to our top two customers accounted for 22% of our revenues. Currently, our largest customers for our solar power products are Conergy AG, or Conergy and Solon AG, or Solon. Conergy accounted for approximately 10% of our revenue for the first quarter of 2007. Solon accounted for approximately 12% of our revenue for the first quarter of 2007. The loss of sales to either of these customers would have a significant negative impact on our business. Our agreements with these customers may be cancelled if we fail to meet certain product specifications or materially breach the agreement or in the event of bankruptcy, and our customers may seek to renegotiate the terms of current agreements or renewals. Most of the solar panels we sell to the European market are sold through our agreement with Conergy, and we may enter into similar agreements in the future.

We currently sell to a relatively small number of customers, and we expect our operating results will likely continue to depend on sales to a relatively small number of customers for the foreseeable future, as well as the ability of these customers to sell solar power products that incorporate our solar cells. We cannot be certain that these customers will generate significant revenue for us in the future or if these customer relationships will continue to develop. If our relationships with our other customers do not continue to develop, we may not be able to expand our customer base or maintain or increase our revenue. This is exacerbated by our current manufacturing constraints for solar cells which limit our ability to sell to other customers and our contractual arrangements which require us to sell part of our future output to Conergy and Solon. In addition, our business is affected by competition in the market for the end products that each of Conergy and Solon sell, and any decline in their business could harm our business and cause our revenue to decline.

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

Our quarterly revenue and operating results will be difficult to predict and SunPower's and PowerLight's results have in the past fluctuated from quarter to quarter. It is possible that our operating results in some quarters will be below market expectations. Our quarterly operating results will be affected by a number of factors, including:

- the average selling price of SunPower's solar cells and panels and imaging detectors and our PowerLight business' solar power systems;
- the availability and pricing of raw materials, particularly polysilicon;
- the availability, pricing and timeliness of delivery of raw materials and components, particularly solar panels and balance of systems components, including steel, necessary for our PowerLight business' solar power systems to function;
- the rate and cost at which we are able to expand our manufacturing and product assembly capacity to meet customer demand, including costs and timing of adding personnel;
- the amount, timing, and mix of sales of our PowerLight business' systems, especially medium and large-scale projects, which may individually cause severe fluctuations in our revenue;
- our ability to meet project completion schedules and the corresponding revenue impact under the percentage-of-completion method of recognizing revenue for projects of our PowerLight business;
- construction cost overruns, including those associated with the introduction of new products;

- the impact of seasonal variations in demand and/or revenue recognition linked to construction cycles and weather conditions;
- timing, availability and changes in government incentive programs;
- unplanned additional expenses such as manufacturing failures, defects or downtime;
- acquisition and investment related costs;
- unpredictable volume and timing of customer orders, some of which are not fixed by contract but vary on a purchase order basis;
- the loss of one or more key customers or the significant reduction or postponement of orders from these customers;
- geopolitical turmoil within any of the countries in which we operate or sell products;
- foreign currency fluctuations, particularly in the Euro, Philippine peso or South Korean won;
- the effect of currency hedging activities;
- our ability to establish and expand customer relationships;
- changes in our manufacturing costs;
- changes in the relative sales mix of our systems, solar cells, solar panels and imaging detectors;
- the availability, pricing and timeliness of delivery of other products, such as inverters and other balance of systems materials necessary for our solar power products to function;
- our ability to successfully develop, introduce and sell new or enhanced solar power products in a timely manner, and the amount and timing of related research and development costs;
- the timing of new product or technology announcements or introductions by our competitors and other developments in the competitive environment;
- the willingness of competing solar cell and panel suppliers to continue product sales to our PowerLight business;
- increases or decreases in electric rates due to changes in fossil fuel prices or other factors; and
- shipping delays.

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

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

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

- we may experience cost overruns, delays, equipment problems and other operating difficulties;
- we may experience difficulties expanding our processes to larger production capacity;

- our custom-built equipment may take longer and cost more to engineer than planned and may never operate as designed; and
- we are incorporating first-time equipment designs and technology improvements, which we expect to lower unit capital and operating costs, but this new technology may not be successful.

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

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

SunPower has constructed a new 30 megawatt automated solar panel assembly factory in the Philippines. This factory commenced commercial production during the fourth quarter of 2006. Much of the manufacturing equipment and technology in this factory is new and unproven in volume production of solar panels. In the event that this factory is unable to ramp production with commercially reasonable yields and competitive production costs, our anticipated revenue growth and gross margin will be adversely affected.

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

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

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

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

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

The reduction or elimination of government and economic incentives could cause revenue to decline for both SunPower and PowerLight.

We believe that the near-term growth of the market for on-grid applications, where solar power is used to supplement a customer's electricity purchased from the utility network or sold to a utility under tariff, depends in large part on the availability and size of government and economic incentives. Because a majority of sales for SunPower and PowerLight are in the on-grid market, the reduction or elimination of government and economic incentives may adversely affect the growth of this market or result in increased price competition, both of which could cause our revenue to decline.

Today, the cost of solar power exceeds retail electric rates in many locations. As a result, federal, state and local government bodies in many countries, most notably Germany, Japan, Spain, Italy, Portugal, South Korea and the United States, have provided incentives in the form of feed-in tariffs, rebates, tax credits and other incentives to end users, distributors, system integrators and manufacturers of solar power products to promote the use of solar energy in on-grid applications and to reduce dependency on other forms of energy. These government economic incentives could be reduced or eliminated altogether. For example, Germany has been a strong supporter of solar power products and systems and political changes in Germany could result in significant reductions or eliminations of incentives, including the reduction of feed-in tariffs more rapidly than required by current law. Some solar program incentives expire, decline over time, are limited in total funding or require renewal of authority. Net metering and other operational policies in California, Japan or other markets could limit the amount of solar power installed there. Reductions in, or eliminations or expirations of, governmental incentives could result in decreased demand for and lower revenue from our products. Changes in the level or structure of a renewable portfolio standard could also result in decreased demand for and lower revenue from our products.

Changes in tax laws or fiscal policies may decrease the return on investment for customers of our PowerLight business, and for certain investors in its projects, which could decrease demand for its products and services and harm its business.

In the three months ended April 1, 2007, substantially all of PowerLight's revenues were derived from sales of solar power systems to companies formed to develop and operate solar power generation facilities. Such companies have been formed by third party investors with some frequency in the United States, Germany, Spain, South Korea and Portugal, as these investors seek to benefit from government mandated feed-in tariffs and similar legislation. PowerLight's business depends in part on the continuing formation of such companies and the potential revenue source they represent. In deciding whether to form and invest in such companies, potential investors weigh a variety of considerations, including their projected return on investment. Such projections are based on current and proposed federal, state and local laws, particularly tax legislation. Changes to these laws, including amendments to existing tax laws or the introduction of new tax laws, tax court rulings as well as changes in administrative guidelines, ordinances and similar rules and regulations could result in different tax assessments and may adversely affect an investor's projected return on investment, which could have a material adverse effect on our PowerLight business and results of operations.

Problems with product quality or product performance, including defects, in our solar cells could result in a decrease in customers and revenue, unexpected expenses and loss of market share for SunPower and PowerLight.

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

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

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

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

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

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

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

In February 2004, one of PowerLight's major panel suppliers at the time, AstroPower, Inc., filed for bankruptcy. PowerLight had installed systems incorporating over 30,000 AstroPower panels, and approximately 27,000 of these panels incorporated into systems that are still under warranty by it. The majority of these warranties expire by 2008, and all expire by 2010. While PowerLight has not experienced a significant number of warranty or other claims related to installed AstroPower panels, it may in the future incur significant unreimbursable expenses in connection with the repair or replacement of these panels, which could have a material adverse effect on our business and results of operations. In addition, another major supplier of solar panels notified PowerLight of a product defect that may affect a substantial number of panels installed by PowerLight during the period 2002 through September 2006. If the supplier does not perform its contractual obligations to remediate the defective panels, we will be exposed to those costs it would incur under the warranty with PowerLight's customers.

SunPower incurred losses from inception through 2005 and SunPower and PowerLight may not be able to generate sufficient revenue in the future to achieve or sustain profitability.

SunPower incurred net losses from inception through 2005 and at April 1, 2007, we had an accumulated deficit of approximately $30.8 million. To maintain our profitability, SunPower and PowerLight will need to generate and sustain higher revenue while maintaining reasonable cost and expense levels. We do not know if our revenue will grow, or if it will grow sufficiently to outpace our expenses, which we expect to increase as we expand our manufacturing capacity. We may not be able to sustain or increase profitability on a quarterly or an annual basis. If we do not sustain profitability or otherwise meet the expectations of securities analysts or investors, the market price of our common stock will likely decline.

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

In addition to our reliance on a small number of suppliers for its solar cells and panels, PowerLight relies on third-party suppliers for key components for its solar power systems, such as inverters that convert the direct current electricity generated by solar panels into alternating current electricity usable by the customer. For the quarter ended April 1, 2007, one supplier accounted for most of PowerLight's inverter purchases for domestic projects, two suppliers accounted for most of its inverter purchases for European projects and one supplier accounted for all of the inverter purchases for its Asia projects. In addition, one vendor supplies all of the foam required to manufacture PowerLight's PowerGuard ® roof system.

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

Any firm commitment supply agreements with solar panel manufacturers could result in insufficient or excess inventory in the PowerLight business.

PowerLight recently attempted to address the solar cell and panel shortage by negotiating certain multi-year contractual commitments from suppliers. Under such agreements, it is generally required to purchase a specified number of solar cells or panels at fixed prices. Our PowerLight business' failure to satisfy its purchase obligations may result in substantial liquidated or other damages that we will be required to pay these suppliers. PowerLight did not obtain, and we do not intend to obtain, contracts or commitments from customers for products incorporating solar panels prior to the negotiation of such firm commitment contracts. Instead, PowerLight relies on its long-term internal forecasts to determine the timing of its production schedules and the volume and mix of its products to be manufactured, including the estimated number of solar panels needed. The level and timing of orders placed by customers may vary for many reasons. As a result, at any particular time, we may have insufficient or excess inventory, and incur liquidated or other damages with suppliers to our PowerLight business for failure to satisfy its purchase obligations, any of which could have a material adverse effect on our business and results of operations. In addition, if we enter into long-term solar panel purchase commitments, due to the rapid pace of technological advancements in the solar power industry, we increase our risk of obsolescence of products that we have agreed to purchase over extended periods.

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

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

- insufficient experience with technologies and markets in which the acquired business is involved, which may be necessary to successfully operate and integrate the business;

- problems integrating the acquired operations, personnel, technologies or products with the existing business and products;
- diversion of management time and attention from the core business to the acquired business or joint venture;
- potential failure to retain key technical, management, sales and other personnel of the acquired business or joint venture;
- difficulties in retaining relationships with suppliers and customers of the acquired business, particularly where such customers or suppliers compete with us; and
- subsequent impairment of the acquired assets, including intangible assets.

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

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

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

For the quarter ended April 1, 2007, a substantial portion of our sales were made to customers outside of the United States. SunPower currently has four solar cell production lines in operation, which are located at our manufacturing facility in the Philippines. In addition, a majority of our assembly functions have historically been conducted by a third-party subcontractor in China. PowerLight has historically had significant sales in Germany, Portugal and Spain. Risks we face in conducting business internationally include:

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

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

In addition, although base wages are lower in the Philippines than in the United States, wages for SunPower's employees in the Philippines are increasing, which could result in increased costs to employ our manufacturing engineers. As of April 1, 2007, approximately 83% of our employees were located in the Philippines. We also are faced with competition in the Philippines for employees, and we expect this competition to increase as additional solar companies enter the market and expand their operations. In particular, there may be limited availability of qualified manufacturing engineers. We have benefited from an excess of supply over demand for college graduates in the field of engineering in the Philippines. If this favorable imbalance changes due to increased competition, it could affect the availability or cost of qualified employees, who are critical to our performance. This could increase our costs and turnover rates.

A significant portion of the operations for SunPower and PowerLight occur outside the United States. Currency fluctuations in the Euro, Philippine peso or the South Korean won relative to the U.S. dollar could decrease revenue or increase its expenses.

During the three months ended April 1, 2007, approximately 68% of SunPower's total revenue was generated outside the United States. We presently have currency exposure arising from sales, capital equipment purchases, prepayments and customer advances denominated in foreign currencies. A majority of SunPower's total revenue is denominated in Euros, including fixed price agreements with Conergy and Solon, and a significant portion is denominated in U.S. dollars, while a portion of SunPower's costs are incurred and paid in Euros and a smaller portion of SunPower's expenses are paid in Philippine pesos and Japanese yen. In addition, SunPower's prepayment to Wacker-Chemie AG, a polysilicon supplier to SunPower, and SunPower's customer advances from Solon are denominated in Euros. For the three months ended April 1, 2007 approximately 56% of PowerLight's total revenue was generated outside the U.S., of which approximately 42% is denominated in Euros and a significant portion of its costs are incurred and paid in Euros.

SunPower and PowerLight are exposed to the risk of a decrease in the value of the Euro relative to the U.S. dollar, which would decrease our total revenue. Changes in exchange rates between foreign currencies and the U.S. dollar may adversely affect our operating margins. For example, if these foreign currencies appreciate against the U.S. dollar, it will make it more expensive in terms of U.S. dollars to purchase inventory or pay expenses with foreign currencies. In addition, currency devaluation can result in a loss to us if we hold deposits of that currency as well as make our products, which are usually purchased with U.S. dollars, relatively more expensive than products manufactured locally. An increase in the value of the U.S. dollar relative to foreign currencies could make our solar cells more expensive for international customers, thus potentially leading to a reduction in our sales and profitability. Furthermore, many of our competitors will be 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 currency forward contracts. We cannot predict the impact of future exchange rate fluctuations on our business and operating results. In the past, we have experienced an adverse impact on our total revenue and profitability as a result of foreign currency fluctuations.

SunPower's current tax holidays in the Philippines will expire within the next several years.

SunPower currently benefits from income tax holiday incentives in the Philippines in accordance with our subsidiary's registrations with the Board of Investments and Philippine Economic Zone Authority, which provide that we pay no income tax in the Philippines for four years under our Board of Investments non-pioneer status and Philippine Economic Zone Authority registrations, and six years under our Board of Investments pioneer status registration. Our current income tax holidays expire in 2010, and we intend to apply for extensions. However, these tax holidays may or may not be extended. We believe that as our Philippine tax holidays expire, (a) gross income attributable to activities covered by our Philippine Economic Zone Authority registrations will be taxed at a 5% preferential rate, and (b) our Philippine net income attributable to all other activities will be taxed at the statutory Philippine corporate income tax rate of 32%. As of yet no tax benefit has been realized from the income tax holiday due to operating losses in the Philippines.

Neither SunPower nor PowerLight may be able to increase or sustain our recent growth rate, and we may not be able to manage our future growth effectively.

Neither SunPower nor PowerLight may be able to continue to expand our business or manage future growth. Our recent expansion has placed, and our planned expansion and any other future expansion will continue to place, a significant strain on our management, personnel, systems and resources. We plan to purchase additional equipment to significantly expand our manufacturing capacity and to hire additional employees to support an increase in manufacturing, research and development and our sales and marketing efforts. To successfully manage our growth and handle the responsibilities of being a public company, we believe we must effectively:

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

- manage multiple relationships with our customers, suppliers and other third parties.

PowerLight experienced significant revenue growth due primarily to the development and market acceptance of its PowerGuard ® roof system, the acquisition and introduction of its PowerTracker ® ground and elevated parking systems, its development of other technologies and increasing global interest and demand for renewable energy sources, including solar power generation. As a result, PowerLight increased its revenues in a relatively short period of time. Its annual revenue increased from $50.9 million in 2003 to $87.6 million in 2004 to $107.8 million in 2005 to $243.4 million in 2006. PowerLight revenue for the three months ended April 1, 2007 was $80.5 million. Our PowerLight business may not experience similar revenue growth in future periods. Accordingly, you should not rely on the results of any prior quarterly or annual period as an indication of the future operating performance of our PowerLight business.

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

SunPower and PowerLight had approximately 1,813 full-time employees as of April 1, 2007, and we anticipate that we will need to hire a significant number of highly skilled technical, manufacturing, sales, marketing, administrative and accounting personnel. The competition for qualified personnel is intense in our industry. We may not be successful in attracting and retaining sufficient numbers of qualified personnel to support our anticipated growth. Since we are a public company, may have more difficulty than our private competitors in attracting personnel because of the perception that the stock option component of our compensation package may not be as valuable.

The success of our PowerLight business will depend in part on the continuing formation of such companies and the potential revenue source they represent. In deciding whether to form and invest in such companies, potential investors weigh a variety of considerations, including their projected return on investment. Such projections are based on current and proposed federal, state and local laws, particularly tax legislation. Changes to these laws, including amendments to existing tax laws or the introduction of new tax laws, tax court rulings as well as changes in administrative guidelines, ordinances and similar rules and regulations could result in different tax assessments and may adversely affect an investor's projected return on investment, which could have a material adverse effect on our business and results of operations.

The steps SunPower has taken to increase the efficiency of our polysilicon utilization are unproven at volume production levels and may not enable us to realize the cost reductions we anticipate.

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

PowerLight recognized revenue on a "percent completion" basis and upon the achievement of contractual milestones. We intend to recognize revenue from projects our PowerLight business on a similar basis, and any delay or cancellation of a project could adversely affect our business.

PowerLight recognized revenue on a "percent completion" basis and, as a result, the revenue from this business was driven by its performance of its contractual obligations, which is generally driven by timelines for the installation of its solar power systems at customer sites. We will recognize revenue from projects of the PowerLight business on a similar basis. As a consequence of the Merger, we will delay the recognition of revenue from sales of cells and panels to PowerLight until PowerLight recognizes revenue. This could result in unpredictability of revenue and, in the near term, a revenue decrease. As with any project-related business, there is the potential for delays within any particular customer project. Variation of project timelines and estimates may impact our ability to recognize revenue in a particular period. In addition, certain customer contracts may include payment milestones due at specified points during a project. Because our PowerLight business usually must invest substantial time and incur significant expense in advance of achieving milestones and the receipt of payment, failure to achieve such milestones could adversely affect our business and results of operations.

Our PowerLight business' sales cycles can be longer than the sales cycle for our solar cells and panels and may require significant upfront investment which may not ultimately result in signing of a sales contract and could materially adversely affect our business and results of operations.

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

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

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

SunPower depends on a combination of our own wafer-slicing operations and those of other vendors for the wafer-slicing stage of our manufacturing, and any technical problems, breakdowns, delays or cost increases could significantly delay our manufacturing operations, decrease our output and increase our costs.

SunPower has historically depended on the wafer-slicing operations of third-party vendors to slice ingots into wafers. We have established our own wafer-slicing operations, and in the quarter ended April 1, 2007, we sliced approximately 48% of our wafers. If our third-party vendors increase their prices or decrease or discontinue their shipments to us, as a result of equipment malfunctions, competing purchasers or otherwise, and we are unable to obtain substitute wafer-slicing from another vendor on acceptable terms, or increase our own wafer-slicing operations on a timely basis, our sales will decrease, our costs may increase or our business will otherwise be harmed.

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

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

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

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

Sales contracts for PowerLight's systems typically include bonding requirements and with increasing frequency have begun to include provisions regarding liquidated damages for installation delays, electricity generation or other solar power system performance guarantees and conditional payments. If they continue, liquidated damages provisions will put us at economic risk for future uncertain events.

Most PowerLight customers require performance bonds issued by a bonding agency. Due to the general performance risk inherent in construction activities, it has become increasingly difficult recently to secure suitable bonding agencies willing to provide performance bonding. In the event PowerLight is unable to obtain bonding, we will be unable to bid on, or enter into, sales contracts requiring such bonding. In addition, some of PowerLight's larger customers require that it pay substantial liquidated damages for each day or other period its solar installation is not completed beyond an agreed target date. This is particularly true in Europe, where long-term, fixed feed-in tariffs available to investors are typically set during the year of project completion, but the fixed amount declines over time for projects completed in subsequent years. In addition, investors often require that the solar power system generate specified levels of electricity in order to maintain their investment returns, allocating risk and financial penalties to PowerLight if those levels are not achieved. Furthermore, its customers often require protections in the form of conditional payments, payment retentions or holdbacks, and similar arrangements that condition its future payments on performance. Delays in solar panel or other supply shipments, other construction delays, unexpected performance problems in electricity generation or other events could cause our PowerLight business to fail to meet these performance criteria, resulting in unanticipated revenue and earnings losses and financial penalties. If the trend for requiring such provisions continues, our PowerLight business would be subject to the same risks as PowerLight prior to the Merger, which could have a material adverse effect on our business and results of operations.

PowerLight prior to the Merger usually acted as the general contractor for its customers in connection with the installations of its solar power systems and was subject to risks associated with cost overruns, delays and other contingencies. We intend to operate the PowerLight business in the same manner, and will be subject to the same risks.

PowerLight prior to the Merger acted as the general contractor for its customers in connection with the installation of its solar power systems. All essential costs were estimated at the time of entering into the sales contract for a particular project, and these were reflected in the overall price that it charges its customers for the project. These cost estimates were preliminary and may or may not be covered by contracts between PowerLight or the other project developers, subcontractors, suppliers and other parties to the project. In addition, PowerLight required qualified, licensed subcontractors to install most of its systems. Shortages of such skilled labor could significantly delay a project or otherwise increase PowerLight's costs. Should miscalculations in planning a project or defective or late execution occur, PowerLight may not have achieved its expected margins or cover its costs. Construction delays are often caused by inclement weather, failure to timely receive necessary approvals and permits, or delays in obtaining necessary solar panels, inverters or other materials. Because we intend to operate our PowerLight business in the same manner, our PowerLight business could be subject to the same risks, and such risks could have a material adverse effect on our business and results of operations.

Our PowerLight business could be adversely affected by seasonal trends and construction cycles.

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

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

The expansion of our PowerLight business into the residential market may increase its exposure to certain risks, including class action product liability claims.

PowerLight has expanded into the residential market by selling its systems to large production homebuilders. It currently expects this new growth strategy to initially focus on new home development projects in excess or 50 homes, though it considers projects below this amount. As part of this strategy, PowerLight developed SunTile ® , a product that integrates a solar panel into a roof tile. To date PowerLight has focused on large-scale commercial applications and has limited experience serving the residential market.

Our PowerLight business' new residential products and services may not gain market acceptance and it may not otherwise be successful in entering the residential market, which would limit its growth and adversely affect our operating results. Furthermore, the residential construction market has peculiar characteristics that may increase its exposure to certain risks it currently faces or expose it to new risks. These risks include increased seasonality, sensitivity to interest rates and other macroeconomic conditions, as well as enhanced legal exposure. In particular, new home developments often result in class action litigation when one or more homes within a development experiences construction problems. Unlike our PowerLight business' commercial business, where it typically acts as general contractor, PowerLight will be generally acting as subcontractor to homebuilders overseeing the development projects. In many instances subcontractors may be held liable for work of the homebuilder or other subcontractors. In addition, homebuilders often require onerous indemnification obligations that effectively allocate most of the potential liability from homeowner or class action lawsuits to subcontractors, including our PowerLight business. Insurance policies for its residential work have significant limitations on coverage that may render such policies inapplicable to these lawsuits. If our PowerLight business is not successful in entering the new residential construction market, or if as a result of the litigation and indemnification risks associated with such market, our PowerLight business incurs significant costs, our business and results of operations could be materially adversely affected.

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

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

The solar power market is characterized by continually changing technology requiring improved features, such as increased efficiency and higher power output and improved aesthetics. This will require us to continuously develop new solar power products and enhancements for existing solar power products to keep pace with evolving industry standards and changing customer requirements. Technologies developed by others, including thin film solar panels, concentrating solar cells or other solar technologies, may prove more advantageous than ours for the commercialization of solar power products and may render our technology obsolete. Our failure to further refine our technology and develop and introduce new solar power products could cause our products to become uncompetitive or obsolete, which could reduce our market share and cause our sales to decline. Our net research and development expense after deduction for government funding was $2.9 million for the three months ended April 1, 2007 and $2.0 million for the three months ended April 2, 2006. In addition, in the first quarter of 2007 SunPower and PowerLight were selected for an award, pending finalization of the award agreement, under the Department of Energy's Solar America Initiative (SAI), for up to $10.5 million in the first budgeting period following negotiation of the agreement. We will need to invest significant financial resources in research and development to maintain our market position, keep pace with technological advances in the solar power industry and effectively compete in the future.

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

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

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

We intend to continue our policy of selectively pursuing contract research, product development and market development programs funded by various agencies of the federal and state governments to complement and enhance our own resources. Funding

from government grants is recorded as an offset to our research and development expense. During the three months ended April 1, 2007, funding from government grants offset approximately 7% our total research and development expense, excluding in-process research and development.

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

Our PowerLight business' government-sponsored research contracts require that it provide regular written technical updates on a monthly, quarterly or annual basis, and, at the conclusion of the research contract, a final report on the results of its technical research. Because these reports are generally available to the public, third parties may obtain some aspects of its sensitive confidential information. Moreover, the failure to provide accurate or complete reports may provide the government with rights to any intellectual property arising from the related research.

Funding from government contracts also may limit when and how we can deploy our products and services developed under those contracts. For example, government contracts may require that the manufacturing of products developed with federal funding be substantially conducted in the United States. In addition, technology and intellectual property that we develop with government funding provides the government with "march-in" rights. March-in rights refer to the right of the government or a government agency to require us to grant a license to the developed technology or products to a responsible applicant or, if it refuses, the government may grant the license itself. The government can exercise its march-in rights if it determines that action is necessary because we fail to achieve practical application of the technology or because action is necessary to alleviate health or safety needs, to meet requirements of federal regulations or to give the United States industry preference.

Because the markets in which we compete are highly competitive and many of our competitors have greater resources than SunPower and PowerLight, we may not be able to compete successfully and we may lose or be unable to gain market share.

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

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

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

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

SunPower and PowerLight expect to continue to make significant capital expenditures, particularly in our manufacturing facilities, and if adequate funds are not available or if the covenants in our credit agreements impair our ability to raise capital when needed, our ability to expand our manufacturing capacity and our business will suffer.

We expect to continue to make significant capital expenditures, particularly in our manufacturing facilities, including, for example, through building purchases or long-term leases. SunPower and PowerLight anticipate that our expenses will increase substantially in the foreseeable future as we expand our manufacturing operations, hire additional personnel, pay more or make advance payments for raw material, especially polysilicon, increase our sales and marketing efforts, invest in joint ventures and acquisitions, and continue our research and development efforts with respect to our products and manufacturing technologies. We expect total capital expenditures of approximately $170 to $190 million in 2007 as we continue to increase our solar cell and solar panel manufacturing capacity. These expenditures would be greater if we decide to bring capacity on line more rapidly. We believe that our current cash and cash equivalents and funds available under our credit facility will be sufficient to fund our capital and operating expenditures over the next 12 months. However, if our financial results or operating plans change from our current assumptions, we may not have sufficient resources to support our business plan. 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. We may also issue equity securities in the future to suppliers of raw materials in order to secure adequate materials to satisfy our production needs. The sale of additional equity securities or convertible debt securities would result in additional dilution to our stockholders. Additional debt would result in increased expenses and could require us to abide by covenants that would restrict our operations. Our credit facilities contain customary covenants and defaults, including, among others, limitations on dividends, incurrence of indebtedness and liens and mergers and acquisitions and may restrict our operating flexibility. If adequate funds are not available on acceptable terms or terms consistent with any new our credit agreement we may enter into, our ability to fund our operations, develop and expand our manufacturing operations and distribution network, maintain our research and development efforts or otherwise respond to competitive pressures would be significantly impaired.

The demand for products requiring significant initial capital expenditures such as SunPower's and PowerLight's solar power products and services are affected by general economic conditions.

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

Increases in interest rates may decrease the return on investment for certain customers or investors in projects of PowerLight, which could decrease demand for its products and services and which could have a material adverse effect on our business and results of operations.

PowerLight has benefited from historically low interest rates in recent years, as these rates have made it more attractive for its customers to use debt financing to purchase its solar power systems. Interest rates have been rising and may continue to rise, which will likely increase the cost of financing these systems and may reduce an operating company's profits and investors' expected returns on investment. Rising interest rates may also make certain alternative investments more attractive to investors, and therefore lead to a decline in demand for PowerLight's solar power systems, which could have a material adverse effect on our business and results of operations.

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

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

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

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

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

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

In September 2002, PowerLight entered into a Technology Assignment and Services Agreement and other ancillary agreements with Jefferson Shingleton and MaxTracker Services, LLC, a New York limited liability company controlled by Mr. Shingleton. These agreements form the basis for its intellectual property rights in its PowerTracker ® products. Under such agreements, as later amended, Mr. Shingleton assigned to PowerLight his MaxTracker ™ , MaxRack ™ , MaxRack Ballast ™ and MaxClip ™ products and all related intellectual property rights. Mr. Shingleton is obligated to provide consulting services to PowerLight related to such technology until December 31, 2012 and is required to assign to PowerLight any enhancements he makes to the technology while providing such consulting services. Mr. Shingleton retains a first security interest in the patents and patent applications assigned until the earlier of the expiration of the patents, full payment by PowerLight to Mr. Shingleton of all of the royalty obligations under the

Technology Assignment and Services Agreement, or the termination of the Technology Assignment and Services Agreement. In the event of PowerLight's default under the Technology Assignment and Services Agreement, MaxTracker Services and Mr. Shingleton may terminate the agreements and the related assignments and cause the intellectual rights assigned to it to be returned to Mr. Shingleton or MaxTracker Services, including patents related to PowerTracker ®. In addition, upon such termination, PowerLight must grant Mr. Shingleton a perpetual, non-exclusive, royalty-free right and license to use, sell, and otherwise exploit throughout the world any intellectual property MaxTracker Services or Mr. Shingleton developed during the provision of consulting services to PowerLight. Events of default by PowerLight which could enable Mr. Shingleton or Max Tracker Services to terminate the agreements and the related assignments and cause the intellectual rights assigned to it to be returned to Mr. Shingleton or MaxTracker Services include the following:

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

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

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

From time to time, SunPower, PowerLight, our respective customers or third-parties with whom we work may receive letters, including letters from various industry participants, alleging infringement of their patents. Although we are not currently aware of any parties pursuing or intending to pursue infringement claims against us, we cannot assure you that we will not be subject to such claims in the future. Also, because patent applications in the United States and many other jurisdictions are kept confidential for 18 months before they are published, we may be unaware of pending patent applications that relate to our products. Our third-party suppliers may also become subject to infringement claims, which in turn could negatively impact our business. SunPower ceased use of certain licensed technology for which we have not paid royalties since the second quarter of 2004 because our current products do not use the licensed technology. However, the licensor could challenge these actions and litigate against us. Intellectual property litigation is very expensive and time-consuming and could divert management's attention from our business and could have a material adverse effect on our business, operating results or financial condition. If there is a successful claim of infringement against us, our customers or our third-party intellectual property providers, we may be required to pay substantial damages to the party claiming infringement, stop selling products or using technology that contains the allegedly infringing intellectual property, or enter into royalty or license agreements that may not be available on acceptable terms, if at all. Parties making infringement claims may also be able to bring an action before the International Trade Commission that could result in an order stopping the importation into the United States of our solar cells. Any of these judgments could materially damage our business. We may have to develop non-infringing technology, and our failure in doing so or in obtaining licenses to the proprietary rights on a timely basis could have a material adverse effect on our business.

SunPower or PowerLight may file claims against other parties for infringing our intellectual property that may be very costly and may not be resolved in our favor.

We cannot guarantee that infringement of SunPower's or PowerLight's intellectual property by other parties does not exist now or that it will not occur in the future. To protect our intellectual property rights and to maintain our competitive advantage, we may file suits against parties who we believe infringe our intellectual property. Intellectual property litigation is expensive and time consuming and could divert management's attention from our business and could have a material adverse effect on our business, operating results or financial condition, and our enforcement efforts may not be successful. In certain situations, we may have to bring such suit in foreign jurisdictions, in which case we are subject to additional risk as to the result of the proceedings and the amount of damage that we can recover. Certain foreign jurisdictions may not provide protection to intellectual property comparable to that in the United States. Our participation in intellectual property enforcement actions may negatively impact our financial results.

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

"SunPower" is our registered trademark in the United States and Europe for use with solar cells and solar panels. We are seeking similar registration of the "SunPower" trademark in foreign countries but we may not be successful in some of these jurisdictions. For example, we have received initial rejection of our application to register the "SunPower" trademark in Canada and Japan based on prior registration by other people. In the foreign jurisdictions where we are unable to obtain this registration or have not tried, others may be able to sell their products using the SunPower trademark which could lead to customer confusion. In addition, if there are jurisdictions where someone else has already established trademark rights in the SunPower name, we may face trademark disputes and may have to market our products with other trademarks, which also could hurt our marketing efforts. We may encounter trademark disputes with companies using marks which are confusingly similar to SunPower which if not resolved favorably could cause our branding efforts to suffer. In addition, we may have difficulty in establishing strong brand recognition with consumers if others use similar marks for similar products.

PowerLight holds registered trademarks for PowerLight®, PowerGuard®, PowerTracker® and SunTile® in the United States, registered trademarks for PowerLight® and PowerGuard® in Europe, and a pending trademark application for PowerTilt™ in the United States. It has not registered, and may not be able to register, these trademarks elsewhere.

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

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

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

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

Neither SunPower nor PowerLight may obtain sufficient patent protection on the technology embodied in the solar cells or solar system components we currently manufacture and market, which could harm our competitive position and increase our expenses.

Although SunPower and PowerLight rely primarily on trade secret laws and contractual restrictions to protect the technology in the solar cells and solar system components we currently manufacture and market, our success and ability to compete in the future may also depend to a significant degree upon obtaining patent protection for our proprietary technology. As of April 1, 2007, in the United States, SunPower owned 72 issued patents and jointly owned another three patents, and had 36 U.S. and 66 foreign patent applications pending. These patent applications cover aspects of the technology in the solar cells we currently manufacture

and market. Patents that we currently own or license-in do not cover the solar cells that we presently manufacture and market. As of April 1, 2007, including the United States and foreign countries, PowerLight had a total 63 issued patents and 54 pending patent applications. PowerLight intends to continue to seek patent protection for those aspects of its technology, designs, and methodologies and processes that it believes provide significant competitive advantages. PowerLight's material patents primarily relate to PowerGuard ®, PowerTilt ™ and PowerTracker ®.

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

If the effective term of SunPower's or PowerLight's patents is decreased due to changes in patent laws or if we need to refile some of our patent applications, the value of our patent portfolio and the revenue we derive from products protected by the patents may be decreased.

The value of SunPower's and PowerLight's patents depends in part on their duration. A shorter period of patent protection means less value of a patent. For example, the United States patent laws were amended in 1995 to change the term of patent protection from 17 years after the date of the patent's issuance to 20 years after the earliest effective filing date of the application for a patent, unless the application was pending on June 8, 1995, in which case the term of a patent's protection expires either 17 years after its issuance or 20 years after its filing, whichever is later. Because the time required from the filing of patent application to issuance of a patent is often longer than three years, a 20-year patent term from the filing date may result in substantially shorter patent protection. Also, we may need to re-file some of our patent applications and, in these situations, the patent term will be measured from the date of the earliest priority application to which benefit is claimed in such a patent application. This would also shorten our period of patent exclusivity. A shortened period of patent exclusivity may negatively impact our revenue protected by our patents.

SunPower's and PowerLight's intellectual property indemnification practices may adversely impact our business.

SunPower and PowerLight are required by contract to indemnify some of our customers and our third-party intellectual property providers for certain costs and damages of patent infringement in circumstances where our solar cells are a factor creating the customer's or these third-party providers' infringement liability. This practice may subject us to significant indemnification claims by our customers and our third-party providers. We cannot assure you that indemnification claims will not be made or that these claims will not harm our business, operating results or financial condition.

The success of SunPower's and PowerLight's business depends on the continuing contributions of our key personnel.

SunPower and PowerLight rely heavily on the services of our key executive officers, including Thomas H. Werner, our Chief Executive Officer, Emmanuel T. Hernandez, our Chief Financial Officer, Dr. Richard Swanson, our President and Chief Technology Officer, PM Pai, our Chief Operating Officer and Thomas L. Dinwoodie, PowerLight's Chief Executive Officer. The loss of services of any principal member of our management team, particularly Thomas H. Werner, Emmanuel T. Hernandez, Dr. Richard Swanson, PM Pai and Thomas L. Dinwoodie could adversely impact our operations. In addition, our technical personnel represent a significant asset and serve as the source of our technological and product innovations. We believe our future success will depend upon our ability to retain these key employees and our ability to attract and retain other skilled managerial, engineering and sales and marketing personnel. However, we cannot guarantee that any employee will remain employed at the Company for any definite period of time since all of our employees, including Messrs. Werner, Hernandez, Swanson, Pai and Dinwoodie, serve at-will and may terminate their employment at any time for any reason.

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

Our headquarters for both the SunPower and PowerLight businesses, including research and development operations, our manufacturing facilities and the facilities of SunPower's subcontractor upon which we rely to assemble and test our solar

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

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

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

SunPower maintains self-insurance for certain indemnities we have made to our officers and directors.

SunPower's certificate of incorporation, by-laws and indemnification agreements require us to indemnify our officers and directors for certain liabilities that may arise in the course of their service to us. We self-insure with respect to potential indemnifiable claims. Although we have insured our officers and directors against certain potential third-party claims for which we are legally or financially unable to indemnify them, we intend to self-insure with respect to potential third-party claims which give rise to direct liability to such third-party or an indemnification duty on our part. If we were required to pay a significant amount on account of these liabilities for which we self-insure, our business, financial condition and results of operations could be seriously harmed.

Changes to financial accounting standards may affect our combined results of operations and cause SunPower and/or PowerLight to change our business practices.

We prepare our financial statements to conform with U.S. GAAP. These accounting principles are subject to interpretation by the American Institute of Certified Public Accountants, the SEC and various bodies formed to interpret and create appropriate accounting policies. A change in those policies can have a significant effect on our combined reported results and may affect our reporting of transactions completed before a change is announced. Changes to those rules or the questioning of current practices may adversely affect our reported financial results or the way we conducts our business. For example, accounting policies affecting many aspects of our business, including rules relating to employee stock option grants, have recently been revised. The Financial Accounting Standards Board, or the FASB, and other agencies have made changes to U.S. GAAP, that required U.S. companies, starting in the first quarter of fiscal 2006, to record a charge to earnings for employee stock option grants and other equity incentives. We may have significant and ongoing accounting charges resulting from option grant and other equity awards that could reduce our net income or increase our net loss. In addition, since SunPower and PowerLight historically used equity-related compensation as a component of their total employee compensation program, the accounting change could make the use of equity-related compensation less attractive to us and therefore make it more difficult to attract and retain employees.

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

Section 404 of the Sarbanes-Oxley Act of 2002 requires us to evaluate and report on our internal controls over financial reporting and have our independent registered public accounting firm annually attest to our evaluation, as well as issue its own opinion on our internal control over financial reporting. We have in the past discovered, and may in the future discover, areas of our internal controls that need improvement. Sunpower is complying with Section 404 by strengthening, assessing and testing our system of internal controls to provide the basis for our report. However, the continuous process of strengthening our internal controls and

complying with Section 404 is expensive and time consuming, and requires significant management attention. We cannot be certain that these measures will ensure that we will maintain adequate control over our financial processes and reporting, or that we or our independent registered public accounting firm will be able to provide the attestation and opinion required under Section 404 in our Annual Reports on Form 10-K. If we or our independent registered public accounting firm discover a material weakness, the disclosure of that fact, even if quickly remedied, could reduce the market's confidence in our financial statements and harm our stock price. In addition, future non-compliance with Section 404 could subject us to a variety of administrative sanctions, including the suspension or delisting of our common stock from The Nasdaq Global Market and the inability of registered broker-dealers to make a market in our common stock, which would further reduce our stock price.

Our efforts to establish an effective, unified system of internal control over financial reporting with respect to PowerLight could present challenges.

PowerLight has not been required to prepare a report on the effectiveness of its internal controls over financial reporting because it was not subject to the informational requirements of the Securities Exchange Act of 1934, as amended, or the Exchange Act. In August 2006, PowerLight's audit committee received a letter from its independent auditors identifying certain material weaknesses in its internal controls over financial reporting relating to its audits for 2005, 2004 and 2003. These material weaknesses included problems with financial statement close processes and procedures, inadequate accounting resources, unsatisfactory application of the percentage of completion accounting method, inaccurate physical inventory counts, incorrect accounting for complex capital transactions and inadequate disclosure of related party transactions. In addition, PowerLight had to restate its 2004 and 2003 financial statements to correct previously reported amounts primarily related to its contract revenue, contract costs, accrued warranty, California state sales tax accrual and inventory items. We have begun remediation efforts with respect to the material weaknesses identified by PowerLight's independent auditors. Although initiated, our plan to improve the effectiveness of the internal controls and processes at PowerLight is not complete. It will take some time to put in place the rigorous disclosure controls and procedures desired by our management and our board of directors. While we expect to complete this remediation process as quickly as possible, doing so depends on several factors beyond our control, including the hiring of additional qualified personnel and, as a result, we cannot at this time estimate how long it will take to complete the steps identified above. Our management will continue to evaluate the effectiveness of the control environment at PowerLight and will continue to refine existing controls. We cannot assure you that the measures we have taken to date or any future measures will remediate the material weaknesses reported by PowerLight's independent auditors. Additional deficiencies in PowerLight's or our internal controls may be discovered in the future. Any failure to develop or maintain effective controls, or any difficulties encountered in their implementation or improvement, could harm our operating results or cause us to fail to meet our reporting obligations and may result in a restatement of our prior period financial statements. Ineffective internal controls could also cause investors to lose confidence in our reported financial information, which would likely have a negative effect on the trading price of our securities.

We are responsible for establishing and maintaining disclosure controls and procedures as defined in the Exchange Act Rules. We were required to report on the effectiveness of our internal controls over financial reporting for the first time in our annual report on Form 10-K for the fiscal year ended December 31, 2006, although our report on our internal controls over financial reporting will not include an assessment of PowerLight's internal controls until our annual report on Form 10-K for the fiscal year ended December 31, 2007 (the first fiscal year to end after the date of the Merger), unanticipated factors may hinder the effectiveness or delay the integration of SunPower's and PowerLight's control systems. We cannot predict whether we will be able to establish an effective, unified system of internal controls over financial reporting.

SunPower faces competition in the market for our imaging detectors and infrared detectors, and if we fail to compete effectively, we will lose or fail to gain market share.

SunPower competes with companies such as Hamamatsu Photonics K.K. and UDT Sensors, Inc. in the market for high performance imaging detectors. In addition we compete with companies such as Vishay Intertechnology, Inc., Rohm Co., Ltd. and Agilent Technologies, Inc. in the market for infrared detectors. We may face competition in the future from other manufacturers of high performance imaging detectors, infrared detectors or alternative devices. The use of alternative devices, including low power, high data rate wireless protocols, may replace existing detectors and limit our market opportunity. Our current and future competitors may have longer operating histories, greater name recognition and greater financial, sales and marketing, technical and other resources than us or may develop technologies superior to those incorporated in our imaging detectors and infrared detectors. If we fail to compete successfully, we may be unable to expand our customer base for our imaging detectors and our business would suffer.

Because of the lengthy sales cycles for SunPower's imaging detectors and the relatively fixed nature of a significant portion of our expenses, we may incur substantial expenses before we earn associated revenue and may not ultimately achieve our forecasted sales for our imaging detectors.

SunPower's sales cycles from design to manufacture of our imaging detectors can typically take 12 to 18 months. Sales cycles for our imaging detectors are lengthy for a number of reasons, including:

- our customers usually complete an in-depth technical evaluation of our imaging detectors before they place a purchase order;
- the commercial adoption of our imaging detectors is typically limited during the initial release of their products to evaluate performance and consumer demand;
- failure to deliver a product in a timely manner can seriously delay or cancel introduction; and
- the development and commercial introduction of products incorporating complex technology frequently are delayed or canceled.

As a result of our lengthy sales cycles, SunPower may incur substantial expenses before we earn associated revenue because a significant portion of our operating expenses is relatively fixed and based on expected revenue. If customer cancellations or product changes occur, this could result in the loss of anticipated sales without allowing us sufficient time to reduce our operating expenses.

SunPower's debt agreements contain covenant restrictions that may limit our ability to operate our business.

The agreements governing SunPower's credit facilities contain, and any of our other future debt agreements may contain, covenant restrictions that limit our ability to operate our business, including restrictions on our ability to:

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

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

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

Provisions of SunPower's debentures issued in February 2007 could discourage an acquisition of us by a third party.

Certain provisions of the $200 million in principal amount of 1.25% senior convertible debentures we issued in February could make it more difficult or more expensive for a third party to acquire us. Upon the occurrence of certain transactions constituting a fundamental change, holders of the debentures will have the right, at their option, to require us to repurchase, at a cash repurchase price equal to 100% of the principal amount plus accrued and unpaid interest on the debentures, all of their debentures or any portion of the principal amount of such debentures in integral multiples of $1,000. We may also be required to issue additional shares of our class A common stock upon conversion of the debentures in the event of certain fundamental changes.

Risks Related to SunPower's Class A Common Stock

The effect of the issuance of our shares of class A common stock pursuant to the share lending agreement, including sales of our class A common stock in short sale transactions by purchasers of the Debentures, may lower the market price of our class A common stock.

Concurrently with our February 2007 offering of debentures, we offered 2,947,132 shares of our class A common stock, all of which were initially borrowed by an affiliate of Lehman Brothers Inc., under a share lending agreement we have entered into with such affiliate and Lehman Brothers Inc.

Such loaned shares must be returned to us by February 15, 2027, or earlier in certain circumstances. Such affiliate of Lehman Brothers Inc. has agreed to use sales of such shares to facilitate the establishment by the debenture investors of hedged positions in the offering of our debentures. The market price of our class A common stock could be negatively affected by these or other short sales of our class A common stock by the purchasers of the debentures to hedge investments in the debentures. In addition, the effect of the increase in the number of outstanding shares of our class A common stock issued pursuant to the share lending agreement could have a negative effect on the market price of our class A common stock.

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

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

Substantial future sales or other dispositions of our class A common stock or other securities could cause our stock price to fall.

Sales of our class A common stock in the public market or sales of any of our other securities, or the perception that such sales could occur, could cause the market price of our class A common stock to decline. As of May 4, 2007, we had 30,641,178 shares of class A common stock outstanding and, net of the effect of the sale of 7,500,000 shares of SunPower's class B common stock in an offering pursuant to Rule 144 of the Securities Act, Cypress owned 44,533,287 outstanding shares of SunPower's class B common stock, representing approximately 59% of the total outstanding shares of SunPower's common stock. Cypress may convert these shares into class A common stock at any time. Cypress has no contractual obligation to retain its shares of class A common stock. Subject to applicable United States federal and state securities laws, Cypress may sell or distribute to its stockholders any or all of the shares of our common stock that it owns, which may or may not include the sale of a controlling interest in us. Cypress announced on October 6, 2006 and reiterated on October 19, 2006 that it was exploring ways in which to allow its stockholders to fully realize the value of its investment in SunPower. Cypress has made public statements since October 19, 2006 that were consistent with these announcements.

We filed a registration statement on Form S-8 under the Securities Act covering 6,891,266 shares of SunPower class A common stock issuable under outstanding options under SunPower's 1988 Incentive Stock Plan, under SunPower's 1996 Stock Plan and under non-plan options granted to employees and consultants and 356,839 shares reserved for future issuance as of September 30, 2006 under SunPower's 2005 Stock Incentive Plan. We have also registered for resale up to 4,106,884 shares of class A common stock for resale by holders of former PowerLight shares. These shares are available for sale in the open market, although sales of shares held by PowerLight shareholders who are now affiliates of SunPower will be subject to sales restrictions under the Securities Act. In addition, we recently filed a registration statement on Form S-8 under the Securities Act covering 1,601,839 shares of class A common stock issuable pursuant to options, some of which are subject to vesting, assumed pursuant to the Merger.

As of May 4, 2007, if Cypress elects to convert its shares of class B common stock into shares of class A common stock, an additional 44,533,287 shares of class A common stock will be available for sale, subject to customary sales restrictions. In addition, except for a limited time in connection with the Merger, Cypress has the right to cause us to register the sale of its shares of class A common stock under the Securities Act. Registration of these shares under the Securities Act would result in these shares, other than shares purchased by our affiliates, becoming freely tradable without restriction under the Securities Act.

If Cypress distributes to its stockholders shares of class A common stock that it owns, substantially all of these shares would be eligible for immediate resale in the public market. We are unable to predict whether significant amounts of class A common stock would be sold in the open market in anticipation of, or after, any such distribution. We also are unable to predict whether a sufficient number of buyers for shares of our class A common stock would be in the market at that time.

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

The trading market for our class A common stock is influenced by the research and reports that industry or securities analysts publish about us, our business or our market. We have only been a public company since our initial public offering in November 2005, and accordingly our stock is covered by fewer securities analysts than that of more mature public companies. If one or more of the analysts who cover us change their recommendation regarding our stock adversely, our stock price would likely decline. If one or more of these analysts cease coverage of our company or fail to regularly publish reports on us, we could lose visibility in the financial markets, which in turn could cause our stock price or trading volume to decline.

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

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

The difference in the voting rights of our class A and our class B common stock may reduce the value and liquidity of our class A common stock.

The rights of class A and class B common stock are substantially similar, except with respect to voting, conversion and other protective provisions. The class B common stock is entitled to eight votes per share and the class A common stock is entitled to one vote per share. The difference in the voting rights of our class A and class B common stock both before and after any distribution of our class B common stock by Cypress to its stockholders could reduce the value of the class A common stock to the extent that any investor or potential future purchaser of our common stock ascribes value to the right of class B common stock to eight votes per share. The existence of two classes of common stock could result in less liquidity for either class of common stock than if there were only one class of our common stock.

Delaware law and our corporate charter and bylaws contain anti-takeover provisions that could delay or discourage takeover attempts that stockholders may consider favorable.

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

- the right of the board of directors to elect a director to fill a vacancy created by the expansion of the board of directors;
- the prohibition of cumulative voting in the election of directors, which would otherwise allow less than a majority of stockholders to elect director candidates;
- the requirement for advance notice for nominations for election to the board of directors or for proposing matters that can be acted upon at a stockholders' meeting;
- the ability of the board of directors to issue, without stockholder approval, up to 10,042,490 shares of preferred stock with terms set by the board of directors, which rights could be senior to those of common stock; and
- in the event that Cypress, its successors in interest and its subsidiaries no longer collectively own shares of our common stock equal to at least 40% of the shares of all classes of our common stock then outstanding and Cypress is no longer consolidating us for accounting purposes:
- our board of directors will be divided into three classes of directors, with the classes to be as nearly equal in number as possible;

- no action can be taken by stockholders except at an annual or special meeting of the stockholders called in accordance with our bylaws, and stockholders may not act by written consent;
- stockholders may not call special meetings of the stockholders; and
- our board of directors will be able to alter our bylaws without obtaining stockholder approval.

Until such time as Cypress, its successor in interest and its subsidiaries collectively own less than 40% of the shares of all classes of our common stock then outstanding and Cypress is no longer consolidating us for accounting purposes, the affirmative vote of at least 75% of the then-authorized number of members of our board of directors will be required to: (1) adopt, amend or repeal our bylaws or certificate of incorporation; (2) appoint or remove our chief executive officer; (3) designate, appoint or allow for the nomination or recommendation for election by our stockholders of an individual to our board of directors; (4) change the size of our board of directors to be other than five members; (5) form a committee of our board of directors or establish or change a charter, committee responsibilities or committee membership of any committee of our board of directors; (6) adopt any stockholder rights plan, "poison pill" or other similar arrangement; or (7) approve any transactions that would involve a merger, consolidation, restructuring, sale of substantially all of our assets or any of our subsidiaries or otherwise result in any person or entity obtaining control of us or any of our subsidiaries. Cypress may at any time in its sole discretion waive this requirement to obtain such a supermajority vote of our board of directors.

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

As a result of SunPower's offering of debentures completed in February 2007, we have a significant amount of debt. Our substantial indebtedness could adversely affect our business, financial condition and results of operations and our ability to meet our payment obligations under the debentures and our other debt.

As a result of our $200 million debenture offering completed in February 2007, we have significant indebtedness and substantial debt service requirements.

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

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

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

Our ability to meet our payment and other obligations under our indebtedness depends on our ability to generate significant cash flow in the future. This, to some extent, is subject to general economic, financial, competitive, legislative and regulatory factors as well as other factors that are beyond our control. There is no assurance that our business will generate cash flow from operations, or that future borrowings will be available to us under our existing or any amended credit facilities or otherwise, in an amount sufficient to enable us to meet our payment obligations under the debentures and our other debt and to fund other liquidity needs. If we are not able to generate sufficient cash flow to service our debt obligations, we may need to refinance or restructure our debt, including the debentures, sell assets, reduce or delay capital investments, or seek to raise additional capital. If we are unable to implement one or more of these alternatives, we may not be able to meet our payment obligations under the debentures and our other debt.

Risks Related to Our Relationship with Cypress Semiconductor Corporation

As long as Cypress controls us, the ability of our other stockholders to influence matters requiring stockholder approval will be limited.

As of May 4, 2007, Cypress owned all 44,533,287 shares of outstanding SunPower class B common stock, representing approximately 59% of the total outstanding shares of SunPower common stock, or approximately 55% of such shares on a fully diluted basis after taking into account outstanding options, and 91% of the voting power of SunPower's outstanding capital stock. Shares of class A common stock and class B common stock have substantially similar rights, preferences and privileges except with respect to voting and conversion rights and other protective provisions. Shares of class B common stock are entitled to eight votes per share of class B common stock, and shares of class A common stock are entitled to one vote per share of class A common stock. If Cypress transfers shares of class B common stock to any party other than a successor in interest or a subsidiary of Cypress prior to a tax-free distribution to its stockholders, those shares would automatically convert into shares of class A common stock. Other than through such transfers or voluntary conversions by Cypress of shares of class B common stock into shares of class A common stock, only at such time, if at all, that Cypress, its successors in interest (not including its stockholders following a dissolution) and its subsidiaries collectively own less than 40% of the shares of all classes of our common stock then outstanding will all shares of class B common stock automatically convert into shares of our class A common stock on a one-for-one basis. Until such time, by virtue of the voting power afforded the shares of class B common stock, Cypress will be able to effectively elect all of the members of our board of directors.

In addition, until such time as Cypress, its successors in interest and its subsidiaries collectively own less than 40% of the shares of all classes of our common stock then outstanding and Cypress is no longer consolidating us for accounting purposes, Cypress will have the ability to take stockholder action without the vote of any other stockholder and, by virtue of the voting power afforded the shares of class B common stock, investors will not be able to affect the outcome of any stockholder vote during this period. As a result, Cypress will have the ability to control all matters affecting us, including:

- the composition of our board of directors and, through the board of directors, any determination with respect to the combined company's business plans and policies, including the appointment and removal of officers;
- any determinations with respect to mergers and other business combinations;
- our acquisition or disposition of assets;
- our financing activities;
- changes to the agreements providing for our separation from Cypress;
- the allocation of business opportunities that may be suitable for us;
- the payment of dividends on the class A common stock; and
- the number of shares available for issuance under our stock plans.

Cypress's voting control may discourage transactions involving a change of control of SunPower, including transactions in which holders of class A common stock might otherwise receive a premium for their shares over the then current market price. Except for a limited time in connection with the Merger, Cypress is not prohibited from selling a controlling interest in us to a third party and may do so without approval of holders of class A common stock and without providing for a purchase of class A common stock. Accordingly, shares of class A common stock may be worth less than they would be if Cypress did not maintain voting control over us.

Our ability to continue to manufacture our imaging detectors and our solar cells in our current facilities with our current and planned manufacturing capacities, and therefore to maintain and increase revenue and achieve profitability, depends to a large extent upon the continued success of our relationship with Cypress.

Our imaging detectors are manufactured for us by Cypress and are processed and tested in our San Jose, California facility. We do not have a long-term fixed-price agreement with Cypress for the manufacturing of our imaging detectors, but instead operate on a purchase order basis. The processes for manufacturing our imaging detectors are highly complex, specialized and proprietary. If Cypress is unable to continue manufacturing our imaging detectors for us, our manufacturing output would be interrupted and delayed, and we would incur increased expenses in establishing relationships with alternative manufacturers at market prices. We may not be able to find alternative manufacturers on terms acceptable to us, and we may be unable to establish our own operations in a timely or cost-effective manner, if at all.

We manufacture our solar cells in our Philippines manufacturing facility which we lease from Cypress. We are in the process of expanding existing facilities for solar and panel assembly. If we are unable to expand in our current facility or are required to move our manufacturing facility, we would incur significant expenses as well as lost sales. Furthermore, we may not be able to locate a facility that meets our needs on terms acceptable to us. Any of these circumstances would increase our expenses and decrease our total revenue and could prevent us from sustaining profitability.

Our historical financial information as a business segment of Cypress may not be representative of our results as an independent public company.

Our historical financial information does not necessarily reflect what our financial position, results of operations or cash flows would have been had we been an independent entity. The historical costs and expenses reflected in our audited and unaudited consolidated financial statements include an allocation for certain corporate functions historically provided by Cypress, including centralized legal, tax, treasury, information technology, employee benefits and other Cypress corporate services and infrastructure costs. These expense allocations were based on what we and Cypress considered reasonable reflections of the utilization of services provided or the benefit received by us. Our historical financial information is not necessarily indicative of what our results of operations, financial position, cash flows or costs and expenses will be in the future. We have not made adjustments to such historical financial information to reflect many significant changes that occurred or may yet occur in our cost structure, funding and operations as a result of our separation from Cypress, including changes in our employee base, changes in our tax structure, potential increased costs associated with reduced economies of scale and increased costs associated with being a publicly traded, stand-alone company.

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

As a subsidiary of Cypress, we have relied on administrative and other resources of Cypress to operate our business. In connection with our initial public offering, we entered into various service agreements to retain the ability for specified periods to use these Cypress resources. These agreements will expire upon the earlier or November 2009 or a change of control of our Company. We need to create our own administrative and other support systems or contract with third parties to replace Cypress' systems. In addition, we recently established disclosure controls and procedures and internal control over financial reporting as part of our becoming a separate public company in November 2005. These services may not be provided at the same level as when we were a wholly owned subsidiary of Cypress, and we may not be able to obtain the same benefits that we received prior to the separation. These services may not be sufficient to meet our needs, and after our agreements with Cypress expire, we may not be able to replace these services at all or obtain these services at prices and on terms as favorable as we currently have with Cypress. Any failure or significant downtime in our own administrative systems or in Cypress' administrative systems during the transitional period could result in unexpected costs, impact our results and/or prevent us from paying our suppliers or employees and performing other administrative services on a timely basis.

We may experience increased costs resulting from a decrease in our purchasing power and we may have difficulty obtaining new customers due to our relatively small size after our separation from Cypress.

Historically, we were able to take advantage of Cypress' size and purchasing power in procuring goods, technology and services, including insurance, employee benefit support and audit services. We are a smaller company than Cypress, and we cannot assure you that we will have access to financial and other resources comparable to those available to us prior to our separation from Cypress. These risks would be come more pronounced if Cypress were to cease to own a majority of our stock. As an independent company, we may be unable to obtain goods, technology and services at prices or on terms as favorable as those available to us prior to our separation from Cypress, which could increase our costs and reduce our profitability. In addition, as a smaller, separate, stand-alone company, we may encounter more customer concerns about our viability as a separate entity, which could harm our business, financial condition and results of operations. Our future success depends on our ability to maintain our current relationships with existing customers, and we may have difficulty attracting new customers.

Our agreements with Cypress require us to indemnify Cypress for certain tax liabilities. These indemnification obligations may limit our ability to obtain additional financing or participate in future acquisitions for up to two years.

We have entered into a tax sharing agreement with Cypress, under which we and Cypress agree to indemnify one another for certain taxes and similar obligations that the other party could incur under certain circumstances. In general, we will be responsible for taxes relating to our business. Furthermore, we may be held jointly and severally liable for taxes determined on a consolidated basis even though Cypress is required to indemnify us for its taxes pursuant to the tax sharing agreement. After the date we cease to be a member of Cypress' consolidated group for federal income tax purposes or state income tax purposes, as and to the extent that we become entitled to utilize on our separate tax returns portions of those credit

or loss carryforwards existing as of such date, we will distribute to Cypress the tax effect (estimated to be 34% for federal income tax purposes) of the amount of such tax loss carryforwards so utilized and the amount of any credit carryforwards so utilized. We will distribute these amounts to Cypress in cash or in our shares, at our option. Upon completion of our follow-on public offering of class A common stock in June 2006, we were no longer considered to be a member of Cypress' consolidated group for federal income tax purposes. Accordingly, we will be subject to the obligations payable to Cypress for any federal income tax credit or loss carryforwards utilized in its federal tax returns. As of December 31, 2006, we had approximately $50.6 million of federal net operating loss carryforwards and approximately $4.8 million of California net operating loss carryforwards, meaning that such potential future payments to Cypress, which would be made over a period of several years, would therefore aggregate between $15.0 million and $16.0 million.

If Cypress distributes our class B common stock to Cypress stockholders in a transaction intended to qualify as a tax-free distribution under Section 355 of the Internal Revenue Code, or the Code, Cypress intends to obtain an opinion of counsel to the effect that such distribution qualifies under Section 355 of the Code. Despite such an opinion, however, the distribution may nonetheless be taxable to Cypress under Section 355(e) of the Code if 50% or more of our voting power or economic value is acquired as part of a plan or series of related transactions that includes the distribution of our stock. The tax sharing agreement includes our obligation to indemnify Cypress for any liability incurred as a result of issuances or dispositions of our stock after the distribution, other than liability attributable solely to certain dispositions of our stock by Cypress, that cause Cypress' distribution of shares of our stock to its stockholders to be taxable to Cypress under Section 355(e) of the Code. Under current law, following a distribution by Cypress and for up to two years thereafter, our obligation to indemnify Cypress will be triggered only if we issue stock or otherwise participate in one or more transactions other than the distribution in which 50% or more of our voting power or economic value is acquired in financing or acquisition transactions that are part of a plan or series of related transactions that includes the distribution. If such an indemnification obligation is triggered, the extent of our liability to Cypress will generally equal the product of (a) Cypress' top marginal federal and state income tax rate for the year of the distribution, and (b) the difference between the fair market value of our class B common stock distributed to Cypress stockholders and Cypress' tax basis in such stock as determined on the date of the distribution. Our ability to use our equity to obtain additional financing or to engage in acquisition transactions for a period of time after a distribution will be restricted if we can only sell or issue a limited amount of our stock before triggering our obligation to indemnify Cypress for taxes it incurs under Section 355(e) of the Code.

For example, under the current tax rules, if Cypress were to make a complete distribution of its class B common stock and our total outstanding capital stock at the time of such distribution was 69,000,000 shares, unless we qualified for one of several safe harbor exemptions available under the Treasury Regulations, in order to avoid our indemnification obligation to Cypress, we could not, for up two years from the date of Cypress' distribution, issue 69,000,000 or more shares of class A common stock, nor could we participate in one or more transactions (excluding the distribution itself) in which 34,500,000 or more shares of our then existing class A common stock were to be acquired in connection with a plan or series of related transactions that includes the distribution. In addition, these limits could be lower depending on certain actions that we or Cypress might take before or after a distribution. If we were to participate in such a transaction, assuming Cypress distributed 44,500,000 shares, Cypress' top marginal income tax rate is 40% for federal and state income tax purposes, the fair market value of our class B common stock is $42.00 per share and Cypress' tax basis in such stock is $5.00 per share on the date of their distribution, then our liability under our indemnification obligation to Cypress would be approximately $658.6 million.

Third parties may seek to hold us responsible for liabilities of Cypress.

Third parties may seek to hold us responsible for Cypress' liabilities. Under our separation agreements with Cypress, Cypress will indemnify us for claims and losses relating to liabilities related to Cypress' business and not related to our business. However, if those liabilities are significant and we are ultimately held liable for them, we cannot assure you that we will be able to recover the full amount of our losses from Cypress.

Our inability to resolve any disputes that arise between us and Cypress with respect to our past and ongoing relationships may result in a significant reduction of our revenue.

Disputes may arise between Cypress and us in a number of areas relating to our past and ongoing relationships, including:

- labor, tax, employee benefit, indemnification and other matters arising from our separation from Cypress;
- the cost of wafers for our imaging detectors;
- employee retention and recruiting;
- business combinations involving us;
- pricing for transitional services;

- sales or distributions by Cypress of all or any portion of its ownership interest in us;
- the nature, quality and pricing of services Cypress has agreed to provide us; and
- business opportunities that may be attractive to both Cypress and us.

We may not be able to resolve any potential conflicts, and even if we do, the resolution may be less favorable than if we were dealing with an unaffiliated party.

The agreements we entered into with Cypress may be amended upon agreement between the parties. While we are controlled by Cypress, we may not have the leverage to negotiate amendments to these agreements if required on terms as favorable to us as those we would negotiate with an unaffiliated third party.

Some of our directors and executive officers may have conflicts of interest because of their ownership of Cypress common stock, options to acquire Cypress common stock and positions with Cypress.

Some of our directors and executive officers own Cypress common stock and/or options to purchase Cypress common stock. In addition, some of our directors are executive officers and/or directors of Cypress. Ownership of Cypress common stock and options to purchase Cypress common stock by our directors and officers and the presence of executive officers or directors of Cypress on our board of directors could create, or appear to create, conflicts of interest with respect to matters involving both us and Cypress. For example, corporate opportunities may arise that concern both of our businesses, such as the potential acquisition of a particular business or technology that is complementary to both of our businesses. In these situations, our amended and restated certificate of incorporation provides that directors and officers who are also directors or officers of Cypress have no duty to communicate or present such corporate opportunity to us unless it is specifically applicable to the solar energy business and not applicable to or reasonably related to any business conducted by Cypress, have the right to deal with such corporate opportunity in their sole discretion and shall not be liable to us or our stockholders for breach of fiduciary duty by reason of the fact that such director or officer pursues or acquires such corporate opportunity for itself or for Cypress. In addition, we have not established at this time any procedural mechanisms to address actual or perceived conflicts of interest of these directors and officers and expect that our board of directors, in the exercise of its fiduciary duties, will determine how to address any actual or perceived conflicts of interest on a case-by-case basis. If any corporate opportunity arises and if our directors and officers do not pursue it on our behalf pursuant to the provisions in our amended and restated certificate of incorporation, we may not become aware of, and may potentially lose, a significant business opportunity.

Because Cypress is not obligated to distribute to its stockholders or otherwise dispose of our common stock that it owns, we will continue to be subject to the risks described above relating to Cypress' control of us if Cypress does not complete such a transaction.

Cypress is not obligated to distribute to its stockholders or otherwise dispose of the shares of our class B common stock that it beneficially owns, although it might elect to do so in the future. Cypress announced on October 6, 2006 and reiterated on October 19, 2006 that it was exploring ways in which to allow its stockholders to fully realize the value its investment in us. Cypress has made public statements since October 19, 2006 that were consistent with these announcements. On May 4, 2007, Cypress sold 7,500,000 shares of SunPower's class B common stock in an offering pursuant to Rule 144 of the Securities Act. Completion of any distribution transaction could be contingent upon, among other things, the receipt of a favorable tax ruling from the Internal Revenue Service and/or a favorable opinion of Cypress' tax advisor as to the tax-free nature of such a transaction for U.S. federal income tax purposes.

Unless and until such a distribution occurs or Cypress otherwise disposes of shares so that it, its successors in interest and its subsidiaries collectively own less than 40% of the shares of all classes of our common stock then outstanding, we will continue to face the risks described above relating to Cypress' control of us and potential conflicts of interest between Cypress and us. We may be unable to realize potential benefits that could result from such a distribution by Cypress, such as greater strategic focus, greater access to capital markets, better incentives for employees and more accountable management, although we cannot guarantee that we would realize any of these potential benefits if such a distribution did occur. In addition, speculation by the press, investment community, our customers, our competitors or others regarding whether Cypress intends to complete such a distribution or otherwise dispose of its controlling interest in us could harm our business or lead to volatility in our stock price.

So long as Cypress continues to hold a controlling interest in us or is otherwise a significant stockholder, the liquidity and market price of our class A common stock may be adversely impacted. In addition, there can be no assurance that Cypress will distribute or otherwise dispose of any of its remaining shares of our class B common stock.

Cypress' ability to replace our board of directors may make it difficult for us to recruit independent directors.

Cypress may at any time replace our entire board of directors. Furthermore, some actions of our board of directors require the approval of 75% of our directors except to the extent this condition is waived by Cypress. As a result, unless and until Cypress, its successors in interest and its subsidiaries collectively own less than 40% of the shares of all classes of our common stock then outstanding and Cypress is no longer consolidating us for accounting purposes, Cypress could exercise significant control over our board of directors. As such, individuals who might otherwise accept a board position at SunPower may decline to serve, and Cypress may be able to control important decisions made by our Board of Directors.

Item 4. Submission of Matters to a Vote of Security Holders

At our Annual Meeting of Stockholders on May 4, 2007, stockholders (1) elected each of the director nominees, (2) ratified the selection of PricewaterhouseCoopers LLP as our independent registered public accountants for the fiscal year ending December 31, 2007, and (3) approved the adoption of the Amended and Restated SunPower Corporation 2005 Stock Incentive Plan to increase by 925,000 the number of shares of class A shares of common stock reserved for issuance under the plan, to make certain changes to the compensation of director under the plan and to make certain other technical amendments to the plan. Each holder of shares of class A common stock was entitled to one vote for each share of class A common stock held as of the record date of March 21, 2007, and each holder of shares of class B common stock was entitled to eight votes for each share of class B common stock held as of such date. After giving effect to the increased voting power of class B common stock, the voting results were as follows:

1. Proposal One — Election of Directors:

	Number of Votes	
	For	Withheld
T. J. Rodgers	437,309,723	515,102
Thomas H. Werner	437,314,956	514,778
W. Steve Albrecht	437,038,492	243,871
Betsy S. Atkins	437,038,816	238,638
Pat Wood III	437,309,431	244,163

2. Proposal Two — Ratification of PricewaterhouseCoopers LLP:

Number of Votes			
For	Against	Abstain	Broker Non-Votes
437,518,712	24,872	10,010	0

3. Proposal Three — Adoption of the Amended and Restated SunPower Corporation 2005 Stock Incentive Plan:

Number of Votes			
For	Against	Abstain	Broker Non-Votes
420,704,544	11,809,663	20,588	5,018,800

Item 6. Exhibits

Exhibit Number	Description
10.1	Lease Agreement, dated February 9, 1996, by and between Hawthorne/Stone Property Management, Inc., and PowerLight Corporation (as amended on January 20, 2000, September 13, 2001, January 4, 2002, May 6, 2002, February 20, 2003, December 18, 2003, May 12, 2004, February 3, 2005, February 28, 2005, August 17, 2005, January 26, 2006 and May 11, 2007).
10.2†	Engineering, Procurement and Construction Agreement, dated as of March 30, 2007, by and between Solar Star NAFB, LLC and PowerLight Corporation.
10.3	Industrial Lease, dated May 12, 1999, between Temescal, L.P., Contra Costa Industrial Park, Ltd. and PowerLight Corporation (as amended on November 6, 2000 and January 22, 2004)
10.4	Standard Industrial / Commercial Multi-Tenant Lease, dated December 15, 2006, by and between FPOC, LLC and PowerLight Corporation.
10.5†	Contract for the Delivery of Solar Cells, dated August 31, 2006 , between ErSol Energy AG and PowerLight Corporation
10.6†	Engineering, Procurement and Construction Agreement, dated as of March 26, 2007, by and between Agrupacion Solar Llerena-Badajoz 1, A.I.E., PowerLight Systems S.A. and Solarpack Corporacion Tecnologica, S.L.
10.7†	Letter Agreement to Unit Transfer Agreement, dated March 30, 2007, by and among Solar Star NAFB, LLC, PowerLight Corporation and MMA NAFB Power, LLC.
10.8†	Photovoltaic Module Master Supply Agreement, dated November 3, 2005, by and between Evergreen Solar, Inc., PowerLight Corporation and PowerLight Systems AG.
10.9†	Amendment One to Photovoltaic Module Master Supply Agreement, dated June 29, 2006, by and between Evergreen Solar, Inc., PowerLight Corporation and PowerLight Systems AG.
10.10†	Original Equipment Manufacturer Production of Photovoltaic Modules Agreement, dated December 6, 2006, between PowerLight Corporation and aleo solar AG (as amended on March 21, 2007).
10.11†	Master Supply Contract for Solar Cells, dated May 18, 2006, between Q-Cells Aktiengesellschaft and PowerLight Corporation.
10.12†	Contract for the Delivery of Solar Cells, dated January 12, 2007, between JingAo Solar Star Company, Ltd and PowerLight Corporation.
10.13	Unit Transfer Agreement, dated March 21, 2007, by and among Solar Star NAFB, LLC, PowerLight Corporation and MMA NAFB Power, LLC.
31.1	Certification of Chief Executive Officer Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
31.2	Certification of Chief Financial Officer Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
32.1	Certification of Chief Executive Officer and Chief Financial Officer Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.

† Confidential treatment has been requested for portions of this exhibit.

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SIGNATURES

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

SUNPOWER CORPORATION

Dated: May 11, 2007

By: /S/ EMMANUEL T. HERNANDEZ

Emmanuel T. Hernandez
Chief Financial Officer

HAWTHORNE/STONE PROPERTY MANAGEMENT COMPANY
INDUSTRIAL LEASE

ARTICLE 1. FUNDAMENTAL LEASE PROVISIONS

This Lease is made and entered into by Landlord an Tenant this 9th day of February , 1996 (the "Effective Date").

Landlord:	Hawthorne/Stone Property Management, Agents for Owners
Tenant:	PowerLight Corporation
Premises:	A portion of that certain project located at Berkeley, California, commonly known as the Berkeley Business Center (the "Project"); the premises consist of approximately 5075 square feet of floor area in the Building of which the Premises are a part (the "Building") and are outlined in red on "Exhibit A" attached hereto and incorporated herein by reference; the Premises are commonly known as 2954 San Pablo Avenue (Article 2).
Lease Term:	Four Years commencing March 1,1996 (the "Commencement Date") and ending on February 28, 2000 Article 3).
Rent-Monthly:	Seventeen Hundred Dollars ($1, 700. 00) per month. (Article 4).
Prepaid Rent:	Thirty Four Hundred Dollars ($3,400.001) for the month(s) of March and April, 1996. (Article 4).
Security Deposit:	Twenty Six Hundred and Fifty Dollars ($2,650.00). (Article 5).
	Tenant's Pro Rata share of Real Property Taxes, Common Area Expenses and Landlord's Insurance: N/A (Articles 6.1, 8.5, 15.2).
Use:	Product Design, Prototyping and Fabrication (Article 7).
Parking:	Ten unreserved parking spaces (Article 8.4).

PROMPT HASSLE-FREE PAYMENT OF RENT AND OTHER CHARGES IS ABSOLUTELY ESSENTIAL TO GOOD LANDLORD-TENANT RELATIONS. Landlord will insist upon it and without limiting its remedies may require payment of late charges in the event of delay. Landlord's remedies in the event of Tenant's breach of Lease are set forth in Article 19 and elsewhere in this lease; the remedies include, without limitation, Lease cancellation, late charges, legal fees, cost, and interest and/or continuing liability for non-performance. This lease should be examined carefully in view of the remedies as Landlord intends to require full performance by Tenant of each provision of the Lease.

Addresses for Notices and Payment of Rent: (Article 20.19)

Landlord: c/o	Hawthorne/Stone Property Management Co. 1704 Union Street San Francisco, Ca 94123 Telephone: (415) 441-8400
Tenant:	To the Premises or: 2550 Benven Berkeley CA 94704
Emergency Address and Telephone:	510 841-2772

References in this Article 1 to the other Articles are for convenience and designate other Articles where references to the particular Fundamental Lease provisions appear. Each reference in this Lease to any of the Fundamental Lease Provisions contained in this Article 1 shall be construed to incorporate all the terms provided under each such Fundamental Lease Provision. In the event of any conflict between a Fundamental Lease Provision and the balance of the Lease, the latter shall control.

ARTICLE 2. PREMISES

Landlord hereby leases to Tenant and Tenant hereby leases from Landlord, for the term, at the Rent, and upon the covenants and conditions hereinafter set forth, those certain premises, described in Article 1 hereof, including the underlying realty and the improvements thereon or so much thereof as Tenant is entitled to occupy or use hereunder (hereinafter collectively the "Premises").

ARTICLE 3. TERM

3.1 Term. The term of this Lease shall continue during the Lease term specified in Article 1 hereof, unless sooner terminated as hereinafter provided in this Lease,

3.2 Delay in Commencement. Tenant agrees that in the event of the inability of Landlord for any reason to deliver possession of the Premises to Tenant on the commencement date set forth in Article 1, Landlord shall not be liable for any damage thereby nor shall such inability affect the validity of this Lease but in such case Tenant shall not be obligated to pay Rent or other monetary sums until possession of the Premises is tendered to Tenant; provided that if the delay in delivery of possession exceeds one hundred and twenty (120) days, then Tenant at its option, to be exercised within ten (10) days after the end of said one hundred and twenty day (120) period, may terminate this Lease. If Tenant terminates the Lease in such manner, Landlord shall return any monies previously deposited by Tenant and the parties shall be discharged from all obligation, hereunder.

3.3 Construction. The obligations of Landlord and Tenant to perform work, supply labor and materials and prepare the Premises for occupancy are set forth in detail in Exhibit B attached hereto and incorporated herein by reference. Landlord and Tenant shall expend all funds and do all acts required of them in Exhibit B and shall have the work performed promptly and diligently and in a first-class, workmanlike manner. If Landlord is obligated hereunder to perform construction or remodeling work, then possession shall not be deemed tendered and the term of this Lease shall not commence until the first to occur of the following: (a) seven (7) days after written certification by Landlord that Landlord's construction work has been completed; or (b) upon the Tenant's opening for business within the Premises.

3.4 Acknowledgment of Commencement Date. In the event the commencement date of the term of the Lease is delayed beyond the One Hundred Twenty (120) Days described in Article 3.2 or if the commencement date is to be determined pursuant to Article 3.3, then Landlord and Tenant shall execute a written acknowledgment of the dates of commencement and termination of the Lease and shall attach it to the Lease as an Exhibit.

ARTICLE 4. RENT

Tenant shall pay the sum set forth in Article 1 as Rent for the Premises in advance on the first (1st) day of each calendar month for the term of this Lease, said sum to be paid without deduction, offset prior notice or demand, in lawful money of the United States. If the

commencement date is not the first (1st) day of a month, or if the Lease termination date is not the last day of the month, a prorated monthly installment shall be paid at the then current rate for the fractional month during which the Lease commences and/or terminates. Tenant hereby acknowledges that Landlord will not be required to send monthly statements and invoices as a condition to Tenant paying any Rent due under this Lease. On the first and each successive anniversary of the commencement date during the lease term or any extension thereof (the "adjustment date"), the monthly installment of rent due hereunder shall be increased by an amount equal to (see lease addendum) of the rent due during the month preceding each such adjustment date.

Concurrently with Tenant's execution of this Lease, Tenant shall pay to Landlord the sum specified in Article 1 as Prepaid Rent for the months designated therein.

ARTICLE 5. SECURITY DEPOSIT

Tenant has deposited with Landlord the sum specified in Article 1 hereof as "Security Deposit", receipt of which is hereby acknowledged. Landlord shall not be required to keep this Security Deposit separate from its general funds; the Security Deposit shall be held by Landlord, without liability for interest, as security for the faithful performance by Tenant of all the terms of this Lease. The Security Deposit shall not be mortgaged, assigned, transferred or encumbered by Tenant without the written consent of Landlord and any such act on the part of Tenant shall be without force and effect and shall not be binding upon Landlord.

If any rent herein reserved or any other sum payable by Tenant to Landlord shall be overdue and unpaid or should Landlord make payments on behalf of the Tenant, or should Tenant fail to perform any of the terms of this Lease, then Landlord may, at its option and without prejudice to any other remedy which Landlord may have on account thereof, appropriate and apply the entire Security Deposit or so much thereof as may be necessary to compensate Landlord toward the payment of Rent or other sums due to such breach on the part of Tenant; Tenant shall within ten (10) days of demand therefore restore the Security Deposit to the original sum deposited. Should Tenant comply with all of said terms and promptly pay all Rent and all other sums payable by Tenant to Tenant (or, at Landlord's option, to the last assignee of Tenant's interest hereunder) at the expiration of the term of the lease. In the event Tenant fails to occupy the Premises in accordance with the terms of this Lease, Landlord's remedies shall include, without limitation thereto, retention of all sums deposited herewith or otherwise paid pursuant to this Lease.

In the event of bankruptcy or other debtor-creditor proceedings against Tenant, the Security Deposit shall be deemed to be applied first to the payment of Rent and other sums due Landlord for all periods prior to the filing of such proceedings.

Landlord may deliver the funds deposited hereunder by Tenant to the purchaser of Landlord's interest in the Premises in the event that such interest be sold and thereupon Landlord shall be discharged from any further liability with respect to the Security Deposit, and this provision shall also apply to any subsequent transferees.

b. Improvements to the Premises. Anything to the contrary notwithstanding contained herein, Tenant shall pay any increases in Real Property Taxes resulting from any and all improvements of any kind whatsoever placed on or in the Premises for the benefit of or at the request of Tenant, regardless of whether said improvements were installed or constructed either by Landlord or Tenant, except those items included with the original Premises.

6.2 Personal Property Taxes. Tenant shall pay prior to delinquency all taxes assessed against and levied upon trade fixtures, furnishings, equipment and all other personal property of Tenant contained in the Premises or elsewhere. When possible, Tenant shall cause said trade fixtures, furnishings, equipment and all other personal property to be assessed and billed separately from the real or personal property of Landlord.

ARTICLE 7. USE

7.1 Use. The premises shall be used and occupied by Tenant only for the purposes set forth

in Article 1 hereof and for no other purpose whatsoever without obtaining the prior written consent of Landlord. UNDER NO CIRCUMSTANCES WILL TENANT OR TENANT'S EMPLOYEES, AGENTS, INVITEES OR ANYONE ELSE BE ALLOWED TO OCCUPY THE PREMISES FOR RESIDENTIAL PURPOSES.

7.2 Condition of Premises. Tenant hereby accepts the Premises in their condition existing as of the date of the execution hereof, subject to all applicable zoning, municipal, county and state laws, ordinances and regulations governing and regulating the use of the Premises, and accepts this Lease subject thereto and to all matters disclosed thereby and by any exhibits attached hereto. Tenant acknowledges that neither Landlord nor any agent of Landlord has made any representation or warranty with respect to the condition of the Premises or the suitability thereof for the conduct of Tenant's business, nor has Landlord agreed to undertake any modification, alteration or improvement to the Premises except as provided in this Lease. The taking of possession of the Premises by Tenant shall conclusively establish that the Premises were at such time in satisfactory condition unless within fifteen (15) days after such date Tenant shall give Landlord written notice specifying in reasonable detail the respects in which the Premises were not in satisfactory condition.

7.3 Compliance with Law. Tenant shall not use the Premises or permit anything to be done in or about the Premises which will in any way conflict with any law, statute, zoning restrictions, ordinance or governmental rule or regulation or requirements of duly constituted public authorities now in force or which may hereafter be in force and with the requirements of any board of fire underwriters or other similar body now or hereafter constituted relating to or affecting the condition, use, or occupancy of the Premises. The judgment of any court of competent jurisdiction or the admission of Tenant in any action against Tenant, whether Landlord be a party thereto or not, that Tenant has violated any law, statute, ordinance, or governmental rule, regulation or requirement, shall be conclusive of that fact as between Landlord and Tenant. Tenant shall not do or permit anything to be done in or about the Premises which will in any way obstruct or interfere with the rights of other tenants or occupants of the Project or may be a part or injure or annoy them or use or allow the Premises to be used for any unlawful or objectionable purpose, nor shall Tenant cause, maintain, or permit any nuisance in, on, or about the Premises. Tenant shall not commit or allow any waste in or upon the Premises nor shall Tenant conduct any auction upon the Premises.

ARTICLE 8. COMMON AREAS

8.1 Definition. The phrase "Common Areas" means all areas and facilities outside the Premises and in the Project that are provided and designated by Landlord from time to time for the general non-exclusive use and convenience of Landlord, Tenant and other tenants of the Project and their respective officers, agents and employees, suppliers, shippers, customers, and invitees. Common Areas include (but are not limited to) pedestrian sidewalks, common entrances, lobbies, restrooms, stairwells, access ways, landscaped areas, loading docks, ramps, drives, roadways, parking areas, and railroad tracks. Landlord shall have the right, in Landlord's sole discretion, from time to time: (a) to make changes to the Common Areas, including, without limitation, changes in the location, size, shape and number of driveways, entrances, parking spaces, parking areas, loading and unloading areas, ingress, egress, direction of traffic, landscaped areas and walkways; (b) to close temporarily any of the Common Areas for maintenance purposes so long as reasonable access to the Premises remains available; (c) to designate areas outside the boundaries of the Project to be part of the Common Areas; (d) to add additional buildings and improvements to the Common Areas (e) to use the Common Areas while engaged in making additional improvements, repairs or alterations to the Project or any portion thereof; (f) to do and perform such other acts and make such other changes in, to or with respect to the Common Areas and Project as Landlord may, in the exercise of sound business judgment, deem to be appropriate.

8.2 Maintenance. During the term of this Lease, Landlord shall operate, manage, and maintain the Common Areas so that they are clean and free from accumulation of debris, rubbish, and garbage. The manner in which such Common Areas shall be so maintained, and the expenditures for such maintenance, shall be at the sole discretion of Landlord, and the use of the Common Areas shall be subject to such reasonable regulations and changes therein as

Landlord shall make from time to time, if necessary, all or any portion of the Common Areas to such extent as may be legally sufficient, in the option of Landlord's counsel, to prevent a dedication thereof or the accrual of rights of any person or of the public therein, or to close temporarily all or any portion of such Common Areas for such purposes.

8.3 Tenant's Rights and Obligation. Landlord hereby grants to Tenant, during the term of this Lease, the license to use, for the benefit of Tenant and its officers, agents, employees, customers, and invitees, in common with the others entitled to such use, the Common Areas as they from time to time exist, subject to the rights, powers, and privileges herein reserved to Landlord. Storage, either permanent or temporary, of any materials, supplies or equipment in the Common Areas without Landlord's prior written consent is strictly prohibited. Should Tenant violate this provision of the Lease, then in such event, Landlord may, upon notice to Tenant pursuant to section 20.19, remove said materials, supplies or equipment from the Common Areas and place such items in storage, the cost thereof to be reimbursed by Tenant within ten (10) days from receipt of a statement submitted by Landlord. All subsequent costs in connection with the storage of said items shall be paid to Landlord by Tenant as accrued. Failure of Tenant to pay these charges within ten (10) days from receipt of statement shall constitute a breach of this Lease.

8.4 Parking. Tenant shall be entitled to utilize the number of vehicle parking spaces set forth in Article 1 hereof on an unreserved, unassigned basis on those portion of the Common Areas Designated by Landlord from time to time for parking. Tenant shall not use more parking spaces than said number.

Tenant and its officers, agents, employees, customers, and invitees shall park their motor vehicles only in areas designated by Landlord for that purpose from time to time. Within five (5) days after request from Landlord, Tenant shall furnish to Landlord a list of the license numbers assigned to its motor vehicles, and those of its officers, agents, and employees. Tenant shall not at anytime park or permit the parking of motor vehicles, belonging to it or to others, so as to interfere with the pedestrian sidewalks, roadways, and loading areas, or in any portion of the Common Area not designated by Landlord for such use by Tenant. Tenant agrees that receiving and shipping of goods and merchandise and all removal of refuse shall be made only by way of the loading areas constituting part of the Premises. Tenant shall repair, at its cost, all deteriorations or damages to the Common Areas, occasioned by its lack of ordinary care. Tenant shall not permit or allow any vehicles that belong to or are controlled by Tenant or Tenant's employees, suppliers, shippers, customers, or invitees to be loaded, unloaded, or parked in areas other than those designated by Landlord for such activities. If Tenant permits or allows any of the prohibited activities described in this Section 8.4, then Landlord shall have the right, upon notice pursuant to section 20.19, in addition to other rights and remedies that it may have to remove or tow away the vehicle at the Owner's expense.

ARTICLE 9. REPAIRS AND MAINTENANCE

9.1 Landlord's Obligations. SUBJECT TO THE PROVISIONS OF ARTICLE 16 AND EXCEPT FOR DAMAGE CAUSED BY ANY NEGLIGENCE OR INTENTIONAL ACT OR OMISSION OF TENANT AND TENANT'S AGENTS, EMPLOYEES, OR INVITEES, LANDLORD SHALL AT ITS OWN EXPENSE KEEP DOORS, EXTERIOR WALLS AND THE ROOF OF THE PREMISES. Landlord shall not be obligated to paint such exterior, nor shall Landlord be required to maintain the windows, interior doors, or plate glass or interior surface of exterior walls. Landlord shall not have the obligation to make repairs under this Article 9 until a reasonable time after receipt of written notice of the need for such repairs. Tenant expressly waives the benefits of any statute now or hereafter in effect which would otherwise afford Tenant the right to make repairs at Landlord's expense or to terminate this Lease because of Landlord's failure to keep the Premises in good order, condition and repair.

9.2 Tenant's Obligation. SUBJECT TO THE PROVISIONS OF ARTICLE 16 AND ARTICLE 9.1, TENANT AT ITS SOLE COST AND EXPENSE SHALL KEEP IN GOOD ORDER, CONDITION, AND REPAIR THE PREMISES AND EVERY PART THEREOF INCLUDING WITHOUT LIMITATION THERETO ALL GLASS, PLUMBING, HEATING, AIR CONDITIONING, VENTILATING, ELECTRICAL WITHIN THE PREMISES. Tenant shall repair all damage to the Common Area caused by its operations or activities of those of its agents, contractors, licensees, invitees, or employees immediately upon notice from Landlord. In the event Tenant fails to do so, Landlord may (but shall not be obligated to) make such repairs and collect the sum expended as Rent and including interest at the rate established pursuant to Section 20.17 hereof from the date of any such expenditure.

9.3 Surrender. Upon the expiration or earlier termination of this Lease, Tenant shall surrender the Premises in the same condition as received, broom clean, with ordinary wear and tear, and damage by fire, earthquake, act of God or the elements alone excepted. Tenant at its sole cost and expense agrees to repair any damage to the Premises caused by or in connection with the removal of any articles of personal property, business or trade fixtures, machinery equipment, cabinetwork, furniture, movable partitions, or permanent improvements or additions, including the floor and patching and painting the walls where required by Landlord to Landlord's reasonable satisfaction. Tenant shall indemnify the Landlord against any loss or liability resulting from delay in Tenant surrendering the Premises, including without limitation any claims made by any succeeding tenants founded on such delay.

9.4 Landlord's Rights. In the event Tenant fails to perform Tenant's obligations under this Article 9, Landlord shall give Tenant notice to do such acts as are reasonably required to so maintain the Premises. If Tenant fails to do the work and diligently prosecute it to completion, then Landlord shall have the right (but not the obligation) to do such acts and expend such funds at the expense of Tenant as are reasonably required to perform such work. Landlord shall have no liability to Tenant for any damage, inconvenience or in performing any such work.

ARTICLE 10. ALTERATIONS AND ADDITIONS

Tenant shall not, without Landlord's prior written consent, make any alterations, additions,

improvements or utility installments in, on, or about the Premises, except for non-structural alterations not exceeding $2,500.00 in cost. As used in this Article 10, the term “utility installations” shall include ducting, power panels, fluorescent fixtures, space heaters, conduit and wiring. Tenant understands and agrees that Landlord’s consent will be conditioned upon satisfaction of such requirements as Landlord may deem necessary, in its sole discretion, including without limitation, Landlord’s approval of plans and specifications, contractors, insurance required by Landlord to be maintained by tenants, contractors, hours of construction, the manner in which the work is to be done, the quality of the proposed work and Landlord’s receipt of adequate security (such as payment and performance bond) satisfactory to Landlord to assure timely completion of the work and payment of all costs of the work notwithstanding the foregoing, upon written request by Landlord prior to the expiration or earlier termination of the Lease, Tenant shall remove any and all utility installations, permanent improvements, alterations or additions to the Premises installed at Tenant’s expense and restore the Premises to their prior condition. Landlord shall have the right but not the obligation to inspect the work of improvement to the Premises and may require changes in the method or quality of the work. Tenant shall reimburse Landlord for all costs, fees, and expenses incurred by Landlord with respect to the proposed alterations, installation or improvements, including without limitation, the costs of reviewing the plans and specification for such work (whether or not Landlord’s consent to such work is granted). Landlord’s approval or any plans and specifications for any such work shall not constitute a warranty or representation with respect thereto. Failure to obtain such written consent of Landlord prior to commencement of the work shall constitute a breach of the Lease and entitle Landlord to (a) require removal of any such improvement and return of the Premises to their former condition, and/or (b) terminate the Lease.

Unless Landlord requires the removal pursuant hereto, all alterations, additions, improvements, and utility installations on the Premises (whether or not such utility installations constitute trade fixtures of Tenant) shall at the expiration or earlier termination of the Lease become the property of Landlord and remain upon and be surrendered with the Premises. Notwithstanding the foregoing, personal property, business and trade fixtures, cabinetwork, furniture, movable partitions, machinery and equipment, other than that which is affixed to the Premises so that it cannot be removed without material damage to the Premises, shall remain the property of Tenant and may be removed by Tenant subject to the provisions of Article 9, at any time during the term of this Lease when Tenant is not in default.

ARTICLE 11. UTILITIES

Tenant shall pay prior to delinquency for all water, gas, heat, light, power, telephone, sewage, air conditioning and ventilating, scavenger, janitorial, landscaping, and all other materials and utilities supplied to the Premises. If any such services are not separately metered to Tenant, Tenant shall pay a reasonable proration of all charges which are jointly metered, the determination to be made by Landlord, and payment to be made by Tenant within (10) days of receipt of a statement for such charges. Landlord shall not be liable to Tenant or any other person for, and neither Tenant nor any other person shall be entitled to, any abatement or reduction of Rent or any damages, direct or indirect, because of any reduction or suspension in utility service if required by any governmental authority, or Landlord’s failure or inability to furnish any service or facility Landlord has agreed to supply when such failure is caused by accident, breakage, repairs, alterations or improvements, strikes, lockouts, or other labor disturbances or disputes or any character, unavailability of employees, acts of God, governmental preemption in connection with a national or local emergency, any rule, order or regulation or any governmental agency, conditions of supply and demand, Landlord’s compliance with any voluntary or mandatory governmental energy conservation or environmental protection program or by any other cause similar or dissimilar, beyond the reasonable control of Landlord, unless caused by Landlord or Landlord’s agents intentional or negligent acts or omissions. Landlord shall not be liable under any circumstances for loss of or injury to person, property, or business, however occurring, through or in connection with or incidental to any failure described above to furnish any service or facility, nor shall any such failure be constructed as an eviction of Tenant, in whole or in part, or operate to release Tenant from any of Tenant’s obligation under this Lease, unless caused by Landlord or Landlord’s agents intentional or negligent acts or omissions. Tenant shall cooperate fully with Landlord to effect energy conservation in the Project and shall use its best efforts to minimize its use of energy (including electricity) and water throughout the term hereof.

ARTICLE 12. LIENS

Tenant shall keep the Premises, the Building and the Project free from any liens arising out of work performed, materials furnished, or obligations incurred by Tenant and shall indemnify, hold harmless and defend Landlord from any liens and encumbrances arising out of any work performed or materials furnished by or at the direction of Tenant. In the event that Tenant shall not, within twenty (20) days following the imposition of any such lien, cause such lien to be released of record by payment or posting of a proper bond, Landlord shall have, in addition to all other remedies provided herein and by law, the right, but not the obligation, to cause the same to be released by such means as it shall deem proper, including payment of the claim giving rise to such lien. All such sums paid by Landlord and all expenses incurred by it in connection therewith including attorney's fees and costs shall be payable to Landlord by Tenant on demand with interest at the rate established pursuant to Section 20.17 hereof. Landlord shall have the right at all times to post and keep posted on the Premises any notices permitted or required by law, or which Landlord shall deem proper, for the protection of Landlord, the Project, and the Premise, and any other party having an interest therein, from mechanics' and materialmen's liens. TENANT SHALL GIVE TO LANDLORD AT LEAST FIFTEEN (15) BUSINESS DAYS PRIOR WRITTEN NOTICE OF THE EXPECTED DATE OF COMMENCEMENT OF ANY WORK RELATING TO ALTERATIONS OR ADDITIONS TO THE PREMISES.

ARTICLE 13. LANDLORD'S ACCESS

Landlord and Landlord's agents shall have the right at reasonable times to enter the Premises to inspect the same or to maintain or repair, make alterations or additions to the Premises or any portion thereof or to show the Premises to prospective purchasers, tenants, or lenders. Landlord may at any time place on or about the Premises any ordinary "for sale" signs; Landlord may at any time during the last ninety (90) days of the term of the Lease place on or about the Premises any ordinary "for lease" signs. Tenant hereby waives any claim for abatement of Rent or for damages for any injury or inconvenience to or interference with Tenant's business, any loss of occupancy or quiet enjoyment of the Premises, and any other loss occasioned thereby.

ARTICLE 14. INDEMNITY; EXEMPTION OF LANDLORD FROM LIABILITY

14.1 Indemnity. Tenant shall indemnify and hold Landlord harmless from and against any and all claims of liability for and injury or damage to any person or property arising from Tenant's use of the Premises, the Building or the Project, or from the conduct of Tenant's business, or from any activity, work or thing done, permitted or suffered by Tenant in or about the Premises, the Building, the Project or elsewhere. Tenant shall further indemnify and hold Landlord harmless from and against any and all claims arising from any breach or default in the performance of any obligation on Tenant's part to be performed under this Lease, or arising from any negligence of Tenant or Tenant's agents, contractors, or employees and from and against all costs, attorney's fees, expense, and liabilities incurred in the defense of any such claim or any action or proceeding is brought thereon. In the event any action or proceeding is brought against Landlord for reason of any such claim, Tenant upon notice from Landlord shall defend same at Tenant's expense by counsel satisfactory to Landlord. Tenant, as a material part of the consideration to Landlord, hereby assumes all risk of damage to property or injury to persons in, upon, or about the Premises arising from any cause and Tenant hereby waives all claims in respect thereof against Landlord, except for damages arising from Landlord's intentional or negligent acts.

14.2 Exemption of Landlord from Liability. Landlord shall not be liable for injury to Tenant's business or loss of income therefrom or for damage which may be sustained by the person, goods, wares, merchandise, or property of Tenant, its employees, invitees, customers, agents, or contractors, or any other person in or about the Premises, the Building, or the Project caused by or resulting from fire, steam, electricity, gas, water, or rain, which may leak or flow from or into any part of the Premises, or from the breakage, leakage, obstruction, or other defects of the pipes, sprinklers, wires, appliances, plumbing, air conditioning, or lighting fixtures of the

same, whether the said damage or injury results from conditions arising upon the Premises, the Building, or the Project, or from other sources or places and regardless of whether the cause of such damage or injury or the means of repairing the same is inaccessible to Tenant, unless caused by the negligent or intentional acts or omissions by Landlord or it's agents. Landlord shall not be liable for any damages arising from any act or neglect of any other tenant (if any) of the Project.

ARTICLE 15. INSURANCE

15.1 Tenant's Insurance. Tenant covenants and agrees that prior to occupancy of the Premises and thereafter throughout the term of this Lease, Tenant will carry and maintain at its sole cost and expense the types of insurance in the amounts and forms hereinafter specified.

a. Public Liability and Property Damage. Bodily Injury and Property Damage Insurance with coverage limits of not less than Five Hundred Thousand Dollars ($500,000) combined each occurrence and in the aggregate insuring against any and all liability of the insured with respect to the Premises or arising out of the maintenance, use or occupancy thereof. All such insurance shall specifically insure performance by Tenant of the indemnity agreement set forth in Article 14 as to liability for injury to or death of persons and damage to property. Such insurance shall have a Landlord's Protective Liability Endorsement attached thereto.

b. Tenant Improvements. Insurance covering all alterations, additions or improvements permitted under Article 10, trade fixtures, merchandise and personal property from time to time in, on or upon the Premises, in an amount not less than ninety percent (90%) of their full replacement cost from time to time during the term of this Lease. Such insurance shall provide protection against any peril included within the classification of fire and extended coverage, vandalism, malicious mischief, sprinkler leakage, water damage (from roof leakage, ground water or otherwise) and special extended peril (all risk). Tenant agrees to carry such insurance, it being expressly understood and agreed that none of the items to be insured by Tenant hereunder shall be insured by Landlord, nor shall Landlord be required to reinstall, reconstruct or repair any of such items. Any policy proceeds shall be used for the repair or replacement of the property damaged or destroyed unless this Lease shall cease and terminate under the provisions of Article 16 hereof.

c. Other. Workmen's Compensation Insurance as required by law; Products Liability Insurance where the use of the Premises by Tenant is determined reasonably by Landlord to require such coverage.

ALL INSURANCE REQUIRED HEREUNDER SHALL BE WITH COMPANIES RATED AT B OR BETTER IN BEST'S INSURANCE GUIDE. TENANT SHALL DELIVER TO LANDLORD CERTIFICATES OF INSURANCE EVIDENCING THE EXISTENCE AND AMOUNT OF SUCH INSURANCE WITH LOSS PAYABLE CLAUSES SATISFACTORY TO LANDLORD AND SHOWING LANDLORD AN ADDITIONAL INSURED UNDER THE INSURANCE SET FORTH IN 15.1A. In the event Tenant fails to procure and maintain such insurance, Landlord may (but shall not be required to) procure same at Tenant's expense after ten (10) days prior written notice. No such policy shall be cancelable or subject to reduction of coverage or other modification except after thirty (30) days prior written notice to Landlord by the insurer. Tenant shall, within twenty (20) days prior to the expiration of such policies furnish Landlord with renewals or binders, or Landlord may order such insurance and charge the cost to Tenant, which amount shall be payable by Tenant upon demand. All such policies shall be written as primary policies, not contributing with and not in excess of coverage which Landlord may carry. Tenant shall have the right to provide such Insurance coverage pursuant to blanket policies obtained by Tenant provided such blanket policies expressly afford coverage to the Premises, the Project, Landlord, and Tenant as required by this Lease.

15.2 Landlord's Insurance. Landlord shall, at Landlord's expense procure and maintain at all times during the term of this Lease a policy or policies of insurance covering loss or damage to the premises in the amount of the full replacement value thereof (EXCLUSIVE OF TENANT'S TRADE FIXTURES, INVENTORY, PERSONAL PROPERTY AND EQUIPMENT), providing protection against all perils included within the classification of fire an extended coverage,

vandalism, malicious mischief, sprinkler leakage, water damage and special extended peril (all risks). Additionally, Landlord may (but shall not be required to) carry: (1) Public Liability and Property Damage Liability Insurance and/or Excess Coverage Liability Insurance on the buildings constituting the Project; and (2) Earthquake and/or Flood Damage Insurance; and, (3) Rental Income Insurance at its election or if required by its lender from time to time during the term hereof in such amounts and with such limits as Landlord or its lender may deem such amounts and with such limits as Landlord or its lender may deem appropriate. During the term of this Lease, Tenant shall pay its pro rata share (set forth in Article 1 hereof) of such insurance premiums to Landlord within fifteen (15) days after receipt by Tenant of a statement thereof. Such statement shall be accompanied by a copy of the premium statement or other reasonably satisfactory evidence of the amount due, which shall include the method of calculation of Tenant's share thereof if the insurance covers other improvements than the Premises. If the term of this Lease does not expire concurrently with the expiration of the period covered by the insurance, Tenant's liability for premium increases shall be prorated on an annual basis. Tenant shall not do or permit anything to be done in or about the Premises or cause the cancellation of any insurance policy covering said Premises, the Building or the Project, nor shall Tenant sell or permit to be kept, used, or sold in or about said Premises any articles which may be prohibited by Landlord's policy of fire insurance.

15.3 Waiver of Subrogation. Landlord and Tenant each hereby waive any and all rights of recovery against the other or against the officers, employees, agents, and representatives of the other, on account of loss or damage occasioned to such waiving party of its property or the property of others under its control caused by fire or any of the extended coverage risks described above to the extent that force at the time of such loss or damage. The insuring party shall, upon obtaining the policies of insurance required under this Lease, give notice to the insurance carrier or carriers that the foregoing mutual waiver of subrogation is contained in this Lease.

ARTICLE 16. DAMAGE OR DESTRUCTION

16.1 Partial Damage. In the event improvements on the Premises are damaged by any casualty which is covered under an insurance policy required to be maintained pursuant to Article 15.2, then Landlord shall repair such damage as soon as reasonably possible and this Lease shall continue in full force and effect. In the event the improvements on the Premises are damaged by any casualty not covered under an insurance policy required to be maintained pursuant to Article 15.2, then Landlord may, at Landlord's option, either (a) repair such damage as soon as reasonably possible at Landlord's expense, in which event this Lease shall continue in full force and effect, or (b) give written notice to Tenant within thirty (30) days after the date of occurrence of such damage of landlord's intention to cancel and terminate this Lease as of the date of the occurrence of the damage. In the event Landlord elects to terminate this lease pursuant hereto, Tenant shall have the right within ten (10) days after receipt of the required notice to notify Landlord in writing of Tenant's intention to repair such damage at Tenant's expense, without reimbursement from Landlord, in which event this Lease shall continue in full force and effect and Tenant shall proceed to make such repairs as soon as reasonably possible. If Tenant does not give such notice within the ten (10) day period, this Lease shall be canceled and terminated as of the date of the occurrence of such damage. Landlord shall not be required to repair any injury or damage by fire or other cause, or to make any restoration or replacement of any paneling, decorations, office fixtures, partitions, railings, ceilings, floor covering, equipment, machinery, or fixtures or any other improvements or property installed in the Premises by Tenant or at the direct or indirect expense of Tenant. Tenant at his discretion may restore or replace same in the event of damage.

16.2 Total Destruction. If the improvements on the Premises are totally destroyed during the term of this Lease from any cause whether or not covered by the insurance required under Article 15.2 (including any destruction required by any authorized public authority), this Lease shall automatically terminate as of the date of such total destruction.

16.3 Damage Near End of the Term. If the improvements on the Premises are partially

destroyed or damaged during the last year of the term of this Lease, Landlord may at Landlord's option cancel and terminate this Lease as of the date of occurrence of such damage giving written notice to Tenant of Landlord's election to do so within thirty (30) days after the date of occurrence of such damage.

16.4 Partial Destruction of Project. If fifty percent (50%) or more of the Buildings constituting the Project shall be damaged or destroyed by an insured risk, or if fifteen percent (15 %) or more of the Buildings constituting the Project shall be damaged or destroyed by an uninsured risk, notwithstanding that the Premises may be unaffected thereby, Landlord may at its option cancel and terminate this Lease by giving written notice of its election to do so within ninety (90) days from the date of occurrence of such damage or destruction in which event the term of this Lease shall expire within sixty (60) days and Tenant shall thereupon surrender the Premises to Landlord.

16.5 Abatement of Rent: Tenant's Remedies: Advance Payments.

a. Abatement of Rent. If the Premises are partially destroyed or damaged and Landlord or Tenant repairs them pursuant to this Lease, the Rent payable hereunder for the period during which such damage and repair continues shall be abated in proportion to the extent to which Tenant's use of the Premises is impaired. Except for abatement of Rent (if any), Tenant shall have no claim against Landlord for any damage suffered by reason of any such damage, destruction, repair, or restoration.

b. Tenant's Remedies. If Landlord shall be obligated to repair or restore the Premises under this Article 16 and shall not commence such repair or restoration within forty-five (45) days after such obligation shall accrue, Tenant at Tenant's option may cancel and terminate this Lease by written notice to Landlord at any time prior to the commencement of such repair or restoration. In such event this Lease shall terminate as of the date of such notice.

c. Advance Payments. Upon termination of this Lease pursuant hereto, an equitable adjustment shall be made concerning Prepaid Rent and any advance payments made by Tenant to Landlord. Landlord shall in addition return to Tenant so much of Tenant's Security Deposit as has not theretofore been applied by Landlord.

ARTICLE 17. CONDEMNATION

If the Premises or any portion thereof are taken under the power of eminent domain, or sold by Landlord under the threat of the exercise of said power (all of which is herein referred to as "condemnation"), this Lease shall terminate as to the part so taken as of the date the condemning authority takes title or possession, whichever occurs first. If more than twenty-five percent (25%) of the Project is taken by condemnation, either Landlord or Tenant may terminate this Lease as of the date the condemning authority takes possession by notice in writing of such election within twenty (20) days after the condemning authority shall have taken possession.

If this Lease is not terminated by either Landlord or Tenant, then it shall remain in full force and effect as to the portion of the Premises remaining, provided the Rent shall be reduced in the proportion that the floor area taken within the Premises bears to the total floor area of all of the Premises leased to Tenant pursuant hereto. In the event this Lease is not so terminated, then Landlord agrees, at Landlord's sole cost, to restore the Premises as soon as possible to a complete unit reasonably capable in Landlord's opinion of accommodating Tenant's usage as that usage existed prior to the condemnation. All awards for the taking of any part of the Premises or any payment made under the threat of the exercise of power of eminent domain shall be the property of Landlord, whether made as compensation for the taking of the fee of severance damages (including without limitation bonus value). Nothing contained herein shall be deemed to give Landlord any interest in or to require Tenant to assign to Landlord any award made to Tenant for the taking of personal property and fixtures belonging to Tenant and/or for the interruption of or damage to Tenant's business and/or for Tenant's unamortized cost of its leasehold improvements provided that as to partitions or other improvements in the nature of realty installed or constructed by Tenant, Tenant shall be entitled to receive only the unamortized cost thereof computed over the remaining useful life, not to

exceed the balance of the initial term of this Lease. In the event that this Lease is not terminated by reason of such condemnation, Landlord shall, to the extent of severance damages received by Landlord in connection with such condemnation, repair any damage to the Premises caused by such condemnation except to the extent that Tenant has been reimbursed therefore by the condemning authority in which case Tenant shall pay any amount in excess of such severance damages required to complete such repair.

ARTICLE 18. ASSIGNMENT AND SUBLEASE

NOTWITHSTANDING THE FOLLOWING AND WITHOUT INCURRING ANY OBLIGATION TO ACT OTHER THAN IN ACCORDANCE WITH THE PROVISIONS OF THIS ARTICLE 18 WHEN A TENANT HAS EXPRESSED A DESIRE TO VACATE THE PREMISES, IT HAS BEEN LANDLORD'S PREFERENCE TO NEGOTIATE WITH TENANT TO TERMINATE TENANT'S OCCUPANCY ENTIRELY UPON SECURING AN ACCEPTABLE SUBSTITUTE TENANT.

18.1 Landlord's Consent Required. Except where Tenant may assign this Lease to its parent or affiliated entities Tenant shall not voluntarily or by operation of law assign this Lease or enter into license or concession agreements, sublet all or any part of the Premises, or otherwise transfer, mortgage, pledge, hypothecate or encumber all or any part of Tenant's interest in this Lease or in the Premises or any part thereof, without Landlord's prior written consent and any attempt to do so without such consent being first had and obtained shall be wholly void and shall constitute a breach of this Lease.

18.2 Reasonable Consent. If Tenant complies with the following conditions, Landlord shall not unreasonably withhold its consent to the assignment of the lease or the Subletting of the Premises or any portion thereof: Tenant shall submit in writing to Landlord (a) the name and legal composition of the proposed Assignee or Sublessee; (b) the nature of the proposed Assignee's or Sublessee's business to be carried on in the Premises; (c) the terms and provisions of the proposed Assignment or Sublease; (d) such reasonable financial information as Landlord may request concerning the proposed Assignee or Sublessee including, without limitation, financial history, credit rating and business experience. Tenant acknowledges that Landlord has entered into this Lease in reliance on the particular skills, knowledge and experience of Tenant and/or the principal officer of Tenant with respect to the conduct of business in the Premises; Tenant recognizes that Landlord's substantial investment at risk under the terms of this Lease is based upon Landlord's judgmental consideration regarding Tenant's abilities as set forth above. Without in any way limiting Landlord's rights to refuse to give such consent for any other reason or reasons Landlord reserves the right to give such consent if in Landlord's reasonable business judgment the quality of operation is or may be in any way adversely affected during the term of the Lease. Anything to the contrary notwithstanding contained herein or elsewhere in this Lease, Landlord as additional consideration for approval of such assignment or subletting shall be entitled to receive any and all consideration payable in connection therewith, including without limitation, any additional Rent or other charges or any lump sum settlement after Tenants has recovered it's reasonable costs related to such assignment and sublease.

18.3 No Release of Tenant. No consent by Landlord to any assignment or subletting by Tenant shall relieve Tenant of any obligation to be performed by Tenant under this Lease, whether occurring before or after such consent; assignment of the Lease or subletting of the Premises. The consent by Landlord to any assignment or subletting shall not relieve Tenant from the obligation to obtain Landlord's express written consent to any other such assignment of the Lease or subletting of the Premises. The acceptance of Rent by Landlord from any other person shall not be deemed to be a waiver by Landlord of any provision of this Lease or to be a consent to any assignment, subletting or other transfer. Consent to one assignment, subletting or other transfer shall not be deemed to constitute consent to any subsequent assignment, subletting or other transfer.

Provided that Tenant is still occupying the Premises, Tenant hereby irrevocably assigns to Landlord all Rent and other sums above 50% of the total rent paid by Tenant at that time from any subletting of the Premises, and agrees that Landlord, may collect such Rent and other sums and apply the same as provide in Section 19 upon Tenant's default; provided, however, that until the occurrence of any act of default by Tenant or subtenant, Tenant shall have the right to collect such sums.

ARTICLE 19. DEFAULT; REMEDIES

19.1 Defaults by Tenant: Remedies. The occurrence of any of the following shall constitute a material default and breach of this Lease by Tenant: (a) any failure by Tenant to pay Rent or any other monetary sums required to be paid hereunder (where such failure continues for three (3) days after written notice by Landlord to Tenant); (b) the abandonment or vacation of the Premises by Tenant; (c) a failure by Tenant to observe and perform any other provision of this Lease to be observed or performed by Tenant, where such failure continues for ten (10) days after written notice thereof by Landlord to Tenant; provided, however, that if the nature of the default is such that the same cannot reasonably be cured within said ten (10) day period, Tenant shall not be deemed to be in default. Tenant shall within such period commence such cure and thereafter diligently prosecute the same to completion; provided, further, however, Landlord in its sole discretion may require Tenant to deliver a bond, deposit funds or such other form of security device which may be necessary to prosecute the Premises, Landlord, and the Project in the event such default cannot be cured within said ten (10) day period. Any such notice shall be in lieu of, and not in addition to, any notice required by law.

a. Remedies. In the event of any such material default or breach by Tenant, Landlord may at any time thereafter without limiting Landlord in the exercise of any right or remedy at law or in equity which Landlord may have be reason of such default or breach;

(i) Maintain this Lease in full force and effect and recover the Rent and other monetary charges as they become due without terminating Tenant's right to possession, pursuant to California Civil Code Section 1951.4.

(ii) Terminate Tenant's right to possession by and lawful means, in which case the Lease shall terminate and Tenant shall immediately surrender possession of the Premises to Landlord. In such event Landlord shall be entitled to recover from Tenant all damages incurred by Landlord by reason of Tenant's default as more particularly set forth in California Civil Code Section 1951.2.

Landlord shall also be entitled to recover all leasing commissions, costs or preparing the Premises for reletting and any other costs and expenses in lieu of any of the foregoing, or as may be permitted from time to time by the laws of the State of California.

For all purposes of this Article 18, the term "Rent" shall be deemed to be the Rent set forth in Article 1 and all other sums required to be paid by Tenant pursuant to the terms of the Lease. All such sums shall be computed on the basis of the average monthly amount thereof accruing during the immediately preceding twenty-four (24) month period, except that if it becomes necessary to compute such rental before such a twenty-four (24) month period has occurred then such Rent shall be computed on the basis of the average monthly amount thereof accruing during such shorter period.

b. Additional Rights of Landlord. In the event of default, all of Tenant's fixtures, fixture equipment, improvements, additions, alterations, and other personal property shall remain on the Premises and in the event, and continuing during the length of said default, Landlord shall have the right to take the exclusive possession of same and to use same, rent or charge free, until all defaults are cured or, at its option, at any time during the term of this Lease to require Tenant to forthwith remove the same.

Tenant hereby acknowledges that late payments by Tenant to Landlord of Rent and other sums due hereunder will cause Landlord to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to processing and accounting charges and late charges which may be imposed on Landlord by the terms of any mortgage or trust deed covering the Premises. ACCORDINGLY IF ANY INSTALLMENT OF RENT OR ANY OTHER SUM DUE FROM TENANT SHALL NOT BE RECEIVED BY LANDLORD OR LANDLORD'S DESIGNEE WITHIN TEN (10) DAYS AFTER SUCH AMOUNT SHALL BE DUE, TENANT SHALL PAY TO LANDLORD

A LATE CHARGE EQUAL TO EIGHT PERCENT (8%) OF SUCH OVERDUE AMOUNT. The parties hereby agree that such late charge represents a fair and reasonable estimate of costs Landlord will incur by reason of late payment by Tenant. Acceptance of such late charge by Landlord shall in no event constitute a waiver of Tenant's default with respect to such overdue amount, nor prevent Landlord from exercising any of the other rights and remedies granted hereunder.

Tenant hereunder waives any right of redemption or relief from forfeiture under the laws of the State of California or under any other present or future law, in the event Tenant is evicted or Landlord takes possession of the Premises by reason of any default by Tenant hereunder.

Landlord shall be under no obligation to observe or perform any covenant of this Lease on its part to be observed or performed which accrues after the date of any default by Tenant hereunder.

19.2 Rights and Obligations Under the Bankruptcy Code.

a. Upon the filing of a petition by or against Tenant under the United States Bankruptcy Code Tenant, as debtor in possession, and any trustee who may be appointed agree as follows: (1) to perform each and every obligation of Tenant under this Lease until such time as this Lease is either rejected or assumed by order of the United States Bankruptcy Court; and (2) to pay monthly in advance on the first day of each month a reasonable compensation for use and occupancy of the Premises an amount equal to the Rent and other charges otherwise due pursuant to this Lease; and (3) to reject or assume this Lease within sixty (60) days of the filing of such petition under Chapter 7 of the Bankruptcy Code or within one hundred twenty (120) days (or such shorter term as Landlord, in its sole discretion, may deem reasonable so long as notice of such period is given) of the filing of a petition under any other Chapter; and (4) to give Landlord at least forty-five (45) days prior written notice of any abandonment of the Premises; any such abandonment to be deemed a rejection of this Lease; and (5) to do all other things of benefit to Landlord otherwise required under the Bankruptcy Code; and (6) to be deemed to have rejected this Lease in the event of the failure to comply with any of the above; and (7) to have consented to the entry of an order by an appropriate United States Bankruptcy Court providing all of the above, waiving notice and hearing of the entry of same.

b. Included within and in addition to any other condition or obligations imposed upon Tenant or its successor in the event of assumption and/or assignment are the following: (1) the cure of any monetary defaults and the reimbursement of pecuniary loss within not more than more than thirty (30) days of assumption and/or assignment; and (2) the deposit of an additional sum equal to three (3) months Rent to be held pursuant to the terms of Article 5 of this Lease; and (3) the use of the Premises as set forth in Article 7 of this Lease; and (4) the reorganized debtor or assignee of such debtor in possession or of Tenant's trustee demonstrates in writing that it has sufficient background including, but not limited to financial ability and experience to operate in the manner contemplated in this Lease and meets any other reasonable criteria of Landlord as did Tenant upon execution of this Lease; and (5) the prior written consent of any mortgagee to which this Lease has been assigned as collateral security; and (6) the Premises, at all times, remains a single location and no physical changes of any kind may be made to the Premises unless in compliance with the applicable provisions of this Lease.

19.3 Default by Landlord. In the event Landlord shall neglect or fail to perform or observe any of the covenants, provisions or conditions contained in this Lease on its part to be performed or observed within thirty (30) days after written notice of default or if more than thirty (30) days shall be required because of the nature of the default, if Landlord shall fail to proceed diligently to cure such default after written notice, then in that event Landlord shall be responsible to Tenant for any and all damages sustained by Tenant as a result of Landlord's breach. Tenant agrees, however, that any damages arising out of a money judgment against Landlord shall be satisfied only out of Landlord's estate in the Project, or as an offset against rent and Landlord shall have no personal liability whatsoever with respect to any such judgment. Tenant hereby waives, to the extent waivable under law, any right to satisfy said money judgment against Landlord except from Landlord's estate in the Project.

If the Premises or any part thereof are at any time subject to a first mortgage or a first deed of trust and this Lease or the rentals due from Tenant hereunder are assigned to such mortgages, trustee or beneficiary (called Assignee for purposes of this Article only) and Tenant is given written notice thereof, including the post office address of such Assignee, then Tenant shall give written notice to such Assignee, specifying the default in reasonable detail, and affording such Assignee a reasonable opportunity to make performance for and on behalf of Landlord. If and when the said Assignee has made performance on behalf of Landlord, such default shall be deemed cured.

ARTICLE 20. ADDITIONAL PROVISIONS

20.1 Subordination. At Landlord's option this Lease shall be subject to the lien of any deeds of trust in any amount whatsoever now or hereafter placed on or against the Premises or on or against Landlord's interest or estate therein, without the necessity of the execution and delivery of any further instruments on the part of Tenant to effectuate such subordination. If any trustee shall elect to have this Lease prior to the lien of its deed of trust, and shall give written notice thereof to Tenant, this Lease shall be deemed prior to such deed of trust, whether this Lease is dated prior or subsequent to the date of the recording thereof. Tenant covenants and agrees to execute and deliver upon demand without charge therefore, such further instruments evidencing such subordination of this Lease to the lien of any such deeds of trust as may be required by Landlord, so long as such instruments provide non-disturbance language reasonably acceptable to Tenant.

20.2 Quiet Enjoyment. Landlord covenants and agrees with Tenant that upon Tenant paying Rent and other monetary sums due under the Lease and performing its covenants and conditions, Tenant shall and may peaceably and quietly have, hold and enjoy the Premises for the term, subject, however, to the terms of the Lease and of any of the aforesaid deeds of trust described above.

20.3 Attornment. In the event of foreclosure or of the exercise of the power of sale under any deed of trust made by Landlord covering the Premises, Tenant shall attorn to the purchaser upon any such foreclosure or sale and recognize such purchaser as Landlord under this Lease, provided such purchaser expressly agrees in writing to be bound by the terms of the Lease.

20.4 Estoppel Certificate. Tenant shall within ten (10) days after receipt of a request therefore from Landlord execute, acknowledge and deliver to Landlord a statement in writing, (i) certifying that this Lease is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying that this Lease, as so modified, is full force and effect and the date to which the Rent and other charges are paid in advance, if any), and (ii) acknowledging that there are not, to Tenant's knowledge, any uncured defaults on the part of Landlord hereunder, or specifying such defaults, if any are claimed. Any such statement may be inclusively relied upon by a prospective purchaser or encumbrancer of the premises. Tenant's failure to deliver such statement within such time shall be conclusive upon Tenant, (i) that this Lease is in full force and effect without modification except as may be represented by Landlord, (ii) that there are no uncured defaults in Landlord's performance, and (iii) that not more than one month's Rent has been paid in advance. If Landlord desires to finance or refinance the project or any part thereof, Tenant hereby agrees to deliver to any lender designated by Landlord such financial statements of Tenant as may be reasonably required by such lender. All such financial statements shall be received by Landlord in confidence and shall be used only for the purposes herein set forth.

20.5 Transfer of Landlord's Interest. In the event of a sale or conveyance of Landlord or Landlord's interest in the Premises or the Building or the Project other than a transfer for security purposes only, Landlord shall be relieved from and after the date specified in such notice of transfer of all obligations and liabilities accruing thereafter on the part of Landlord, provided that any funds in the hands of Landlord at the time of transfer in which Tenant has an interest shall be delivered to the successor of Landlord. This Lease shall not be affected by any such sale and Tenant agrees to attorn to the purchaser or assignee provided all Landlord's obligations hereunder are assumed in writing by the transferee.

20.6 Captions. Attachments. Defined Terms. The captions of the Articles of this Lease are for convenience only and shall not be deemed relevant in resolving any questions of interpretation or construction of any section of this Lease. Exhibits attached hereto, and addendums and schedules initialed by the parties, are deemed by attachment to constitute part of this Lease and are incorporated herein. The words “Landlord” and “Tenant”, as used herein, shall include the plural as well as the singular. Words used in neuter gender include the masculine and feminine and words in the masculine or feminine gender include neuter. If the Tenants are husband and wife, the obligations shall extend individually to their sole and separate property as well as to their community property. The term “Landlord” shall mean only the owner or owners at the time in questions of the fee title to the Premises. The obligations contained in this Lease to be performed by Landlord shall be binding on Landlord’s successors and assigns only during their respective periods of ownership.

20.7 Entire Agreement. This instrument along with any exhibits and attachments hereto constitutes the entire agreement between Landlord and Tenant relative to the Premises and this Agreement and the exhibits and attachments may be altered, amended or revoked only by an instrument in writing signed by both Landlord and Tenant. Landlord and Tenant agree hereby that all prior or contemporaneous oral agreements between and among themselves and their agents and representatives relative to the leasing of the Premises are merged in or revoked by this Agreement.

20.8 Severability. If any term or provision of this Lease shall, to any extent, be determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Lease shall not be affected thereby, and each term and provision of this Lease shall be valid and be enforceable to the fullest extent permitted by law.

20.9 Costs of Suit. If Tenant or Landlord shall bring any action for any relief against the other declaratory or otherwise, arising out of this Lease, including any suit by Landlord for the recovery of Rent or possession of the Premises, the losing party shall pay the successful party a reasonable sum for attorneys fees which shall be deemed to have accrued on the commencement of such action and shall be paid whether or not such action is prosecuted to judgment. Should Landlord, without fault on Landlord’s part be made a party to any litigation instituted by Tenant or by any third party against Tenant, or by or against any person holding under or using the Premises by license of Tenant, or for the foreclosure of any lien for labor or materials furnished to or for Tenant or any such other person or otherwise arising out of or resulting from any act or transition of Tenant or of any such other person Tenant covenants to save and hold Landlord harmless from any judgment rendered against Landlord on the Premises or the Project, and all costs and expenses, including reasonable attorney’s fees, incurred by Landlord in or in connection with such litigation.

20.10 Time. Joint and Several Liability. Time is of the essence in this Lease and each and every provision hereof, except as to the conditions relating to the delivery of possession of the Premises to Tenant. All of the terms, covenants and conditions contained in this Lease to be performed by either party if such party shall consist of more than one person or organization, shall be deemed to be joint and several, and all rights and remedies of the parties shall be cumulative and non-exclusive of any other remedy at law or in equity.

20.11 Binding Effect: Choice of Law. The parties hereto agree that all the provisions hereof are to be constructed as both covenants and conditions; subject to any provisions restricting assignment or subletting by Tenant, and subject to Section 20.5 which binds the parties hereto and inures to the benefit of their respective heirs, legal representative successors, and assigns. This Lease shall be governed by the laws of the State of California.

20.12 Waiver. No covenant, term, or condition or the breach thereof shall be deemed waived, except by written consent of the party against whom the waiver is claimed and any waiver or the breach of any covenant, term, or condition shall not be deemed to be a waiver of any preceding or succeeding breach of the same or any other covenant, term, or condition. Acceptance by Landlord of any performance by Tenant after the time the same shall have become due shall not constitute a waiver by Landlord of the breach or default of any covenant, term, or condition unless otherwise expressly agreed to be Landlord in writing.

20.13 Surrender of Premises. The voluntary or other surrender of this Lease by Tenant, or a mutual cancellation thereof, shall not work a merger and shall, at the option of the Landlord, terminate all of any existing subleases or subtenancies, or may, at the option of Landlord, operate as an assignment to it of any or all such subleases or subtenancies.

20.14 Holding Over. If Tenant or anyone claiming under Tenant shall, with or without the written consent of Landlord, hold over the expiration or earlier termination of the term of this Lease, such tenancy shall be for an indefinite period of time on a month-to-month basis, which may be terminated as provided by law. During such tenancy Tenant agrees to pay to Landlord (i) Rent at the current fair market value of space in the Project, but in no event to be less than the highest rate provided for herein plus an additional amount equal to one hundred percent (100%) thereof, plus (ii) all other sums due under this Lease, and (iii) to be bound by all of the terms, covenants and conditions as specified herein.

20.15 Signs. Tenant shall not place or permit to be placed in or upon the Premises where visible from outside the Premises, or outside the Premises or any part of any Building within the Project, any signs, notices, drapes, shutters, blinds, or displays of any type without the prior written consent of Landlord and the approval of various city agencies including the Landmark's Preservation Commission where applicable.

20.16 Reasonable Consent. Except as limited elsewhere in this Lease, wherever in this Lease, Landlord or Tenant is required to give its consent or approval to any action on the part of the other, such consent or approval shall not be unreasonably withheld. In the event of failure to give any such consent, the other party shall be entitled to specific performance at law and shall have such other remedies as are reserved to it under this Lease, but in no event shall Landlord or Tenant be responsible in monetary damages for failure to give consent unless said failure is withheld maliciously or in bad faith.

20.17 Interest on Past Due Obligations. Except as expressly provided, herein, any overdue amount shall bear interest at a rate of ten percent (10%) per annum from the due date until the sum has been paid. Payment of such interest shall not excuse or cure any default by Tenant under this Lease.

20.18 Recording. Tenant shall not record this Lease without Landlord's prior written consent, and such recordation shall, at the option of Landlord, constitute a non-curable default or Tenant hereunder. Either party shall, upon request of the other, execute, acknowledge, and deliver to the other a short form memorandum of this Lease for recording purposes.

20.19 Notice. Wherever in this Lease it shall be required that notice or demand be given or served by either party to this Lease to or on the other, such notice or demand shall be given or served, and shall not be deemed to have been duly given or served unless in writing and forwarded by certified or registered mail, addressed to the addressees of the parties specified in Article 1 hereto. Either party may change such address by written notice by certified or registered mail to the other.

Notwithstanding anything to the contrary contained within this Article 20.19, any notices Landlord required or authorized to deliver to Tenant in order to advise Tenant of alleged violations of Tenant covenants contained in Article 20.15 (with respect to signs), Article 9 (failure of Tenant to properly repair and/or, maintain the Premises), Article 8.3 (Tenant's Rights and Obligations), Article 8.4 (improper parking of Tenant and Tenant's employees automobiles) must be in writing and shall be deemed to have been fully given or served upon Tenant by delivering a copy of such notice to one of Tenant's managing employees at the Premises and by mailing a copy of such notice to Tenant in the manner specified above.

20.20 No Reservations. Submission of this instrument for examination or signature by Tenant does not constitute a reservation or option for lease; it is not effective as a lease or otherwise until execution and delivery by both Landlord and Tenant.

20.21 Force Majeure. Any prevention, delay or stoppage due to strikes, lockouts, labor disputes, acts of God, inability to obtain labor or materials or reasonable substitutes thereof, governmental restriction, governmental regulations, governmental controls, enemy or hostile governmental actions, civil commotion, fire or other casualty, and other causes beyond the reasonable control of the party obligated to perform, shall excuse the performance by such party for a period equal to any such prevention, delay or stoppage, except the obligations imposed with regard to Rent and other charges to be paid by Tenant pursuant to this Lease.

20.22 Corporate Authority. If Tenant is a corporation, each individual executing this Lease on behalf of said corporation represents and warrants that he/she is duly authorized to execute and deliver this Lease on behalf of said corporation in accordance with the bylaws of said corporation, and that this Lease is binding upon said corporation in accordance with its terms.

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease to be effective as of the Effective Date:

LANDLORD:

Hawthorne/Stone Property Management

By: /s/ Andy Mehiel
Andy Mehiel
Agent for Owner

Date: 2/04/96

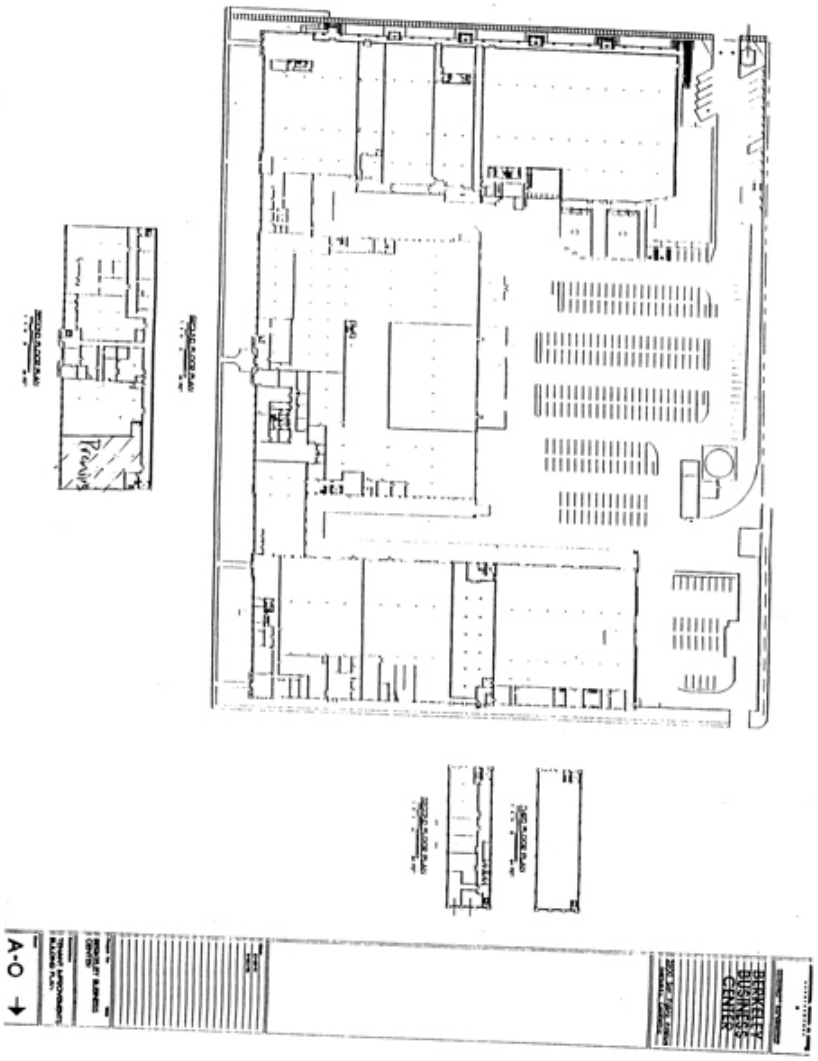
TENANT:

PowerLight Corporation

By: /s/ Tom Dinwoodie
Tom Dinwoodie
President

Date: 2/9/96

EXHIBIT A



FIRST ADDENDUM TO LEASE AGREEMENT

The following paragraphs are added to and become a part of that Lease Agreement dated February 9,1996 by and between Hawthorne/Stone Property Management Inc., and PowerLight Corporation, for those Premises at 2954 San Pablo Avenue, Berkeley, California.

The subject parties hereto hereby agree to amend the subject Lease as follows:

ARTICLE 21. IMPROVEMENTS TO PREMISES

Tenant agrees to accept the Premises in an "as is" condition except for the following improvements which the Landlord agrees to provide at his expense (detailed on attached Plan, exhibit B).

Provide adequate electrical outlets and power throughout the space.

Provide two overhead space heaters.

Build an eight foot high wall running east to west through the space as per Tenants plan. The wall will be finished on the office side but not drywalled on the side of the fabrication area.

Install two new entrance doors, one with glass panel and one interior office door to connect the office area and fabrication area.

Install plumbing and sink in fabrication area.

Demolition of existing private offices

ARTICLE 22. TENANT'S GUARANTEE OF QUIET ENJOYMENT

Tenant hereby acknowledges that their fabrication process of their products causes a degree of noise, smell and smoke that may be offensive to other Tenants in the building and cause them to lose their implied rights of quiet enjoyment of their Premises. In the event that this happens it is a condition of this Lease agreement that Tenant shall take whatever steps necessary to mitigate the problem. Those steps may include but not be limited to installing an exhaust system, changing the floor plan or doing production work on off hours. Pursuant to this, both parties hereby agree to install insulation in the demising wall when the contigous space is leased. The cost of the insulation to be shared $^{2}/_{3}$ to Landlord and $^{1}/_{3}$ to Tenant. Whatever the necessary solution, it is agreed by both parties that Tenant must resolve this issue in a timely manner if it becomes a problem or Landlord has the right to take one of the following steps.

1. Do the work and bill Tenant for cost. If this transpires then Landlord will present Tenant with an invoice for the work done and Tenant will have thirty (30) days to reimburse Landlord for at least 50% of the cost, with the remainder being amortized over the remaining Lease term. Any failure to do so will be considered a material default of the Lease and subject to the same terms and conditions as a failure to pay rent (Article 19.)

2. Terminate the remainder of Tenant's Lease with a written sixty (60) day notice. If this transpires then Tenant will be responsible for the amortizated repayment of the cost of Tenant's Improvements to occupy the Premises, using $30,000 as the total cost of those improvements and subtracting from that the total of monthly rent paid by Tenant. Landlord has the right to apply Tenant's security deposit to that amortized total owed.

ARTICLE 23. PAYMENT OF RENT

Rent shall be paid as follows:

Seventeen Hundred Dollars ($1,700,00) per month for the period of 3/01/96-6/30/96.

Nineteen Hundred Dollars ($1,900.00) per month for the period of 7/01/96-10/31/96.

Twenty One Hundred Dollars ($2,100.00) per month for the period of 11/01/96-2/28/97.

Twenty Two Hundred Dollars ($2,200.00) per month for the period of 3/01/97-2/28/98.

Twenty Four Hunched and Fifty Dollars ($2,450.00) per month for the period of 3/01/98-2/28/99.

Twenty Six Hundred and Fifty Dollars ($2,650.00) per month for the period of 3/01/99-2/28/00.

ALL OTHER TERMS AND CONDITIONS SHALL REMAIN THE SAME.

LANDLORD
Hawthorne/Stone Property Management

/s/ Andy Mehiel
Andy Mehiel
Agent for Owner

Date: 2/04/96

TENANT
PowerLite Corporation

/s/ Tom Dinwoodie
Tom Dinwoodie
President

Date: 2/9/96

SECOND ADDENDUM TO LEASE AGREEMENT

The following paragraphs are added to and become a part of that Lease Agreement dated February 9, 1996 by and between Hawthorne/Stone Property Management, Inc., and PowerLight Corporation, for those Premises at 2954 San Pablo Avenue, Berkeley, California.

The subject parties hereto hereby agree to amend the subject Lease as follows:

ARTICLE 24. EXTENSION OF LEASE TERM

Tenant hereby agrees to extend their Lease Agreement for an additional five-year term commencing on March1,2000 and expiring on February 28, 2005 under the following terms and conditions.

PAYMENT OF RENT

Tenant shall pay rent during the extended term as follows:

$3600.00 per month for the first year of the term (3/01/2000-2/28/2001).

$4060.00 per month for the second year of the term (3/01/2001-2/28/2002).

$4567.00 per month for the third year of the term (3/01/2002-2/28/2003).

$5075.00 per month for the fourth year of the term (3/01/2003-2/28/2004).

$5582.00 per month for the fifth year of the term (3/01/2004-2/28/2005).

CONDITION OF PREMISES

[MARCH 1, 2005 - FEB. 28, 2006 - 5836/mo]

[MARCH 1, 2006 - DEC. 31, 2006 - 6090/mo (see addendum 3)]

Tenant agrees to accept the Premises in an “as is” condition.

ARTICLE 25. EARLY TERMINATION OF LEASE TERM

Both Landlord and Tenant recognize the possibility that Tenant’s business growth may create a scenario in which Tenant may have to seek larger Premises for their business before the term of this Lease Agreement has expired. In that situation Tenant may need to explore the possibility of an early termination of this Lease Agreement and to vacate the Premises before the expiration of the Lease term. Although it is always Landlord initial preference to try to re-lease the Premises to a new Tenant or if not possible to work with Tenant to sub-lease the Premises, in the event that neither scenario can be accomplished then Landlord agrees to allow Tenant to have the right to an early termination of this Lease Agreement under the following terms and conditions.

1. Provided that Tenant not be in default of any terms or conditions of the Lease Agreement then Tenant can at anytime after 33 months of the Lease term has expired send Landlord a 3 month written notice of his intention to vacate the Premises and seek an early termination of the Lease Agreement after a minimum tenancy of 36 months known herein to be March 1, 2003.

2. Tenant must pay a sum of $36,000.00 to Landlord if he chooses to terminate the Lease Agreement as of March 1, 2003 or One Thousand Dollars ($1,000.00) less each and every month thereafter through the life of the term in order to terminate the Lease Agreement before it’s original expiration date. For example if Tenant wishes to seek to terminate this Lease agreement as of March 1, 2004 he would be responsible for a $24,000.00 payment to Landlord. It is understood that Tenant is responsible for his rent throughout this early termination notice period throughout his tenancy and this buyout payment due is in addition to Tenant’s regular monthly rent.

3. Payment must be made as follows: Tenant to pay Landlord a third of the required amount at the time that his three month written notice is sent. Tenant to then pay Landlord another third of the amount thirty days later and the final third of the payment is due in another thirty days. Payment must be sent to Landlord's office the same address that Tenant sends their monthly rent to. Within ten days of Tenant's vacating the Premises in a clean and orderly manner Landlord will refund Tenant's security deposit and give Tenant a written release of the Lease Agreement at that time as well.

ALL OTHER TERMS AND CONDITIONS OF THIS LEASE AGREEMENT SHALL REMAIN THE SAME.

LANDLORD
Hawthorne/Stone Property Management, Inc.

/s/ Andy Mehiel
Andy Mehiel
Agent for Owner

Date: 1/20/2000

TENANT
PowerLight Corporation

/s/ Tom Dinwoodie
Tom Dinwoodie
President

Date: 1/20/2000

THIRD ADDENDUM TO LEASE AGREEMENT

The following paragraphs are added to and become a part of that Lease Agreement dated February 9, 1996 by and between Hawthorne/Stone Property Management Inc., and PowerLight Corporation for those Premises at 2954 San Pablo Avenue, Berkeley, California.

The subject parties hereby agree to amend the subject Lease as follows:

ARTICLE 26. LEASING OF ADDITIONAL PREMISES

Tenant agrees to lease additional premises in the building, specifically 2930 San Pablo Avenue, a space of approximately +/- 10,800 square feet under the following terms and conditions.

PREMISES:

Approximately +/- 10,800 square feet that is divided into +/- 6000 feet of office space and +/- 4800 feet of warehouse space located at 2930 San Pablo Avenue, Berkeley. The space has a front entrance off of San Pablo Avenue and rear entrance with a roll-up door and dock high access.

TERM:

The term shall be for five (5) years commencing January 1, 2002 or at the completion of the Tenant Improvements whichever comes later. [2/1/02]

RENT:

The rental rate for the additional Premises at 2930 San Pablo Avenue, Berkeley shall be as follows:

$9,720 per month for the first year of the term. [2/1/02 - 1/31/03]

$10,800 per month for the second year of the term. [2/1/03 - 1/31/04]

$ 11,880 per month for the third year of the term. [2/1/04 - 1/31/05]

$ 12,420 per month for the fourth year of the term. [2/1/05 - 1/31/06]

$12,960 per month for the fifth year of the term. [2/1/06 - 1/31/07]

PREPAID RENT:

Upon the execution of this Lease Agreement Tenant agrees to prepay the first two months rent for the premises known herein to be $19,440.00.

IMPROVEMENTS TO PREMISES:

The Landlord agrees to provide the following improvements to the premises at his expense as described generally herein and detailed on the attached floor plans and construction documents labeled Exhibit B.

In the +/- 6000 square feet of office space the improvements shall be:

Premises re-carpeted with building standard glued down commercial grade carpet and new commercial grade vinyl in restrooms and utility room.

Repaint ceiling, walls, windows, columns, doors and casings.

Tenant to choose colors and specifications of all of the above within building standard price range.

Specific demising walls removed, new demising walls built as per attached floor plan.

New entry doors installed off of main lobby. The style and quality of the doors to be of existing building standard.

Removal of T-Bar ceiling, troffer lighting, HVAC flex ducting and registers, support wires and fasteners.

New spiral HVAC ducting to be installed to serve new floor plan (see attached diagram).

New building standard lighting fixtures installed. Tenant to have the option of upgrading all light fixtures at their expense with Landlord contributing the cost of building standard fixtures. That allowance is $100 per fixture. This applies to the light fixtures in the warehouse space as well.

Adequate electrical outlets and switches installed as per the submitted floor plan

A steel staircase to be installed within the premises to connect it to the PowerLight premises above it at 2954 San Pablo Avenue.

Existing ABS waste lines for PowerLight sink in 2954 San Pablo to be replaced with copper as per U.B.C.

New double wide utility sink to replace existing utility sink.

In the +/- 4800 feet of warehouse space the improvements shall be:

The +/- 4800 square feet of warehouse space is to be created by building new demising walls in the present warehouse.

The walls, ceilings, doors and columns are to be repainted. Tenant to choose color.

Existing electrical service upgraded to furnish required power and voltages as per submitted plan.

Building standard lighting fixtures and switches to be installed.

The entire electrical service (office and warehouse) to be re-wired to be on one meter that is Tenant’s responsibility.

5000 CFM ventilation system to be installed.

SECURITY DEPOSIT:

Upon taking occupancy of the Premises Tenant agrees to pay Landlord a security deposit of $19,050.00 pursuant to all leasehold terms and conditions contained in **ARTICLE 5 SECURITY DEPOSIT.** It is stated here that Tenant presently has a security deposit of $2,650.00 already on file for those premises at 2954 San Pablo; therefore an additional $16,400.00 is required. This will represent the entire security deposit required for both of Tenant's Premises, 2930 San Pablo Avenue & 2954 San Pablo Avenue.

ARTICLE 27. EXTENSION OF LEASE TERM FOR 2954 SAN PABLO AVENUE, BERKELEY

Tenant agrees to extend their lease term for those premises at 2954 San Pablo Avenue, Berkeley for an additional 22 months from it's present expiration date of February 28, 2005 to December 31, 2006 under the following terms and conditions:

TERM:

The lease term for 2954 San Pablo Avenue, Berkeley, California shall be extended through February 28, 2006 making it concurrent with the lease term for those Premises PowerLight will occupy at 2930 San Pablo Avenue, Berkeley.

RENT:

The rent for the 2954 San Pablo Avenue premises shall be as follows for the extended period.

$5,836.00 per month for the period of March 1, 2005 through February 28, 2006.

$6,090.00 per month for the period of March 1, 2006 through December 31, 2006.

REVOCATION OF ARTICLE 25. EARLY TERMINATION OF LEASE TERM

In consideration of the Landlord's improvements to 2930 San Pablo Avenue and PowerLight's leasing of those premises it is agreed that Article 25. Early Termination of Lease Term shall be rescinded and is null and void as of the execution of this addendum.

ARTICLE 28. OPTION TO LEASE CONTIGUOUS SPACE

Provided that Tenant is not in default of any of the terms and conditions of their Lease Agreement then Tenant shall have the following Options during the term of their Lease. In the event that a Lease expires on space contiguous to 2930 San Pablo Avenue and the existing Tenant chooses not to re-lease those premises then PowerLight has a one week Option upon receipt of a written notice from Landlord to negotiate a new lease on the vacant contiguous space at fair market value, or this option is null and void and Landlord is free to lease the Premises to another tenant. The contiguous spaces are:

2970 San Pablo Avenue	7800 square feet
2910 San Pablo Avenue	7650 square feet
2936 San Pablo Avenue	3619 square feet

These premises will not be further subdivided.

ALL OTHER TERMS AND CONDITIONS SHALL REMAIN THE SAME

LANDLORD
Hawthorne/Stone Property Management Inc.

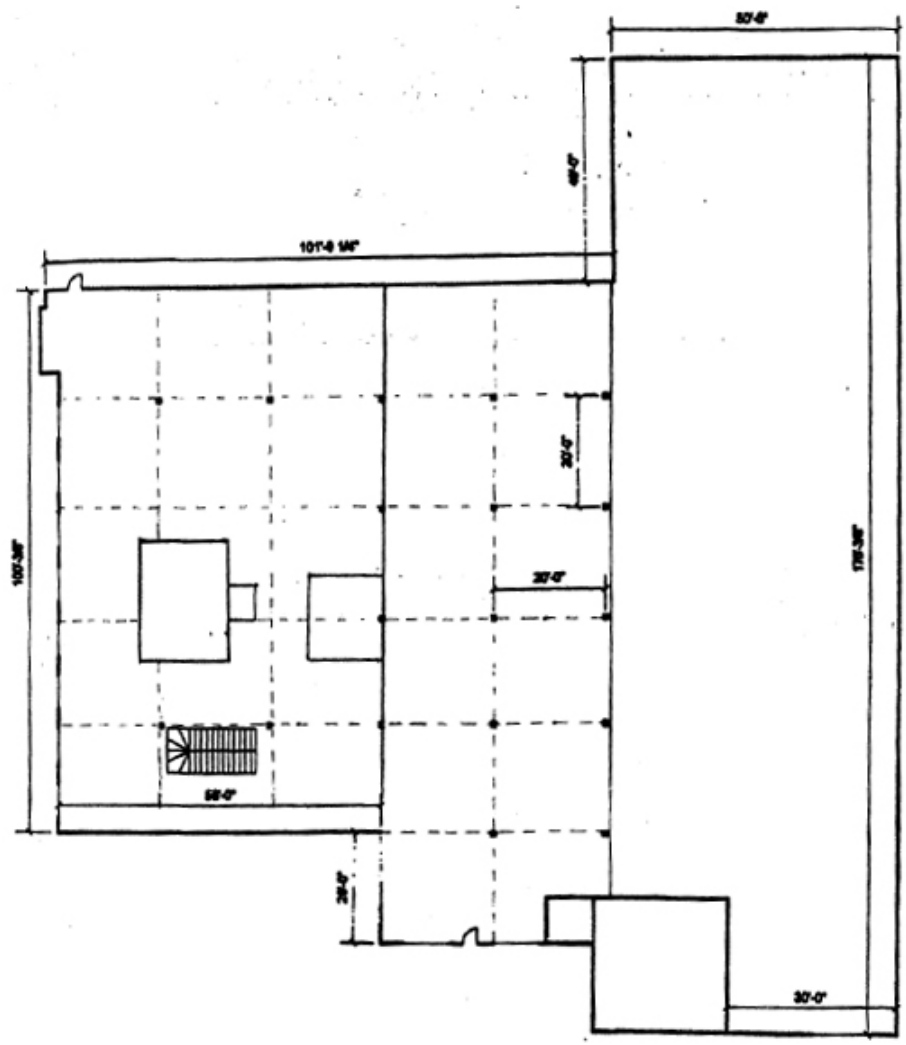
/s/ Andy Mehiel
Andy Mehiel
Agent for Owner

Date: 9/13/01

TENANT
PowerLight Corporation

/s/ Tom Dinwoodie
Tom Dinwoodie
President

Date: Aug. 31, 2001



[8/30/01]

Melissa Zucker

From: **Ann Torres [atorres@powerlight.com]**
Sent: **Wednesday, August 01, 2001 9:18 AM**
To: **Melissa Zucker (E-mail)**
Co: **Mike Schober (E-mail); Colleen OBrien (E-mail); Jeff Ansley (E-mail); Jonathan Botkin (E- mail)**
Subject: **New R&D space**

Hey Melissa,

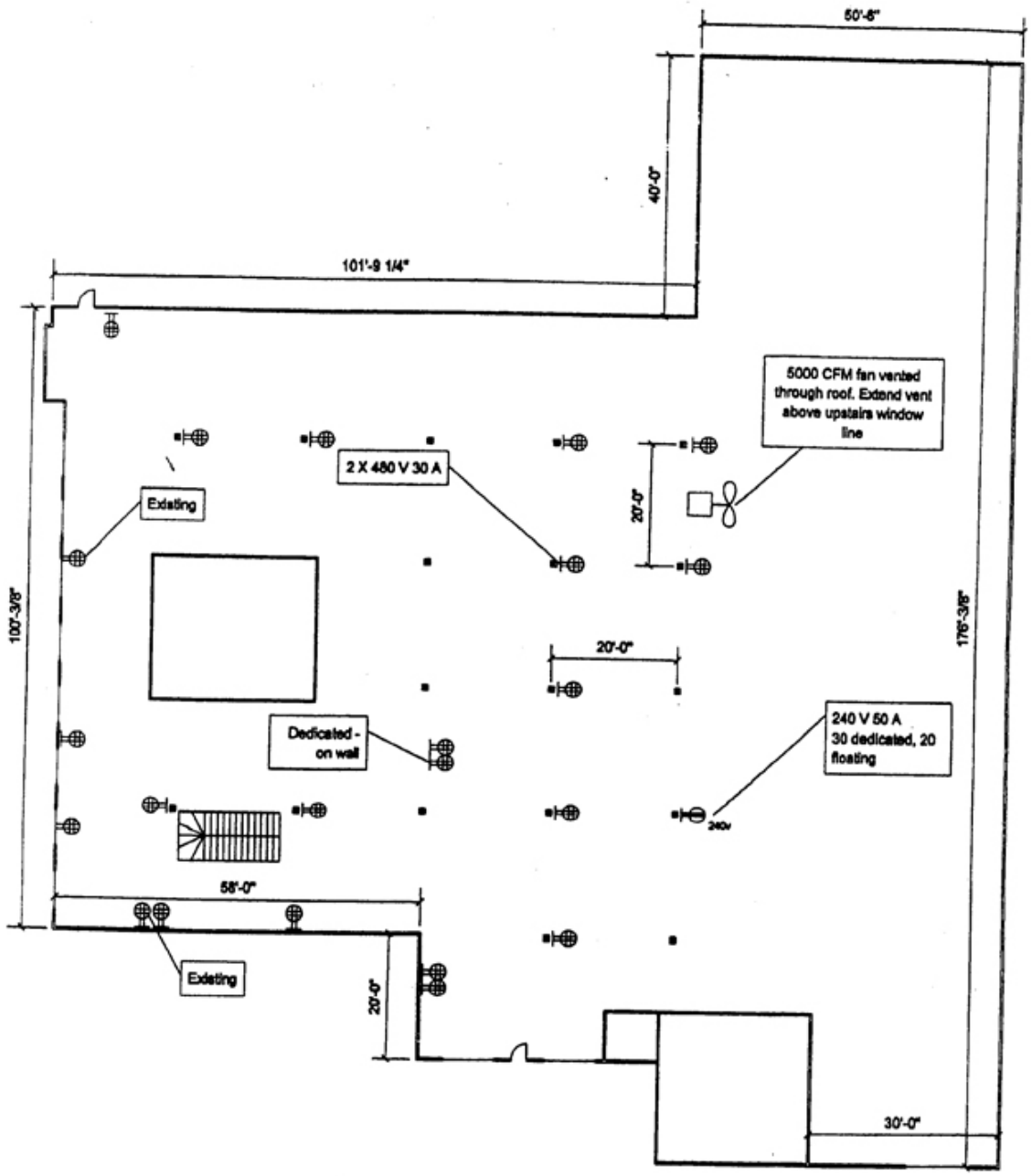
The engineering group came up with the following requirements for the new R&D space:

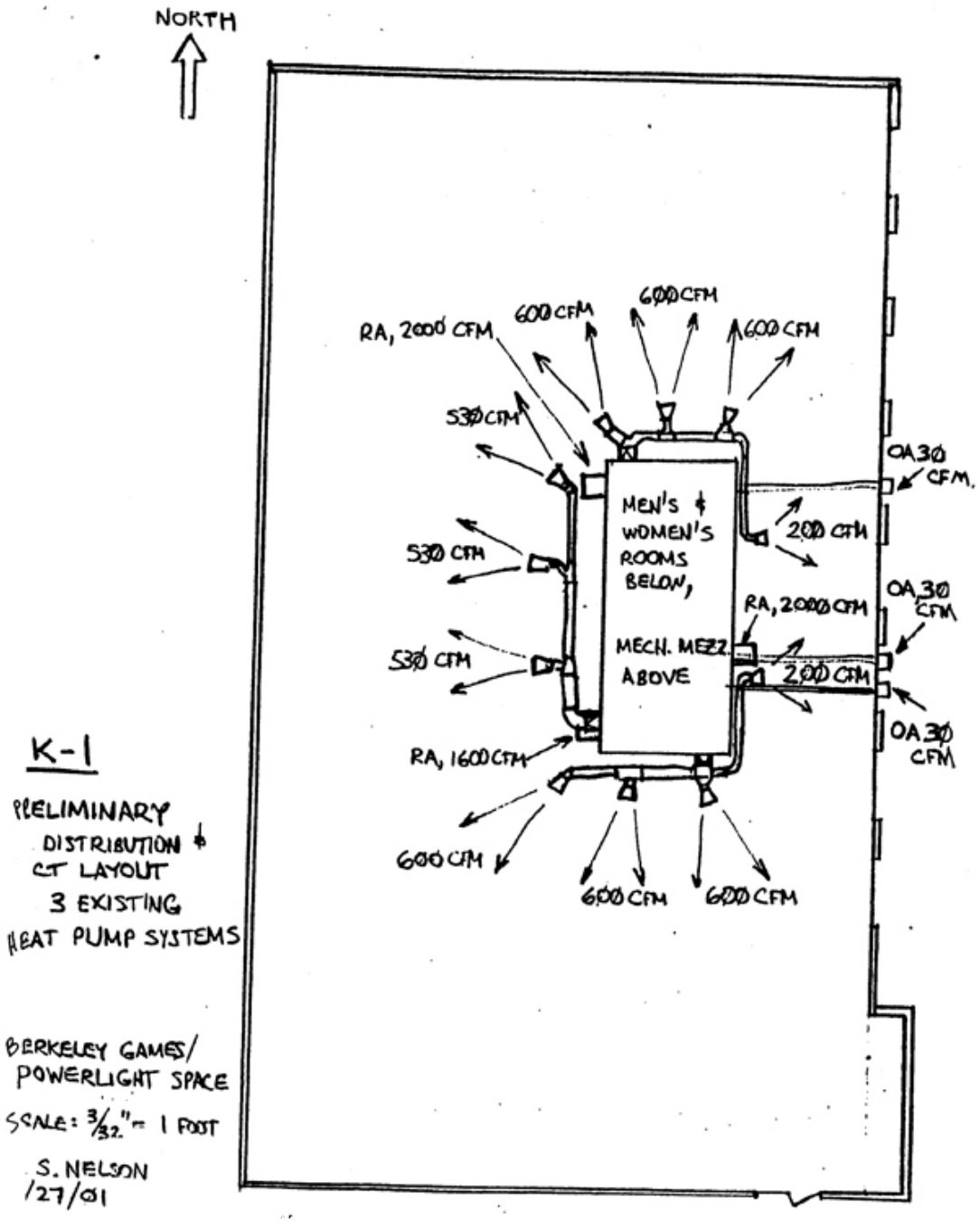
Size:	
At least 2400 sq ft	[4800]
Electrical:	
• double gang (4 outlets) / column (20 sq ft) : 110V 30A • 2x 208V 50A • 2x 480V 30A • 1x 240V 50A: 30A dedicated, 20A floating	[APPROVED H/S]
Ventilation:	
A system with at least 5,000 cfm fan	[APPROVED H/S]
Floor:	
white epoxy floor	[POWERLIGHT]
Lighting:	
Instant start electrically ballasted T-8 835 lamps 80-100 ft candles for office, 100-200 ft candles for work areas	[APPROVED H/S WITH STIPULATIONS BASED ON FORTHCOMING SPECS. CONDITIONAL]
Heating/Climate control:	
at least the same as current office w/ bi-directional fans	[277 VLT INFRARED EXISTING SEE VENTILATION]
Walls:	
Similar to current office: white walls, blue columns	[APPROVED H/S]
Sound proofing:	
Sound barrier between R&D and office space Sound barrier needed for compressor	[POWERLIGHT]
Bay Doors:	
Lockable screens/fences for ventilation	[POWERLIGHT]
Roof Access:	
To install R&D array	[NOT RELEVANT]

Thanks.

I hope we get the space downstairs.

If you have any other questions, let me know.


50'-6"
40'-0"
101'-9 1/4"
5000 CFM fan vented through roof. Extend vent above upstairs window line
2 X 480 V 30 A
Existing
20'-0"
100'-3/8"
176'-3/8"
20'-0"
Dedicated - on wall
240 V 50 A
30 dedicated, 20 floating
240v
58'-0"
Existing
20'-0"
30'-0"


NORTH
RA, 2000 CFM
600 CFM
600 CFM
600 CFM
530 CFM
530 CFM
530 CFM
MEN'S & WOMEN'S ROOMS BELOW,
MECH. MEZZ. ABOVE
OA 30 CFM.
200 CFM
RA, 2000 CFM
OA 30 CFM
200 CFM
OA 30 CFM
RA, 1600 CFM
600 CFM
600 CFM
600 CFM
K-1
PRELIMINARY
DISTRIBUTION & CT LAYOUT
3 EXISTING
HEAT PUMP SYSTEMS
BERKELEY GAMES/
POWERLIGHT SPACE
SCALE: 3/32" = 1 FOOT
S. NELSON
/27/01

Golden State Steel & Stair, Inc.
P. O. Box 5203 Vacavile, CA 95696
Phone: 510-765-2308 Fax: 510-763-5505 License # 696083

PROPOSAL

DATE: July 26,2001
TO: Berkeley Business Center
ATTENTION: Doug Kelly
FROM: John Tuttle
PROJECT: New interior stairway

PRICE INCLUDES:

1. Design drawings and engineering calculations for new stairway
2. Brackets welded to existing steel beams for new wood headers by others at floor opening
3. (2) flights of steel stairs (approximately 27 risers total)
4. (1) Intermediate steel stair landing with 4 posts and bracing as required
5. Steel guardrails and handrails at stair and landing
6. Steel guardrails around new floor opening
7. One shop cost of prime paint
8. Installation
9. Sales tax

PRICE:

PRICE DOES NOT INCLUDE:

1. Demolition, shoring, cutting, or patching of existing items
2. Foundations
3. Fasteners for other trades
4. Aluminum, stainless steel, or other non-ferrous metals
5. Galvanizing
6. Finish paint
7. Costs of testing or inspection
8. Permits

NOTES:

1. Several different stair tread materials are available for this price, including checker plate, precast concrete, or pan-fill type.
2. Several different railing styles are available for this price.
3. We do not yet know whether new foundation work will be required. If any new foundations are required, our engineer will design them, but we will not include their construction.
4. We do not yet know whether wood framing work will be required at new floor opening. If any new framing is required, our engineer will design it, but we will not include its construction.

TERMS:

10% Down

Additional 10% due upon submittal of design

Net 30 days

No retention

Thank you for the opportunity to quote on this project.

Please Indicate your acceptance of this proposal with authorized signature and data below:

Sign _____ Date _____

FOURTH ADDENDUM TO LEASE AGREEMENT

The following paragraphs are added to and become a part of that Lease Agreement dated February 9, 1996 by and between Hawthorne/Stone Property Management Inc., and PowerLight Corporation for those Premises at 2954 San Pablo Avenue, Berkeley, California.

The subject parties hereby agree to amend the subject Lease as follows:

ARTICLE 29. LEASING OF ADDITIONAL PREMISES

Tenant agrees to lease those Premises at 2936 San Pablo Avenue, Berkeley, a warehouse premises of +/- 3619 square feet under the following terms and conditions:

TERM

Two years commencing February 1, 2002 and expiring January 31, 2004.

RENT

Twenty Eight Hundred Dollars ($2,800.00) per month for the first year of the term. [773]

Three Thousand Dollars ($3,000.00) per month for the second year of the term. [.828 7%]

Rent to be charged on a gross basis, Tenant to be responsible for their own utilities, janitorial and phone service. [.857 35]

IMPROVEMENTS TO PREMISES

Tenant agrees to accept the Premises in an “as is” condition except for the following improvements which Landlord shall provide at his expense.

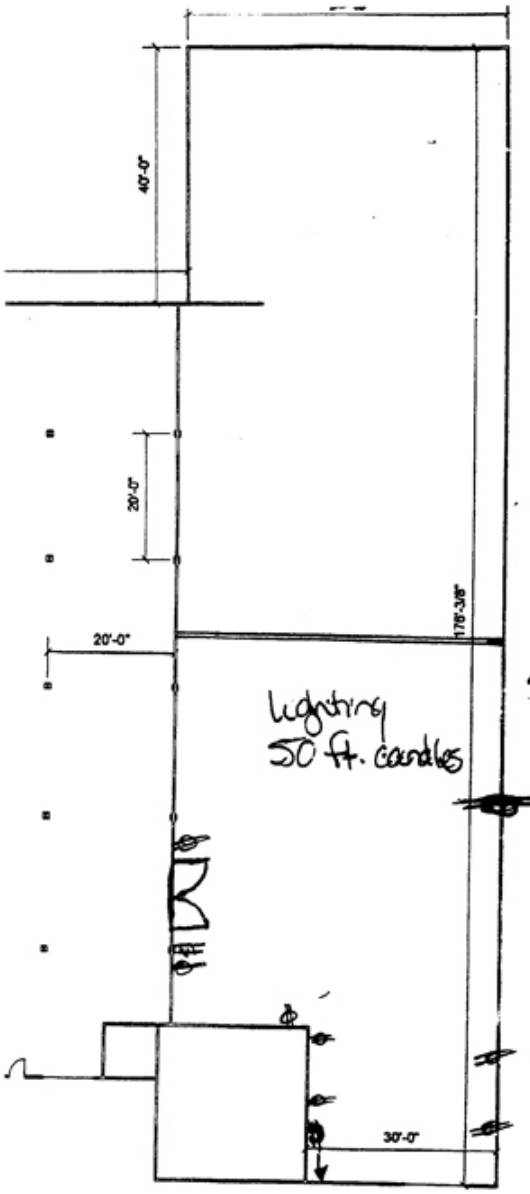
Landlord to re-paint the walls, columns and roll-up doors only of the warehouse, not the ceiling.

Landlord to install building standard industrial light fixtures as needed and electrical outlets as indicated on the plans presented by PowerLight to the Berkeley Business Center, labeled Exhibit C and attached to this addendum.

Landlord to install a door from Tenants Premises at 2930 San Pablo Avenue to 2936 San Pablo.

ALL OTHER TERMS AND CONDITIONS SHALL REMAIN THE SAME.

LANDLORD	**TENANT**
Hawthorne/Stone Property Management Inc.	**PowerLight Corporation**
/s/ Andy Mehiel	**/s/ Thomas Dinwoodie**
Andy Mehiel	
Agent for Owner	
Date: 1/04/02	**Date: 1/03/02**



Lighting
50 ft. candles

Doves
3619 sq. ft
2536 San Pablo

Exhibit C

$ Switches - Lighting -

Outlets - 4plex

3619
660
2959

484

22
30
60

Qm

FIFTH ADDENDUM TO LEASE AGREEMENT

The following paragraphs are added to and become a part of that Lease Agreement dated February 9, 1996 by and between Hawthorne/Stone Property Management Inc., as Landlord and PowerLight Corporation as Tenant for those Premises at 2954 San Pablo Avenue, Berkeley, California.

The subject parties hereby agree to amend the subject Lease as follows:

ARTICLE 30. RESERVED PARKING FOR ELECTRIC VEHICLES

As part of their existing Lease provisions for parking Landlord agrees to grant Powerlight Corporation the exclusive use of two reserved parking spaces in the parking lot under the following terms and conditions:

Landlord is granting Tenant the use of the two (2) southernmost parking spaces in the portion of the parking lot directly west of the Dharma warehouse (2912 San Pablo Avenue). These spaces are contiguous to the Orchard pick-up and delivery exterior fence and detailed on the site plan.

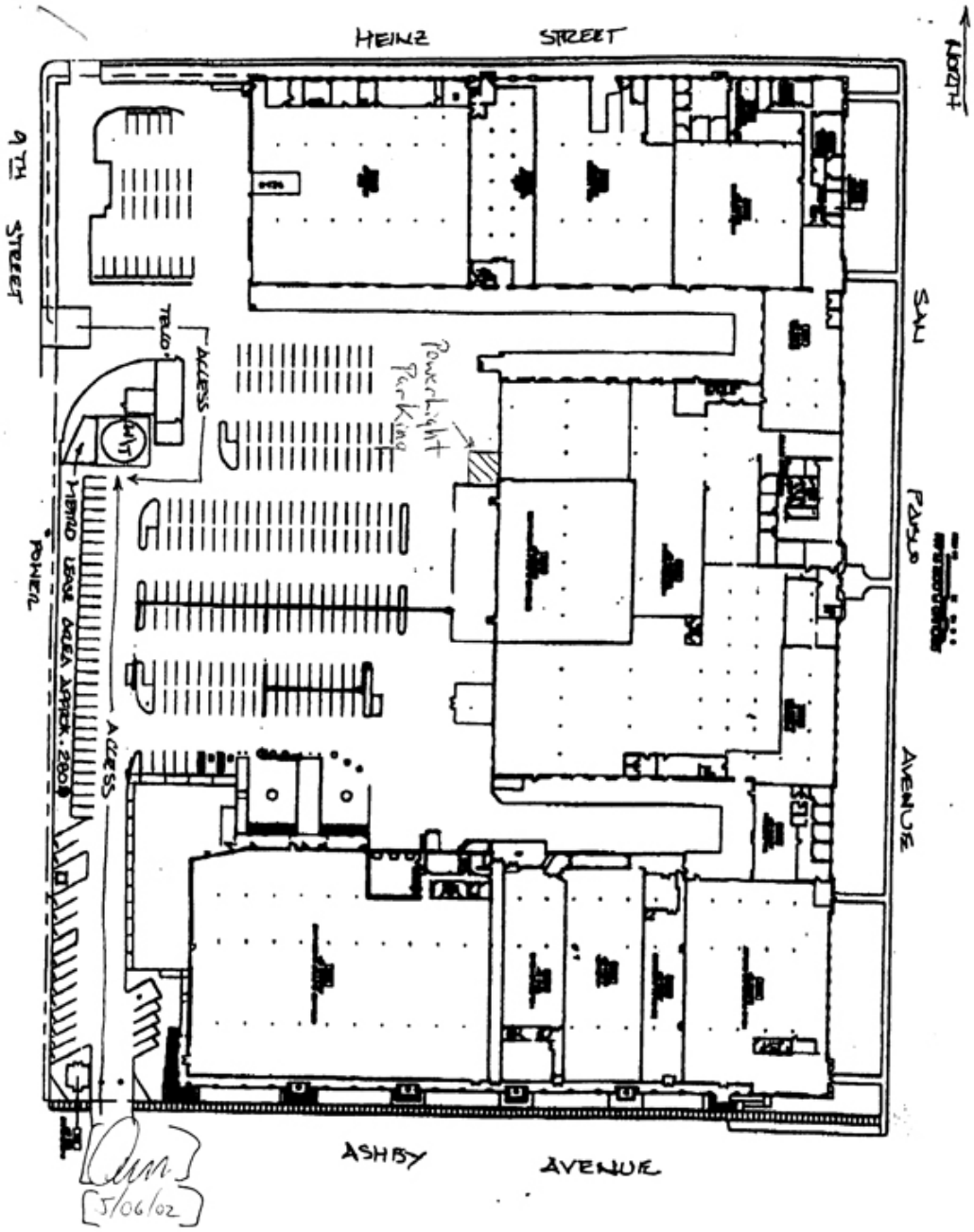
Tenant is responsible for installing a power source to the parking spaces that is connected to Tenant's existing electrical service and meter. Tenant may affix a permanent sign to the exterior of the building to designate the appropriate spaces provided that Landlord approves the sign prior to its installation. Landlord will paint an appropriate reserved designation on the pavement the next time Landlord re-stripes other portions of the parking lot.

In the event that Landlord requires the use of these two parking spaces in order to re-lease the premises directly contiguous to the spaces (presently leased to Dharma Publishing) or for any other reason including but not limited to those terms and conditions of ARTICLE 8. COMMON AREAS, specifically article 8.1 Definition and article 8.2 Maintenance. Landlord may cancel Tenant's use of the parking spaces and retake possession of the specific spaces with no cost or liability whatsoever to Landlord including any cost to Tenant to remove or relocate their existing power source or damage caused by the loss of the use of their electric vehicles. Landlord has the right to require Tenant to remove all conduit or electrical equipment that Tenant has installed on the building if he so desires. Landlord will use his best efforts to try and provide Tenant with alternative spaces for their electric vehicles but it is not guaranteed by this agreement.

ALL OTHER TERMS AND CONDITIONS SHALL REMAIN THE SAME.

LANDLORD	**TENANT**
Hawthorne/Stone Property Management, Inc.	**PowerLight Corporation**
/s/ Andy Mehiel	**/s/ Dan Shugar**
Andy Mehiel	**Dan Shugar**
Agent for Owner	**President**
Date: 5/06/02	**Date: 5/6/02**

ATTACHMENT B1



SIXTH ADDENDUM TO LEASE AGREEMENT

The following paragraphs are added to and become a part of that Lease Agreement dated February 9,1996 by and between Hawthorne/Stone Property Management Inc., as Landlord and PowerLight Corporation as Tenant for those Premises at 2954 San Pablo Avenue, Berkeley, California.

The subject parties hereby agree to amend the subject Lease as follows:

ARTICLE 31. LEASING OF ADDITIONAL PREMISES

Tenant agrees to lease those premises at 2980 San Pablo Avenue, Berkeley, California, an office premises of +/- 2800 square feet under the following terms and conditions.

TERM:

Two years commencing April 1,2003 and expiring on March 31,2005.

OPTION TO EXTEND:

Provided that they not be in default of any terms or conditions of their Lease Agreement then Tenant shall have an option to extend the term of this agreement for an additional two (2) years under all the same terms and conditions provided that Tenant gives Landlord a written notice of their intention to exercise their option no later than one hundred and twenty (120) days prior to the expiration of this agreement.

RENT:

Tenant agrees to pay rent as follows:

$3,080.00 gross per month for the period of 4/01/03-3/31/04. [4%]

$3,203.20 gross per month for the period of 4/01/04-3/31/05. [3.5% = 3315^{30}]

Tenant to be responsible for their utilities and janitorial service.

IMPROVEMENTS TO PREMISES:

Tenant agrees to accept the premises in an “as is” condition except for the following improvements which Landlord agrees to install at his own expense.

Repaint the premises with a base color throughout and steel trusses painted PowerLight blue.

Install Finelite series 8 lighting fixtures and the appropriate title 24 emergency lighting as per the lighting plan attached to this agreement.

Clean the existing carpet.

Install a ceiling and HVAC register on the existing office space adjacent to the east wall along the San Pablo Avenue exterior. Ceiling is to be sheet-rocked on the bottom only. Install a 3’ by 4’ window in the west wall of the office.

ARTICLE 32. OPTION TO LEASE PREMISES AT 2960 SAN PABLO AVENUE, BERKELEY, CA.

Landlord hereby grants Tenant the option to lease those premises at 2960 San Pablo Avenue, Berkeley, California under the following terms and conditions.

Provided that the existing Tenant in 2960 San Pablo Avenue, Meyer Sound Laboratories, Inc., does not sign a written agreement to extend their tenancy before September 1, 2003

and provided that PowerLight not be in default of any terms or conditions of their Lease Agreement, then PowerLight shall have the first option to enter into a lease agreement for the premises under the following terms and conditions.

Landlord to notify PowerLight in writing within three days of September 1,2003 that the Premises are available. PowerLight has five (5) business days in which to execute a Lease Agreement for the Premises, under the following terms and conditions. In the event that PowerLight does not execute a Lease Agreement within the prescribed five (5) business days then landlord is not bound by this option and is free to lease the premises to any Tenant they choose. The terms and conditions of the "Option" Agreement are stated herein and arc as follows:

TERM:

The term shall be for fifteen (15) months commencing January 1,2004 and expiring on March 31, 2005. There will be no additional term unless expressly agreed in writing.

RENT:

Tenant to pay rent as follows:

$4,788.00 "gross rent" per month for the period of 1/01/04-12/31/04. [4/1/04]
$4,979.52 "gross rent" per month for the period of 1/01/05-3/31/05.
Tenant to be responsible for their utilities and janitorial service.

SECURITY DEPOSIT:

Upon execution of the Lease Agreement, Tenant to deposit with Landlord a security deposit of $4,979.00 pursuant to all the terms and contains stated in Article 5. SECURITY DEPOSIT of the Lease Agreement.

IMPROVEMENTS TO THE PREMISES:

Tenant agrees to accept the premises in an "as is" condition except for the following improvements which Landlord agrees to provide at their expense.

Repaint the premises with a base color throughout and the steel trusses painted blue.

Clean the carpet.

Replace existing lighting with Finelite series 8 lighting throughout the premises as per lighting plan attached to this agreement. However both parties agree that Landlord and Tenant shall share the cost of purchasing and installing the lighting as per the following agreement. Landlord to pay 62.5% of the total cost for the purchase of and installation of the light fixtures and Tenant to pay 37.5% of the total cost for the purchase of and installation of the light fixtures. Both parties agree to reimburse the appropriate contractors directly at the time of the invoicing. In the event that Tenant agrees to extend their tenancy beyond the expiration date of this agreement through December 31, 2005 then landlord will reimburse 100% of Tenant's prorated share of the lighting costs.

ALL OTHER TERMS AND CONDITIONS SHALL REMAIN THE SAME.

LANDLORD	**TENANT**
Hawthorne/Stone Property Management, Inc.	**PowerLight Corporation**
/s/ Andy Mehiel	**/s/ Subramaniam Janakiraman**
Andy Mehiel	**Subramaniam Janakiraman**
Agent for Owner	**CFO**
Date: 2/20/03	**Date: Feb. 20, 2003**

SEVENTH ADDENDUM TO LEASE AGREEMENT

The following paragraphs are added to and become a part of that Lease Agreement dated February 9,1996 by and between Hawthorne/Stone Property Management Inc., as Landlord and PowerLight Corporation as Tenant for those Premises at 2954 San Pablo Avenue, Berkeley, California.

The subject parties hereby agree to amend the subject Lease as follows:

ARTICLE 33. EXTENSION OF LEASE TERM FOR 2936 SAN PABLO, AVENUE, BERKELEY, CA.

Tenant agrees to renew their lease Agreement and extend the term of their lease for their Premises at 2936 San Pablo Avenue, Berkeley, California, a warehouse premises of +/-3619 square feet under the following terms and conditions.

TERM:

13 months commencing February 1, 2004 and expiring on February 28,2005.

RENT:

Tenant agrees to pay rent as follows:

Three Thousand Dollars ($3,000.00) per month gross rent for the period of 2/01/04-2/28/05. [3.5% = 3105$\frac{00}{}$]

Tenant agrees to accept the premises in an “as is” condition.

ALL OTHER TERMS AND CONDITIONS SHALL REMAIN THE SAME.

LANDLORD	**TENANT**
Hawthorne/Stone Property Management, Inc.	**PowerLight Corporation**
/s/ Andy Mehiel	**/s/ Subramaniam Janakiraman**
Andy Mehiel	**Subramaniam Janakiraman**
Agent for Owner	**CFO**
Date: 12/18/03	**Date: December 18, 2003**

EIGHTH ADDENDUM TO LEASE AGREEMENT

The following provisions are added to and become a part of that Lease Agreement dated February 9, 1996 by and between Hawthorne/Stone Property Management Inc., as Landlord and PowerLight Corporation as Tenant for those Premises at 2954 San Pablo Avenue, Berkeley, California.

The subject parties hereby agree to amend the subject Lease as follows:

ARTICLE 34. EXTENSION OF LEASE TERM FOR 2930 & 2954 SAN PABLO AVENUE, BERKELEY, CA.

Tenant desires to extend the term of their Lease Agreement for those premises at 2930 San Pablo Avenue and 2954 San Pablo Avenue, Berkeley, California under the following terms and conditions.

TERM:

Two years commencing February 1, 2007 and expiring on January 31, 2009.

RENT:

Tenant shall pay rent for the extended term as follows:

For the period of February 1,2007 through January 31, 2008 the total combined rent for 2930 San Pablo Avenue and 2954 San Pablo Avenue shall be $19,844.00 per month.

For the period of February 1, 2008 through January 31, 2009 the total combined rent for 2930 San Pablo Avenue and 2954 San Pablo Avenue shall be $20,637.00 per month.

TENANT IMPROVEMENTS:

As a material part of this agreement Landlord agrees to share equally with Tenant (up to a maximum of $23,002.00) the cost of installing a new HVAC system in 2954 San Pablo and the cost of new light fixtures for 2954 San Pablo Avenue. Provided that Tenant not be in default of any of the terms and conditions of the Lease, then upon execution of this agreement and upon receipt of an applicable lighting invoice from Tenant, Landlord to reimburse Tenant $4,512.50 for the purchase of light fixtures with the understanding that Tenant will install those fixtures within four months of the execution of this agreement.

Additionally Landlord agrees to provide $18,489.50 towards the cost of installing an HVAC system in 2954 San Pablo Avenue. Landlord agrees to make equal payments with Tenant direct|y to Simonsen Air Conditioning during the course of the installation. Tenant guarantees to complete the installation of the system as per plans submitted to both parties by contractor.

ALL OTHER TERMS AND CONDITIONS SHALL REMAIN THE SAME.

LANDLORD	**TENANT**
Hawthorne/Stone Property Management, Inc.	**PowerLight Corporation**
/s/ Andy Mehiel	**/s/ Subramaniam Janakiraman**
Andy Mehiel	**Subramaniam Janakiraman**
Agent for Owner	**CFO**
Date: 5/12/04	**Date: May 12, 2004**

NINTH ADDENDUM TO LEASE AGREEMENT

The following provisions are added to and become a part of that Lease Agreement dated February 9, 1996 by and between Hawthorne/Stone Property Management Inc., as Landlord and PowerLight Corporation as Tenant for those Premises at 2954 San Pablo Avenue, Berkeley, California.

The subject parties hereby agree to amend the subject Lease as follows:

ARTICLE 34. EXTENSION OF LEASE TERM FOR 2936 SAN PABLO AVENUE, BERKELEY, CA.

Tenant desires to extend the term of their Lease Agreement for those premises at 2936 San Pablo Avenue, Berkeley, California under the following terms and conditions.

TERM:

Four (4) years commencing February 1, 2005 and expiring on January 31, 2009.

RENT:

Tenant shall pay rent for the extended term as follows:

For the period of February 1, 2005 through January 31, 2006 the monthly rent for 2930 San Pablo Avenue shall be $3,100.00 per month.

There will be a 2.5% annual increase to the rent each successive anniversary date (February 1) of the term.

TENANT IMPROVEMENTS:

Tenant agrees to accept the premises in an “as is”condition.

ALL OTHER TERMS AND CONDITIONS SHALL REMAIN THE SAME.

LANDLORD	**TENANT**
Hawthorne/Stone Property Management, Inc.	**PowerLight Corporation**
/s/ Andy Mehiel	**/s/ Subramaniam Janakiraman**
Andy Mehiel	**Subramaniam Janakiraman**
Agent for Owner	**CFO**
Date: 2-17-05	**Date: February 3, 2005**

TENTH ADDENDUM TO LEASE AGREEMENT

The following provisions are added to and become a part of that Lease Agreement dated February 9, 1996 by and between Hawthorne/Stone Property Management Inc., as Landlord and PowerLight Corporation as Tenant for those Premises at 2954 San Pablo Avenue, Berkeley, California.

The subject parties hereby agree to amend the subject Lease as follows:

ARTICLE 35. EXTENSION OF LEASE TERM FOR 2980 SAN PABLO AVENUE, BERKELEY, CA.

Tenant desires to extend the term of their Lease Agreement for those premises at 2980 San Pablo Avenue, Berkeley, California under the following terms and conditions.

TERM:

One (1) year commencing April 1 , 2005 and expiring on March 31 , 2006.

RENT:

For the period of April 1, 2005 through March 31, 2006 Tenant shall pay $3,300.00 per month rent.

TENANT IMPROVEMENTS:

Tenant agrees to accept the premises in an “as is” condition.

ARTICLE 36. LEASING OF ADDITIONAL PREMISES [VOID] SAN PABLO AVENUE, BERKELEY, CA.

Tenant agrees to Lease those additional premises at 2900 San Pablo Berkeley, California under the following terms and conditions:

TERM:

One year commencing August 1, 2005 or 45 days after receiving written notice from Landlord that space is available, which ever comes sooner.

RENT:

Tenant shall pay $3,450.00 per month rent for the one-year term.

TENANT IMPROVEMENTS

Tenant agrees to accept the premises in an “as is” condition with the exception that Landlord agrees to repaint the premises at his expense.

ALL OTHER TERMS AND CONDITIONS SHALL REMAIN THE SAME.

LANDLORD	**TENANT**
Hawthorne/Stone Property Management, Inc.	**PowerLight Corporation**
/s/ Andy Mehiel	**/s/ Dan Shugar**
Andy Mehiel	**Dan Shugar**
Agent for Owner	**President**
Date: 2/28/05	**Date: 2/28/05**

ELEVENTH ADDENDUM TO LEASE AGREEMENT

The following provisions are added to and become a part of that Lease Agreement dated February 9,1996 by and between Hawthorne/Stone Property Management Inc., as Landlord and PowerLight Corporation as Tenant for those Premises at 2954 San Pablo Avenue, Berkeley, California.

The subject parties hereby agree to amend the subject Lease as follows:

ARTICLE 37. LEASING OF ADDITIONAL PREMISES

Tenant desires to lease additional Premises in the Berkeley Business Center, specifically the +/- 4,420 square feet of the "front or East portion of 2990 San Pablo Avenue" including the building management offices. The premises are detailed in Exhibit C attached to and made a part of this agreement. Tenant shall lease the premises under the following terms and conditions:

TERM:

Two (2) years commencing August 15, 2005 and expiring on August 14, 2007.

RENT:

Tenant shall pay rent as follows:

For the period of August 15, 2005 through August 14, 2006 the monthly rent for 2990 San Pablo Avenue shall be $5,304.00 per month ($1.20 per square foot).

There will be a 2.5% annual increase to the rent each successive anniversary date (August 15) of the term.

TENANT IMPROVEMENTS:

Landlord agrees to provide the following improvements to the premises at their expense as described herein and shown on Exhibit D attached to and made a part of this Agreement.

Remove all demising walls in the premises except those used for the existing conference room and for the two areas where the electrical equipment and the HVAC equipment will be protected and contained.

Paint the premises.

Carpet the premises with building standard carpet as selected by the Tenant.

Build a new entry to Tenants new premises from Tenants existing R & D area. The entrance will be an 8-foot by 8-foot hallway with a ceiling and a one-hour rating.

Remove existing glass door to 2942 office area and replace opening with drywall.

Provide new "wraparound" 4-foot florescent light fixtures throughout the premises as needed.

Provide adequate electrical outlets throughout premises. Outlets to be surface mounted.

Provide adequate HVAC service with one ten (10) ton unit and appropriate ductwork registers and thermostats.

Separate Tenants electrical service for 2990 San Pablo Avenue from contiguous tenants. It is understood that an electrical sub-meter will be placed on the electrical panel to measure specifically PowerLight's total usage. Landlord will put the electrical service in their name and will read Tenants sub-meter monthly and bill Tenant.

Provide a cold water supply line a water line for Tenants use. There will not be a sink or a drain however.

Construct a 12-foot by 12-foot private office in the SW corner of the premises. This office to have a ten foot high drywall ceiling, wooden door with glass insert and glass lite in the East wall.

Install a wooden door with glass insert in the existing conference room. Install two glass lites approximately 30” by 48” in the East wall of the conference room facing the lobby above the existing doorway.

These afore referenced improvements are complete. All other improvements to be provided by the Tenant.

SECURITY DEPOSIT:

Upon execution of this agreement Tenant to deposit with Landlord a security deposit of $5,316.00 pursuant to all the terms and conditions contained in **ARTICLE 5. SECURITY DEPOSIT** of the Lease Agreement.

ARTICLE 38. TERMINATION OF LEASE OBLIGATIONS FOR 2900 SAN PABLO AVENUE, BERKELEY.

As a material part of this Agreement Landlord agrees to cancel and terminate ARTICLE 36. LEASING OF ADDITIONAL PREMISES AT 2900 SAN PABLO AVENUE, BERKELEY, CA. Upon execution of this agreement Tenant has absolutely no obligation to lease or claims to occupy 2900 San Pablo Avenue, Berkeley. Both parties recognize that leasing 2990 San Pablo Avenue supercedes and nullifies the Lease Agreement for 2900 San Pablo Avenue.

ALL OTHER TERMS AND CONDITIONS SHALL REMAIN THE SAME.

LANDLORD	**TENANT**
Hawthorne/Stone Property Management, Inc.	**PowerLight Corporation**
/s/ Andy Mehiel	**/s/ Dan Shugar**
Andy Mehiel	**Dan Shugar**
Agent for Owner	**President**
Date: 8/12/05	**Date: 8/17/05**

TWELFTH ADDENDUM TO LEASE AGREEMENT

The following provisions are added to and become a part of that Master Lease Agreement dated February 9, 1996 by and between Hawthorne/Stone Property Management Inc., as Landlord and PowerLight Corporation as Tenant for those Premises at 2954 San Pablo Avenue, Berkeley, California.

The subject parties hereby agree to amend the subject Lease as follows:

ARTICLE 39. EXTENSION OF LEASE AGREEMENT FOR 2980 SAN PABLO PREMISES

Tenant hereby agrees to extend their Lease Agreement for those premises at 2980 San Pablo Avenue, Berkeley, California, for an additional two years commencing on April 1, 2006 and expiring on March 31,2008 under the following terms and conditions.

RENT:

Tenant shall pay rent as follows:

For the period of April 1, 2006 though March 31, 2007 the rent shall be $3,360.00 per month.

For the period of April 1, 2007 though March 31, 2008 the rent shall be $3,444.00 per month.

Tenant agrees to accept the premises in an “as is” condition.

ALL OTHER TERMS AND CONDITIONS SHALL REMAIN THE SAME.

LANDLORD	**TENANT**
Hawthorne/Stone Property Management, Inc.	**PowerLight Corporation**
/s/ Andy Mehiel	**/s/ Dan Shugar**
Andy Mehiel	**Dan Shugar**
Agent for Owner	**President**
Date: 1/30/06	**Date: 1/26/06**

THIRTEENTH ADDENDUM TO LEASE AGREEMENT

The following provisions are added to and become a part of that Master Lease Agreement dated February 9, 1996 by and between Hawthorne/Stone Property Management Inc., as Landlord and PowerLight Corporation as Tenant for those Premises at 2954 San Pablo Avenue, Berkeley, California.

The subject parties hereby agree to amend the subject Lease as follows:

ARTICLE 40. EXTENSION OF LEASE AGREEMENT FOR 2990 SAN PABLO AVENUE PREMISES

Landlord agrees to grant Tenant an extension of their Lease Agreement for 2990 San Pablo Avenue, Berkeley, California for an additional 4.5 months through December 31, 2007 under all the same terms and conditions of the existing Lease Agreement including rent.

ALL OTHER TERMS AND CONDITIONS SHALL REMAIN THE SAME.

LANDLORD
Hawthorne/Stone Property Management Inc.

//Andy Mehiel
Andy Mehiel
Agent for Owner

Date:_____May 11, 2007_____

TENANT
PowerLight Corporation

//Tom Dinwoodie
Tom Dinwoodie
CEO, PowerLight Corporation

Date:_____May 11, 2007_____

Exhibit 10.2

EXECUTION VERSION

*****CONFIDENTIAL TREATMENT REQUESTED – CONFIDENTIAL PORTIONS OF THIS DOCUMENT HAVE BEEN REDACTED AND HAVE BEEN SEPARATELY FILED WITH THE COMMISSION*****

ENGINEERING, PROCUREMENT AND CONSTRUCTION AGREEMENT

Dated as of March 30, 2007

by and between

Solar Star NAFB, LLC

and

PowerLight Corporation

***CONFIDENTIAL MATERIAL REDACTED AND
SEPARATELY FILED WITH THE COMMISSION***

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***CONFIDENTIAL MATERIAL REDACTED AND
SEPARATELY FILED WITH THE COMMISSION***

Schedules

Exhibit

***CONFIDENTIAL MATERIAL REDACTED AND
SEPARATELY FILED WITH THE COMMISSION***

ENGINEERING, PROCUREMENT AND CONSTRUCTION AGREEMENT

This ENGINEERING, PROCUREMENT AND CONSTRUCTION AGREEMENT, dated as of March 30, 2007 ("Agreement"), is by and between Solar Star NAFB, LLC, a limited liability company formed under the laws of the State of Delaware ("Solar Star") and PowerLight Corporation, a corporation formed under the laws of the State of Delaware ("Contractor").

RECITALS:

WHEREAS, Solar Star is developing an approximately 15 MWp solar photovoltaic power plant as more fully described in Schedule 4.1 (the "System") to be located on approximately 140 acres owned by the Government of the United States of America, acting through Nellis Air Force Base ("NAFB") in Clark County, Nevada and leased to Solar Star (the "Site");

WHEREAS, NAFB has issued that certain Solicitation, Offer and Award to Contractor, which has been novated to Solar Star (the "PPA"), pursuant to which Solar Star has agreed to arrange for the construction of the System and provide all electrical energy produced therefrom to NAFB;

WHEREAS, Contractor designs, constructs and installs photovoltaic systems and as such is able to engineer and construct the System and all the necessary ancillary systems to make available electric energy to NAFB;

WHEREAS, Solar Star desires to engage Contractor to supply and install the System at the Site; and

WHEREAS, Contractor desires to provide such supply and installation services, all in accordance with the terms and conditions set forth in this Agreement.

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

AGREEMENT:

1. Definitions.

Unless otherwise required by the context in which any term appears: (a) capitalized terms used in this Agreement shall have the respective meanings set forth in this Section 1; (b) the singular shall include the plural and vice versa; (c) the word "including" shall mean "including, without limitation", (d) references to "Sections", "Schedules" and "Exhibits"

***CONFIDENTIAL MATERIAL REDACTED AND
SEPARATELY FILED WITH THE COMMISSION***

shall be to sections, schedules and exhibits hereof; (e) the words "herein", "hereof" and "hereunder" shall refer to this Agreement as a whole and not to any particular section or subsection hereof; and (f) references to this Agreement shall include a reference to all schedules and exhibits hereto, as the same may be amended, modified, supplemented or replaced from time to time.

"Agreement" shall have the meaning set forth in the preamble.

"Applicable Law" shall mean, with respect to any Governmental Authority, any constitutional provision, law, statute, rule, regulation, ordinance, treaty, order, decree, judgment, decision, certificate, injunction, registration, license, permit, authorization, guideline, governmental approval, consent or requirement of such Governmental Authority, as construed from time to time by any Governmental Authority.

"Applicable Permits" shall mean each and every national, autonomic, regional and local license, authorization, certification, filing, recording, permit or other approval with or of any Governmental Authority, including, without limitation, each and every environmental, construction or operating permit and any agreement, consent or approval from or with any other Person that is required by any Applicable Law or that is otherwise necessary for the performance of the Work or operation of the System, as listed on Schedule 4.4.

"Change Order" shall mean a written document in the form of Schedule 1D signed by Solar Star and Contractor authorizing an addition, deletion or revision to the Work or an adjustment of the Contract Price or Construction Schedule issued after execution of this Agreement.

"Construction Schedule" shall mean the schedule for prosecution of the Work as set forth on Schedule 1A.

"Contract Documents" shall mean this Agreement, the exhibits and schedules hereto, and drawings, specifications, plans, calculations, models and designs that are part of Exhibit 1 and that have been prepared by Contractor or any Subcontractor exclusively for the Work.

"Contract Price" shall mean the amount for performing the Work that is payable to Contractor as set forth in Section 17.1, as the same may be modified from time to time in accordance with the terms hereof.

"Contractor" shall have the meaning set forth in the preamble.

"Contractor Representative" shall mean the individual designated by the Contractor in accordance with Section 3.2.

"Disclosing Party" shall have the meaning set forth in Section 34.

"Dispute" shall have the meaning set forth in Section 32.1.

"Dollar" and "$" shall mean the lawful currency of the United States of America.

"Effective Date" shall mean the date on which this Agreement becomes effective, as defined in Section 13.1.

"Equipment" shall mean (a) all materials, supplies, apparatus, machinery, equipment, parts, tools, components, instruments, appliances, spare parts and appurtenances thereto that are required for prudent design, construction or operation of the Systems in accordance with Industry Standards and (b) all materials, supplies, apparatus, machinery, equipment, parts, tools, components, instruments, appliances, spare parts and appurtenances thereto described in, required by, reasonably inferable from or incidental to the Work or the Contract Documents.

"Final Completion" shall mean satisfaction or waiver of all of the conditions for completion of the System set forth in Section 6.

"Force Majeure Event" shall mean, when used in connection with the performance of a Party's obligations under this Agreement, any act or event (to the extent not caused by such Party or its agents or employees) which is unforeseeable, or being foreseeable, unavoidable and outside the control of the Party which invokes it, and which renders said Party unable to comply totally or partially with its obligations under this Agreement. In particular, any of the following shall be considered a Force Majeure Event:

(a) war (whether or not war is declared), hostilities, revolution, rebellion, insurrection against any Governmental Authority, riot, terrorism, acts of a public enemy or other civil disturbance;

(b) acts of God, including but not limited to, storms, floods, lightning, earthquakes, hailstorms, ice storms, tornados, typhoons, hurricanes, landslides, volcanic eruptions, fires, winds in excess of ninety (90) miles per hour, and objects striking the earth from space (such as meteorites), sabotage or destruction by a third party (other than any contractor retained by or on behalf of the Party) of facilities and equipment relating to the performance by the affected Party of its obligations under this Agreement;

(c) strikes (whether local, regional, national or sectorial), walkouts, lockouts or similar industrial or labor actions or disputes; and

(d) acts of any Governmental Authority that materially restrict or limit Contractor's access to the Site or its activities at the Site; provided that no act by the Government of the United States of America shall constitute a Force Majeure Event in respect of any obligation of Solar Star hereunder regarding Work completed or in process (such as Equipment ordered but not yet received) as of the date and time of such Force Majeure Event.

"Governmental Authority" shall mean any national, autonomic, regional, province, town, city, or municipal government, whether domestic or foreign, or other administrative, regulatory or judicial body of any of the foregoing.

"Hazardous Material" shall mean oil or petroleum and petroleum products, asbestos and any asbestos containing materials, radon, polychlorinated biphenyl's ("PCBs"), urea formaldehyde insulation, lead paints and coatings, and all of those chemicals, substances, materials, controlled substances, objects, conditions and waste or combinations thereof which are now or become in the future listed, defined or regulated in any manner by any federal, state or Applicable Law.

"Indemnified Party" shall have the meaning set forth in Section 25.4.

"Indemnifying Party" shall have the meaning set forth in Section 25.4.

"Industry Standards" shall mean those standards of care and diligence normally practiced by solar engineering, construction and installation firms in performing services of a similar nature in jurisdictions in which the Work will be performed and in accordance with good engineering design practices, Applicable Permits, specifications and processes recommended by the equipment manufacturers, and other standards established for such Work.

"Knowledge Group" means Gregory Rosen, Howard Wenger, Bruce Ledesma Gary Wayne, Kevin Hennessy, and Dan Shugar.

"MWp" means MWdc, which is the manufacturer's rated wattage of a photovoltaic system.

"Notice to Proceed" means the notice to be delivered to the Contractor by Solar Star instructing Solar Star to commence the Work, which notice shall be reasonably acceptable to the Contractor.

"Party" shall mean, individually, each of the parties to this Agreement.

"Performance Tests" means, with respect to each Phase, the tests of the portion of the System to be brought online conducted in connection with such Phase, as more particularly described in Schedule 1B.

"Person" shall mean any individual, corporation, partnership, company, joint venture, association, trust, unincorporated organization or Governmental Authority.

"Phase" means each of Phase I, Phase II and Phase III.

"Phase I" means the construction phase projected to achieve Substantial Completion on ***, comprising a portion of the System having a nominal generating capability of approximately 33% of the total MWp of System, as described more fully in Schedule 4.1.

"Phase II" means the construction phase projected to achieve Substantial Completion on ***, comprising an additional portion of the System having a nominal generating capability of approximately 33% of the total MWp of System, as described more fully in Schedule 4.1.

"Phase III" means the construction phase projected to achieve Substantial Completion on ***, comprising an additional portion of the System having a nominal generating capability of approximately 34% of the total MWp of System, as described more fully in Schedule 4.1.

"PPA" shall have the meaning set forth in the second recital.

"Project Documents" shall include the PPA and other key documents set forth in Schedule 1C.

"Receiving Party" shall have the meaning set forth in Section 32.

"Retention" shall have the meaning set forth in Section 18.2.

"Schedule of Values" shall mean the breakdown and valuation of the work for progress payment purposes as set forth on Schedule 1E.

"Site" shall have the meaning set forth in the first recital, and is more fully described in Exhibit 1 hereto.

"Solar Star" shall have the meaning set forth in the preamble.

"Solar Star's Representative" shall mean the individual designated by Solar Star in accordance with Section 3.1.

"Subcontractor" shall mean any Person, other than Contractor and Suppliers, retained by Contractor to perform any portion of the Work (including any Subcontractor of any tier) in furtherance of Contractor's obligations under this Agreement.

"Substantial Completion" shall mean, for each Phase, satisfaction or waiver of all of the conditions set forth in Section 13.3.

"Substantial Completion Date" shall mean the actual date on which the Substantial Completion of the System, as defined in Section 13.3, has occurred.

"Suppliers" shall mean those Equipment suppliers with which Contractor contracts to build the System.

"Technical Advisor" shall mean the independent engineering firm appointed by Solar Star to supervise the completion of the Performance Tests and execute the certificates approving any Performance Test contemplated in Section 4.6.

"Technical Dispute" shall have the meaning set forth in Section 32.2.

"Warranty" shall mean the warranty of Contractor set forth on Schedule 23.1.

"Work" shall mean all obligations, duties, and responsibilities assigned to or undertaken by Contractor and described on Schedule 4.1 with respect to the System.

2. Scope. Contractor shall (a) provide, on a turnkey basis, all professional design and engineering services, Equipment procurement, supervision, labor, materials, equipment, tools, construction Equipment and machinery, utilities, transportation, and procurement of the Applicable Permits for the System (but excluding any related fees), and other facilities, items and services, in each case to the extent necessary for the proper execution and completion of each Phase, in accordance with the Contract Documents, which are each made a part hereof, and (b) supervise and direct the Work in accordance with Industry Standards. Contractor shall have sole control over the engineering, design and construction means, methods, techniques, sequences, and procedures and for coordination of all portions of the Work under this Agreement unless the Agreement specifically provides otherwise.

3. Representatives.

3.1 Solar Star Representatives. Solar Star designates, and Contractor agrees to accept, Joe Kastner as Solar Star Representative for all matters relating to Contractor's performance of the Work (except for the execution of the certificates approving any Performance Test contemplated in Section 4.6). However, for the exclusive purposes of executing the certificates approving any Performance Test contemplated in Section 4.6, Solar Star

unconditionally and irrevocably appoints the Technical Advisor as its representative. The actions taken by Solar Star Representative regarding such performance shall be deemed the acts of Solar Star and shall be fully binding for Solar Star. Solar Star may, upon written notice to Contractor, pursuant to Section 33 hereof, change the designated Solar Star Representative or Technical Advisor; provided, however, that Solar Star shall notify Contractor of the replacement of the Technical Advisor at least one (1) month prior to the beginning of the first Performance Test contemplated in Section 4.6.

3.2 Contractor Representatives. Contractor designates, and Solar Star agrees to accept, Richard Hanson as Contractor Representative for all matters relating to Contractor's performance under this Agreement. The actions taken by Contractor Representative shall be deemed the acts of Contractor. Contractor may, upon written notice to Solar Star, pursuant to Section 33 hereof, change the designated Contractor Representative.

3.3 The Parties shall vest their Representatives with sufficient powers to enable them to assume the obligations and exercise the rights of Contractor or Solar Star, as applicable, under this Agreement.

3.4 Notwithstanding Sections 3.1 and 3.2, all amendments, Change Orders, notices and other communications between Contractor and Solar Star contemplated herein shall be delivered in writing and otherwise in accordance with Section 33.

4. The Work.

4.1 Subject to Section 21, Contractor shall perform the Work in accordance with the express description thereof on Schedule 1C.

4.2 Contractor shall perform all Work in accordance with Industry Standards, Applicable Law, Applicable Permits and, to the extent applicable, the terms and conditions of the Project Documents.

4.3 Contractor shall perform engineering and design services, using qualified architects, engineers and other professionals selected and paid for by Contractor, in each case as are necessary to prepare all Contract Documents and submit the Contract Documents to Solar Star for its review and approval.

4.4 Contractor, at its expense, shall obtain, and shall file on a timely basis any documents required to obtain any necessary Applicable Permits on a timely basis. Contractor shall pay for all taxes, fees and costs in order to obtain the Applicable Permits for which Contractor is responsible under this Section 4.4.

4.5 Contractor, at its expense, shall purchase, transport, deliver, inspect to the extent it deems necessary, and construct and install all Equipment necessary or useful in order to complete the System in a manner consistent with Industry Standards. Contractor shall use commercially reasonable efforts to maintain standard manufacturer's and supplier's warranties for the Equipment. With respect the System, Contractor shall assign to Solar Star all of Contractor's right, title and interest in each component of the System upon delivery thereof to the Site. In addition, upon Substantial Completion of each Phase, Contractor shall assign to Solar Star all related manufacturer's and/or supplier's warranties for the applicable Phase.

4.6 Contractor shall startup each Phase and perform the Performance Tests therefor and for the System described on Schedule 4.6. Solar Star shall provide such electricity and consumables as may be required to carry out the Performance Tests. The Contractor's technical personnel (or, when applicable the installer and/or manufacturer's personnel, with Contractor's supervision) shall operate the applicable Phase during the Performance Tests, although Solar Star (and Solar Star's personnel) shall be entitled to be present during any Performance Test. Any third party entrusted with the supervision, oversight or quality control of Contractor shall be entitled to observe the Performance Tests. Contractor shall provide Solar Star with at least seven (7) days' prior written notice of the commencement of each Performance Test at Substantial Completion of a Phase in order to permit Solar Star's Representative coordinate attendance and observation of the Performance Tests.

Upon completion of the relevant Performance Tests, Contractor shall submit to the Technical Advisor the certificate of the results thereof for its approval or rejection. Solar Star and Contractor agree that the approval or rejection by the Technical Advisor shall fully bind Solar Star, and that no certificate of the results of the Performance Tests executed by Solar Star's Representative (and not by the Technical Advisor) shall be a valid approval or rejection of such Performance Tests.

If the results of the Performance Test can be obtained at the Site immediately following the performance of the Performance Test and the Performance Test has been completed successfully, Solar Star's Representative and Contractor's Representative shall execute the relevant certificate including the results achieved in the Performance Test. If the results of the Performance Test cannot be obtained at the Site immediately following the performance of the Performance Test, Contractor shall submit promptly the relevant certificate containing the results of such Performance Test to Solar Star's Representative as soon as practicable. Solar Star's Representative shall promptly review such certificate and the results set forth therein and shall determine whether the Performance Test has been successfully completed within five (5) business days following receipt of such certificate.

If any Phase (or component thereof) fails to satisfy any Performance Test, Solar Star's Representative and Contractor's Representative shall execute the relevant certificate

including the results achieved in the relevant Performance Test for such Phase. Contractor shall repeat the Performance Test for the applicable Phase or component one or several times before Substantial Completion of the applicable Phase. Contractor shall take all corrective actions so that Phase or component may successfully complete the Performance Tests, without prejudice to Solar Star's rights and remedies in accordance with this Agreement; provided, however, that if such Phase or component does not successfully complete the Performance Tests before the Substantial Completion of the applicable Phase, the applicable portion of the Contract Price shall be adjusted in accordance with Section 17.1.

If any Dispute regarding the Performance Tests arises, Contractor shall be entitled to submit the Dispute to an independent expert in accordance with Section 32.2. If the independent expert contemplated in Section 32 determines that any Performance Test has been completed successfully, such decision shall prevail and shall be binding on Solar Star, Contractor and the Technical Advisor and, therefore, the relevant Performance Test shall be deemed approved for all the purposes contemplated in this Agreement.

4.7 Contractor shall provide to Solar Star a copy of the operations and maintenance manual for the System. Contractor shall provide the drafts and the final version of the operations and maintenance manual on or before the dates contemplated in Section 4.12. After Final Completion, Contractor shall remove debris, unused equipment (other than spares) and surplus materials from the portion of Site where the System is located and leave such portion of the Site in "broom clean" condition.

4.8 Solar Star shall be solely responsible for soliciting and obtaining any subsidies, rebates or other incentives that may be available from any Governmental Authority pursuant to or in connection with the purchase of the System or otherwise, and Contractor makes no representation or warranty to Solar Star as to the availability of any of such subsidies, rebates or incentives. If reasonably requested by Solar Star, Contractor shall, at Contactor's sole cost and expense, provide Solar Star reasonable assistance in obtaining such subsidies, rebates or incentives. IN NO CASE SHALL CONTRACTOR HAVE ANY LIABILITY TO SOLAR STAR FOR ANY FAILURE BY ANY OF ITS INVESTORS TO OBTAIN ANY OR ALL OF THE BENEFIT OF ANY INVESTMENT TAX CREDIT OR DEPRECIATION.

4.9 Exclusions. Contractor shall not perform any work or activity beyond the scope of the Work, as defined in this Agreement. In particular, the following shall not be included in the Work and therefore shall be performed by Solar Star:

4.9.1 Solar Star shall provide the Site for the Work and continuous and suitable access thereto so that Contractor may gain access to the Site to perform the Work as soon as any necessary work permits, licenses and authorizations are obtained;

4.9.2 Solar Star shall select its own personnel so that it is present at the Performance Tests prior to the date of Substantial Completion of each Phase and entry into commercial operation of the applicable Phase;

4.9.3 Solar Star shall be responsible for hiring any third party entrusted with the supervision, oversight or quality control of Contractor, such third party shall not, however, be responsible for the quality assurance and control of Work, other than reporting to Solar Star;

4.9.4 Solar Star shall be solely responsible for securing and paying for all asset management services relating to the System and will not require any such services from Contractor;

4.9.5 Solar Star shall be solely responsible for, and shall bear any fees, costs and expenses of, obtaining any authorization or permit, and the making of any filing, certification or declaration, required under state or federal energy laws or regulations; provided that Contractor shall provide reasonable cooperation to Solar Star in connection with such efforts; and

4.9.6 Contractor shall not be responsible for any environmental liabilities relating to the Site, except for such pollution, toxic emissions, and other Hazardous Materials as are caused by Contractor during construction of the System and for Hazardous Materials associated with the existing landfill at Site which are disturbed or removed during Contractor's provision of Services under this Agreement; provided, however, that Contractor shall be required to comply with all applicable environmental laws and regulations during construction of the System without prejudice to the provisions of Section 28.2.

4.10 Title; Risk of Loss.

4.10.1 From the Effective Date and until the date of Substantial Completion of a Phase, and subject to Sections 4.10.2, 4.10.3 and 4.10.4, Contractor assumes risk of loss and full responsibility for the cost of replacing or repairing any damage to the applicable Phase and all materials, Equipment, supplies and maintenance equipment (including temporary materials, equipment and supplies) that are purchased by Contractor for permanent installation in or for use during construction of such Phase, regardless of whether Solar Star has title thereto under this Agreement.

4.10.2 Solar Star shall bear the risk of loss and full responsibility in respect of a Phase from and after the date of Substantial Completion of such Phase, and if any component of such Phase is lost or damaged for whatever reason from and after such date, then Contractor shall restore or rebuild any such loss or damage and complete the

Work in accordance with this Agreement at the sole cost and expense of Solar Star; provided, however, that Contractor shall not be obligated to restore or rebuild any such loss or damage unless Solar Star has obtained and maintained the insurance that Solar Star is required to maintain pursuant to Section 24 and Contractor has received reasonable assurances from Solar Star that Solar Star will prosecute such claim in a commercially reasonable manner and Contractor will receive the insurance proceeds, if any, paid under such Solar Star-maintained insurance policy in accordance with the disbursement provisions of this Agreement.

4.10.3 Notwithstanding anything herein to the contrary, but subject to the following sentence, Contractor shall bear the risk of loss and full responsibility for the cost of restoring or rebuilding any damage to such Phase and all materials, Equipment, supplies and maintenance equipment (including temporary materials, equipment and supplies) that are purchased by Contractor or Solar Star for permanent installation in or for use during construction of such Phase to the extent caused by a Force Majeure Event occurring at any time from the Effective Date until the date Substantial Completion of the applicable Phase. In light of the foregoing, Contractor shall obtain and maintain a builder's risk policy in accordance with Schedule 24; provided that Force Majeure Events not covered by such builder's risk policy are not assumed by Contractor, and shall entitle Contractor to obtain a Change Order in good faith on commercially reasonable terms except if Solar Star reasonably determines that the Change Order is so substantial as to permit Solar Star to terminate the Agreement pursuant to 11.1.1(D) and Solar Star elects to so terminate the Agreement.

4.10.4 Notwithstanding anything herein to the contrary, Solar Star shall bear the risk of loss and full responsibility for the cost of replacing or repairing any damage to such Phase and all materials, Equipment, supplies and maintenance equipment (including temporary materials, equipment and supplies) that are purchased by Contractor or Solar Star for permanent installation in or for use during construction of such Phase to the extent caused by the negligent, grossly negligent or willful acts of Solar Star or its agents, employees or representatives.

4.11 Training of Solar Star's Personnel.

4.11.1 Contractor shall provide Solar Star's personnel with up to two (2) days of on-site operation and maintenance training in respect of the System. Solar Star's personnel shall have the qualifications necessary to perform their activities and will be hired by Solar Star.

4.11.2 Scheduling of training will be coordinated between Contractor and Solar Star; provided that the operation and maintenance manuals and such training will be provided within the thirty (30) days following the Substantial Completion Date of Phase I.

4.12 Technical Contract Documents to be delivered by Contractor. Contractor shall deliver Solar Star an owner's manual, operator's manual and as-built drawings for the System no later than thirty (30) days after Substantial Completion of Phase III occurs. For the avoidance of doubt, the as-built drawings shall be included in the punchlist items contemplated in Section 13.3.

5. Inspection. All Work performed by Contractor and all Equipment shall be subject to inspection by Solar Star, but such right of inspection of the Work or Equipment shall not relieve Contractor of responsibility for the proper performance of the Work or Equipment to the extent provided under this Agreement. Contractor shall provide to Solar Star or Solar Star's designee access to Contractor's facility or facilities where the Work is being performed upon reasonable prior notice (at least forty-eight (48) hours), during business hours, and subject to compliance with Contractor's safety rules and policies. Solar Star shall ensure that the inspections and Performance Tests do not affect the normal performance of this Agreement.

6. Final Completion.

Final Completion of the System shall be deemed to have occurred only if all punchlist items contemplated in Section 13.3 have been completed or waived. Upon Final Completion, Contractor shall submit to Solar Star a written statement requesting acknowledgement thereof. Such acknowledgment shall be executed by Solar Star within five (5) business days after the receipt of the receipt by Solar Star of such written statement unless Solar Star provides written notice of Contractor's failure to achieve Final Completion. Execution of the acknowledgment or failure of Solar Star to provide written notice of Contractor's failure to achieve Final Completion within five (5) business days shall constitute Final Completion.

7. Changes and Extra Work.

7.1 Without invalidating this Agreement, Solar Star may initiate a change in the Work on the System by advising Contractor in writing of the change believed to be necessary. As soon as practicable after notice, Contractor shall prepare and forward to Solar Star in writing the price for the extra or changed Work on such Phase pursuant to a Change Order and any required adjustment to the Construction Schedule or any other term or condition of this Agreement. Except for minor modifications in the Work not involving extra cost and not inconsistent with the purposes of the Work, and except in an emergency endangering life or property, all authorized extra Work or changes, and the agreed to price, shall be confirmed through a Change Order to this Agreement in respect of the relevant Phase. No change or extra Work shall be effective without a Change Order signed by Solar Star and accepted in writing by Contractor. The price shall include all costs associated with performing the extra Work or changes, including the impact on the Work, inefficiencies created by the extra Work or changes, and overhead associated with the extra Work or changes.

7.2 All extra Work and changes shall be performed in accordance with the provisions and conditions of this Agreement, except as provided in the Change Order.

7.3 If Contractor's price or time adjustment is not accepted, Contractor shall provide Solar Star Representative with the details of and backup for its price or time estimate. If the Parties fail to agree on a price, Solar Star Representative may authorize the extra or changed Work to be performed on a time and material basis in accordance with the rates specified in Schedule 1F.

7.4 Contractor may propose Change Orders to Solar Star if those Change Orders improve the System or are otherwise advisable for the Work. This shall not affect the obligation of Contractor to perform the Work and to deliver the System in the form agreed in this Agreement.

7.5 Any changes to the System or the Work required by changes in Applicable Law or requested by any Governmental Authority as a condition to issue an Applicable Permit shall entitle Contractor to request a Change Order in accordance with this Section 7.

8. Protective Measures.

8.1 Contractor shall be responsible for all injury or damage to individuals or property that may occur as a result of its fault or negligence or that of its Subcontractors in connection with the performance of the Work. Contractor shall be responsible for the proper care and protection of all Equipment and materials furnished by Contractor and the Work performed until Final Completion of the Work for each Phase.

8.2 Contractor shall take all reasonably necessary precautions for the safety of its employees on the relevant part of the Site where the System is located and prevent accidents or injury to individuals on, about, or adjacent to the premises where the Work is being performed.

8.3 Contractor shall keep the relevant part of the Site where the System is located and surrounding areas free from accumulation of waste materials or rubbish caused by the Work, and upon Final Completion, shall remove from the relevant part of the Site where the System is located all waste materials, rubbish, tools, unused equipment (other than spares), machinery and surplus materials.

9. Force Majeure. Contractor shall promptly notify Solar Star in writing of any delay or anticipated delay in Contractor's performance of this Agreement due to a Force Majeure Event, and the reason for and anticipated length of the delay. Contractor shall be excused for any delays or defaults in the performance of its obligations under this Agreement that are the result of a Force Majeure Event. In the event of any Force Majeure Event, Contractor shall (i) exercise all commercially reasonable efforts to bring the situation caused by the Force Majeure event under control and mitigate the extent, duration, and impact of such Force Majeure Event on the Work and System and (ii) provide periodic notices to Solar Star with respect to its actions and plans for actions in accordance with (i) above and promptly notify to Solar Star of the cessation of the event or condition giving rise to it being excused from performance. Contractor shall be entitled to a reasonable extension of time for delays due to a Force Majeure Event; provided that any Force Majeure Event that prevents performance, or is reasonably expected to prevent performance, for more than ninety (90) days shall entitle the Contractor and Solar Star to terminate this Agreement; provided, further, that any Work done or materials furnished by Contracts in restoring or rebuilding any affected Phase will be paid for by Solar Star as extra Work pursuant to Section 7. Any modification to the Construction Schedule pursuant to this Section 9 shall be documented by a written Change Order to this Agreement.

10. Unanticipated Conditions. If any unusual or unanticipated conditions exist or arise at the Site (such as Hazardous Materials, environmental conditions, pollution or archeological findings), which conditions would involve the incurrence by Contractor of any expenses to correct such conditions, Contractor shall submit a request for approval of the corrective work and payment of the related expenses to Solar Star, which approval shall not be unreasonably withheld, conditioned or delayed. The additional work resulting therefrom will be paid for by Solar Star as extra Work pursuant to Section 7. Solar Star shall not be obligated to pay for such additional Work if such unusual or unanticipated conditions are in respect of geotechnical, subsurface, or seismic conditions of the Site which should have been anticipated by Contractor when Contractor completed its due diligence of the Site in order to identify any issues that could affect the foundation of the System.

11. Termination.

11.1 Termination by Solar Star:

11.1.1 Contractor agrees that Solar Star shall be entitled to terminate this Agreement upon the occurrence of any of the following circumstances:

(A) Contractor abandons the entire Work without just cause for more than thirty (30) days or fails to commence the Work without just cause for within thirty (30) days after the Effective Date, or

(B) Contractor shall, except as expressly permitted hereunder, assign this Agreement in whole without the written authorization of Solar Star, or

(C) Contractor violates in any material respect any of the provisions of this Agreement, which violation remains uncured for thirty (30) days following Contractor's receipt of written notice thereof from Solar Star.

(D) A Force Majeure Event creates such damage to the Work or System that, taking into account applicable insurance proceeds and payments from third parties received or reasonably anticipated to be received in respect of such Force Majeure Event, the Project is determined to be no longer economically viable pursuant to Section 4.10.3.

11.1.2 In addition, upon the occurrence of any of the foregoing, Solar Star may instruct Contractor to discontinue all or any part of the Work, and Contractor shall thereupon discontinue the Work of such parts thereof. Solar Star shall thereupon have the right to continue and complete the Work or any part thereof, by contract or otherwise. Upon the occurrence of any of the circumstances contemplated in Sections 11.1.1(A), 11.1.1(B), 11.1.1(C), or 11.1.1(D), Contractor shall be liable to Solar Star, unless otherwise contemplate herein, for any and all damage and excess cost incurred by Solar Star in completing the Work, in each case to the extent caused by Contractor's material breach of this Agreement.

11.1.3 The remedies in this Section 11.1 shall be inclusive and additional to any other remedies that may be available under Applicable Law, and no action by Solar Star shall constitute a waiver of any such right or remedy.

11.2 Termination by Contractor. Without limiting the provisions of Section 9, Solar Star agrees that if (a) Solar Star shall become bankrupt or insolvent, or shall assign this Agreement, or sublet any part thereof, without the written authorization of Contractor or (b) Solar Star violates in any material respect any of the provisions of this Agreement, which violation remains uncured for thirty (30) days following Solar Star's receipt of written notice thereof from Contractor, or (c) Solar Star executes this Agreement in bad faith, Contractor shall have all rights and remedies that may be available under Applicable Law against Solar Star with respect to this Agreement, including without limitation the right to suspend performance of the Work, to terminate this Agreement, and/or to require Solar Star to immediately post payment bonds.

11.3 Termination of Agreement. Except for Section 23 and subject to Section 37, this Agreement shall terminate and be of no further force and effect upon satisfaction of the conditions set forth in Section 6. Contractor shall satisfy the conditions set forth in Section 6 no later than June 30, 2008.

12. Labor. Contractor shall use reasonable efforts to minimize the risk of labor-related delays or disruption of the progress of the Work. Contractor shall promptly take any and all reasonable steps that may be available in connection with the resolution of violations of collective bargaining agreements or labor jurisdictional disputes. Contractor shall advise Solar Star 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 strikes, walkouts, lockouts or other labor disputes shall be at the discretion of the Party having the difficulty.

13. Commencement and Substantial Completion of Each Phase; Delay Liquidated Damages; Bonus.

13.1 Contractor shall perform the Work in accordance with Schedule 1A. The Work must commence on the date set forth in the Notice to Proceed, which shall be delivered no later than the Effective Date.

13.2 The target date on which Substantial Completion for each Phase is expected to occur is set forth on Schedule 1A. Contractor may claim a justified extension of the Substantial Completion date for the applicable Phase if it is or will be delayed in completing the Work for any of the following causes:

13.2.1 Change Orders agreed pursuant to this Agreement;

13.2.2 breach of this Agreement (including Section 4) or of a statutory duty by Solar Star;

13.2.3 suspension of the Work pursuant to Section 19;

13.2.4 delays in testing as contemplated in Sections 2.1, 2.2 and 2.4 of Schedule 1B due to the lack of full sun conditions; or

13.2.5 a Force Majeure Event.

13.3 The following are conditions precedent to Substantial Completion of each Phase:

13.3.1 the relevant Phase is mechanically, electrically, and structurally constructed in accordance with the requirements of Schedule 4.1 of this Agreement, the Work and Industry Standards, except for non-critical punchlist items;

13.3.2 the medium voltage infrastructure and the grid connection for such Phase are mechanically, electrically and functionally complete and capable of interconnection with the local utility and Contractor's Representative provides written notice of satisfaction of such conditions to Solar Star's Representative; and

13.3.3 Commissioning according to procedures set forth in Schedule 4.6 is completed successfully and the corresponding certificates are duly signed by Solar Star's Representative and the Contractor's Representative, both acting reasonably.

13.4 At Substantial Completion of a Phase Solar Star and Contractor shall agree on the punchlist items for such Phase. The punchlist shall be completed no later than two (2) months after Substantial Completion of the final Phase. Failure of Contractor to fulfill this obligation shall entitle Solar Star to complete the pending works on its own and charge the Contractor for the duly justified costs. Notwithstanding anything in this Agreement to the contrary, Substantial Completion shall not be withheld for failure to obtain any Applicable Permits that do not materially affect the lawful and technical operation of the System or any material portion thereof.

13.5 Delay Penalties. Subject to Section 13.2, for each Phase, if any portion of the System is not operational on the fifteenth calendar day after the applicable target Substantial Completion date set forth on Schedule 1A, thereafter Contractor shall pay to Solar Star an amount per day for each day of delay that is equal to the product of (a) *** multiplied by (b) a fraction, the numerator of which is ***and the denominator of which is ***. In no event shall this per day amount exceed ***. In addition to the foregoing, if any portion of the System does not achieve Substantial Completion prior to ***, Solar Star will be entitled to reduce the Contract Price by a value equal to *** multiplied by a fraction, the numerator of which is *** and the denominator of which is ***. If Contractor fails to pay such liquidated damages, Contractor agrees that Solar Star may deduct the amount thereof from any monies due, or that may become due, Contractor under this Agreement. The amounts payable under this Section 13.5 shall be Solar Star's sole and exclusive remedy for Contractor's failure to achieve Substantial Completion of a Phase. Solar Star and Contractor agree that the extent and amount of actual damages that would be suffered by Solar Star as a result of Contractor's failure to achieve Substantial Completion of a Phase by the guaranteed contract completion date is impractical and extremely difficult to determine or estimate. Therefore, the liquidated damages set forth in this Section 13.5 represent the Parties' best estimate of the sums which would be fair, average compensation for all losses that may be sustained.

13.6 Bonuses for Early Delivery. Solar Star shall pay to Contractor a bonus of *** per day per MWp for (1) each MWp of System capacity that satisfies the criteria in Sections 13.3.1 and 13.3.2 prior to ***, and, (2) without duplication of clause (1), each MWp of System capacity that meets the Substantial Completion criteria set forth in Section 13.3.3 prior to the date on which such MWp of System capacity is scheduled to reach Substantial Completion pursuant to Schedule 1A between *** and ***.

14. Reports. Contractor shall prepare a monthly progress report that shall include at a minimum the following for the System and submit it to Solar Star within twenty-one (21) days after the end of each calendar month: (a) executive summary, (b) progress of Work in comparison to the Construction Schedule, (c) safety report, (d) changes in Work, (e) progress photos and (e) issues/concerns.

15. Subcontractors and Suppliers.

15.1 Contractor shall at all times be responsible for the acts and omissions of Subcontractors. Contractor shall be responsible for performance of all the Work, whether performed by Contractor or its Subcontractors. Solar Star shall not undertake any obligation to pay or to be responsible for the payment of any sums to any Subcontractor.

15.2 Subject to meeting the warranty requirements described in Section 23.2 and obtaining valid warranties for such photovoltaic modules at the Site, Solar Star accepts that the System may be built with photovoltaic modules provided by one or more of the following pre-approved Suppliers:

- ***

Solar Star, at its sole discretion, may randomly select up to fifty (50) modules of each type of photovoltaic modules used in the System for delivery to a third-party for quality verification testing. The costs of such verification testing shall be the responsibility of Solar Star.

15.3 Subject to meeting all warranty requirements described in Section 23.2, Solar Star agrees that the System may be built with the following inverter equipment that will have valid warrantees upon installation at the Site that are at least ten (10) years in duration and substantially similar or superior to the existing 5-year warrantees for the equipment:

***

15.4 Contractor may vary the equipment described in Section 15.3, so long as such equipment is acceptable under the terms of the PPA. Solar Star shall not unreasonably withhold or delay approval for any inverter provided by one of the following pre-approved Suppliers as long as the inverters of any manufacturer have ten (10)-year warrantees that are substantially similar or superior to the existing 5-year warrantees for the equipment of such manufacturer (or, in the case of warrantees of Siemens, substantially similar or superior to the existing 5-year warrantees for the equipment of Xantrex):

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16. Ownership of Plans, Data, Reports and Material.

16.1 Subject to Sections 16.3 and 34, Contract Documents developed by Contractor under this Agreement shall immediately become the property of Solar Star when prepared and shall be delivered to Solar Star upon completion of the Work; provided that nothing in the foregoing shall impair, alter or otherwise affect Contractor's proprietary rights in its patents, products or other intellectual property or prejudice the rights of Contractor derived from Section 34.

16.2 Any additional inventions or intellectual property created during construction shall be owned by Contractor.

16.3 Contractor further agrees to grant and hereby grants to Solar Star an irrevocable, non-exclusive, royalty-free license under all patents, copyrights and other proprietary information of Contractor related to the Work now or hereafter owned or controlled by Contractor to the extent reasonably necessary for the operation, maintenance or repair of the System or any subsystem or component thereof designed, specified, or constructed by Contractor under this Agreement. No other license in such patents and proprietary information is granted pursuant to this Agreement.

17. Contract Price.

17.1 Amount. Subject to the following sentence, as full compensation for the Work and all of Contractor's obligations hereunder Solar Star shall pay to Contractor *** (the "Contract Price") in monthly payments in accordance with the values set forth on Schedule 1E on the first Business Day of each month referenced therein. The Contract Price (or portion there of, as applicable) shall be modified in accordance with Change Orders approved in accordance with Sections 7 or 9. The Contract Price shall be paid in accordance with Section 18.

17.2 Fixed Price. Except as otherwise set forth herein, the Contract Price is firm and fixed and not subject to any variation or price adjustments (downward or upward) in this Agreement and includes all expenses to be incurred by Contractor including, but not limited to, design, engineering, Equipment and materials, erection, commissioning and Performance Tests, inclusive of cost of travel and lodging expenses and the Applicable Permits, related to Contractor's performance of its obligations under this Agreement.

18. Payment.

18.1 So long as the Work is being performed in accordance with the provisions of this Agreement, including Schedule 1A, Solar Star shall pay to Contractor the progress

payments set forth in Section 17 in accordance with the Schedule of Values for each Phase, subject to Retention as provided in Section 18.2. Upon such payment, Solar Star's ownership of the applicable Equipment shall vest upon delivery to the Site.

18.2 Solar Star shall pay ninety-five percent (95%) of each completion payment when such payment is due in accordance with Schedule 1A. The aggregate of the remaining five percent (5%) of each completion payment of the Contract Price (the "Retention") shall be paid no later than fifteen (15) days after Substantial Completion of the applicable Phase, and in full compliance with Section 13.2 of this Agreement; provided, however that at no time shall the total Retention retained exceed *** in the aggregate.

18.3 All invoices shall be paid by Solar Star within fifteen (15) calendar days of invoice delivery by Contractor; provided, that the initial payment shall be made on the Effective Date.

18.4 Invoices shall be sent by facsimile or email with confirmation of receipt, and Solar Star must receive the invoice and, if applicable, the attached documentation, on the same date of delivery by Contractor.

18.5 Overdue payment obligations of Solar Star hereunder shall bear interest from the date due until the date paid at a rate per annum equal to the rate published by the *Wall Street Journal* as the "prime rate" on the date on which such interest begins to accrue plus two percent (2%).

19. Suspension of the Work.

19.1 Contractor may suspend the Work temporarily if Solar Star fails to pay any payment within ten (10) days after the date on which such payment is required to be made hereunder. Contractor shall be entitled to request (i) an extension of the deadlines of this Agreement for the same period of the suspension, and (ii) the reimbursement of the additional costs and expenses, if any, reasonably incurred and substantiated by Contractor in protecting, securing or insuring the Work, and in resumption of the Work. If a suspension of the Work continues for more than two (2) months, Contractor shall be entitled to terminate this Agreement.

19.2 In the event that the Work is totally or partially suspended by reason of an order from a Governmental Authority, the Party that has caused the issuance of such order (whether by reason of an act, omission or default) shall bear all the damages, costs and expenses caused by the suspension, subject to the limitations provided under Section 25.5 of this Agreement. If the suspension is not due to an act, omission or default of any of the Parties, then the deadlines of this Agreement will be extended for the same period of the suspension, or for such other period that the Parties deem reasonable in view of the circumstances, and Solar Star shall assume any costs arising under the effects of the suspension on the obligations of the Parties under this Agreement. Notwithstanding the occurrence or continuation of any Force Majeure Event, the provisions of this Section 19.2 shall apply.

19.3 After the resumption of the performance of the Work, Contractor shall, after due notice to Solar Star, examine the Work affected by the suspension. Contractor shall make good any defect, deterioration or loss of the construction or the Work affected that may have occurred during the suspension period. Costs properly incurred by Contractor (including mobilization costs, insurance fees and others) shall be added to the Contract Price, so long as the suspension did not arise due to any act, omission or default on the part of Contractor.

20. Taxes. In addition to the Contract Price, Solar Star assumes exclusive liability for and shall pay before delinquency all federal, state or local sales, use, value added, excise and other taxes, charges or contributions imposed on, or with respect to, or measured by the matters contemplated by this Agreement; provided, however, that Contractor assumes exclusive liability for ***. Provided that the conditions of indemnification set forth in Section 25 are satisfied, Solar Star shall hold harmless, indemnify and defend Contractor, together with any and all its officers, directors, agents and employees from any liability, penalty, interest and expense by reason of Solar Star's failure to pay such taxes, charges or contributions. Contractor and Solar Star shall cooperate with each other to minimize the tax liability of both Parties to the extent legally permissible.

21. Solar Star Obligations. Solar Star shall provide Contractor with all necessary access to the Site and work areas Contractor requires for completion of the Work in accordance with the processes, requirements, and restrictions set forth in the Project Documents listed in Schedule 1C. Contractor shall have reasonable access to the Site after the Final Completion Date for inspection and photography. If Contractor is ready to ship ordered materials to the Site, and the Site is not ready to receive materials, to the extent the Site is not ready due to no fault of the Contractor, Solar Star shall pay for the costs associated with such delay, including (to the extent applicable) any delivery, drop-off, insurance and temporary-storage fees.

22. Representations and Warranties.

22.1 Representations and Warranties of Contractor. Contractor represents and warrants to Solar Star that:

22.1.1. Contractor is a corporation, duly organized, validly existing, and in good standing under the laws of the State of Delaware, and has full power to engage in the business it presently conducts and contemplates conducting, and is and will be duly licensed or qualified and in good standing under the laws of the State of Delaware and in each other 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.

22.1.2 Contractor has (either directly or through its Subcontractors) all the required authority, ability, skills, experience and capacity necessary to perform and shall diligently perform the Work in a timely and professional manner, utilizing sound engineering principles, project management procedures, construction procedures and supervisory procedures, all in accordance with Industry Standards. Contractor has (either directly or through its Subcontractors) the experience and skills necessary to determine, and Contractor has reasonably determined, that Contractor can perform the Work for the Contract Price.

22.1.3 The execution, delivery and performance by Contractor of this Agreement will not (i) violate or conflict with any covenant, agreement or understanding to which it is a party or by which it or any of its properties or assets is bound or affected, or its organizational documents or (ii) subject the System or any component part thereof to any lien other than as contemplated or permitted by this Agreement.

22.1.4 There are no actions, suits, proceedings, patent or license infringements or investigations pending or, to Contractor's knowledge, threatened against it before any court or arbitrator that individually or in the aggregate could result in any materially adverse effect on the business, properties or assets or the condition, financial or otherwise, of Contractor or in any impairment of its ability to perform its obligations under this Agreement.

22.1.5 As of the Effective Date, the members of the Knowledge Group do not have actual knowledge of assertions that could reasonably be expected to result in Solar Star's responsibility for material costs associated with Schedule 1C. Excluded Items.

22.1.6 As of Effective Date, the members of the Knowledge Group do not have actual knowledge of assertions that could reasonably be expected to result in impingements on the System's solar access by neighboring sites or facilities.

22.2 Representations and Warranties of Solar Star. Solar Star represents and warrants to Contractor that:

22.2.1 Solar Star is a limited liability company duly formed and validly existing under the laws of the State of Delaware and has full legal capacity and standing to pursue its corporate purpose (including the capacity to dispose of and encumber all of its assets) and full power to engage in the business it presently conducts and contemplates conducting, and is and will be duly licensed or qualified and in good standing under the laws of 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.

22.2.2 The execution, delivery and performance by Solar Star of this Agreement will not (i) violate or conflict with any covenant, agreement or understanding to which it is a party or by which it or any of its properties or assets is bound or affected, or its organizational documents or (ii) subject the System or any component part thereof or the Site or any portion thereof to any lien other than as contemplated or permitted by this Agreement.

22.2.3 There are no actions, suits, proceedings, patent or license infringements or investigations pending or, to Solar Star's knowledge, threatened against it before any court or arbitrator that individually or in the aggregate could result in any materially adverse effect on the business, properties or assets or the condition, financial or otherwise, of Solar Star or in any impairment of its ability to perform its obligations under this Agreement.

22.2.4 Solar Star has, and will have, available all the funds that are necessary from time to time to pay Contractor the Contract Price.

23. Warranty.

23.1 Contractor's sole warranty hereunder for each Phase shall be a comprehensive warranty, as set forth in Schedule 23.1, and, except as set forth in such Schedule, Contractor does not make (and hereby expressly disclaims) any other warranties of any kind whatsoever. Contractor shall not be liable for any defect or deficiency to the extent that the same results from the specific written direction of Solar Star relating to the Work and/or the Systems; provided that any such defect or deficiency is not the result of Contractor's failure to properly implement the Work in accordance with this Agreement. The scope of such warranty will not include the warranty statements provided under the warranties referenced in Section 23.2 below.

23.2 Contractor will provide Solar Star with copies of pass-through warranties provided by photovoltaic module and inverter Suppliers for the benefit of Solar Star. Solar Star shall be responsible for supervising and making claims under such warranties, whether by itself or by Contractor acting at Solar Star's reasonable request.

24. Insurance.

24.1 Contractor, ***, shall procure or cause to be procured and maintain or cause to be maintained in full force and effect at all times commencing no later than commencement of the work at the Site and until Final Completion, a builder's risk policy with the insurance coverages specified in Part I of Schedule 24, which are agreed by the Parties to be sufficient for construction of the System. All insurance coverage shall be in accordance with the terms of this Section 24 and Part I of Schedule 24. Contractor shall not be required to procure, maintain or cause to be maintained insurance except as specifically set forth in this Section 24 and in Schedule 24.

24.2 Solar Star, at Solar Star's expense, shall procure or cause to be procured and maintain or cause to be maintained in full force and effect at all times during the period commencing no later than commencement of the work at the Site and until Final Completion, all insurance coverages specified in Part II of Schedule 24. All insurance coverages shall be in accordance with this Section 24 and Part II of Schedule 24. Subject to the prior agreement of the Parties, such insurance coverages can be included, at Solar Star's cost and responsibility, under Contractor's insurance policies under Section 24.1 above.

24.3 Contractor's policies shall provide for a waiver of subrogation rights against Solar Star and its affiliates, and their assigns, subsidiaries, affiliates, directors, officers and employees, and of any right of the insurers to any set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any such Person insured under Contractor's Commercial General Liability policy. Contractor releases and waives any and all rights of recovery against Solar Star and all of its affiliates, subsidiaries, employees, successors, permitted assigns, insurers and underwriters that Contractor may otherwise have or acquire in or from or in any way connected with any loss covered by policies of insurance maintained or required to be maintained by Contractor pursuant to this Agreement or because of deductible clauses in or inadequacy of limits of any such policies of insurance.

24.4 If at any time the insurance to be provided by Solar Star or Contractor hereunder shall be reduced or cease to be maintained, then (without limiting the rights of the other Party in respect of any default that arises as a result of such failure) the other Party may at its option take out and maintain the insurance required hereby and, in such event, (a) Solar Star may withhold the cost of insurance premiums expended for such replacement insurance from any payments to Contractor, or (b) Solar Star shall reimburse Contractor for the premium of any such replacement insurance, as applicable.

24.5 The insurance policy limits set forth herein shall in no way be construed as limits on the Parties' liability under this Agreement, subject to the provisions of Section 25.5.

24.6 The beneficiaries of the insurance policies shall be Solar Star, Contractor and the Subcontractors that may be affected by the risks insured. The insurance policies shall permit Solar Star to assign its rights thereunder to third parties at no cost.

24.7 Each Party shall provide the other Party with certificates of the insurance policies and with evidence that the premiums have been paid not later than thirty (30) days following the Effective Date.

25. Indemnity.

25.1 Subject to Section 24, Contractor shall fully indemnify, save harmless and defend Solar Star from and against any and all costs, claims, and expenses incurred by Solar Star in connection with or arising from any claim by a third party for physical damage to or physical destruction of property, or death of or bodily injury to any person, but only to the extent caused by (a) the negligence, gross negligence or willful misconduct of Contractor or its agents or employees or others under Contractor's control or (b) a breach by Contractor of its obligations hereunder.

25.2 Subject to Section 24, Solar Star shall fully indemnify, save harmless and defend Contractor from and against any and all costs, claims, and expenses incurred by Contractor in connection with or arising from any claim by a third party for physical damage to or physical destruction of property, or death of or bodily injury to any person, but only to the extent caused by (a) the negligence, gross negligence or willful misconduct of Solar Star or its agents or employees or others under Solar Star's control or (b) a breach by Solar Star of its obligations hereunder.

25.3 Each Party shall indemnify, defend and hold the other Party, and its present and future direct and indirect parents, subsidiaries and affiliates and their directors, officers, shareholders, employees, agents and representatives harmless from and against any and all claims, actions, suits, proceedings, losses, liabilities, penalties, damages, costs or expenses (including attorneys' fees and disbursements) of any kind whatsoever arising from (a) actual or alleged infringement or misappropriation by such Party (or in the case of Contractor, any Subcontractor) of any patent, copyright, trade secret, trademark, service mark, trade name, or other intellectual property right in connection with the System, including without limitation, any deliverable, (b) such Party's (or in the case of Contractor, any Subcontractor's) violation of any third-party license to use intellectual property in connection with the Work, including, without limitation, any deliverable.

25.4 If any claim is brought against a Party (the "Indemnified Party"), then the other Party (the "Indemnifying Party") shall be entitled to participate in, and, unless in the opinion of counsel for the Indemnifying Party a conflict of interest between the Parties may exist with respect to such claim, assume the defense of such claim, with counsel reasonably acceptable to the Indemnifying Party. If the Indemnified Party does not assume the defense of the Indemnifying Party, or if a conflict precludes the Indemnified Party from assuming the defense, then the Indemnified Party shall reimburse the Indemnifying Party on a monthly basis for the Indemnifying Party's defense through separate counsel of the Indemnifying Party's choice. Even if the Indemnified Party assumes the defense of the Indemnifying Party with acceptable counsel, the Indemnifying Party, at its sole option, may participate in the defense, at its own expense, with counsel of its own choice without relieving the Indemnified Party of any of its obligations hereunder.

25.5 IN NO EVENT SHALL THE INDEMNIFYING PARTY BE LIABLE TO THE INDEMNIFIED PARTY FOR INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATED TO THE TERMS OF THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO LOST PROFITS, COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES OR BUSINESS INTERRUPTION, EVEN IF THE INDEMNIFYING PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, BUT EXCEPT FOR LOSS OR DAMAGE ARISING OUT OF THE PARTIES' WILLFUL MISCONDUCT OR GROSS NEGLIGENCE. IN ADDITION, WHETHER AN ACTION OR CLAIM IS BASED ON WARRANTY, CONTRACT, TORT OR OTHERWISE, UNDER NO CIRCUMSTANCE SHALL THE INDEMNIFYING PARTY'S TOTAL LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED (i) PRIOR TO SUBSTANTIAL COMPLETION AN AMOUNT EQUAL TO *** PERCENT *** OF THE CONTRACT PRICE AND (ii) UPON SUBSTANTIAL COMPLETION OF ENTIRE PROJECT AN AMOUNT EQUAL TO *** PERCENT *** OF THE CONTRACT PRICE, MINUS THE AGGREGATE AMOUNT OF ANY PENALTIES PAID BY THE INDEMNIFYING PARTY UNDER THIS AGREEMENT; PROVIDED, THAT EACH INDEMNIFYING PARTY'S LIABILITY UNDER CLAUSE (ii) HEREOF SHALL EXPIRE ON THE DATE THAT IS *** AFTER SUBSTANTIAL COMPLETION OF THE ENTIRE SYSTEM; PROVIDED, FURTHER, THAT NOTHING CONTAINED IN THIS SUBSECTION 25.5 OR IN ANY OTHER PROVISION OF THIS AGREEMENT SHALL BE CONSTRUED TO LIMIT EITHER PARTY'S LIABILITY IN THE CASE OF FRAUD BY, OR WILLFUL MISCONDUCT OF, SUCH PARTY AND, IN THE CASE OF CONTRACTOR, CONTRACTOR'S PLACEMENT OF LIENS ON THE SYSTEM OR THE SITE.

26. Performance of the Work.

26.1 Contractor agrees to use, and agrees that it shall require each of its Subcontractors to use, only personnel who are qualified and properly trained and who possess every license, permit, registration, certificate or other approval required by Applicable Law or any Governmental Authority to enable such Persons to perform their Work involving any part of Contractor's obligations under this Agreement.

26.2 Contractor agrees that all materials and Equipment to be supplied or used by Contractor or its Subcontractors in the performance of its obligations under this Agreement shall be in good condition and fit for the use(s) for which they are employed by Contractor or its Subcontractors. Such materials and Equipment shall at all times be maintained, inspected and operated as required by Applicable Law and consistent with Industry Standards. Contractor further agrees that all licenses, permits, registrations and certificates or other approvals required by Applicable Law or any Governmental Authority will be procured and maintained for such materials and Equipment at all times during the use of the same by Contractor or its Subcontractors in the performance of any of Contractor's obligations under this Agreement.

27. Compliance with Applicable Laws.

27.1 Contractor specifically agrees that it shall at all times fully comply with Applicable Laws and that it shall perform the Work in accordance with the Applicable Laws in force at the date of execution of this Agreement. Notwithstanding the foregoing, Contractor shall not be responsible for any environmental liabilities relating to the relevant part of the Site where the System is located, except for such pollution, toxic emissions and other Hazardous Materials as are caused by Contractor during construction of the System and for Hazardous Materials associated with the existing landfill at Site which are disturbed or removed during Contractor's provision of Services under this Agreement; provided, however, that Contractor shall be required to comply with all applicable environmental laws and regulations during construction of the System. If any hazardous material is found in the Site, the removal shall be at the cost of Solar Star.

27.2 Solar Star specifically agrees that in the performance of its obligations under this Agreement it shall at all times fully comply with Applicable Laws. Solar Star further specifically agrees that at all times during its performance of this Agreement it shall not take or omit to take any action that would affect the validity of, or otherwise adversely affect, any Applicable Permit.

28. Hazardous Materials.

28.1 Subject to Section 27, Contractor hereby specifically agrees to indemnify, defend and hold Solar Star, its present and future direct or indirect parents, subsidiaries, affiliates, divisions, and their respective directors, officers, employees, shareholders, agents, representatives, successors and assigns harmless from and against any and all losses, liabilities, claims, demands, damages, causes of action, fines, penalties, costs and expenses (including, but not limited to, all reasonable consulting, engineering, attorneys' or other professional fees), that they may incur or suffer by reason of:

28.1.1 any unauthorized release of a Hazardous Material by Contractor;

28.1.2 any enforcement or compliance proceeding commenced by or in the name of any Governmental authority because of an alleged, threatened or actual violation of any Applicable Law by Contractor; and

28.1.3 any action reasonably necessary to abate, remediate or prevent a violation or threatened violation of any Applicable Law by Contractor.

28.2 Solar Star hereby specifically agrees to indemnify, defend and hold Contractor, its present and future direct or indirect parents, subsidiaries, affiliates, divisions, and their respective directors, officers, employees, shareholders, agents, representatives, successors

and assigns harmless from and against any and all losses, liabilities, claims, demands, damages, causes of action, fines, penalties, costs and expenses (including, but not limited to, all reasonable consulting, engineering, attorneys' or other professional fees), that they may incur or suffer by reason of:

28.2.1 any unauthorized release of a Hazardous Material by Solar Star;

28.2.2 any enforcement or compliance proceeding commenced by or in the name of any Governmental authority because of an alleged, threatened or actual violation of any Applicable Law by Solar Star; and

28.2.3 any action reasonably necessary to abate, remediate or prevent a violation or threatened violation of any Applicable Law by Solar Star.

29. Governing Law. The formation, interpretation and performance of this Agreement shall be governed by and construed in accordance with the laws of the State of California, without regard to its conflicts of laws principles.

30. Liens.

30.1 Contractor warrants good title, free and clear of all liens, claims, charges, security interests, and encumbrances whatsoever, to all Equipment and other items furnished by it or any of its Subcontractors that become part of the System to the extent payment therefor has been received by Contractor.

30.2 Title to all Equipment shall pass to Solar Star, free and clear of all liens, claims, charges, security interests, and encumbrances whatsoever, upon the payment therefor to the Contractor.

31. Nonwaiver. The failure of either Party to insist upon or enforce, in any instance, strict performance by the other Party of any of the terms of this Agreement or to exercise any rights herein conferred shall not be construed as a waiver or relinquishment to any extent of its right to assert, or rely upon any such terms or rights on any future occasion. No waiver shall be valid unless stated in writing as set forth in Section 33.

32. Dispute Resolution.

32.1 Good faith negotiations. In the event that any question, dispute, difference or claim arises out or is in connection with this Agreement, including any question regarding its existence, validity, performance or termination (a "Dispute"), which either Party has notified to the other, senior management personnel from both Contractor and Solar Star shall meet and diligently attempt in good faith to resolve the Dispute for a period of thirty (30) days following

one Party's written request to the other Party for such a meeting. If, however, either Party refuses or fails to so meet, or the Dispute is not resolved by negotiation, the provisions of Sections 32.2 and 32.3 shall apply.

32.2 Technical Dispute. Technical Disputes shall be resolved by an independent expert. For the purposes of this Agreement, a "Technical Dispute" shall mean a Dispute regarding whether the System conforms to the Technical Specifications (Schedule 4.1), whether the relevant part of the Site where the System is located meets the required site characteristics, whether the Performance Tests contemplated by the System commissioning plan (Schedule 4.6) have been satisfied, and any other Disputes of a technical or engineering nature. All Technical Disputes shall be resolved on an accelerated basis by one of the following institutions unless otherwise agreed in writing by Contractor and Solar Star:

32.1.1 Sandia National Laboratories;

32.1.2 National Renewable Energy Laboratory; and

32.1.3 Arizona State University Photovoltaic Test Lab.

32.3 Arbitration. Any Dispute that is not settled to the mutual satisfaction of the Parties within the applicable notice or cure periods provided in this Agreement or settled pursuant to Sections 32.1 and 32.2 shall be settled by arbitration between the Parties conducted in Oakland, California, in accordance with the Commercial Arbitration Rules of the American Arbitration Association in effect on the date that a Party gives notice of its demand for arbitration under this Section. The submitting Party shall submit such Dispute to arbitration by providing a written demand for arbitration to the other Party and the Parties shall select a single neutral arbitrator with significant contract resolution experience and experience and understanding of the contemporary solar photovoltaic power industry and photovoltaic systems. If the Parties cannot agree on a single neutral arbitrator within fifteen (15) business days after the written demand for arbitration is provided, then the arbitrator shall be selected pursuant to the Commercial Arbitration Rules of the American Arbitration Association in effect on the date such selection is to be made. Once an arbitrator has been selected, the Parties may then commence with and engage in discovery in connection with the arbitration as provided by California statutes and shall be entitled to submit expert testimony or written documentation in such arbitration proceeding. The decision of the arbitrator shall be final and binding upon Solar Star and Contractor and shall be set forth in a reasoned opinion, and any award may be enforced by Solar Star or Contractor, as applicable, in a court of competent jurisdiction. Any award of the arbitrator shall include interest from the date of any damages incurred for breach or other violation of this Agreement, and from the date of the award until paid in full, at the rate of the lesser of one percent (1%) per month and the maximum rate allowed by Applicable Law. Each of Solar Star and Contractor shall bear its own cost of preparing and presenting its case; provided, however, the Parties agree that the prevailing party in such arbitration shall be awarded

its reasonable attorney's fees, expert fees, expenses and costs incurred in connection with the Dispute. The cost of the arbitration, however, including the fees and expenses of the arbitrator, shall initially be shared equally by Solar Star and Contractor, subject to reimbursement of such arbitration costs and attorney's fees and costs to the prevailing party. The arbitrator shall be instructed to establish procedures such that a decision can be rendered within sixty (60) calendar days of the appointment of the arbitrator.

32.4 Arbitrator Confidentiality Obligation. The Parties shall ensure that any arbitrator appointed to act under this Section will agree to be bound to the provisions of Section 34 with respect to the terms of this Agreement and any information obtained during the course of the arbitration proceedings.

33. Notices and Demands. Any notice, request, demand or other communication required or permitted under this Agreement, shall be deemed to be properly given by the sender and received by the addressee if made in writing and (a) if personally delivered; (b) three (3) days after deposit in the mail if mailed by certified or registered air mail, post prepaid, with a return receipt requested; or (c) if sent by facsimile with confirmation. Mailed notices and facsimile notices shall be addressed as follows to:

Solar Star:	Solar Star NAFB, LLC 44 Montgomery Street, Suite 2400 San Francisco, California 94104 USA Facsimile No: (415) 276-8962 Attention: Matt Cheney
Contractor:	PowerLight Corporation 2954 San Pablo Avenue Berkeley, California 94702 USA Facsimile No: (510) 540-0552 Attention: President

34. Nondisclosure; Publicity. Each Party (the "Receiving Party") shall not use for any purpose other than performing the Work under this Agreement or divulge, disclose, produce, publish, or permit access to, without the prior written consent of the other Party (the "Disclosing Party"), any confidential information of the Disclosing Party. Confidential information includes, without limitation, this Agreement and exhibits hereto, all information or materials prepared in connection with the Work performed under this or any related subsequent Agreement, designs, drawings, specifications, techniques, models, data, documentation, 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, 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, and any other trade secrets. Confidential information does not include (a) information known to the Receiving Party prior to obtaining the same from the Disclosing Party; (b) information in the public domain at the time of disclosure by the Receiving Party; or (c) information obtained by the Receiving Party from a third party who did not receive same, directly or indirectly, from the Disclosing Party. The Receiving Party shall use the higher of the standard of care that the Receiving Party uses to preserve its own confidential information or a reasonable standard of care to prevent unauthorized use or disclosure of such confidential information. Notwithstanding anything herein to the contrary, the Receiving Party has the right to disclose Confidential Information without the prior written consent of the Disclosing Party: (i) as required by any court or other Governmental Authority, or by any securities exchange on which the shares of any Party are listed, (ii) as otherwise required by law, (iii) as advisable or required in connection with any government or regulatory filings, including without limitation, filings with any regulating authorities covering the relevant financial markets, (iv) to its attorneys, accountants, financial advisors or other agents, in each case bound by confidentiality obligations, (v) to banks, investors and other financing sources and their advisors, in each case bound by confidentiality obligations; or (vi) in connection with an actual or prospective merger or acquisition or similar transaction where the party receiving the Confidential Information is bound by confidentiality obligations. If a Receiving Party believes that it will be compelled by a court or other Governmental Authority to disclose Confidential Information of the Disclosing Party, it shall give the Disclosing Party prompt written notice so that the Disclosing Party may determine whether to take steps to oppose such disclosure.

Subject to the foregoing, the Parties shall jointly agree upon the necessity and content of any press release in connection with the matters contemplated by this Agreement. Any other publication, news release or other public announcement by a Party relating to this Agreement or to the performance hereunder shall first be reviewed and consented to in writing by the other Party, such consent not to be unreasonably withheld.

35. Time of Essence. Time is expressly agreed to be of the essence of this Agreement and each, every and all of the terms, conditions and provisions herein.

36. Validity. The invalidity, in whole or in part, of any provisions hereof shall not affect the validity of any other provisions hereof.

37. Survival. Sections 1, 2, 11, 15, 16, 17, 18, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 37, 38, 39, 40, 41, 44, 45 ,46 and 49 and schedules referenced in such Sections shall survive termination of this Agreement and shall survive final payment to Contractor following Final Completion.

38. Binding Effect. This Agreement shall be binding on the Parties hereto and on their respective permitted successors, heirs and assigns.

39. No Oral Modifications. No oral or written amendment or modification of this Agreement by any officer, agent or employee of Contractor or Solar Star, 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 any officer of the Party (or of the managing member or managing partner of the Party on behalf of the Party) to be bound thereby.

40. Headings. The headings in this Agreement are for convenience of 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.

41. Counterparts. This Agreement may be executed in counterparts which, taken together, shall constitute a single instrument.

42. Authority. Each individual executing this Agreement on behalf of Solar Star and Contractor 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.

43. Announcements and Publications. Contractor shall coordinate with Solar Star with respect to, and provide advance copies to Solar Star for review of, the text of any proposed announcement or publication that include any non-public information concerning the Work prior to the dissemination thereof to the public or to any Person other than Subcontractors or advisors of Contractor, in each case, who agree to keep such information confidential. If Solar Star delivers written notice to Contractor rejecting any such proposed announcement or publication within two (2) business days after receiving such advance copies, the Contractor shall not make such public announcement or publication; provided, however, that Contractor may disseminate or release such information in response to requirements of Governmental Authority to the extent required by Applicable Law or the rules of any securities exchange on which the shares of a Party are traded.

44. Complete Agreement. This Agreement constitutes the complete and entire Agreement between the Parties 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, PRIOR COURSE OF DEALING OR COURSE OF PERFORMANCE UNDER THIS AGREEMENT SHALL BE A PART OF THIS AGREEMENT OR SHALL BE USED IN THE INTERPRETATION OR CONSTRUCTION OF THIS AGREEMENT.

45. No Agency. This Agreement is not intended, and shall not be construed, to create any association, joint venture, agency relationship or partnership between the Parties or to impose any such obligation or liability upon either Party. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act as or be an agent or representative of, or otherwise bind, the other Party.

46. Priority of Documents. In the event of conflicting provisions between any of the Contract Documents, the provisions shall govern in the following priority: first, duly executed amendments to this Agreement (to the extent not superseded by a subsequent amendment), second, this Agreement and third, the other Contract Documents.

47. Assignment.

47.1 Except as set forth in Section 47.2, no Party shall be entitled to assign this Agreement or any of its rights or obligations under this Agreement, nor shall it enter into any transaction as a result of which it may transfer, assign, charge or dispose by any title of any of those rights and obligations, without the prior written consent of the other Party, which may be withheld in its sole and absolute discretion.

47.2 Notwithstanding the foregoing, (i) Solar Star shall be entitled to transfer, pledge or assign its right, title and interest in and to this Agreement (and, in particular, any rights arising in relation to any insurance policy and any other right to collect any amount from Contractor) to any lenders or special purpose entity created for financing or tax credit purposes related to System by way of security for the performance of obligations to such lenders without the consent of the Contractor; and (ii) Contractor shall be entitled to assign its right, obligation, title and interest in and to this Agreement to any of its affiliates or in connection with a merger or acquisition of Contractor; provided, however, that any such assignee of Contractor shall have (a) a financial profile materially similar to or better than the financial profile of Contractor as reflected in the audited financial statements of Contractor for the fiscal year ended December 31, 2006 (for purposes of clarity, it being understood that such financial statements reflect the financial profile of Contractor prior to its acquisition by SunPower Corporation) and (b) the technical expertise and experience necessary to perform Contractor's obligations under this Agreement.

48. Days. In this Agreement "day" means calendar day unless it is specified that it means a "business day". "Business day" means any calendar day that is not a Saturday, a Sunday or a day on which banks are required or permitted to be closed in Berkeley, California.

49. Expansion Option. Solar Star agrees that, if Nevada Power Company exercises its option under and in accordance with the Portfolio Energy Credit Purchase Agreement entered into by Solar Star and Nevada Power Company to cause Solar Star to expand the System, Contractor shall have the exclusive right of first refusal to design, engineer, construct and operate such expansion on terms and conditions that are acceptable to both Parties. Upon Nevada Power Company's exercise of its option, Solar Star shall promptly notify Contractor. Contractor will have twenty (20) days following such notification in which to express its desire to build the expansion and provide the necessary terms and conditions. Thereafter, the Parties will negotiate in good faith to reach an agreement regarding the expansion within thirty (30) days.

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IN WITNESS WHEREOF, the parties hereto have duly executed and delivered this Agreement as of the date set forth above.

SOLAR STAR NAFB, LLC,

by MMA NAFB Power, LLC, its sole member

by MMA Solar Fund IV, GP, Inc., its general partner

By: /s/ Matthew Cheney
Name: Matthew Cheney
Title: CEO

POWERLIGHT CORPORATION

By: /s/ Howard Wenger
Name: Howard Wenger
Title: Executive Vice President

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SCHEDULE 1A

Construction Schedule

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SCHEDULE 1B

Performance Tests

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SCHEDULE 1C

Scope of Work

General

PowerLight shall provide all engineering, procurement, and construction services necessary to build the System in a manner that complies with processes, requirements, and restrictions in all material respects as set forth in the following "Project Documents" (as amended or clarified in a writing signed by each of the applicable parties, in each case through the date hereof):

1. Department of the Air Force Ground Lease of Property on Nellis Air Force Base, Nevada between the Secretary of the Air Force on behalf of the United States of America and Solar Star NAFB LLC (as successor to PowerLight Corporation), dated December 14, 2006 ("Site Lease");
2. "Contract No. FA4861-06-D-B500", which is the power purchase agreement between the Department of the Air Force and Solar Star NAFB LLC (as successor in interest to PowerLight Corporation), dated July 27, 2006, 2006 ("PPA");
3. Portfolio Energy Credit Purchase Agreement between Nevada Power Company and Solar Star NAFB, LLC, dated November 8, 2006 ("PEC Agreement"); and
4. Interconnection and Operating Agreement between Nellis Air Force Base and Solar Star NAFB, LLC, dated _____, 2007 ("Interconnection Agreement").
5. Operating Agreement between the United States Department of the Air Force and Solar Star NAFB LLC (as successor in interest to PowerLight Corporation) dated as of December 14, 2006 ("Operating Agreement").

System Design

PowerLight shall prepare all engineering and installation drawings consistent with prevailing construction standards. The Designers will review the existing site and infrastructure and design an efficient system that will produce the required energy and meet the Nevada PUC Requirements. The system design will comply with all applicable laws and regulations.

The Design Package shall include:

1. Mechanical and Electrical Construction Drawings (Site Plans, Schematic Single Lines and Detail Drawings)
2. Product description information

3. Bill of Materials
4. As-built documents at the commissioning phase

Solar Star will review and approve the documents prior to Construction. The project schedule is based on a 14-day review period for each approval. After such Solar Star approval, the Design Package shall be deemed "Design Submittal" as referenced in Schedule 23.1 - - Warranty of this Agreement.

Material Purchase

PowerLight will purchase and furnish to the project site the following material:

1. Concrete Foundations
2. Tracker Structural Steel
3. Miscellaneous Steel
4. Components (Nuts, Bolts, Clamps, etc.)
5. Photovoltaic Modules
6. DC Cabling
7. DC Junction Boxes
8. AC Cabling
9. Inverters
10. Electric Switchgear
11. Transformers
12. Equipment Enclosures
13. Tracker Motor Assemblies
14. Meteorological Station
15. Remotely accessible Data Acquisition Systems including Revenue Grade Metering
16. All materials related to drainage required by the civil engineering plan.

The material will arrive on site as to not delay the completion of the project.

Assembly and Installation

PowerLight will Assemble and Install with its own forces and/or with Subcontractors the following Work:

1. Prepare the site, including but not limited to drainage required by the civil engineering plan, and remove excess debris
2. Concrete Foundations
3. Complete Tracker Units including PV Modules
4. DC Cabling and Junction Boxes
5. AC Trenching and cabling
6. Inverters, switchgear and transformers

7. Tracker Motor Assemblies
8. Meteorological Station
9. Remotely accessible Data Acquisition System including Revenue Grade Metering

Commissioning

PowerLight will commission the completed system to verify that the system is functioning as expected within acceptable parameters and will be designed at a nameplate capacity that is expected to generate *** kWh in the first year of operation under normal weather conditions. PowerLight will provide an Operations and Maintenance manual to the Customer at the completion of the commissioning phase.

EXCLUDED ITEMS:

1 Special permits, approval requirements, fees and certifications such as environmental impact report, wetlands, special utility interconnection, water quality, archeological, endangered species, water rights, mineral rights.

2 Site landscaping or plant restoration (none is contemplated)

3 Painting of steel structures or any equipment. All metal materials are galvanized and will not need painting for weather protection or architectural features.

CLARIFICATIONS:

1 The Contract assumes there will be no issues in obtaining all required permits and approvals for construction of the solar electric system such as conditional use permits, environmental impact reports, fugitive dust control permits. PowerLight will not be responsible for construction delays caused by permit and approval requirements. Delays caused by permit requirements and all other approval requirements, to the extent not caused by Contractor, will allow PowerLight a time extension change order to the contract in the amount of time for obtaining required permit and approvals.

2 The Contract is based on using EMT Conduit with Rain Tight compression fittings for above ground and schedule 40 PVC below ground.

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SCHEDULE 1D

Form of Change Order

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AIG DOCUMENT NO. 202

CHANGE ORDER

CUSTOMER

CONTRACTOR: PowerLight Corporation

Job #/ JobName: _____

Contract Date: _____

Contract Number: (_____)

Change Order No. ____

This Change Order is made this ____ day of _____, ____ by _____ , and

Powerlight Corporation

for the following gchanges in the Work

(CUSTOMER) agrees to pay for all changes in the Work performed by Powerlight Corporation under this Change Order according to the terms of the Agreement. The amount paid by [CUSTOMER] shall be full compensation for all Work requested and for all effects of this document on the Work. The change, if any, in the Contract Price shall be computed according to one of the following methods.

- ☐ 1.No cost Change Order
- ☐ 2.Costs Plus a Fee _____
- ☐ 3.Unit Price _____
- ☐ 4.Lump Sum of $ _____

Unless Item 1 or 4 is marked, PowerLight Corporation shall submit promptly to [CUSTOMER] such itemized labor and material breakdowns as [CUSTOMER] may require for Work performed of deleted from the Agreement by this Change Order PowerLight Corporation shall include the cost of such change in its next application for payment in a separate line item.

The change if any, in the contract time resulting from the Work requested by the Change Order shall be determined according to the terms of the Agreement and allows for __ and additional __ deletion of _____ (____) days.

IMPORTANT: This document may contain modifications to the text of the original AGC standard form. Its author has chosen not to reflect any modifications in the electronic or printed output. Consultation with legal and insurance counsel and careful review of the entire document are strongly encouraged.

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$(_____) Original Contract Sum

$(_____) Previous Authorized Change Orders

$(_____) This Change Order

$(_____) Total Revised Contract Sum

PowerLight Corporation

By _____

Title _____

Date _____

[CUSTOMER]

By _____

Title _____

Date _____

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SCHEDULE 1E

Schedule of Values

	2007 March	April	May	June	July	
Monthly billing (as % of total EPC price)	***	***	***	***	***	
Cumulative billing	***	***	***	***	***	

	2007 August	Sept.	October	Nov.	Dec.	2008 January
Monthly billing (as % of total EPC price)	***	***	***	***	***	***
Cumulative billing	***	***	***	***	***	100.0%

*Note: Substantial completion of phases 1, 2 & 3 are on *** respectively*

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SCHEDULE 1F

Time and Materials Rate Schedule

Administrative Assistant	$***/hr
Construction Manager	$***/hr
Designer Engineer	$***/hr
EE Eng./Mech. Eng.	$***/hr
Project Manager	$***/hr
Field Engineer (Customer Service)	$***/hr.
Sr. Mgmt.	$***/hr
Principals/Officers	$***/hr

Material is billed cost plus ***%.

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Schedule 4.1 – Technical Specifications and Bill of Materials

Technical Specifications

See spec sheets on pages 3-4 of this schedule

Additional T-20 Technical Specifications are as follows:

Tracker Model	***	***	***	***
Modules	***	***	***	***
Modules per Tracker Unit	***	***	***	***
Peak Rating	***	***	***	***
Strings per Tracker Unit	***	***	***	***
Tracker Module Area	***	***	***	***
Torque Tube Length	***	***	***	***
Torque Tube Slope	***	***	***	***
Bearings				
Bearing Type	***	***	***	***
Bearing Material	***	***	***	***
Weights	***			
Front Foundation Weight	***	***	***	***
Rear Foundation Weight	***	***	***	***
Tracker Unit Weight	***	***	***	***
Layout				
E/W Tracker Spacing	***	***	***	***
N/S Tracker Spacing	***	***	***	***
Rotation Angle	***	***	***	***
Rows				
Tracker Units (max)	***	***	***	***
Peak Rating (Max)	***	***	***	***
Row Length (Max)	***	***	***	***
Drive Capacity	***	***	***	***
Drive Power	***	***	***	***
Motor Type	***	***	***	***

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SCHEDULE 4.4

Applicable Permits

1. General Storm Water Permit (SWPPPS)
2. Welding Permit
3. Digging Permit
4. Environmental Permits (Landfill)
5. Nellis AFB Civil Engineering Work Clearance Form
6. Dust Permit

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SCHEDULE 4.6

Substantial Completion Commissioning Plan for Phases and System

4.6.1 System

Overall Site Condition	Inspect general condition of site and surrounding grounds; cleanliness of site and structure, tiles; note erosion control and drainage; confirm 'Danger' signage; check security, fencing and safety features
Installed Equipment	Verify that all equipment on construction drawings is installed per design documents and manufacturer's specifications
Support Structure	Inspect structure welds; drainage, grounding; Torque tube placement and alignment; Bearing condition and placement;
PV Mounting	Module placement, spacing and alignment; Check for cracks and other defects in modules; installation and condition frames and clamps; degree of soiling; assess shading; assess module clearance and obstacles
Array Wiring	Check grounding integrity; check connections and wire condition;
Tracker controller	Site parameters correctly installed; verify setting and function of limits and stops on tracker

4.6.2 Electrical

Combiner Box and Terminal Boxes	Check for loose wires and conduit, door seals, check fuses and connections; verify correct signage and labeling;
Inverter	Follow manufacturers start up and commissioning procedures
AC/DC Disconnect	Inspect disconnects; verify torques; ensure proper position; check signage

4.6.3 Monitoring

Data Acquisition System	Inspect DAS logger, check phone line. Verify operation and data collection
Power Meter	Calibrate DAS meter against utility grade monitor
Weather Station	Check functionality of meteorological sensors

4.6.4 Testing

Test Open Circuit Voltage (All Strings)	
Test DC Amperage (All Strings)	

SCHEDULE 23.1

Warranty

1. PowerLight System Warranty. For each Phase, commencing on the Substantial Completion Date, and for a period of *** years thereafter, PowerLight warrants that the System will be free from defects in materials and workmanship under normal operating conditions and shall conform to the Design Submittal, as defined in the Scope of Work (Schedule 1C), which shall be made available and approved by Customer before the Completion Date. Notwithstanding the foregoing, this warranty shall not include any warranty statements provided by Other Manufacturers as described in Section 3 of this Warranty. If the System fails to conform to the Design Submittal, PowerLight will, at its option, either repair or replace any defective parts. Subject to Section 2, below, unless this warranty is extended by written agreement or a Manufacturer Warranty applies, Customer shall pay for any repair costs incurred by PowerLight after *** year standard warranty expires.

2. PowerLight Extended Warranty. For each Phase of the System, the PowerLight System Warranty shall be extended for a period of *** years past the initial *** Warranty period set forth in Section 1 of this Warranty, to cover the following in respect of the *** (***):

    i. tracker drive components, including by not limited to motors, tracker controllers, screwdrives, joints, bushings/bearings, drive-arms and linkages; and

    ii. tracker assembly, including but not limited to steel structure, joints, bushings/bearings and pedestals.

    PowerLight warrants that the System components listed will be free from defects in materials and workmanship under normal operating conditions and shall conform to the Design Submittal, as defined in the Scope of Work (Schedule 1C), which shall be made available and approved by Customer before the Completion Date. Notwithstanding the foregoing, this warranty shall not include any warranty statements provided by Other Manufacturers as described in Section 3 of this Warranty. If the System fails to conform to the Design Submittal, PowerLight will, at its option, either repair or replace any defective parts. Unless this warranty is extended by written agreement or a Manufacturer Warranty applies, Customer shall pay for any repair costs incurred by PowerLight after the *** year extended warranty expires.

3. Manufacturer Warranties. PowerLight assigns to Customer the applicable pass-through warranties from PowerLight's manufacturers, including but not limited to photovoltaic

modules, tracker drive components and system motors, and inverters ("Other Manufacturers"). The Other Manufacturers used for the Project shall be stated in Design Submittal. PowerLight makes no representation or warranty, and Customer shall seek no recourse from PowerLight, regarding the warranties of Other Manufacturers, including, without limitation, the power output of the PV modules.

4. Warranty Exceptions. This warranty shall be void in the event of any of the following:

    a. Alterations or repairs made to the System's supporting structure, or to any part of the System or associated wiring and parts without PowerLight's prior written approval;

    b. Failure of the System to perform caused by legislative, administrative, or executive regulation, order or requisition of the government, local utility or public utilities commission, or any state, provincial or municipal government or official;

    c. Use of the System beyond the scope contemplated in its operating manuals or technical specifications;

    d. Force Majeure Events; and

    e. A change in usage of the Site, which may affect building or site permits and related requirements, without the written approval of PowerLight, or a change in ownership of building or property and the new owner has not signed an assumption agreement of the terms and conditions herein.

5. Disclaimer. Except as expressly provided herein, PowerLight expressly disclaims any and all warranties of any kind, express, implied or statutory, including without limitation any implied warranties of merchantability and/or fitness for a particular purpose. Neither this Agreement nor any document furnished under it, unless explicitly stated, is intended to express or imply any warranty or guarantee with regard to the performance of the System, including, but not limited to i. electricity output, ii. reduction in energy costs or environmental savings, iii. financial savings or return on investment and iv. public recognition.

SCHEDULE 24

Insurance Requirements:

Part I: Contractor shall secure and maintain the following insurance coverages:

Commercial General Liability

Limits of Liability:

$5,000,000 General Aggregate
$2,000,000 Products/Completed Operations Aggregate
$2,000,000 Personal & Advertising Injury Limit
$5,000,000 Per Occurrence

Endorsements issued in favor to Solar Star :

- Additional Insured
- Coverage afforded Solar Star shall be Primary and non-contributing to any other insurance maintained by Solar Star
- Thirty (30) days notice of cancellation, except ten (10) days for non-payment of premium.

Automobile Liability:

Limits of Liability:

$2,000,000 per accident
$2,000,000 in aggregate

Workers' Compensation:

Limits of Liability:

The greater of $1,000,000 or statutory minimum

Employers' Liability:

Limits of Liability:

$1,000,000 per occurrence

Umbrella/Excess Liability:

$20,000,000 Aggregate
Excess over Primary Limits of Liability required for Commercial General Liability, Automobile Liability and Employers' Liability.

Professional Liability:

Limits of Liability:

$1,000,000 each claim

$2,000,000 aggregate

Builders' Risk:

Builders Risk insurance covering the entire project for the full cost of replacement of the project at the time of any loss. Coverage shall be written for "All Risks" of physical loss or damage including Earthquake and Flood. Coverage for the project shall be written to include coverage loss of Business Income, Construction Penalties, Expediting Expenses, Interest, Taxes, arising out of physical loss or damage to the project. This insurance shall include Contractor as Additional Insured and Loss Payee as their interest may appear.

Cargo Coverage:

Cargo coverage to cover loss or damage to project property & equipment while in due course of transit from it's point of origin to the site. Insurance shall be valued at the C.I.F. plus 10% (cost, insurance, freight plus 10%).

Part II: Solar Star Insurance Requirements

Upon substantial completion of the project Solar Star shall procure and maintain comprehensive insurances appropriate for owners risks arising out of their ownership and operation of the System.

EXHIBIT 1

Description of Site

The site consists of 140 acres of land at Nellis AFB. Nellis Air Force Base, located in northeast Las Vegas, is the headquarters of the Air Warfare Center along with its 57th Wing and its 97th Air Base Wing. Nellis is also headquarters for the Thunderbirds, the U.S. Air Force Weapons School, and Red Flag, the Air Warfare Center's major aircrew training program.

Below is a drawing showing the recommended acres to be leased by Solar Star.

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Exhibit 10.3

INDUSTRIAL LEASE

BETWEEN

Temescal, L.P., a California limited partnership,
and Contra Costa Industrial Park, Ltd., a California limited partnership
as Landlord

and

Powerlight Corporation,
A California corporation
as Tenant

TABLE OF CONTENTS

Summary of Industrial Lease Information

Effective Date:	May 12, 1999.
Section 1 Leased Premises:	A portion of the real property located at 815 Heintz Street, Berkeley, CA, , as designated on Exhibit A-1. Tenant may use the roof over the Lease Premises, subject to the conditions set forth on Exhibit A. A crane is located within the Leased Premises, which crane shall not be a part of this Lease unless so designated by Tenant as set forth in Exhibit D attached hereto.
Non-Exclusive Parking Places:	Sixteen, plus that certain parking described in Exhibit A.
Section 1 Rentable Area of Premises:	Approximately 16,830 square feet.
Section 2 Commencement Date:	Thirty (30) days following the date on which this Lease is executed by Landlord and Tenant.
Termination Date:	Five Years thereafter, with One (1) Option to Extend the Term for an additional Sixty (60) months.
Section 3 Use	Office, Warehousing and light manufacturing of solar system products and related business use permitted by law.
Section 5 Monthly Base Rent:	Seven Thousand Two Hundred Thirty-Six and 90/100 ($7236.90) (1st month's rent payable in advance).
Base Year:	1999 (for Property Taxes and Insurance).
Section 6 Security Deposit:	Ten Thousand Eight Hundred Fifty four and 00/100 ($10,854.00)
Section 9 Tenant's Share of Project Operating Expenses:	Nine and 67/100 percent (9.67%) of Project Operating Expenses and Escalation Rent, amount to be estimated and provided to Tenant by Landlord.

[SUMMARY CONTINUES]

Section 23.19

Notices:

Landlord: Temescal, L.P., a California limited partnership, and Contra Costa Industrial Park, Ltd., a California limited partnership.

Address: c/o the Voit Companies
505 14th Street, Suite 460
Oakland, CA 94612
Telephone: (510) 251-1966

Tenant: Powerlight Corporation, a _____ corporation
Address: To the Leased Premises

The foregoing Summary of Industrial Lease Information is intended to set forth certain terms of the agreement between Landlord and Tenant. In the event of any conflict between any information shown on this Summary and the Lease, the latter shall control.

TD
INITIALS (Tenant)

MZ
INITIALS (Landlord)

INDUSTRIAL LEASE

This Industrial Lease (this "Lease") is entered into as of the Effective Date as set forth in Summary of Industrial Lease Information (the "Summary") by and between Temescal, L.P., a California limited partnership, and Contra Costa Industrial Park, Ltd., a California limited partnership ("Landlord") and the tenant as identified in the Summary and as reflected on the signature block at the end of this Lease ("Tenant").

RECITALS

A. Landlord desires to lease to Tenant and Tenant desires to lease from Landlord the premises located at Berkeley, CA (the "Leased Premises"), designated in the Summary and consisting of the approximately square footage as set forth in the Summary, which for reference purposes only is designated on the map attached to this Lease as Exhibit A and incorporated by reference.

B. The Leased Premises are located in the building at the street address identified in the Summary (the "Building"), which together with certain common areas and other buildings constitute the Temescal Business Center (the "Project).

NOW, THEREFORE, for good and valuable consideration the receipt and adequacy of which are hereby acknowledged, the parties hereby agree as follows:

1. Lease of Premises.

Landlord leases to Tenant and Tenant leases from Landlord the Leased Premises for the term, at the rental and upon all other terms, covenants, and conditions in this Lease. For purposes of this Lease, Landlord and Tenant agree that the rentable area of the Leased Premises (the "Rentable Area of the Premises") is as stated on the Summary.

Tenant shall have the non-exclusive right to use the number of parking spaces as set forth in the Summary in the parking area located in the Project in common with the other tenants of the Project. Landlord reserves the right to alter or modify, on a nondiscriminatory basis, from time to time the location and arrangement of parking spaces in the Project Tenant and its officers, agents, employees, customers, and invitees shall park their motor vehicles only in areas designated by Landlord for that purpose from time to time. Tenant shall not at any time park or permit the parking of motor vehicles, belonging to it or to others, so as to interfere with the pedestrian sidewalks, or roadways, or in any portion of the Common Area not designated by Landlord for such use by Tenant. In no event may any automobiles not in active use and/or displaying current registration tags be stored at the Project and the storage, dismantling, or repairing of vehicles or any materials in the parking area is not permitted. Vehicles shall not be placed on blocks or otherwise made immobile or unsightly, such determination to be at the sole discretion of Landlord. If any vehicle of Tenant or any of its authorized representatives is parking in any part of the Project other than the specified parking spaces or areas. Tenant hereby authorizes Landlord to engage a towing service to remove such vehicle at Tenant's expense. Within ten (10) days after request from Landlord, Tenant shall furnish to Landlord a list of the license numbers assigned to its motor vehicles, and those of its officers, agents and employees.

Tenant shall additionally have ingress and egress rights for loading and unloading purposes at the front loading doors depicted on Exhibit A.

2. Lease Term.

2.1 Term. The term of this Lease (the "Term") shall commence on the date set forth in the Summary (the "Commencement Date"). The Term of this Lease shall end the date as set forth in the Summary (the "Termination Date"), unless sooner terminated pursuant to any provision hereof.

2.2 Early Possession. If Tenant occupies the Leased Premises prior to the Commencement Date, such occupancy shall be subjected to all provisions of this Lease. However, such occupancy shall not advance the Termination Date. Tenant shall not be required to pay rent or other charges if it occupies before the Commencement Date. Landlord shall use its best efforts to permit Tenant to occupy as soon as possible after the current tenant vacates the Leased Premises.

2.3 Delay in Possession. If Landlord fails to deliver possession of the Leased Premises to Tenant by the Commencement Date, Landlord shall not be liable for any damages resulting from that failure, nor shall that failure cause a termination of this Lease or Tenant's obligations under this Lease, except as otherwise permitted under this Section, nor shall that failure extend the term of this Lease. If Landlord has not delivered possession of the Leased Premises to Tenant within sixty (60) days after the Commencement Date, Tenant may, however, cancel this Lease, by written notice provided to and received by Landlord within ten (10) days after the end of the sixty (60) day period; in that case, the parties shall be discharged from all obligations under this Lease, provided, however, that if the written notice of Tenant is not received by Landlord within that ten (10) day period, Tenant shall have no further right to terminate this Lease. If cither party cancels as herein above provided, landlord shall return any monies previously deposited by tenant and the parties shall be discharged from all obligations herein after.

2.4 Acknowledgment of Commencement Date. In the event the Lease Commencement Date of the term of the Lease is delayed beyond the sixty (60) days described in preceding section, then Landlord and Tenant shall execute a written acknowledgment of the dates of commencement and termination of the Lease and shall attach it to the Lease as an Exhibit.

2.5 Option to Extend.

Subject to the provisions hereinafter set forth, Landlord hereby grants to Tenant that number of options as set forth in the Summary, to extend the Term of this Lease on the same terms, conditions and provisions as contained in this Lease, except as otherwise provided herein. Each Option Period shall commence on the day following the end of the Term then in effect (the "Option Period Commencement Date") and end on the last day of the period of such extension as set forth in the Summary.

(a) The option to extend shall be exercisable by written notice from Tenant to Landlord of Tenant's intent to exercise its election for said option and must be given not later than the date which is six (6) months prior to, the Option Period Commencement Date. If Tenant fails to timely give notice of its intent to exercise the applicable option, said option shall thereupon expire.

(b) Monthly Base Rent payable as of the commencement of each Option Period (each an "Extension Commencement Date") with respect to the Leased Premises shall be one hundred and three percent (103%) of the Monthly Base Rent payable for the month immediately preceding such commencement. Thereafter, the Monthly Base Rent shall be adjusted annually on each anniversary of the Extension Commencement Date (the "Adjustment Date") to an amount equal to one hundred and three percent (103%) of the Monthly Base Rent payable for the month immediately preceding such Adjustment Date.

(c) Tenant shall not have any option to extend the Term of this Lease beyond the expiration of the Option Period(s).

3. Use and Condition of Premises.

3.1 Use of Premises.

(a) The Leased Premises shall be used for the use as set forth in the Summary or as otherwise approved by Landlord in writing and for no other purpose. Tenant shall not do or permit any act that could:

(i) cause any structural damage to the Project, or

(ii) cause damage to any part of the Building, except to the extent reasonably necessary for the installation of Trade Fixtures (as defined below), equipment, machinery, or the construction of alterations as permitted under this Lease or as approved in writing in advance by Landlord.

(b) Tenant shall not operate or permit the operation of any equipment or machinery on the Project that could:

(i) materially damage the Project,

(ii) impair the efficient operation of the Building's heating, ventilation, or air conditioning system.

(iii) block or otherwise impede the operation of the Building's sprinkler system,

(iv) overload or otherwise place an undue strain on the Building's electrical and mechanical systems, or

(v) damage, overload, or corrode the Building's sanitary sewer system.

(c) Tenant shall not install or attach anything in the Building in excess of the load limits established for the Building. Tenant shall contain and dispose of all dust, fumes, or waste products generated by Tenant's use of the Leased Premises so as to avoid:

(i) unreasonable fire or health hazards,

(ii) damage to the Project, or

(iii) any violation of any Law.

(d) Except as may be approved by Landlord in advance and in writing, Tenant shall not change the exterior of the Building or install any equipment, machinery, or antennas on or make any penetrations of the exterior or roof of the Building. Tenant has the right, with Landlords approval to place signs and architectural elements identifying its place of business, including entry awning, signs on walls, canopy over entry, and flags. Tenant shall not commit any waste in or around the Project and shall keep the Leased Premises in a neat, clean, attractive and orderly condition, free of any nuisances. Tenant may conduct on any portion of the Leased Premises any sale in connection with its business operations.

3.2. Compliance with Law.

(a) Tenant shall, at Tenant's expense, comply with all applicable statutes, ordinances, rules, regulations, orders, covenants and restrictions of record and requirements of any fire insurance underwriters or rating bureaus, including, but not limited to, the Americans with Disabilities Act, now in effect or which may hereafter come into effect, whether or not they reflect a change in policy from that now existing, during the Term or any part of the Term hereof, relating in any manner to the Leased Premises and the occupation and use by Tenant of the Leased Premises and of the Common Areas. Tenant shall not use or permit the use of the Leased Premises or the Common Areas in any manner that will tend to create waste or a nuisance or shall tend to disturb other occupants of the Project. The judgment of any court of competent jurisdiction or the admission of Tenant in any action against Tenant, whether Landlord is a party thereto or not, that Tenant has violated any law, statute, ordinance, or governmental rule, regulation or requirement, shall be conclusive of the fact as between Landlord and Tenant. Landlord warrants that as of the date possession of the Leased Premises is delivered to Tenant that the Leased Premises (including building systems) complies with applicable laws.

(b) Tenant shall at all times keep the Leased Premises and Common Areas free of Hazardous Materials (as defined below). Tenant shall not use, generate, manufacture, store, release, or dispose of Hazardous Materials in, on, or about the Leased Premises (except as defined in Section 7 (b) of this lease) or the Common Areas. "Hazardous Materials" shall include, but not be limited to, substances defined as "hazardous substances," "hazardous materials," or "toxic substances" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 USCS §§ 9601, et seq.; the Hazardous Materials Transportation Act, 49 USCS §§ 1801 et seq.; the Resource Conservation and Recovery Act, 42 USCS §§ 6901, et seq.; and those substances defined as "hazardous wastes" in Section 25117 of the California Health & Safety Code or as "hazardous substances" in § 25316 of the California Health & Safety Code; and in the regulations adopted and publications promulgated pursuant to said laws.

3.3. Condition of Premises.

(a) Tenant acknowledges that Tenant is leasing the Leased Premises on an "as is" basis, and Tenant and Landlord agree that the Leased Premises (inclusive of building systems) will be delivered "broom clean" and in good and sanitary order, condition and repair.

(b) Tenant hereby accepts the Leased Premises in their agreed upon condition subject to all applicable zoning, municipal, county and state laws, ordinances and regulations governing and regulating the use of the Leased Premises, and any covenants or restrictions of record, and accepts this Lease subject thereto and to all matters disclosed thereby and by any exhibits attached hereto. Tenant acknowledges that neither Landlord nor Landlord's agent has made any representation or warranty as to the present or future suitability of the Leased Premises for the conduct of

Tenant's business, the suitability thereof for the conduct of Tenant's business, the utility services provided to the Leased Premises or the distribution of those utility services within the Leased Premises. Landlord has not agreed to undertake any modification, alteration or improvement to the Leased Premises except as specifically provided in this Lease.

(c) Tenant shall not overload the floor of the Leased Premises. Landlord shall have the right to prescribe the weight, size and position of all safes and other heavy equipment brought into the Leased Premises or Project, the times and manner of moving the same in or out of the Leased Premises or Project, and all such moving must be done under the supervision of Landlord. Safes or other heavy equipment shall, if considered necessary by Landlord, stand on a platform of such thickness as is necessary to properly distribute the weight. Landlord reserves the right to require Tenant to secure the written recommendations of a qualified structural engineer as to the safe installation of such property or equipment. Landlord shall not be responsible for loss of or damage to any such property from any cause, and all damage done to the Leased Premises or Project by moving or maintaining any such property shall be immediately repaired at the expense of Tenant.

4. Construction.

The obligations of Landlord and Tenant to perform work, supply labor and materials and prepare the Leased Premises for occupancy are set forth in detail in Exhibit B. Landlord and Tenant shall expend all funds and do all acts required of them in Exhibit B and shall have the work performed promptly and diligently and in a first-class, workmanlike manner. If Landlord is obligated hereunder to perform construction or remodeling work, then possession shall not be deemed tendered and the term of this Lease shall not commence until the first to occur of the following: (a) three (3) days after written notice by Landlord that Landlord's construction work has been completed; (b) upon the Tenant's opening for business within the Leased Premises or (c) the Commencement Date written in the Summary.

5. Rent.

5.1. Base Rent. Tenant agrees to pay to Landlord as base rent, without notice or demand, the sum set forth in the Summary as Monthly Base Rent ("Monthly Base Rent") increased by (i) Tenant's Share of the total dollar increase, if any, in Property Taxes (as defined in §9) and Insurance (as defined in §16.2) paid or incurred by Landlord in that year over the Base Year (the Property Taxes and Insurance, collectively, the "Escalation Rent") and (ii) Tenant's Share of Project Operating Expenses (as defined in §9) in advance, on or before the first day of each and every successive calendar month during the Term hereof. Tenant's obligation to pay rent shall commence on the Commencement Date. The Monthly Base Rent shall be paid to Landlord without deduction or offset, in lawful money of the United States of America and at the Landlord's address as designated in the Summary, or such place as Landlord may from time to time designate in writing. Monthly Base Rent for any period which is for less than one (1) month shall be a prorated portion of the monthly installment herein based upon a thirty (30) day month, except that Tenant shall pay, at the time of execution hereof, a full (30 day) Monthly Base Rent for the first 30 days of the Term and, as appropriate, the Monthly Base Rent for the next, succeeding month shall be prorated and paid at the beginning of such month. Landlord is not be required to send monthly statements, invoices or billings of any kind as a condition to Tenant paying any Rent due under this Lease.

5.2 Rent Adjustments. The Monthly Base Rent shall be adjusted for the then remaining portion of the initial Term of this Lease as of the first and each anniversary date(s) of the Commencement Date. Each such anniversary date is hereunder referred to as an "Adjustment Date." The Monthly Base Rent shall be adjusted as of each Adjustment Date to an amount equal to one hundred and three percent (103%) of the Monthly Base Rent payable for the month immediately preceding such Adjustment Date.

5.3 Returned Checks. In the event a check from Tenant to Landlord is returned for non-payment of funds, Tenant shall replace said check with only the following: (a) cashier's check, (b) cash, or (c) certified money order. In addition, Landlord shall assess a returned check handling fee of $25.00 for the first, $35.00 for the second and $45.00 for each successive occurrence. The returned check fee shall be tendered with the replacement payment. Said returned check handling fee shall in no way void Landlord's right to assess and collect late charges. The third check rejection shall require payment by money order.

5.4 Date of Receipt of Tenant's Payment. The date of delivery of payment to Landlord shall be considered the bona fide date of receipt of payment. The date of postmark, posting date, or mailing machine date shall not be considered date of payment. Tenant accepts full responsibility for delivery of payments to Landlord.

5.5 Additional Rent. Tenant shall pay, as additional rent, all sums of money or charges required to be paid by Tenant under this Lease in addition to the Monthly Base Rent, Escalation Rent and late charges, all of which are agreed by the parties hereto to be considered "Additional Rent." If such amounts or charges are not paid at the time provided in this Lease, they shall nevertheless be collectible as Additional Rent with the next installment of Monthly Base Rent thereafter falling due, but nothing contained in this Lease shall be deemed to suspend or delay the payment of any amount of money or charge at the time the same becomes due and payable under this Lease or limit any other remedy of Landlord.

5.6 Escalation Rent/Operating Expenses Estimation and Accounting. Escalation Rent and Operating Expenses shall be paid monthly on an estimated basis, with subsequent annual statement, in accordance with the following procedures:

(a) Escalation Rent. No later than forty-five (45) days prior to the end of the Base Year set forth in the summary and no later than forty-five (45) days prior to the end of each subsequent calendar year, or as soon after that time as practicable. Landlord shall give Tenant notice of Landlord's estimate of any Escalation Rent due under this Section for the ensuing calendar Lease year. On or before the first day of each month during the ensuing calendar year. Tenant shall pay to Landlord one-twelfth (l/12th) of the estimated Escalation Rent. If Landlord fails to give notice as required in this Section, Tenant shall continue to pay on the basis of the prior year's estimate until the month after that notice is given. If at any time it appears to Landlord that the Escalation Rent for the current calendar year will vary from the estimate by more than five percent (5%), Landlord shall, by notice to Tenant, revise the estimate for that year, and subsequent payments by Tenant for that year shall be based on the revised estimate.

(b) Operating Expenses. Operating Expenses (as defined in §9) shall initially be estimated by Landlord based upon reasonably anticipated costs, and shall be the sum as set forth in the Summary. Thereafter, Landlord may upon fifteen (15) days written notice to Tenant, adjust this estimate quarterly.

(c) Annual Statement. Within ninety (90) days after the close of each calendar year, or as soon after the ninety (90) day period as practicable, Landlord shall deliver to Tenant a statement of the actual Escalation Rent and Operating Expenses for that calendar year, accompanied by a statement showing the basis on which the actual Escalation Rent and Operating Expenses were determined. At Tenant's request, Landlord shall provide Tenant reasonable supporting detail underlying the calculations of Escalation Rent and Operating Expenses. If Landlord's statement discloses that Tenant owes an amount that is less than the estimated payments for the calendar year previously made by Tenant, Landlord shall credit the excess first against any sums then owed by Tenant, and then against the next payments of rental due. If Landlord's statement discloses that Tenant owes an amount that is more than the estimated payments for the calendar year previously made by Tenant, Tenant shall pay the deficiency to Landlord within thirty' (30) days after delivery of the statement. Any statement provided by Landlord pursuant to this subsection shall be conclusively deemed to be correct if not objected to by Tenant within ninety (90) days following Landlord's delivery of such statement. Tenant hereby waives the benefit of any statute of limitations that would extend Tenant's right to challenge the propriety of any expenses contained in any statement beyond the period agreed to in the preceding sentence.

(d) Proration of Escalation Rent. The amount of Escalation Rent for any fractional year in the Term shall be appropriately prorated. The proration of Property Taxes and Insurance for the calendar year in which termination occurs shall be calculated on the basis of a fraction of said expenses for that entire calendar year. The termination of this Lease shall not affect the obligations of the parties pursuant to this Section to be performed after the termination.

6. Security Deposit.

Tenant shall deposit with Landlord upon execution hereof that sum identified in the Summary as the Security Deposit (the "Security Deposit") as security for Tenant's faithful performance of Tenant's obligations hereunder. If Tenant fails to pay rent or other charges due hereunder (all of which, collectively, are defined to be "Rent"), or otherwise defaults with respect to any provision of this Lease, Landlord may use, apply, or retain all or any portion of said deposit for the payment of any rent or other charge in default or for the payment of any other sum to which Landlord may become obligated by reason of Tenant's default, or to compensate Landlord for any loss or damage which Landlord may suffer thereby. The use, application, or retention of the Security Deposit by Landlord shall not prevent Landlord from exercising any other remedy provided hereunder or at law and shall not be construed as liquidated damages. If Landlord so uses or

applies all or any portion of said deposit, Tenant shall, within ten (10) days after written demand therefor, deposit cash with Landlord in an amount sufficient to restore said deposit to the full amount then required of Tenant. Landlord shall not be required to keep the Security Deposit separate from its general accounts and Tenant shall not be entitled to, and Tenant hereby specifically waives any requirement that Landlord pay interest on the Security Deposit. If Tenant performs all of Tenant's obligations hereunder, the Security Deposit, or so much thereof as has not theretofore been applied by Landlord, shall be returned, without payment of interest or other increment for its use, to Tenant or, at Landlord's option, to the last assignee, if any, of Tenant's interest hereunder. at the expiration of the Term hereof, and after Tenant has vacated the Leased Premises. No trust or fiduciary relationship is created herein between Landlord and Tenant with respect to the Security Deposit. If Landlord transfers the Leased Premises during the Term hereof, Landlord may pay the Security Deposit to Landlord's successor in interest in accordance with Civil Code § 1950.7 or any successor statute, in which event the transferring Landlord shall be released from all liability for the return of the Security Deposit.

7. Hazardous Materials.

(a) Landlord represents and warrants to Tenant that to Landlord's actual knowledge and as of the Commencement Date: (i) the Leased Premises are in compliance with all Environmental Laws (as defined below) governing and relating to the Leased Premises as in effect and enforced as of the Commencement Date; and (ii) except as disclosed to Tenant in writing prior to the execution of this Lease, no Toxic Materials are present in, on or under the Leased Premises or the Project.

(b) Except for reasonable amounts of commercially available office and manufacturing products used, stored and disposed of in compliance with all applicable local, state and federal statutes, orders, ordinances, rules and regulations, Tenant shall not cause or permit any substance, material, waste or item which is or becomes regulated by any federal, state, regional or local governmental authority because it is in any way hazardous, toxic, carcinogenic, mutagenic or otherwise adversely affects any part of the environment, or creates risks of any such hazards or effects to be brought upon, kept or used in or about the Leased Premises or the Project by Tenant, its agents, employees, contractors, licensees, customers, or invitees, without the prior written consent of Landlord, which consent Landlord shall not withhold so long as Tenant demonstrates to Landlord's satisfaction, in the exercise of Landlord's sole and absolute discretion, that such items, and the quantities thereof, are necessary or materially useful to Tenant's business and will be used, kept and stored in a manner that complies with all Environmental Laws (as defined below). Tenant shall comply, at its sole cost, with all federal, state and local laws, statutes, ordinances, codes, regulations and orders relating to the receiving, handling, use, storage, accumulation, transportation, generation, spillage, migration, discharge, release and disposal of any flammable, combustible, explosive, infectious, corrosive, caustic, irritant, strong sensitizing, carcinogenic or radioactive materials, hazardous waste, toxic substances or related materials, including without limitation, substances defined as "hazardous substances," "hazardous materials," "toxic substances" or "asbestos containing materials" by federal, state or local laws, and in the regulations adopted in publications promulgated pursuant to said laws, including but not limited to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA) *[42 USCS §§ 9601 et seq.];* the Resource Conservation and Recovery Act of 1976 (RCRA) *[42 USCS §§ 6901 et seq.];* the Clean Water Act, also known as the Federal Water Pollution Control Act (FWPCA) *[33 USCS §§ 1251 et seq.];* the Toxic Substances Control Act (TSCA) *[15 USCS §§ 2601 et seq.];* the Hazardous Materials Transportation Act (HMTA) *[49 USCS §§ 1801 et seq.];* the Insecticide, Fungicide, Rodenticide Act *[7 USCS §§ 136 et seq.];* the Superfund Amendments and Reauthorization Act *[42 USCS §§ 6901 et seq.];* the Clean Air Act *[42 USCS §§ 7401 et seq.];* the Safe Drinking Water Act *[42 USCS §§ 3OOf et seq.];* the Solid Waste Disposal Act *[42 USCS §§ 6901 et seq.];* the Surface Mining Control and Reclamation Act *[30 USCS §§ 1201 et seq.];* the Emergency Planning and Community Right to Know Act *[42 USCS §§ 11001 et seq.];* the Occupational Safety and Health Act *[29 USCS §§ 655 and 657];* the California Underground Storage of Hazardous Substances Act *[II & SC §§ 25280 et seq.];* the California Hazardous Substances Account Act *[H & S C §§ 25300 et seq.];* the California Hazardous Waste Control Act *[H & SC §§ 25100 et seq.];* the California Safe Drinking Water and Toxic Enforcement Act *[H & SC §§ 24249.5 et seq.];* the Porter-Cologne Water Quality Act *[Wat C §§ 13000 et seq.]* together with any amendments of or regulations promulgated under the statutes cited above and any other federal, state, or local law, statute, ordinance, or regulation now in effect or later enacted that pertains to occupational health or industrial hygiene, and only to the extent that the occupational health or industrial hygiene laws, ordinances, or regulations relate to Hazardous Substances on, under, or about the Property, or the regulation or protection of the environment, including ambient air, soil, soil vapor, groundwater, surface water, or land use (collectively referred to herein as the "Environmental Laws"). Such materials and substances are hereinafter collectively referred to as "Toxic Materials." It shall be the sole obligation of Tenant to obtain any permits and approvals required pursuant to the Environmental Laws. Without limiting the generality of the foregoing, Tenant shall comply with requirements for the inventory of Toxic Materials imposed by any state or local laws, including the Environmental Laws.

(c) Tenant shall be solely responsible for and shall indemnify, protect, defend and hold harmless Landlord and its agents, employees, representatives, directors and officers (collectively hereinafter referred to as the "Landlord Indemnitees") from and against any and all claims, costs, penalties, fines, losses, liabilities, attorneys' fees, damages, injuries, causes of action, judgments, and expenses which arise during or after the Lease Term as a result of the receiving, handling, use, storage, accumulation, transportation, generation, spillage, migration, discharge, release or disposal of Toxic Materials in, upon or about the Leased Premises or the Project, by Tenant or its agents, employees, contractors, licensees, customers or invitees. This indemnification of the Landlord Indemnitees by Tenant includes, without limitation, any and all costs incurred in connection with any investigation of site conditions and any clean-up, remediation, removal or restoration work required by any federal, state or local governmental agency or political subdivision because of Toxic Materials present in the soil, subsoils, ground water or elsewhere in, on, under or about the Leased Premises or the Project. This indemnification by Tenant under this Section shall survive the termination of this Lease.

(d) If Tenant or its agents, employees, contractors, licensees, customers or invitees or any other parties (except the Landlord Indemnitees) causes contamination or deterioration of water or soil resulting in a level of contamination greater than the maximum levels established from time to time during the term of this Lease by any governmental authority having jurisdiction over such contamination, then Tenant shall promptly take any and all action necessary to clean-up such contamination in the manner required by law. If Tenant fails to take such action, Landlord may, but shall not be obligated to, take such action. In such event, all costs incurred by Landlord with respect to such clean-up activities shall be for the account of Tenant. Any amount so expended by Landlord shall be paid by Tenant promptly after demand by Landlord, with interest at the maximum rate permitted by law.

(e) Tenant shall immediately provide Landlord with telephonic notice, which shall later be confirmed by written notice, of any and all accumulations, spillage, discharge, release and disposal of Toxic Materials, onto or within the Leased Premises or the Project, and any injuries or damages relating directly or indirectly therefrom.

(f) On or before the expiration or earlier termination of this Lease, Tenant shall take any and all action required to be taken under the Environmental Laws in order to surrender the Leased Premises, including such portions of the Project which are subject to this Lease, to Landlord in a condition which would be completely free of any and all Toxic Materials caused or permitted to be in or about the Leased Premises or the Project by Tenant, its agents, employees, contractors, licensees, customers, or invitees.

(g) With regard to any Toxic Materials in, on, under or about the Leased Premises or the Project (i) prior to the commencement of this Lease or (ii) that have been spilled, discharged, or disposed on the Leased Premises or the Project by Landlord, its agents, employees or contractors, or any Toxic Materials generated by Landlord, Landlord shall (i) bear all financial and other responsibility for insuring that such Toxic Materials shall be used, kept and stored in a manner which strictly complies with all Environmental Laws regulating such Toxic Materials; (ii) maintain in effect and comply with all conditions and requirements of any and all permits, licenses and other governmental and regulatory approvals or authorizations required under any Environmental Laws; (iii) take any necessary remedial action if and when so ordered by governmental authorities with jurisdiction over such materials; and (iv) indemnify, defend and hold harmless Tenant from and against any and all claims caused by such Toxic Materials.

8. Common Areas.

(a) As used in this Lease, the term Common Areas shall mean all areas and facilities within the Project that are not designated by Landlord for the exclusive use of Tenant, Landlord, or any other tenant of the Project, including but not limited to pedestrian sidewalks, landscaped areas, common bathrooms, lobby areas, parking areas, incinerators, interior stairs and balconies and similar areas and improvements, the truckways, roadways, loading docks, loading areas, railroad tracks, roofs, common areas and delivery yards.

(b) Landlord shall have exclusive control over the Common Areas, provided that Tenant and Tenant's employees, agents, suppliers, shippers, customers, and invitees shall have the nonexclusive right to use the Common Areas during the term of this Lease, subject to the rights reserved by Landlord under this Lease and further subject to all rules and regulations governing the use of the Common Areas from time to time issued by Landlord.

(c) Landlord shall have the right, without it constituting an actual or constructive eviction of Tenant, without any abatement of rent under this Lease and without notice (unless so stated below) to or the consent of Tenant, to

(i) upon five (5) days notice to Tenant, close any part of the Common Areas to the extent necessary in Landlord's opinion to prevent the accrual of any prescriptive rights, provided, however, that access by Tenant shall not be unreasonably disrupted, and Landlord shall, to the maximum extent possible, avoid any disruption to Tenant's access that exceeds four (4) hours;

(ii) upon five (5) days notice to Tenant, temporarily close any part of the Common Areas to repair and maintain them or for any other reasonable purpose, provided, however, that access by Tenant shall not be unreasonably disrupted, and Landlord shall, to the maximum extent possible, avoid any disruption to Tenant's access that exceeds four (4) hours;

(iii) upon five (5) days notice to Tenant, change the nature of the Common Areas, including without limitation changes in the location, size, shape, and number of driveways, entrances, parking spaces, parking areas, loading and unloading areas, ingress, egress, direction of traffic, landscaped areas, and walkways, provided, however, that Landlord shall use its best efforts to avoid any impact upon Tenant's use of the Project;

(iv) upon five (5) days notice to Tenant, eliminate from or add to the Project any land or improvement provided, however, that Landlord shall use its best efforts to avoid any impact upon Tenant's use of the Project;

(v) upon five (5) days notice to Tenant, designate additional property outside the boundaries of the Project to be a part of the Common Areas;

(vi) remove unauthorized persons from the Project;

(vii) upon five (5) days notice to Tenant, change the name or address of the Building or the Project;

(viii) upon five (5) days notice to Tenant, use or allow the use of the Common Areas while engaged in maintenance, repairs, construction, or other alterations to the Project; and

(ix) perform any other acts and make other changes or alterations in the Common Areas and the Project as Landlord may deem reasonably appropriate, upon notice to Tenant within a reasonable time prior to taking such action or making such changes.

9. Operating Expenses.

(a) Tenant shall pay to Landlord during the term of this Lease, as set forth above in Section 5, Tenant's Share, as set forth in the Summary, of all Project Operating Expenses (as defined below), incurred in connection with the operation of the Project.

(b) As used in this Lease, Operating Expenses means:

(i) all costs and expenses incurred by Landlord for the following:

(A) the provision of utilities to the Common Areas, including but not limited (o gas, electricity, and water for irrigation, including the maintenance and repair of same;

(B) the maintenance of all landscaping in the Common Areas, including the installation and maintenance of irrigation systems, the planting and maintenance of shrubs, trees, flowering plants and ground cover;

(C) the compliance with all Laws;

(D) the operation, maintenance, repair, cleaning, painting, and resurfacing of the parking lots included in the Common Areas;

(E) the installation, repair, and maintenance of all light fixtures and signs located in the Common Areas and on or in the Project;

(F) the provision of security to the Project and the Common Areas;

(G) the maintenance of all parking areas, roadways, sidewalks, walkways, driveways, striping, fences and gates contained in the Common Areas;

(H) the establishment and maintenance of directories of tenants in the Project;

(I) the maintenance and repair of all fire prevention and detection systems, including smoke detectors and sprinkler systems; and

(J) charges and/or fees levied by the City of Berkeley, including but not limited to those for street lighting, street landscaping, library service, school tax, clean storm water, street improvements and traffic mitigation.

(ii) management fees, whether for services rendered by Landlord, an affiliate of Landlord, Landlord's employees, or a third-party property manager hired by Landlord.

(iii) the amount of any deductible paid by Landlord in connection with an insured loss resulting from damage to the Project, but in no event more than $1,000 per occurrence;

(iv) the amount of any uninsured loss resulting from damage to the Project; and

(v) all additional costs and expenses incurred by Landlord in connection with the operation, maintenance, repair, replacement, and protection of the Project that would be considered a current expense according to generally accepted accounting principles.

(c) Operating Expenses shall not include

(i) depreciation;

(ii) any capital expenditures, except as permitted in subsection (b)(v), set forth above;

(iii) payments on any loans or ground leases affecting the Project;

(iv) leasing commissions; and

(v) the cost of tenant improvements installed exclusively for the use of other tenants.

(d) As used in this Lease, the term "Property Taxes" shall mean any and all taxes, assessments, levies, and other charges of any kind, general and special, foreseen and unforeseen (including all installments of principal interest required to pay any existing or future general or special assessments (the "Assessments"), and any increases resulting from reassessments made in connection with a change in ownership, new construction, or any other cause), now or later imposed by any governmental or quasi-governmental authority or special district having the power to tax or levy assessments, which are levied or assessed against or with respect to the value, occupancy, or use of all or any portion of the Project (as now constructed or as may at any later time be constructed, altered, or otherwise changed) or Landlord's interest in the Project, the fixtures, equipment, and other property of Landlord, real or personal, that are an integral part of and located on the Project, the gross receipts, income, or rentals from the Project, or the use of parking areas, public utilities, or energy within the Project, or Landlord's business of leasing the Project. Property Taxes include but are not limited to any ad valorem real property tax imposed on the Leased Premises up to the limits imposed by the California Constitution, Article 13A, Section l(a). "Assessments" include any other form of assessment, license fee, rent tax, levy, or other tax (other than estate, inheritance, net income or franchise taxes), imposed by any authority having the direct or indirect power to tax including without limitation, the EPA, any county, state, or federal government or any improvement or other district or division thereof, and specifically including, without limitation, all additional taxes and assessments hereafter levied by the County of Alameda. Neither the term "Property Taxes" nor "Assessments" shall include charges levied by the City of Berkeley, including but not limited to those for street lighting, street landscaping, library service, school tax, clean storm water, street improvements and traffic mitigation.

If at any time during the term of this Lease, the method of taxation or assessment of the Project prevailing as of the Commencement Date is altered so that in lieu of or in addition to any Property Tax described above there shall be levied, assessed, or imposed (whether because of a change in the method of taxation or assessment, creation of a new tax or charge, or any other cause) an alternate or additional tax or charge (i) on the value, use, or occupancy of the Project or Landlord's interest in the Project, or (ii) on or measured by the gross receipts, income or rentals from the Project, on Landlord's business of leasing the Project, or computed in any manner with respect to the operation of the Project, then any tax or charge, however designated, shall be included within the meaning of the term Property Taxes for purposes of this Lease. However, the term Property Taxes shall not include estate, inheritance, transfer, gift, or franchise taxes of Landlord or the federal or state net income tax imposed on Landlord's income from all sources.

Tenant shall not be responsible for paying Tenant's Share of any Property Taxes resulting from additional improvements by other tenants, provided, however, that any Property Taxes resulting from Alterations made for or on

behalf of Tenant under this Lease shall be paid entirely by Tenant. If the Leased Premises is not separately assessed, Tenant's Share of any Property Taxes shall be an equitable proportion of the Property Taxes for all of the land and improvements included within the tax parcel that is assessed.

(e) Tenant shall pay prior to delinquency all taxes assessed against and levied upon trade fixtures, furnishings, equipment and all other personal property of Tenant contained within the Leased Premises or elsewhere. When possible, Tenant shall cause said trade fixtures, furnishings, equipment and all other personal property to be assessed and billed separately from the real or personal property of Landlord.

(f) The inclusion of any services, facilities, or improvements in subsection (b), above, shall not be deemed to impose an obligation on Landlord to provide those services, facilities, or improvements unless otherwise required by this Lease.

10. Repairs and Maintenance.

(a) Subject to reimbursement pursuant to this Lease, and except for damage caused by any negligent or intentional act or omission of Tenant or Tenant's employees or agents, in which event Tenant shall repair the damage, Landlord shall keep in good order and condition the Common Areas and repair and maintain the foundation, roof and exterior walls of the Building. Landlord shall not be obligated to paint the exterior of the Building or Project, nor shall Landlord be required to maintain the steel sashes, windows, glass, doors, or interior surface of exterior walls. Landlord shall not have the obligation to make repairs under this Section until a reasonable time after receipt of written notice from Tenant of the need for such repairs. Landlord shall not be responsible for repairs required by an accident, fire, or other peril or for damage caused to any part of the Project by any act or omission of Tenant or Tenant's employees or agents, except as otherwise required by this Lease. Landlord may engage contractors of Landlord's choice to perform the obligations required by this Section, and the necessity of any expenditure to perform those obligations shall be at the sole discretion of Landlord. Tenant expressly waives the benefits of any statute now or later in effect that would otherwise give Tenant the right to make repairs at Landlord's expense and deduct that cost from rent owing to Landlord.

(b) Subject to the provisions of the preceding subsection, Tenant shall clean and maintain in good order, condition, and repair and replace when necessary the following:

(i) all plumbing and sewage facilities in the Leased Premises, including but not limited to all plumbing fixtures, pipes, fittings, or other parts of the plumbing system in the Leased Premises;

(ii) all fixtures, interior walls, floors, carpets, draperies, window coverings, and ceilings in the Leased Premises;

(iii) all windows, doors, entrances, and plate glass in the Leased Premises; and

(iv) all electrical facilities and all equipment in the Leased Premises, including all light fixtures, lamps, bulbs and tubes.

(c) With respect to utility facilities serving the Leased Premises Tenant shall be responsible for the maintenance and repair of any facilities that serve only the Leased Premises including all facilities that are within the walls or floor or on the roof of the Leased Premises, and any part of the facility that is not within the Leased Premises, but only up to the point where the facilities join a main or other junction from which the utility services are distributed to other parts of the Project as well as to the Leased Premises.

(d) Tenant shall:

(i) maintain, repair, and replace when necessary all heating, air conditioning, and ventilation equipment that services only the Leased Premises, and shall keep the them in good condition through regular inspection and servicing;

(ii) all plumbing and sewage facilities in the Leased Premises, including but not limited to all plumbing fixtures, pipes, fittings, or other parts of the plumbing system in the Leased Premises; and

(iii) maintain continuously throughout the term of the Lease a service contract for the maintenance of all heating, air conditioning, and ventilation equipment with a licensed repair and maintenance contractor approved by Landlord; the contract should provide for periodic inspections and servicing of the heating, air conditioning, and ventilation equipment at least once every ninety (90) days during the term of the Lease.

However, Landlord may elect at any time during the term of this Lease to assume responsibility for and or all of the preceding items (i) through (iii), in which event all expenses incurred by Landlord in connection with the preceding items shall be charged to the Tenant.

(e) All repairs and replacements required of Tenant shall be promptly made with new materials of like kind and quality. If the work affects the structural parts of the Building or if the estimated cost of any item of repair or replacement is in excess of $750. Tenant shall first obtain Landlord's written approval of the scope of the work, the plans for the work, the materials to be used, and the contractor hired to perform the work. Tenant shall not, and shall not permit others, to enter the roofs of the Leased Premises, without Landlord's prior written consent.

(f) If Tenant fails to perform Tenant's obligations under this Section or under any other section of this Lease, after ten (10) days' prior written notice to Tenant, except in an emergency when no notice shall be required, Landlord may enter the Leased Premises, perform the obligations on Tenant's behalf, and recover the cost of performance, together with interest at the maximum rate then allowed by law, as additional rent payable by Tenant with the next installment of Monthly Base Rent. Tenant shall maintain adequate insurance to compensate Tenant for any loss of, or damage to, Tenant's property. In the event that Tenant does not maintain such insurance, Tenant will be deemed to have self-insured Tenant's property.

(g) In the event Tenant fails to perform Tenant's obligations under this Section, Landlord shall give Tenant notice to do such acts as are reasonably required to so maintain the Leased Premises. If within fifteen (15) days after such notice is given by Landlord, Tenant fails to do the work and diligently prosecute it to completion, then Landlord shall have the right (but not the obligation) to do such acts and expend such funds at the expense of Tenant as are reasonably required to perform such work. Any amount so expended by Landlord shall be paid by Tenant promptly after demand with interest at the maximum rate permitted by law from the date of such work. There shall be no abatement of rent and no liability of Landlord by reason of any injury or interference with Tenant's business arising from the making of any repairs, alterations, or improvements in or to any portions of the Project or the Leased Premises or in or to fixtures, appurtenances, and equipment, therein. Landlord reserves the right to enter the Leased Premises to repair the Project, to repair the roof or roof structures or to install electrical, water, drain, sewer, telephone, ventilation, and other conduits for the benefit of the Project or of other tenants of the Project. Repair of the roof or of roof structures may require exposing certain areas of the Project to the elements.

11. Alterations and Additions.

(a) Tenant shall not construct any alterations, improvements or additions or otherwise alter the Leased Premises (the "Alterations") without Landlord's prior written consent. Alterations includes any utility installation, including but not limited to alterations, improvements or additions to gas lines, water lines, ducting, power panels, fluorescent fixtures, space heaters, conduit and wiring. All Alterations shall be constructed by a licensed contractor in accordance with all Laws using new materials of good quality and shall be done at Tenant's sole expense and in such a manner as not to unreasonably disrupt existing operations or disturb existing tenants and occupants of the Project.

(b) Tenant shall not commence construction of any Alterations until:

(i) all required governmental approvals and permits have been obtained,

(ii) all requirements regarding insurance imposed by this Lease have been satisfied,

(iii) Tenant has given Landlord at least ten (10) days' prior written notice of Tenant's intention to commence construction, and

(iv) Tenant has provided to Landlord, at Tenant's sole cost and expense, a lien and completion bond in an amount equal to one and one-half (1 1/2) the estimated cost of the Alterations, where the cost of the intended Alterations will exceed $50,000, to insure Landlord against any liability for mechanic's and materialmen's liens and to ensure completion of the Alterations.

(c) Tenant shall pay, when due, all claims for labor or materials furnished or alleged to have been furnished in connection with the Alterations that are or may become mechanics' or materialmen's liens against the Leased Premises or the Project or any interest in them. Tenant shall have the right to, in good faith, contest the validity of any lien, claim, or demand, provided that Tenant shall, at Tenant's sole expense, defend Landlord against the lien, claim, or demand,

and, upon the request of Landlord, Tenant shall furnish to Landlord a surety bond in an amount equal to the contested lien, claim, or demand indemnifying Landlord against liability and holding the Leased Premises, the Building, and the Project free from the effect of the lien, claim, or demand. In addition, Landlord may require Tenant to pay Landlord's attorney fees and costs in connection with and during the course of any defense of any lien, claim or demand. Tenant shall pay and satisfy any adverse judgment that may be rendered to enforce the lien, claim, or demand against the Landlord, the Leased Premises, or the Project. In addition to any other remedy provided in the Lease, in the event Tenant fails to comply with this Section. Landlord may require Tenant to cease all work being performed by or on behalf of Tenant and Landlord may deny access to the Leased Premises to any person performing work in or supplying materials to the Leased Premises.

(d) All Alterations shall be and remain the property of Tenant during the term of this Lease but shall not be altered or removed from the Leased Premises. At the expiration or sooner termination of the term of this Lease, all Alterations shall become the property of Landlord, and Landlord shall have no obligation to reimburse Tenant for any portion of the value or cost. If Landlord advises Tenant in writing, in advance of the construction of any Alterations, that Landlord will request Tenant to remove such Alterations at the expiration of the term of this Lease, then Landlord shall have the right to require Tenant to remove any Alterations, in which event Tenant shall remove the Alterations prior to the expiration or sooner termination of the term of this Lease.

(e) Tenant shall solely be responsible for making any alteration, addition or change of any sort to the Leased Premises that is required by any Law because of:

(i) Tenant's particular use or change of use of the Leased Premises;

(ii) Tenant's application for any permit or governmental approval; or

(iii) Tenant's construction or installation of any Alterations.

(f) Notwithstanding the foregoing, personal property, business and trade fixtures, cabinetwork, furniture, movable partitions, machinery and equipment, other than that which is affixed to the Leased Premises, shall remain the property of Tenant and may be removed by Tenant subject to the provisions of this Lease concerning the Surrender of the Leased Premises, at any time during the term of this Lease when Tenant is not in default.

12. Utilities.

Tenant shall pay. from the earlier of the Early Possession Date or the Lease Commencement Date, and throughout the term of this Lease, prior to delinquency for all water, gas, heat, light, power, telephone, sewage, air conditioning and ventilating, scavenger, janitorial, landscaping, and all other services, materials, and utilities supplied to the Leased Premises. In the event that such services are not separately metered to Tenant, Tenant shall pay its pro rata share, as provided in the Summary and this Lease, of all charges which are jointly metered, the determination to be made by Landlord. Such payment to be made by Tenant within fifteen (15) days of receipt of a statement for such charges. Any utilities as to which Landlord determines, in its reasonable discretion, that Tenant is using more than its pro rata share shall be separately metered or submetered at Tenant's sole expense, and thereafter Tenant shall pay all such charges directly five (5) days prior to delinquency. Landlord shall not be liable in damages or otherwise for any failure or interruption of any utility service furnished to the Leased Premises, and no such failure or interruption shall entitle Tenant to terminate this Lease or withhold Rent or other sums due hereunder. Tenant may, at Tenant's sole expense and upon notice to Landlord and compliance with Article 11 of this Lease, separately meter any utilities to the Leased Premises.

13. Liens.

Tenant shall keep the Leased Premises and the Project free from any liens arising out of work performed, materials furnished, or obligations incurred by Tenant and shall indemnify, hold harmless and defend Landlord from any liens and encumbrances arising out of any work performed or materials furnished by or at the direction of Tenant. In the event that Tenant shall not, within twenty (20) days following the imposition of any such lien, cause such lien to be released of record by payment or posting of a proper bond, Landlord shall have, in addition to all other remedies provided herein and by law, the right, but not the obligation, to cause the same to be released by such means as it shall deem proper, including payment of the claim giving rise to such lien. All such sums paid by Landlord and all expenses incurred by it in connection therewith including attorneys' fees and costs shall be payable to Landlord by Tenant on demand with interest at the maximum rate permitted by law. Landlord shall have the right at all times to post and keep posted on the Leased Premises any notices permitted or required by law, or which Landlord shall deem proper, for the protection of Landlord, the Project and the Leased Premises, and any other party having an interest therein, from mechanics' and material liens Tenant shall give Landlord at least fifteen (15) business days prior written notice of the expected date of commencement of any work relating to alterations or additions to the Leased Premises.

14. Landlord's Access and Easements.

14.1 Access. Landlord and Landlord's agents shall have the right during all regular business hours and, during all other periods, upon 48 hours prior notice (which notice shall not be required in the event of an emergency) to enter the Leased Premises to inspect the same or to maintain or repair, make alterations or additions to the Leased Premises or any portion thereof (each of which shall be accomplished by Landlord in a reasonable manner to avoid interfering with Tenant's operations), to determine whether Tenant is complying with all of the provisions of this Lease, to post notices of non-responsibility or to show the Leased Premises to prospective purchasers, tenants, or lenders. Upon request from Landlord, Tenant shall, within 24 hours, provide Landlord, for Landlord's permanent possession, a copy of any keys required to gain access to the Leased Premises or to any area within the Leased Premises (excluding Tenant's vaults and safes). Landlord may at any time place on or about the Leased Premises any ordinary "for sale" signs. Landlord may at any time during the last one hundred eighty (180) days of the term of the Lease, place on or about the Leased Premises any ordinary "for lease" signs. Tenant hereby waives any claim for abatement of Rent or for damages for any injury or inconvenience to or interference with Tenant's business, any loss of occupancy or quiet enjoyment of the Leased Premises, or any other loss occasioned thereby.

14.2 Easements. Landlord reserves to itself the right, from time to time, to grant such easements, rights, and dedications that Landlord deems necessary or desirable, and to cause the recordation of Parcel Maps and restrictions, so long as such easements, rights, dedications, maps and restrictions do not unreasonably interfere with the use of the Leased Premises and/or the parking areas by Tenant and Tenant's employees, agents and customers. Tenant shall sign any of the aforementioned documents upon request of Landlord and failure to do so shall constitute a material breach of this Lease.

15. Indemnity; Exemption of Landlord from Liability.

15.1 Tenant Indemnity. Except as otherwise provided in this Lease, Tenant shall indemnify and hold Landlord harmless from and against any and all claims of liability for any injury or damage to any person or property arising from Tenant's use of the Leased Premises or the Project, or from the conduct of Tenant's business, or from any activity, work or thing done, permitted or suffered by Tenant in or about the Leased Premises, the Project or elsewhere. Tenant shall further indemnify and hold Landlord harmless from and against any and all claims arising from any breach or default in the performance of any obligation on Tenant's part to be performed under this Lease, or arising from any act or omission of Tenant or Tenant's agents, employees, contractors, licensees, customers, or invitees and from and against all reasonable costs, attorneys' fees, expenses, and liabilities incurred in the defense of any such claim or any action or proceeding brought thereon. In the event any action or proceeding is brought against Landlord by reason of any such claim, Tenant upon notice from Landlord shall defend same at Tenant's expense by counsel satisfactory to Landlord, or, at Landlord's election, Landlord may retain counsel and submit to Tenant, either periodically or in a lump sum, billings of said counsel for direct payment to counsel or for immediate reimbursement to Landlord. Tenant, as a material part of the consideration to Landlord, hereby assumes all risk of damage to property or injury to persons in, upon, or about the Leased Premises arising from any cause and Tenant hereby waives all claims in respect thereof against Landlord, except for damages arising from Landlord's intentional or grossly negligent acts.

15.2 Exemption of Landlord from Liability. Landlord shall not be liable for injury to Tenant's business or loss of income therefrom or for damage which may be sustained by the persons, goods, wares, merchandise, or property of Tenant, Tenant's agents, employees, contractors, licensees, customers, or invitees, or any other person in or about the Leased Premises or the Project caused by or resulting from fire, steam, electricity, gas, water, or rain, which may leak or flow from or into any part of the Leased Premises, or from the breakage, leakage, obstruction, or other defects of the pipes, sprinklers, wires, appliances, plumbing, air conditioning, or lighting fixtures of the same, regardless of whether the cause of such damage or injury or the means of repairing the same is inaccessible to Tenant. Landlord shall not be liable for any damages arising from any act or omission of any other tenant (if any) of the Project. Tenant acknowledges and agrees that the liability of Landlord (which for purposes of this Section shall include all partners, both general and limited, of any partnership, all members and managers of any limited liability company and the officers, directors and shareholders of any corporation or limited liability company) under this Lease shall be limited to its interest in the Project, and any judgments rendered against Landlord shall be satisfied solely out of the proceeds of sale of its interest in the Project. No member, manager, officer or partner of Landlord shall be named as a party in any suit or action (except as may be necessary

to secure jurisdiction over Landlord) and no personal judgment shall lie against Landlord. Tenant agrees that the foregoing covenants and limitations shall be applicable to any obligation or liability of Landlord, whether expressly contained in this Lease or imposed by statute or at common law. The foregoing provisions are not intended to relieve Landlord from the performance of any of Landlord's obligations under this Lease, but only to limit the personal liability of Landlord in case of recovery of a judgment against Landlord except to the extent of the Landlord's intentional misconduct or gross negligence.

16. Insurance.

16.1 Liability Insurance. Tenant shall at all times during the term hereof and at its own cost and expense procure and continue in force Worker's Compensation Insurance and Bodily Injury Liability and Properly Damage Liability Insurance adequate to protect Landlord and naming Landlord as an additional named insured under the liability policy against liability, injury, or death of any person in connection with the use, operation, or condition of the Leased Premises. Such insurance shall be in an amount of not less than $2,000,000 per occurrence and not less than $2,000,000 in the aggregate, for bodily injury and property damage. The limits of such insurance shall not limit the liability of Tenant. Said insurance shall have a Landlord's Protective Liability Endorsement attached thereto. All insurance required hereunder shall be with companies rated at B+ or better in Best's Insurance Guide. Tenant shall deliver to Landlord certificates of insurance evidencing the existence and amounts of such insurance with loss payable clauses satisfactory to Landlord, provided that in the event Tenant fails to procure and maintain such insurance, Landlord may (but shall not be required to) procure same at Tenant's expense after ten (10) days prior written notice. No such policy shall be cancelable or subject to reduction of coverage or other modification except after thirty (30) days prior written notice to Landlord by the insurer. Tenant shall, within twenty (20) days prior to the expiration of such policies furnish Landlord with renewals or binders, or Landlord may order such insurance and charge the cost to Tenant, which amount shall be payable by Tenant upon demand. All such policies shall be written as primary policies, not contributing with and not in excess of coverage which Landlord may have. Tenant shall have the right to provide such insurance coverage pursuant to blanket policies obtained by Tenant provided such blanket policies expressly afford coverage to the Leased Premises, the Project, Landlord, and Tenant as required by this Lease.

16.2 Fire and Extended Coverage. Landlord shall, at Landlord's expense, procure and maintain at all times during the term of this Lease, a policy or policies of insurance covering loss or damage to the Leased Premises in the amount of the full replacement value thereof (exclusive of Tenant's trade fixtures, personal property and equipment), providing protection against all perils included within the classification of fire, extended coverage, vandalism, malicious mischief, sprinkler leakage and special extended peril (all-risk), and such other risks as Landlord may determine should be insured against. During the term of this Lease, Tenant shall pay the amount of any increase in premium for the insurance required under this Section over and above the premium paid by Landlord during the first full year of the term of the Lease in which Landlord shall have maintained such insurance, irrespective of whether such increase results from acts or omissions of Tenant, Landlord, or from any other source including without limitation a lender's requirements or the increased valuation of the Project. Tenant shall pay such premium increases to Landlord within five (5) days after receipt by Tenant of a statement of the amount due, which shall include the method of calculation of Tenant's share thereof if the insurance covers other improvements than the Leased Premises. If the term of this Lease does not expire concurrently with the expiration of the period covered by the insurance, Tenant's liability for premium increases shall be prorated on an annual basis. Tenant shall not do or permit anything to be done in or about the Leased Premises which will increase the existing rate of insurance upon the Leased Premises or the Project or cause the cancellation of any insurance policy covering said Leased Premises or the Project, nor shall Tenant sell or permit to be kept, used, or sold in or about said Leased Premises any articles which may be prohibited by Landlord's policy of fire insurance. If Tenant's conduct or use of the Leased Premises causes any increase in the premium for such insurance policies, then Tenant shall pay as additional rent hereunder, on demand from Landlord, all of such increase. Tenant shall, at Tenant's expense, comply with all insurance company requirements pertaining to the use of the Leased Premises so that the Leased Premises shall at all times be insurable for fire, extended coverage and the risks specified above.

16.3 Waiver of Subrogation. Landlord and Tenant each hereby waive any and all rights of recovery against the other or against the partners, members, managers, shareholders, officers, directors, employees, agents, and representatives of the other, on account of loss or damage occasioned to such waiving party or its property or the property of others under its control caused by fire or any of the extended coverage risks described above to the extent that such loss or damage is insured against under any insurance policy in force at the time of such loss or damage. The insuring party shall, upon obtaining the policies of insurance required under this Lease, give notice to the insurance carrier or carriers that the foregoing mutual waiver of subrogation is contained in this Lease.

16.4 Increase in Insurance Limits. Landlord reserves the right to reasonably increase the limits and/or

change the terms of coverage required to be carried by Landlord and/or Tenant under this Lease if such limits and/or terms of coverage are below or different from those carried or required to be carried by prudent operators of property similar to the Leased Premises. Landlord shall not exercise this right to increase limits and/or change terms of coverage more than once each three (3) consecutive years.

17. Damage or Destruction.

17.1 Partial Damage. In the event improvements on the Leased Premises are damaged by any casualty which is covered under an insurance policy required to be maintained pursuant to the preceding Section, then Landlord shall repair such damage as soon as reasonably possible and this Lease shall continue in full force and effect. In the event the improvements on the Leased Premises are damaged by any casualty not covered under an insurance policy required to be maintained pursuant to the preceding section, then Landlord may, at Landlord's option, either (a) repair such damage as soon as reasonably possible at Landlord's expense, in which event this Lease shall continue in full force and effect, or (b) give written notice to Tenant, within sixty (60) days after the date of occurrence of such damage, of Landlord's intention to cancel and terminate this lease as of the date of the occurrence of the damage; provided, however, that if such damage is caused by an act or omission to act of Tenant, its agents, employees, contractors, licensees, customers, or invitees, then Tenant shall repair such damage promptly at its sole cost and expense. In the event Landlord elects to terminate this Lease pursuant hereto. Tenant shall have the right within ten (10) days after receipt of the required notice to notify Landlord in writing of Tenant's intention to repair such damage at Tenant's expense, without reimbursement from Landlord, in which event this Lease shall continue in full force and effect and Tenant shall proceed to make such repairs as soon as reasonably possible. If Tenant does not give such notice within the ten (10) day period, this Lease shall be canceled and terminated as of the date of the occurrence of such damage. Landlord shall not be required to repair any injury or damage by fire or other cause, or to make any restoration or replacement of any paneling, decorations, office fixtures, partitions, railings, ceilings, floor covering, equipment, machinery, or fixtures or any other improvements or property installed in the Leased Premises by Tenant or at the direct or indirect expense of Tenant. Tenant shall be required to restore or replace same in the event of damage. Tenant's remedies in the event of destruction of the Leased Premises shall be as provided in the following subsections.

17.2 Total Destruction. If the improvements on the Leased Premises are totally destroyed during the term of this Lease from any cause, whether or not covered by the insurance required under the preceding Section (including any destruction required by any authorized public authority), this Lease shall automatically terminate as of the date of such total destruction.

17.3 Damage Near Term's End. If the improvements on the Leased Premises are partially destroyed or damaged during the last twelve (12) months of the term of this Lease, either party may at their option cancel and terminate this Lease as of the date of occurrence of such damage by giving written notice to the other of such election to do so within sixty (60) days after the date of occurrence of such damage.

17.4 Partial Destruction of Building. If (a) fifty percent (50%) or more of the Building is damaged or destroyed by an insured risk, or (b) fifteen percent (15%) or more of the Building is damaged or destroyed by an uninsured risk and Tenant's use of the Leased Premises is materially impaired, then Landlord may, at its option, cancel and terminate this Lease by giving written notice of its election to do so within ninety (90) days from the date of occurrence of such damage or destruction in which event the term of this Lease shall expire at the end of the calendar month in which such notice is given and Tenant shall thereupon surrender the Leased Premises to Landlord.

17.5 Abatement of Rent; Tenant's Remedies; Advance Payments

17.5.1 Abatement of Rent. If the Leased Premises arc partially destroyed or damaged and Landlord or Tenant repairs them pursuant to this Lease, the Rent payable hereunder for the period during which such damage and repair continues shall be abated in proportion to the extent to which Tenant's use of the Leased Premises is impaired. Except for abatement of Rent (if any), Tenant shall have no claim against Landlord for any damage suffered by reason of any such damage, destruction, repair or restoration, except to the extent of Landlord's intentional misconduct or gross negligence.

17.5.2 Tenant's Remedies. If Landlord shall be obligated to repair or restore the Leased Premises under this Section and shall not (1) commence such repair or restoration within ninety (90) days after such obligation shall accrue. Tenant at Tenant's option may cancel and terminate this Lease by written notice to Landlord at any time prior to the commencement of such repair or restoration. In such event this Lease shall terminate as of the date of such notice.

17.5.3 Advance Payments. Upon termination of this Lease pursuant to this Section, an equitable adjustment shall be made concerning Prepaid Rent and any advance payments made by Tenant to Landlord. Landlord shall, in addition, return to Tenant so much of Tenant's security deposit as has not theretofore been applied by Landlord or to which Landlord is not otherwise entitled.

18. Condemnation.

If the Leased Premises or any portion thereof are taken under the power of eminent domain, or sold by Landlord under the threat of the exercise of said power (all of which is herein referred to as "condemnation"), this Lease shall terminate as to the part so taken as of the date the condemning authority takes title or possession, whichever first occurs. If more than twenty-five percent (25%) of the Project is taken by condemnation, either Landlord or Tenant may terminate this Lease as of the date the condemning authority takes possession by notice in writing of such election within twenty (20) days after the condemning authority shall have taken possession.

If this Lease is not terminated by either Landlord or Tenant then it shall remain in full force and effect as to the portion of the Leased Premises remaining, provided the Rent shall be reduced in the proportion that the floor area taken within the Leased Premises bears to the total floor area of all of the Leased Premises leased to Tenant pursuant hereto. In the event this Lease is not so terminated, then Landlord agrees, at Landlord's sole cost, to restore the Leased Premises as soon as possible to a complete unit reasonably capable in Landlord's opinion of accommodating Tenant's usage as that usage existed prior to the condemnation. All awards for the taking of any part of the Leased Premises or any payment made under the threat of the exercise of power of eminent domain shall be the property of Landlord, whether made as compensation for the taking of the fee or severance damages. Nothing contained herein shall be deemed to give Landlord any interest in or to require Tenant to assign to Landlord any award made to Tenant for the taking of personal property and fixtures belonging to Tenant and/or for the interruption of or damage to Tenant's business and/or for Tenant's business and/or for Tenant's unamortized cost of its leasehold improvements provided that, as to partitions or other improvements in the nature of realty installed or constructed by Tenant, Tenant shall be entitled to receive only the unamortized cost thereof computed over the remaining useful life, not to exceed the balance of the original term of this Lease. In the event that this Lease is not terminated by reason of such condemnation, Landlord shall, to the extent of severance damages received by Landlord in connection with such condemnation, repair any damage to the Leased Premises caused by such condemnation except to the extent that Tenant has been reimbursed therefor by the condemning authority in which case Tenant shall pay any amount in excess of such severance damages required to complete such repair.

19. Assignment and Subletting.

19.1 Landlord's Consent Required. Tenant shall not voluntarily or by operation of law assign this Lease, sublet all or any part of the Leased Premises, or otherwise transfer, mortgage, pledge, hypothecate, or encumber all or any part of Tenant's interest in this Lease or in the Leased Premises or any part thereof (an "Assignment"), without Landlord's prior written consent which consent shall not be unreasonably withheld. Any attempt to make an Assignment without such consent being first obtained shall be wholly void and shall constitute a breach of this Lease.

19.2 Landlord's Consent. If Tenant desires at any time to enter into an Assignment of this Lease, Tenant shall first give written notice to Landlord of its desire to do so, which notice shall contain: (i) the name of the proposed assignee, subtenant or occupant (collectively "Assignee"); (ii) the nature of the business that the proposed Assignee seeks to conduct in the Leased Premises; (iii) a copy of the sublease, assignment or other document that creates the proposed Assignment; and (iv) such financial information, operating histories and statements of prior experience as Landlord may reasonably request concerning the proposed Assignee. Tenant further acknowledges that the use of the Leased Premises shall be limited to the uses described in this Lease, and Landlord may withhold its consent to any other use. Landlord may also withhold consent to any proposed Assignee if Landlord believes, in its sole discretion, that the financial strength, operating history or prior experience of the proposed Assignee are not as strong as those of Tenant, as determined by comparison to the financial strength, operating history and prior experience of Tenant either as of the date of this Lease or as of the date of the proposed Assignment, as selected by Landlord. The failure or inability of the Assignee to pay Tenant pursuant to the Assignment will not relieve Tenant from its obligations to Landlord under this subsection. Tenant will not amend the Assignment in such a way as to reduce or delay payment of amounts which are provided in the Assignment approved by Landlord. Tenant agrees to reimburse Landlord on demand for Landlord's reasonable attorneys' fees and other third party and administrative costs incurred in conjunction with the processing and documentation of any request for consent to an Assignment.

Notwithstanding the preceding, Landlord shall not unreasonably withhold consent to a proposed Assignment in the event such Assignment is proposed by Tenant in connection with the acquisition of Tenant or of substantially all of Tenant's assets by the proposed assignee and the net worth of such assignee, as of the commencement date of any such Assignment is equal to or greater than the net worth of Tenant at (x) the date of the execution of this Lease or (y) the commencement date of any such Assignment, whichever is greater.

At any time within thirty (30) days after Landlord's receipt of the notice and the additional information requested by Landlord and specified in this Section. Landlord may, by written notice to Tenant, elect one of the following, as selected by Landlord in its sole discretion: (i) consent to the Assignment, or (ii) disapprove the Assignment. If Landlord consents to the Assignment, Tenant may thereafter, within ninety (90) days after Landlord's consent, but not later than the expiration of such ninety (90) days, enter into such Assignment of the Leased Premises or portion thereof, upon the terms and conditions set forth in the notice furnished by Tenant to Landlord pursuant to this Section.

19.3 No Release of Tenant. No consent by Landlord to any assignment or subletting by Tenant shall relieve Tenant of any obligation to be performed by Tenant under this Lease, whether occurring before or after such consent, assignment of the Lease or subletting of the Leased Premises. The acceptance of Rent by Landlord from any other person shall not be deemed to be a waiver by Landlord of any provision of this Lease or to be a consent to any Assignment, subletting or other transfer. Consent to one Assignment, subletting or other transfer shall not be deemed to constitute consent to any subsequent Assignment.

Tenant immediately and irrevocably assigns to Landlord, as security for Tenant's obligations under this Lease, all rent from any subletting of all or a part of the Leased Premises as permitted by this Lease, and Landlord as assignee and as attorney-in-fact for Tenant, or a receiver for Tenant appointed on Landlord's applications, may collect such rent and apply it toward Tenant's obligations under this Lease; except that, until the occurrence of an act of default by Tenant. Tenant shall have the right to collect such rent. Except as to a sublease by Tenant (i) of no more than 4,000 sq. ft. within the Leased Premises and (ii) prior to the end of the initial term of this Lease, all rent received by Tenant from its subtenants in excess of the Rent payable by Tenant to Landlord under this Lease shall be paid to Landlord, or any sums to be paid by an assignee to Tenant in consideration of the assignment of this Lease shall be paid to Landlord.

In the event of default by any assignee or sublessee of Tenant or any successor of Tenant in the performance of any of the terms of this Lease. Landlord may proceed directly against Tenant without the necessity of exhausting remedies against such assignee, sublessee or successor. Landlord may consent to subsequent assignments or to amendments or modifications to this Lease with assignee of Tenant, without notifying Tenant, or any successor or Tenant and without obtaining its or their consent thereto and such action shall not relieve Tenant of liability under this Lease. Each assignment shall be expressly subordinate to the terms of this Lease, and any termination of this Lease shall terminate the Assignee's right to possession of the Leased Premises.

19.4 Form of Consent. Each transfer, assignment, subletting, license, concession agreement, mortgage and hypothecation to which there has been consent shall be by an instrument in writing for the benefit of Landlord herein to assume, to be bound by, and to perform all of the terms, covenants, and conditions of this Lease. One executed copy of such written instrument shall be delivered to Landlord. Failure to first obtain in writing Landlord's consent or failure to comply with the provisions of this Section shall operate to prevent any such Assignment from becoming effective.

19.5 Transfer of Ownership. Tenant shall be deemed to have assigned this Lease within the meaning of this Article if legal or beneficial interests representing 40% or more (measured cumulatively over the Term) of the interests in either voting power, capital or profits are transferred by any means.

19.6 Waiver of Civil Code Section 1995.310. Tenant hereby waives the remedies provided in Section 1995.310 of the California Civil Code, consisting of the right to terminate this Lease or collect contract damages, if Landlord unreasonably withholds its consent to any Assignment.

20, Surrender of the Leased Premises.

(a) Upon the expiration or sooner termination of this Lease, Tenant shall vacate and surrender the Leased Premises to Landlord in the same condition as existed at the Commencement Date, except for:

(i) reasonable wear and tear, and

(ii) damage caused by any peril or condemnation.

(b) If Landlord so requests, Tenant shall, prior to the expiration or sooner termination of this Lease;

(i) remove any Alterations that Tenant is required to remove pursuant to this Lease and repair all damage caused by such removal, and

(ii) return the Leased Premises or any part of the Leased Premises to its original configuration existing as of the time the Leased Premises were delivered to Tenant.

(c) If the Leased Premises are not so surrendered at the termination of this Lease, Tenant shall be liable to Landlord for all costs incurred by Landlord in returning the Leased Premises to the required condition, and all Alterations, including all trade fixtures, shall become the property of Landlord. Tenant shall indemnify Landlord against loss or liability resulting from delay by Tenant in surrendering the Leased Premises, including without limitation any claims made by any succeeding tenant or losses to Landlord due to lost opportunities to lease to succeeding tenants.

21. Default; Remedies.

21.1 Defaults by Tenant; Remedies. The occurrence of any of the following shall constitute a material default and breach of this Lease by Tenant: (a) any failure by Tenant to pay Rent or any other monetary sums required to be paid hereunder (where such failure continues for five (5) calendar days); (b) [intentionally omitted]; (c) a failure by Tenant to observe and perform any other provision of this Lease to be observed or performed by Tenant, where such failure continues for fifteen (15) days after written notice thereof by Landlord to Tenant; (provided, however, that if the nature of the default is such that the same cannot reasonably be cured within said fifteen (15) day period, Tenant shall not be deemed to be in default if Tenant shall within such period commence such cure and thereafter diligently prosecute the same to completion; provided, further, however, Landlord in its sole discretion may require Tenant to deliver a bond, deposit funds or such other form of security device which may be necessary to protect the Leased Premises, Landlord, and the Project. Any such notice provided by this Section shall be in lieu of, and not in addition to, any notice required by law. Tenant shall pay to Landlord, as Additional Rent, upon demand and in addition to all other rights and remedies available to Landlord, reasonable attorneys' fees incurred by Landlord in connection with each such notice.

21.2 Remedies. In the event of any such material default or breach by Tenant, Landlord may at any time thereafter, without limiting Landlord in the exercise of any right or remedy at law or in equity which Landlord may have by reason of such default or breach:

(a) Maintain this Lease in full force and effect and recover the Rent and other monetary charges as they become due, without terminating Tenant's right to possession, irrespective of whether Tenant shall have abandoned the Leased Premises. In the event Landlord elects not to terminate the Lease, Landlord shall have the right to attempt to re-let the Leased Premises at such rent and upon such conditions and for such a term, and to do all acts necessary to maintain or preserve the Leased Premises as Landlord deems reasonable and necessary without being deemed to have elected to terminate the Lease, including removal of all persons and property from the Leased Premises; such property may be removed and stored in a public warehouse or elsewhere at the cost of and for the account of Tenant. In the event any such re-letting occurs, this Lease shall terminate automatically upon the new tenant taking possession of the Leased Premises. Notwithstanding that, if Landlord fails to elect to terminate the Lease initially, Landlord at any time during the term of this lease may elect to terminate this Lease by virtue of such previous default of Tenant.

(b) Terminate Tenant's right to possession by any lawful means, in which case this Lease shall terminate and Tenant shall immediately surrender possession of the Leased Premises to Landlord. In such event Landlord shall be entitled to recover from Tenant all damages incurred by Landlord by reason of Tenant's default, including without limitation thereto, the following: (a) the worth at the time of award of any unpaid rent which had been earned at the time of such termination; plus (b) the worth at the time of award of the amount by which the unpaid Rent for the balance of the term after termination under the time of award exceeds the amount of such rental loss that is proved could have been

reasonably avoided; plus (c) the worth at the time of award of the amount by which the unpaid Rent which would have been due after the time of award exceeds the amount of such rental loss that is proved could be reasonably avoided; plus (d) any other amount necessary to compensate Landlord for the detriment proximately caused by Tenant's failure to perform his obligations under this Lease or which in the ordinary course of events would be likely to result therefrom; plus (e) at Landlord's election, such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by applicable state law. Upon any such re-entry Landlord shall have the right to make any reasonable repairs, alterations, or modifications to the Leased Premises which Landlord in its sole discretion deems reasonable and necessary. Any and all amounts expended in reletting the Leased Premises and all monetary damages suffered, including brokers fees to lease the Leased Premises, shall be paid by Tenant. As used in (a) above, the "worth at the time of award" shall be computed by adding interest to such amounts at the maximum rate permitted by law. As used in (b) and (c) above, the "worth at the time of award" is computed by discounting such amount at the discount rate of the U.S. Federal Reserve Bank at the time of award plus one percent (1%). For all purposes of this Section, the term "Rent" shall be deemed to be the Rent and all other sums required to be paid by Tenant pursuant to the terms of this Lease; all such sums shall be computed on the basis of the average monthly amount thereof accruing during the immediately preceding sixty (60) month period, except that if it becomes necessary to compute such Rent before such a sixty (60) month period has occurred, then on the basis of the average monthly amount thereof accruing during such shorter period.

(c) Bankruptcy—Insolvency of Tenant; Landlord's Remedies. Tenant agrees that in the event all or substantially all of Tenant's assets are placed in the hands of a receiver or trustee, and such receivership or trusteeship continues for a period of thirty (30) days, or in the event Tenant makes an assignment for the benefit of creditors or is finally adjudicated a bankrupt, or in the event Tenant institutes any proceedings under the Bankruptcy Act as the same now exists or under any amendment thereof which may hereafter be enacted, or under any other act relating to the subject of bankruptcy wherein Tenant seeks to be adjudicated a bankrupt, or to be discharged of its debts, or to effect a plan of liquidation, composition, or reorganization or in the event any involuntary proceedings are filed against Tenant under any such bankruptcy laws and such proceedings are not removed within sixty (60) days thereafter, then this Lease or any interest in and to the Leased Premises shall not become an asset in any of such proceedings and, in any such events and in addition to any and all rights or remedies provided to Landlord hereunder or by law, Landlord may declare the term hereof ended and re-enter the Leased Premises and take possession thereof and remove all persons therefrom and Tenant shall have no further claim thereon or hereunder.

(d) Late Charges. Tenant hereby acknowledges that late payment by Tenant to Landlord of Rent and other sums due hereunder will cause Landlord to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges and late charges which may be imposed upon Landlord by the terms of any mortgage or trust deed covering the Leased Premises. Accordingly, if any installment of Rent or any other sum due from Tenant shall not be received by Landlord or Landlord's designee within five (5) days after such amount shall be due, Tenant shall pay to Landlord a late charge equal to ten percent (10%) of such overdue amount. The parties hereby agree that such late charge represents a fair and reasonable estimate of the costs Landlord will incur by reason of late payment by Tenant. Acceptance of such late charge by Landlord shall in no event constitute a waiver of Tenant's default with respect to such overdue amount, nor prevent Landlord from exercising any of the other rights and remedies granted hereunder.

In the event that a late charge is payable hereunder, whether or not collected, for three (3) installments of Rent in any twelve (12) month period, then Rent shall automatically become payable thereafter by (a) cashier's check, (b) cash, or (c) certified money order.

(e) Notice to Pay Rent or Quit. If Landlord is not in possession of Tenant's Rent by the fifth (5^{th}) day of each month by 5:00 p.m., in addition to the late charge described above and accrued interest, Tenant may receive a Three Day Notice to Pay Rent or Quit. The service fee for the Three Day Notice shall be One Hundred and no/100 Dollars ($100.00) per occurrence. After Tenant has been served with the Three Day Notice, Tenant shall be required to pay all outstanding charges including Rent, late fees and service fees within the three day notice period to avoid additional remedies as described herein.

(f) Additional Rights of Landlord. In the event of default, all of Tenant's improvements, additions, alterations shall remain on the Leased Premises and in that event, and continuing during the length of said default, Landlord shall have the right to take the exclusive possession of same and to use same, rent or charge free, until all

defaults are cured, or, at its option, at any time during the term of this Lease, to require Tenant to forthwith remove same. Landlord shall be under no obligation to observe or perform any covenant of this Lease on its part to be observed or performed which accrues after the date of any default by Tenant hereunder.

Except as expressly provided elsewhere in this Lease, any legal action by Landlord or Tenant to enforce any obligation of the other party or in pursuance of any remedy hereunder shall be deemed timely filed if commenced at any time prior to one (1) year after the expiration of the term hereof.

The waiver by Landlord of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, or condition or any subsequent breach of the same. The subsequent acceptance of Rent hereunder by Landlord shall not be deemed to be a waiver of any preceding breach by Tenant of any term, covenant or condition of this Lease, other than the failure of Tenant to pay the particular Rent accepted, regardless of Landlord's knowledge of such preceding breach at the time of acceptance of such Rent. No covenant, term, or condition of this Lease shall be deemed to have been waived by Landlord unless such waiver be in writing by Landlord.

If Tenant shall fail to pay any sum of money, other than Rent, required to be paid by Tenant pursuant to this Lease or shall fail to perform any other act on Tenant's part to be performed under this Lease and such shall have become an Event of Default under this Lease, Landlord may, but shall not be obligated so to do and without waiving or releasing Tenant from any obligations of Tenant, make any such payment or perform any such other act on Tenant's part to be made or performed as provided in this Lease. All sums paid by Landlord, whether to fulfill Tenant's unfulfilled payment obligations or to perform Tenant's unfulfilled performance obligations, and all incidental costs hall be deemed Additional Rent hereunder and shall be payable to Landlord on demand.

21.3 Default by Landlord. Landlord shall not be in default unless Landlord fails to perform obligations required of Landlord within a reasonable time, but in no event later than thirty (30) days after written notice by Tenant to Landlord specifying wherein Landlord has failed to perform such obligations; provided, however, that if the nature of Landlord's obligation is such that more than thirty (30) days are required for performance, then Landlord shall not be in default if Landlord commences performance within such thirty (30) day period and thereafter diligently prosecutes the same to completion.

22. Intentionally Deleted.

23. Additional Provisions.

23.1 Subordination. Non-Disturbance and Attornment. At Landlord's option, this Lease shall be subject and subordinate to the lien of any deeds of trust in any amount or amounts whatsoever now or hereafter placed on or against the Leased Premises or on or against Landlord's interest or estate therein, without the necessity of the execution and delivery of any further instruments on the part of Tenant to effectuate such subordination. If any trustee shall elect to have this Lease prior to the lien of its deed of trust, and shall give written notice thereof to Tenant, this Lease shall be deemed prior to such deed of trust, whether this Lease is dated prior or subsequent to the date of the recording thereof. Tenant covenants and agrees to execute and deliver upon demand without charge therefor, such further instruments evidencing such subordination of this Lease to the lien of any such deeds of trust as may be required by Landlord.

Notwithstanding the above, Landlord shall use reasonable efforts to obtain from the holder of any deed of trust, in the event this Lease is or shall be subordinate to such deed of trust, in connection with the execution of any subordination agreement, a provision requiring the purchaser at any foreclosure sale to continue this Lease in full force and effect in the same manner as if such purchaser were the Landlord so long as Tenant is not otherwise in default and requiring Tenant to attorn to such purchaser.

23.2 Quiet Enjoyment. Landlord covenants and agrees with Tenant that upon Tenant paying Rent and other monetary sums due under the Lease and performing its covenants and conditions, Tenant shall and may peaceably and quietly have, hold and enjoy the Leased Premises for the term, subject, however, to the terms of the Lease and of any of the aforesaid deeds of trust described in the preceding subsection.

23.3 Attornment. In the event of foreclosure or the exercise of the power of sale under any deed of trust made by Landlord covering the Leased Premises, Tenant shall attorn to the purchaser upon any such foreclosure or sale and recognize such purchaser as Landlord under this Lease, provided such purchaser expressly agrees in writing to be bound by the terms of this Lease.

23.4 Estoppel Certificate. Tenant shall, within fifteen (15) days after receipt of a request therefor from Landlord, execute, acknowledge and deliver to Landlord a statement in writing (a) certifying that this Lease is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying that this Lease, as so modified, is in full force and effect) and the date to which the Monthly Base Rent and other charges (collectively, the "Rent") are paid in advance, if any, and (b) acknowledging that there are not, to Tenant's knowledge, any uncured defaults on the part of Landlord hereunder, or specifying such defaults if any arc claimed. Any such statement may be conclusively relied upon by a prospective purchaser or encumbrance of the Leased Premises. Tenant's failure to deliver such statement within such time shall be conclusive upon Tenant: (i) that this Lease is in full force and effect without modification except as may be represented by Landlord, (ii) that there are no uncured defaults in Landlord's performance, and (iii) that not more than one month's Rent has been paid in advance. If Landlord desires to finance or refinance the Project or any part thereof, Tenant hereby agrees to deliver to any lender designated by Landlord such financial statements of Tenant as may be reasonably required by such lender.

23.5 Transfer of Landlord's Interest. In the event of a sale or conveyance by Landlord of Landlord's interest in the Leased Premises or the Project, other than a transfer for security purposes only, Landlord shall be relieved from and after the date such transfer is legally effective, of all obligations and liabilities accruing thereafter on the part of Landlord, provided that any funds in the hands of Landlord at the time of transfer in which Tenant has an interest shall be delivered to the successor of Landlord. This Lease shall not be affected by any such sale and Tenant agrees to attorn to the purchaser or assignee provided that all of Landlord's obligations hereunder are assumed in writing by the transferee.

23.6 Captions. Attachments, Defined Terms. The captions of the Sections of this Lease are for convenience only and shall not be deemed to be relevant in resolving any question of interpretation or construction of any section of this Lease. Exhibits attached hereto, and addenda and schedules initialed by the parties, are deemed by attachment to constitute part of this Lease and are incorporated herein. The words "Landlord" and "Tenant", as used herein, shall include the plural as well as the singular. Words used in neuter gender include the masculine and feminine and words in the masculine or feminine gender include the neuter. If there be more than one Landlord or Tenant, the obligations hereunder imposed upon Landlord or Tenant shall be joint and several. If the Tenants are husband and wife, the obligations shall extend individually to their sole and separate property, as well as to their community property. The term "Landlord" shall mean only the owner or owners at the time in question of the fee title to the Leased Premises. The obligations contained in this Lease to be performed by Landlord shall be binding upon Landlord's successors and assigns only during their respective periods of ownership.

23.7 Entire Agreement. This instrument along with any exhibits and attachments hereto constitutes the entire agreement between Landlord and Tenant relative to the Leased Premises and this Lease and the exhibits and attachments may be altered, amended or revoked only by an instrument in writing signed by both Landlord and Tenant. Landlord and Tenant agree hereby that all prior to contemporaneous written or oral agreements between and among themselves and their agents and representatives relative to leasing the Leased Premises are merged in or revoked by this Lease.

23.8 Severability. If any term or provision of this Lease shall, to any extent, be determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Lease shall not be affected thereby, and each term and provision of this Lease shall be valid and be enforceable to the fullest extent permitted by law.

23.9 Costs of Suit and/or Enforcement of Lease. If Tenant or Landlord shall bring any action for any relief against the other, declaratory or otherwise, arising out of this Lease, including any suit by Landlord for the recovery of Rent or possession of the Leased Premises or the curing of any default, the losing party shall pay the successful party a reasonable sum for attorneys' fees and/or other costs of enforcement which shall be deemed to have accrued on the commencement of such action and shall be paid whether or not such action is prosecuted to judgment. Should Landlord, without fault on Landlord's part be made a party to any litigation instituted by Tenant or by any third party against Tenant, or by or against any person holding under or using the Leased Premises by license of Tenant, or for the foreclosure of any lien for labor or materials furnished to or for Tenant or any such other person or otherwise arising out of or resulting from any act or transaction of Tenant or of any such other person, Tenant covenants to save and hold Landlord harmless from any judgment rendered against Landlord or the Leased Premises or the Project, and all costs and expenses, including attorneys' fees, incurred by Landlord in or in connection with such litigation.

23.10 Time, Joint and Several Liability. Time is of the essence of this Lease and each and every provision hereof. The conditions contained in this Lease to be performed by either party, if such party shall consist of more than one person or organization, shall be deemed to be joint and several, and all rights and remedies of the parties shall be cumulative and non-exclusive of any other right or remedy at law or in equity.

23.11 Binding Effect; Choice of Law; Jurisdiction. The parties hereto agree that all the provisions hereof are to be construed as both covenants and conditions as though the words imposing such covenants and conditions were used in each separate paragraph hereof; subject to any provisions hereof restricting assignment or subletting by Tenant all of the provisions hereof shall bind and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors, and assigns. This Lease shall be governed by the laws of the State of California.

23.12 Waiver. No covenant, term, or condition or the breach thereof shall be deemed waived, except by written consent of the party against whom the waiver is claimed and any waiver of the breach of any covenant, term, or condition shall not be deemed to be a waiver of any preceding or succeeding breach of the same or any other covenant, term, or condition. Acceptance by Landlord of any performance by Tenant after the time the same shall have become due shall not constitute a waiver by Landlord of the breach or default of any covenant term or condition unless otherwise expressly agreed to by Landlord of the breach or default of any covenant, term or condition unless otherwise expressly agreed to by such non-defaulting party in writing. Pursuit of any remedy shall not preclude pursuit of any other remedies herein provided or any other remedies provided by law, such remedies being cumulative and non-exclusive, nor shall pursuit of any other remedy constitute a forfeiture or waiver of any Rent due to Landlord hereunder or of any damages accruing to Landlord by reason of the violation of any of the terms, provisions and covenants herein contained. Landlord's acceptance of the payment of Rent or other payments hereunder after the occurrence of an event of default shall not be construed as a waiver of such default, unless Landlord so notifies Tenant in writing. Forbearance by Landlord to enforce one or more of the remedies herein provided upon an event of default shall not be deemed or construed to constitute a waiver of such default or of Landlord's right to enforce any such remedies with respect to such default.

The parties agree that all actions or proceedings arising out of or related to this Lease shall be tired and litigated only in the California state courts and the federal courts located in Alameda County, California. Tenant and Landlord hereby irrevocably submit to the jurisdiction of the California state courts and the Federal District Court of the Northern District of California located in Oakland with respect to such actions or proceedings, and agrees that such courts constitute a proper venue for any such actions and proceedings.

23.13 Surrender of Leased Premises. The voluntary or other surrender of Lease by Tenant, or a mutual cancellation thereof, shall not work a merger and shall, at the option of the Landlord, terminate all or any existing subleases or subtenancies, or may, at the option of Landlord, operate as an assignment to Landlord of any or all such subleases or subtenancies.

23.14 Holding Over. If Tenant remains in possession of all or any part of the Leased Premises after the expiration of the term hereof, without the express or implied consent of Landlord, such tenancy shall be from month to month only and not a renewal hereof or an extension for any further term. In such case such month to month tenancy shall be subject to every other term, covenant, and agreement contained herein except that the monthly Rent shall be at a rate equivalent to 125% of the monthly Rent paid by Tenant at the expiration of this Lease. In the event of such holding over, all options and rights of first refusal, if any, granted under the terms of this Lease shall be deemed terminated and be of no further effect during said month to month tenancy. At any time during said month to month tenancy, either party may terminate this agreement by giving thirty (30) days notice to the other party. Any such thirty (30) day notice by Tenant to Landlord must commence on the first day of each calendar month.

23.15 Signs. Tenant shall not place or permit to be placed in, upon or about the Leased Premises or the Project where visible from outside the Leased Premises or any part of any building within the Project, any signs, notices, drapes, shutters, blinds, or displays of any type without the prior written consent of Landlord, which consent shall not be unreasonably withheld.

23.16 Reasonable Consent. Except as limited elsewhere in this Lease, wherever in this Lease Landlord or Tenant is required to give its consent or approval to any action on the part of the other, such consent or

approval shall not be unreasonably withheld. In the event of failure to give any such consent, the other party shall be entitled to specific performance at law and shall have such other remedies as are reserved to it under this Lease, but in no event shall Landlord or Tenant be responsible in monetary damages for failure to give consent unless said failure is withheld maliciously or in bad faith.

23.17 Interest on Past Due Obligations. Except as expressly herein provided, any amount due to Landlord not paid when due shall bear interest at the maximum rate permitted by law from the due date. Payment of such interest shall not excuse or cure any default by Tenant under this Lease.

23.18 Recording. Tenant shall not record this Lease without Landlord's prior written consent, and such recordation shall, at the option of Landlord, constitute a non-curable default of Tenant hereunder. Either party shall, upon request of the other, execute, acknowledge, and deliver to the other a short form memorandum of this Lease for recording purposes.

23.19 Notices. All notices or demands of any kind required or desired to be given by Landlord or Tenant hereunder shall be in writing and shall be deemed delivered: (1) when personally delivered, or (2) forty-eight (48) after depositing the notice or demand by United States mail, first class, post prepaid, addressed to the Landlord or Tenant, respectively at the addresses set forth in the Summary above.

23.20 No Reservation. Submission of this instrument for examination or signature by Tenant does not constitute a reservation of or option for lease; it is not effective as a lease or otherwise until execution and delivery by both Landlord and Tenant.

23.21 Corporate Authority. If Tenant is a corporation, each individual executing this Lease on behalf of said corporation represents and warrants that he/she is duly authorized to execute and deliver this Lease on behalf of said corporation in accordance with a duly adopted resolution of the Board of Directors of said Corporation or in accordance with the Bylaws of said corporation, and that this Lease is binding upon said corporation in accordance with its terms. If Tenant is a corporation, Tenant shall, within thirty (30) days after execution of this Lease, deliver to Landlord a certified copy of resolution of the Board of Directors of said corporation authorizing or ratifying the execution of this Lease.

23.22 Security Measures. Tenant hereby acknowledges that the Rent payable to Landlord hereunder does not include the cost of guard services or other security measures, and that Landlord shall have no obligation whatsoever to provide same. Landlord has provided certain security devices (as appropriate to the Project) for the convenience of the tenants in the Project, as well as tenants' agents, employees, contractors, licensees, customers, or invitees. However, Landlord can make no guarantees of any nature with respect to the effectiveness of such measures in eliminating criminal acts. Tenant assumes all responsibility for the protection of Tenant and Tenant's agents, employees, contractors, licensees, customers, or invitees, and the property belonging to same, from acts of third parties, and indemnifies Landlord and holds Landlord harmless therefrom. Tenant should install their own locks on their Leased Premises.

23.23 Pets. Without the prior written consent of Landlord, Tenant shall allow no pets of any nature in the Leased Premises or the Project. Where such consent is contemplated, Landlord may require an additional security deposit or additional Rent as a condition for Tenant having pets.

23.24 Rules and Regulations. The Rules and Regulations attached hereto as Exhibit C are hereby incorporated into the terms of the Lease. Tenant agrees to abide by such Rules and Regulations. Landlord may from time to time alter or amend such Rules and Regulations, in its reasonable discretion, for the common benefit of the Tenants and the Project.

23.25 No Partnership. It is expressly understood that Landlord does not, in any way or for any purpose, become a partner of Tenant in the conduct of its business, or otherwise, or joint venturer or a member of a joint enterprise with Tenant.

23.26 No Construction Against Preparer. This Lease has been prepared by Landlord and its professional advisors and reviewed by Tenant and its professional advisors. Landlord, Tenant, and their separate advisors believe that this Lease is the product of all of their efforts, that it expresses their agreement, and that it should not be interpreted in favor of either Landlord or Tenant or against either Landlord or Tenant merely because of their efforts in preparing it.

23.27 Waiver of Jury Trial. Landlord and Tenant hereby waive their respective rights to trial by jury of any cause of action, claim, counter-claim or cross complaint in any action, proceeding or hearing brought by either Landlord against Tenant, or Tenant against Landlord on any matter whatsoever arising out of, or in any connection with, this Lease, the relationship of Landlord and Tenant, Tenant's use or occupancy of the Leased Premises, or any claim of injury or damage, or the enforcement of any remedy under any law, statute or regulation, emergency or otherwise now or hereinafter in effect.

23.28 Title 24. Tenant agrees and understand that, except as otherwise provided in this Lease, any required construction, modification, or improvement to the Leased Premises that may be necessary or appropriate from time to time in order to comply with the State of California Title 24. shall be the sole responsibility of the Tenant and Tenant shall hold Landlord harmless from and against any costs, expenses or obligations (including attorneys fees) incurred in connection therewith.

23.29 City of Berkeley Trip Reduction Measures; First Source. Tenant hereby agrees to comply with all City of Berkeley employer traffic mitigation requirements. Landlord encourages Tenant to execute a First Source Agreement with the City of Berkeley. This agreement will assist Tenant in locating prospective contractors and employees.

23.30 Discrimination. Tenant herein covenants, by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through him or her. and this Lease is made and accepted upon and subject to the following conditions:

(a) That there shall be no discrimination against or segregation of any person or group of persons, on account of race, color, creed, religion, sex, marital status, national origin, or ancestry, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the Leased Premises herein leased nor shall the Tenant, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees in the Leased Premises herein leased.

(b) The foregoing provision shall be binding upon and obligate Tenant and its transferees.

23.3 1 Approval of Landlord. This Lease is contingent upon final approval by Landlord, evidenced by Landlord's signature below. No rights or obligations shall be created hereunder until a fully executed counterpart of this Lease has been delivered to Tenant.

~~TO INDUCE LANDLORD TO EXECUTE THIS LEASE, THE INDIVIDUAL(S) SIGNING BELOW ON BEHALF OF THE TENANT PERSONALLY GUARANTEE(S) ALL OBLIGATIONS OF THIS LEASE AND AGREE(S) THAT NO ACTION AGAINST THE TENANT SHALL BE NECESSARY, OTHER THAN A DEMAND FOR PAYMENT BEFORE COLLECTION FROM THE GUARANTOR(S) MAY DESIGN . GUARANTOR(S) AGREE(S) TO PAY ANY AND ALL COSTS OF SUIT , INCLUDING ATTORNEYS' FEES, TO ENFORCE THIS GUARANTEE.~~

In Witness Whereof, Landlord and Tenant have executed this Lease as of the date first above written.

LANDLORD:	TENANT:
Temescal, L.P., a California limited partnership	Powerlight Corporation, a _____ corporation
By: Libitzky Development Corp. Its: General Partner	

By: /s/ Moses S. Libitzky
Moses S. Libitzky, President
Date: 6/8/99

By: /s/ Thomas Dinwoodie
Date: 6/8/99

Contra Costa Industrial Park, Ltd.,
a California limited partnership

By: Ziegler Development Corp.
Its: General Partner

By: /s/ Michael Ziegler
Michael Ziegler, President
Date: 6/8/99

LANDLORD THROUGH THEIR AGENTS AND/OR EMPLOYEES MAKES NO REPRESENTATIONS OR RECOMMENDATIONS WITH RESPECT TO THE LEGAL SUFFICIENCY OR TAX OR LEGAL EFFECT OF THIS LEASE. THIS DOCUMENT HAS BEEN PREPARED FOR SUBMISSION TO YOUR ATTORNEY WITH WHOM YOU SHOULD CONSULT TO SEE THAT YOUR RIGHTS ARE ADEQUATELY PROTECTED.

Exhibit A

Site plan of premises (§1)

See Attached Exhibit A-l

Additional Parking.

Landlord shall provide Tenant with one 36 x 8 designated parking space located in the parking area adjacent to Berkeley Mills for the storage by Tenant of a loading ramp actively used in its operations.

Use of Roof for Solar Panel Testing.

Tenant shall have the right to access and use the roof above the Leased Premises for the purpose of establishing a testing location for solar panels. Tenant shall advise Landlord in writing, in advance, at such time as Tenant first intends to use the roof. Tenant shall be responsible for the maintenance and care of the roof during the term of this Lease if Tenant elects to use the roof as described above.

Exhibit B

Construction to be performed by Landlord (§4)

Landlord shall: (a) Seal off top of front of building with clear paneling or other solution to secure space while allowing natural light; (b) provide panels or other solution to allow natural light down the North sidewall at top of space, (but only if the cost to perform (a) and (b) do not exceed $5,000; if the cost will exceed $5,000, then, either (X) Tenant may elect to pay for the difference, in advance of the performance of the construction or (Y) the construction will not be required); (c) make sure that all roll up and swing doors to space are in good working order and secure; and (d) deliver Leased Premises broom clean and will bar access by birds.

Construction that may be performed by Tenant (§4)

Tenant at Tenants sole cost and expense shall have the right, subject to Article 11 of the Lease, to (a) install a roll up door along the right hand side of the unit accessing the loading area in the side alley; (b) build 4,800 sq. ft. of offices.

Exhibit C

Rules and Regulations

1. No signs or lettering shall be painted, installed, affixed, or inscribed to the exterior of the Project without prior written consent of Landlord as defined in the Lease, which consent shall not be unreasonably withheld.

2. The sidewalks, fire lanes, driveways, traffic corridors, halls, passages, exits, entrances, elevators and stairways shall not be obstructed by Tenant or used by them for any purpose other than for ingress and egress from the Leased Premises.

3. The toilet rooms, urinals, wash bowls, and other apparatus shall not be used for any other purpose than that for which they were constructed and no foreign substances of any kind whatsoever shall be thrown therein and the expense of any breakage, stoppage or damage resulting from the violation of this rule shall be borne by the Tenant who or whose employees or invitees shall have caused it.

4. No cooking shall be done or permitted by Tenant on the Leased Premises, nor shall the Leased Premises be used for washing clothes, for lodging or for improper objectionable or immoral purpose. Microwave ovens and coffee machines in employee kitchen shall be permitted.

5. Tenant shall not use, keep, or discard or the Leased Premises, or Project, any kerosene, gasoline, flammable or combustible fluid or material, unless previous written consent is given by Landlord, and materials are stored in a manner consistent with all applicable laws and are stored in rooms or containers consistent with all code requirement.

6. Landlord will direct electricians as to where and how telephone and other communication cabling, in use now or in the future, be introduced to the Leased Premises. No boring or cutting of wires will be allowed without prior consent of Landlord. The location of telephones, call boxes and other office equipment affixed to the Leased Premises shall be subject to the prior approval of Landlord, such approval not to be unreasonably withheld.

7. Landlord reserves the right to exclude or expel from the Leased Premises or Project any person who, in the sole judgement of Landlord, is intoxicated or under the influence of liquor or drugs, or who shall in any manner do any act in violation of the any of the herein rules and regulations.

8. No vending machines or machines of any description shall be installed, maintained or operated upon the Leased Premises or Project without the prior written consent of Landlord.

9. With the prior written consent of Landlord, Tenant shall not use the name of the building in connection with or in promoting or advertising the business of Tenant except at Tenant’s address.

Exhibit D

CONDITION, MAINTENANCE AND REPAIR OF CRANES

This Exhibit sets forth the rights and responsibilities of Landlord and Tenant in connection with the condition, maintenance and repair of each crane (each, respectively, a "Crane") located within the Leased Premises and leased to Tenant pursuant to this Lease. To the extent that the provisions of this Exhibit are inconsistent with the provisions of the Lease, this Exhibit supersedes the Lease.

A. Election by Tenant to Use Crane.

As of the Commencement Date, no crane shall be used by Tenant. If Tenant thereafter desires to use the crane at the Leased Premises, Tenant shall provide written notice (the "Election to Use Crane") no less than thirty (30) days prior to such use and shall, thereafter, be subject to the provisions of this Exhibit.

1. Base Level Condition of Cranes.

Within twenty (20) days of Landlord's receipt of the Election to Use Crane, Landlord shall arrange for a crane inspection report to be prepared, which report shall be attached to this Exhibit (a "Crane Report"). Except as to any permanent damage condition which does not interfere with the safety or operation of the Crane as may be noted in the Crane Report, Tenant acknowledges and agrees that Tenant has inspected each Crane and each is accepted by Tenant in good and working order, condition and repair (the "Base Level Condition"). Any repair or maintenance required or recommended by a Crane Report, or otherwise required to place or maintain the Cranes in Base Level Condition, shall be the responsibility of Tenant under Section 2, below. Neither Landlord nor any agent on behalf of Landlord has made or is authorized to make any representation or warranty with respect to (i) the condition of any Crane, (ii) the suitability of any Crane for use in Tenant's business, or (iii) the compliance or noncompliance of any Crane with any federal, state or local laws or regulations, including but not limited to Cal-OSHA standards for crane operations. Not later than five (5) days following Tenant's receipt of the Crane Report. Tenant may, at its discretion, withdraw its Election to Use Crane, in which event the Crane shall be locked and shall not be used by Tenant and no subsequent Election to Use Crane may be made by Tenant. If Tenant does not elect to withdraw its Election to Use Crane, then Tenant shall be deemed to accept the Crane Report as described and under the conditions set forth above, and all of the provisions of this Exhibit shall thereupon govern the rights and responsibilities of Landlord and Tenant concerning the Crane.

2. Tenant's Maintenance and Repair Obligations.

Tenant, at its sole cost and expense, shall keep and maintain each Crane in good order, condition and repair during the term of the Lease.

(a) Inspections. Tenant shall cause, at Tenant's expense, each Crane to be inspected regularly, but no less frequently than once every ninety (90) days (the "Inspection"), by a State licensed Crane servicing company designated in advance by Landlord (the "Servicing Company"). Landlord hereby designates WPH Crane Services as the initial Servicing Company. Landlord may designate in writing, at its sole discretion, other Crane servicing companies in lieu of WPH Crane Services or in addition to said company. Tenant shall make each Crane readily available for such Inspections, however Landlord and/or Servicing Company shall make every effort not to unreasonably interfere with Tenant's use of the Crane and shall provide reasonable advance notice of such Inspection. The Inspection shall include a written report by the Servicing Company and, at a minimum, shall cover those items as set forth on the sample service report form as set forth at Section 5 of this Exhibit (the "Sample Report"), including but not limited to the following:

(i) Bridge Complete Inspection. Brakes, gear boxes, drive shafts, tag lines, bridge motor(s), end trucks, wheels, bridge girders and controls;

(ii) Hoist. Motor brakes, load cables, sheaves, trolley wheels, gear box, trolley, trolley and hoist frame, and load brake to be checked under load;

(iii) Runway System. Rails, beams, bolts, runway buss bar and brackets, end stops and collectors;

(iv) Monorails Inspection and Service. Hoist: Motor brakes, load cable, sheaves, trolley wheels, gear box, trolley, trolley and hoist frame, and load brake to be checked under load. Monorails Beam and suspension brackets and bolts.

(v) Jib Cranes. Hoist: Motor brakes, load cable, sheaves, trolley wheels, gear box, trolley, trolley and hoist frame, and load brake to be checked under load. Jib crane anchor bolts; wall or floor, hood assembly, column and boom, end stop and tag line.

Landlord shall instruct each Servicing Company performing an Inspection to (i) prepare a written report which includes, at a minimum, a report in substantially the form as the Sample Report and (ii) provide a copy of each written report directly to Landlord and to Tenant.

(b) Overhead Hoist and Crane Preventive Maintenance.

Tenant shall regularly, but no less frequently than the earlier of (i) once every ninety (90) days or (ii) every 750 operating hours, cause the following Preventive Maintenance to be accomplished for overhead hoist and cranes:

(i) Lubricate all machine components according to manufacturer's specifications;

(ii) Inspect all oil reservoir levels and add oil as required;

(iii) Inspect cables, hook, sheaves and drums for proper conditions and operation and lubricate as required;

(iv) Inspect hoist and trolley frames, catwalks and handrails for loose bolts and defective parts;

(v) Open all control panels and check all contactors for proper operation;

(vi) Inspect limit switches for proper operation and adjust if necessary;

(vii) Inspect all motors and motor couplings for wear and proper operation;

(viii) Inspect safety switches for proper operation;

(ix) Inspect all end stops, sweeps and bumpers;

(x) Check to sec that all steps are working properly on variable speed cranes (push button and contactors) and on other variable speed cranes, inspect all control buttons for proper condition and operation; inspect all crane motions for smoothness of travel;

(xi) Inspect for any oil leaks (and report same);

(xii) Inspect all motor brakes and adjust as required. Test all brakes for possible need of replacement of brake linings or brake shoes;

(xiii) Check all collector shoes, brushes or wheels for possible need of replacement; and

(xiv) Any other service, maintenance or inspection as may be required by any Federal, State or local laws or regulations.

Tenant shall at all times cause each Crane to meet all requirements for Cal-OSHA certifications, including inspection, testing, maintenance, service, repair and recordkeeping, and shall maintain and keep current any and all certificates (the "Certificates") required for Crane operation. Tenant shall assure that all Cal-OSHA inspections, including but not limited to (i) annual inspections on any Crane exceeding a 3-ton capacity, and (ii) a load test, currently required once every four (4) years on any Crane exceeding a 3-ton capacity, are timely undertaken.

(c) Repairs and Maintenance. Tenant shall, no later than forty-five (45) days after the date on which a written report of any Inspection is made by a Servicing Company or a written report of any inspection in connection with the issuance or renewal of any Certificate (a "Certificate Inspection"), cause, at its sole cost and expense, all repairs (including but not limited to procuring and installing parts) and maintenance as shown on such report to be made. Repairs which require any third party to perform services shall be performed by a Servicing Company approved in advance by Landlord. Each repair made and maintenance undertaken by Tenant or caused by Tenant to be performed shall be documented in writing, and, in the event such repair or maintenance

was recommended or required pursuant to an Inspection or Certificate Inspection, a copy of such written documentation shall be delivered to Landlord within three (3) days of completion of such repair or maintenance. Tenant shall make available, upon reasonable notice and request by Landlord, all maintenance and repair records for Landlord's inspection. Unless requested by Landlord, Tenant does not need to deliver to Landlord a copy of written documentation reflecting the performance of regular preventive maintenance.

3. Tenant's Default. The failure by Tenant to observe or perform any of the obligations set forth in this Exhibit, including but not limited to Tenant's obligation to provide and deliver reports to Landlord within the time frames set forth herein, shall constitute a material breach of the Lease, and Landlord shall have, in addition to the remedies set forth herein, all of those remedies as set forth in the Lease.

In addition to all other remedies, Landlord may. in the event of breach by Tenant, elect to (i) retain, in Tenant's name, on Tenant's behalf (which authority Tenant hereby expressly grants to Landlord), and for Tenant's account a Servicing Company for purposes of accomplishing any Inspection and/or repair and/or maintenance reasonably deemed necessary by such Servicing Company or reasonably required to place a Crane in Base Level Condition, (ii) disable and/or remove from service to the Leased Premises any Crane which Tenant has failed to inspect, repair or maintain in accordance with this Exhibit, and/or (iii) undertake any activity set forth in (i), above, at Landlord's expense, and thereupon apply Tenant's Security Deposit to any such expenses and/or demand the repayment of such sums (to the extent not then available from Tenant's Security Deposit) from Tenant, which sums shall be considered Additional Rent.

4. Condition of Cranes Upon Lease Termination. Upon the termination of the Lease and within no more than five (5) days before vacating the Leased Premises, Tenant shall cause an Inspection to be performed by a Servicing Company and shall, prior to vacating the Leased Premises, cause all then outstanding repairs and maintenance to be performed. Tenant shall return possession of each Crane to Landlord in equal or better working order, condition and repair than the Base Level Condition.

5. Sample Report/Crane Report. The immediately following page of this Exhibit is a Sample Report, as defined above. Following such Sample Report is/are the Crane Report(s) referenced in Section 1 of this Exhibit.

AMENDMENT NO. 1
TO
INDUSTRIAL LEASE

This Amendment No. 1 to Industrial Lease (this "Amendment No. 1") is entered into as of November 6, 2000, by and between Temescal, L.P., a California limited partnership and Contra Costa Industrial Park, Ltd., a California limited partnership (collectively "Landlord") and Powerlight Corporation, a California corporation ("Tenant") and amends that certain Industrial Lease, dated as of May 12, 1999 (inclusive of that certain "Lease Addendum Temescal—Powerlight Corporation" executed June 8, 1997) [Typo] (the "Lease"). All capitalized terms used herein and not otherwise defined herein shall have the meanings ascribed to them in the Lease.

RECITAL

Landlord and Tenant desire to amend the Lease to (a) permit Tenant to access and use a portion of the roof over the adjoining building located at 775 Heinz Street, Berkeley (the "775 Heinz Roof) for the purpose of establishing a testing location for solar panels (b) add the sum of $150 per month to the Monthly Base Rent, effective as of November 1, 2000, and to further modify the Lease as set forth herein.

AGREEMENT

For good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereby agree that the Lease shall be amended as follows:

1. Access and Use of 775 Heinz Street Roof.

Tenant shall have the right, for the Term of the Lease, to access and use the 775 Heinz Roof for the purposes of establishing and maintaining a testing location for solar panels (the "Solar Panels"). The Solar Panels shall cover approximately 50% of the 775 Heinz Roof, in the configuration as generally depicted on Exhibit A attached hereto. Tenant shall be responsible for the maintenance and care of the 775 Heinz Roof during the term of the Lease. If requested by Landlord, in order to accommodate future equipment (including, without limitation, telecommunications equipment) that may be placed on the 775 Heinz Roof, Tenant will reconfigure the Solar Panels. In addition to but subject to this Amendment No. 1, for purposes of Sections 3, 7(b) – (g), 9(d) – (e), 11, 12, 13, 14, 15, 16, 17, 18, 20, 21 (as modified by the Lease Addendum) and 23 (as modified by the Lease Addendum) of the Lease, the term "Leased Premises" shall be deemed to include the 775 Heinz Roof. Tenant shall not have the right to sublet all or any portion of the 775 Heinz Roof.

All access to the 775 Heinz Roof by Tenant shall be exclusively via the roof on the building at 815 Heinz Street, over that point identified as the "Access Point" on Exhibit A. Under no circumstances shall Tenant use, access, enter onto or cross over

(regardless of whether such is considered temporary, emergency or permanent and regardless of the reason for such use, access, entry or crossing) any roof except the 775 Heinz Roof and the 815 Heinz Roof and for the uses described herein or make such access in the absence of providing the notice as required below (collectively and severally, a "Prohibited Access"). Any such Prohibited Access, and/or any breach of any term of this Amendment, shall be grounds for the Landlord to declare Tenant in material default and breach of the Lease and, in addition to any other remedies available to Landlord, Landlord may thereupon elect (without otherwise terminating the Lease), upon thirty (30) days written notice to Tenant, to revoke and terminate Tenant's right to access and use the 775 Heinz Roof and/or the 815 Heinz Roof.

Tenant acknowledges that minimizing foot and any other traffic on the roofs is desirable to avoid damage and/or accelerate or create undue wear and tear to the roofs. Tenant represents that the installation of the Solar Panels shall take no more than five (5) consecutive days from commencement to completion of such installation. Tenant shall, not later than thirty (30) days following completion of such installation, install a remote camera (such as a webcam) to permit viewing of the Solar Panels without the need to physically access the roofs.

Tenant shall provide at least two (2) business days' advance written notice to Landlord prior to accessing the 775 Heinz Roof or the 815 Heinz Roof. Each such notice shall be written and shall be transmitted by facsimile to the Landlord at (510) 652-0588 and to the property manager designated by Landlord (Mark Scheberies/The Merle Hall Company, at 925-933-4150) and shall described the reason for the access, the duration of such access and shall identify the persons who will be making such access. It is the intention of this provision that Tenant shall not be required to provide a written notice for each of multiple accesses made within a reasonably short period of time (for example, multiple access on the same day related to a maintenance inspection, and/or, repair); it is, however, the intention of this provision to require Tenant to provide multiple and separate written notices for multiple access that occurs over the period of days or weeks or more.

2. Rent.

The Monthly Base Rent shall, effective as of November 1, 2000 be increased by the amount of One Hundred and Fifty Dollars ($150.00).

3. Paragraph 2.5 of the Lease and Paragraph 1 of the Lease Addendum are hereby deleted, in their entirety and shall be of no further force or effect.

4. Except as set forth above, all other terms and provisions of the Lease shall remain in full force and effect.

[signature page continues]

IN WITNESS WHEREOF, the parties have executed this Amendment No. 1 effective as of the date first above written.

LANDLORD:

Temescal, L.P., a California limited partnership

By: Libitzky Holdings, LP, a California limited partnership, its general partner

By: Libitzky Development Corporation, a California corporation, its general partner

By: /s/ Moses S. Libitzky
Moses S. Libitzky,
President

Contra Costa Industrial Park, Ltd., a California limited partnership

By: Ziegler Development Corp., its general partner

By: /s/ Michael Ziegler
Michael Ziegler,
President

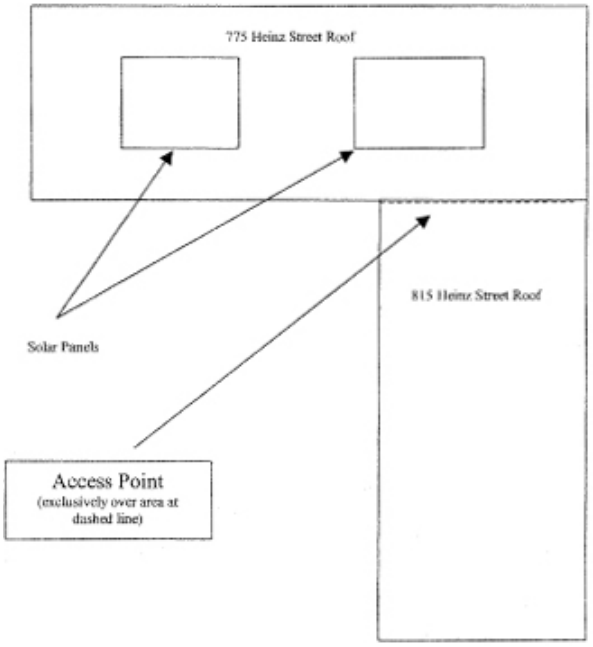
TENANT:

Powerlight Corporation, a California corporation

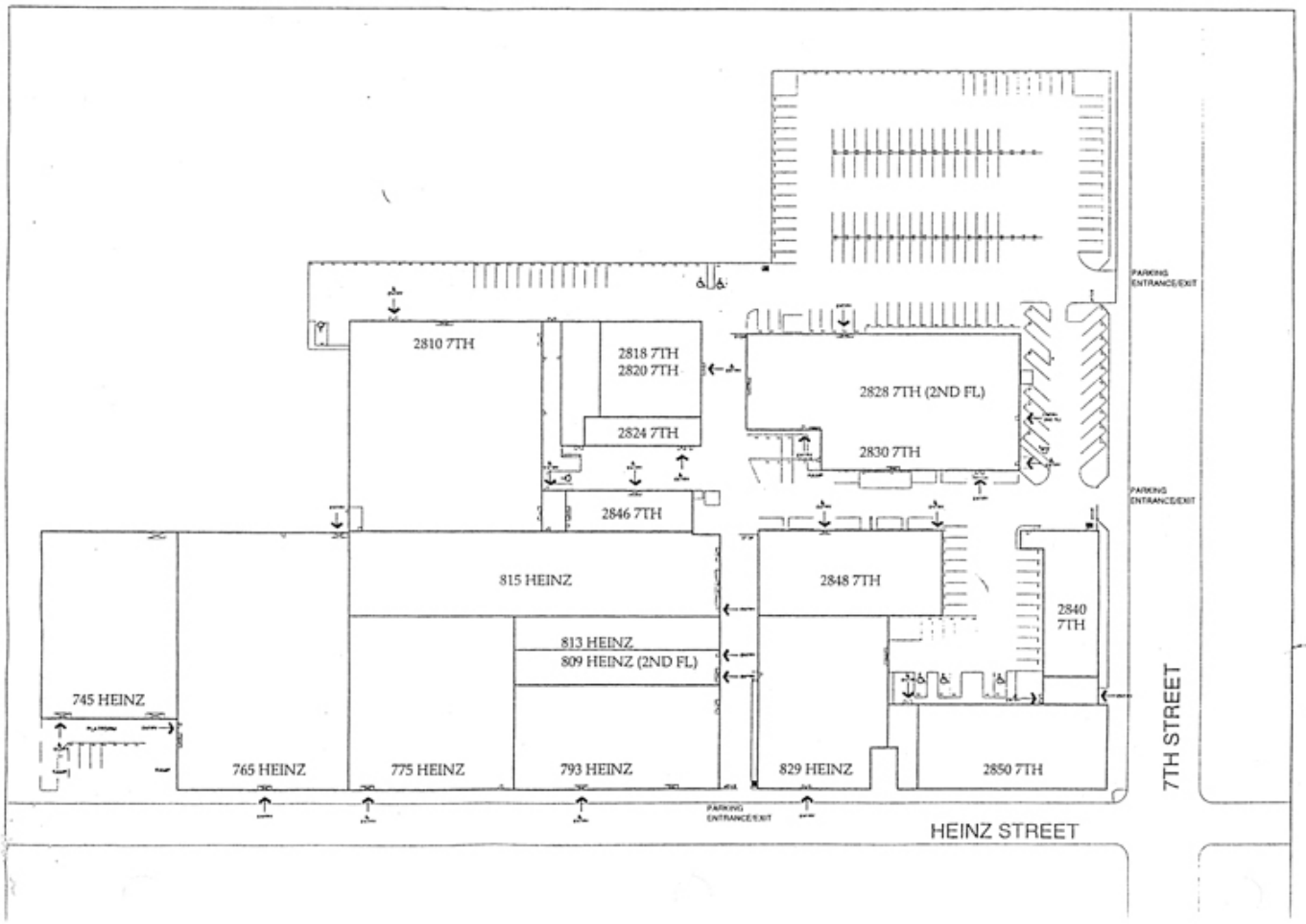
/s/ Daniel Shugar
By: Daniel Shugar,
Vice-President

Exhibit A

775 Heinz Street Roof/Access Point



TEMESCAL BUSINESS CENTER



LEASE ADDENDUM
TEMESCAL – POWERLIGHT CORPORATION

1. **Section 2.5(b) - Option to Extend**. Monthly Base Rent during Option Period to be adjusted annually by cpi, with a minimum of 102% of Monthly Base Rent, and a maximum of 106% of Monthly Base Rent.
2. **Section 23.31 - Approval of Landlord**. The guaranty language to be deleted.

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3. **Section 5.1 - Rent**. Monthly rent payment due on the first of each month, with 10 day grace period.
4. **Section 9 - Operating Expenses**.
   a) In the absence of a cap on operating expense pass throughs,
      i) Subparagraph (b) should be revised to delete the requirement that Tenant pay for any uninsured loss.
      ii) insert “reasonable” management fees . . .
5. **Section 21.2(d) - Late Charge**. The late charge should only apply after Tenant’s 10 day grace period.
6. **Exhibit A**.
   a) 2 dumpsters in locations to be mutually agreed.
7. **Exhibit B**.
   a) Landlord and Tenant to agree on a scope of work not to exceed $5,000.
   b) Given condition of Premises with respect to bird droppings, replace “broomclean” with “powerwash, or equivalent”.

The undersigned agree to the above changes (as edited and initialed) to the Industrial Lease signed June 8, 1999 between Temescal, L.P. as Landlord and PowerLight Corporation as Tenant, and hereby instruct their attorneys to implement said changes for a revised lease which incorporates this Lease Addendum. In consideration of the foregoing, Tenant furnishes a check in the amount of $18,090.90 (for Security Deposit plus first month’s rent) and Landlord agrees upon this day to give 30 days notice to vacate to the current Tenant at 815 Heinz.

/s/ TLD	/s/ MZ
INITIALS (Tenant)	INITIALS (Landlord)
Date: 6/8/99	Date: 6/8/99

Amendment to Lease Agreement

Dated: January 22, 2004

That certain lease agreement dated May 12, 1999 by and between Temescal, L.P. a California Limited Partnership, and Contra Costa Industrial Park, Ltd., a California Limited Partnership, hereinafter known as “Landlord”, and Powerlight Corporation, a California Corporation, hereinafter known as “Tenant”, and concerning the premises commonly known as 815 Heinz Avenue, Berkeley, California, is hereby amended as follows:

1) The Lease Term shall be extended to June 30, 2009.

2) Effective July 1, 2004 Tenant’s Base Rent shall be $8,474.16 per month.

3) Tenant accepts the Premises in its as-is condition.

4) All other terms and conditions of the Lease, as amended, remain in full force and effect

LANDLORD

Temescal, L.P. & Contra Costa Industrial Park, Ltd.

By: Hall Equities Group
As Authorized Agent for Owner

By: /s/ Michael Ziegler

It’s: _____

Date: _____

TENANT

Powerlight Corporation, a California Corporation.

By: /s/ Thomas Dinwoodie

Date: 4/7/04

STANDARD INDUSTRIAL/COMMERCIAL MULTI-TENANT LEASE - NET
AIR COMMERCIAL REAL ESTATE ASSOCIATION

1. **Basic Provisions ("Basic Provisions")**

1.1 **Parties:** This Lease **("Lease")** dated for reference purposes only December 15, 2006 is made by and between FPOC, LLC, a California limited liability company **("Lessor")** and PowerLight Corporation, a California corporation **("Lessee")**, (collectively the **"Parties"**, or individually a **"Party"**)

1.2(a) **Premises:** That certain portion of the Project (as defined below), including all improvements therein or to be provided by Lessor under the terms of this Lease, commonly known by the street address of 1414 Harbour Way South located in the City of Richmond, County of Contra Costa, State of California, with zip code 94804, as outlined on Exhibit A attached hereto **("Premises")** and generally described as (described briefly the nature of the Premises): consisting of two increments: the first increment consists of (approximately 63,280 square feet of office space approximately 50,000 square feet on the second floor and approximately 13,280 square feet on the ground floor) and approximately 22,242 square feet R&D and Light Assembly [collectively, the "First Increment"] and a second increment consisting of approximately 25,000 square feet of second floor office space (the "Second Increment"). The Second Increment is adjacent to the portion of the First Increment located on the second floor. In addition to Lessee's rights to use and occupy the Premises as hereinafter specified, Lessee shall have non-exclusive rights to the any utility raceways of the building containing the Premises **("Building")** and to the common Areas (as defined in Paragraph 2.7 below), but shall not have any rights to the roof or exterior walls of the Building or to any other buildings in the Project. The Premises, the Building, the Common Areas, the land upon which they are located, along with all other buildings and improvements thereon, are herein collectively referred to as the **"Project."** (See also Paragraph 2)

1.2(b) **Parking:** Three Hundred & Sixty-Three (363) unreserved vehicle parking spaces. (See also Paragraph 2.6)

1.3 **Term:** Approximately Eleven (11) years and zero (0) months **("Original Term")** commencing on the later to occur of October 1, 2007 or the date on which Lessor's Work in the Premises is Substantially Completed (as defined in the Work Letter attached hereto) **("Commencement Date")** and ending on September 30, 2018 **("Expiration Date")**. (See also Paragraph 3) Lessor shall use commercially reasonable efforts to Substantially Complete Lessor's Work by October 1, 2007; however, Lessor's failure to cause the Commencement Date to occur on such date shall not affect the validity of this Lease.

1.4 ~~**Early Possession:** _____ **("Early Possession Date")** (See also Paragraphs 3.2 and 3.3)~~

1.5 **Base Rent:** $_____ ~~per month~~ **("Base Rent")**, ~~payable on the ____ day of each month commencing _____.~~ (See also Addendum and Paragraph 4)

☑ If this box is checked, there are provisions in this Lease for the Base Rent to be adjusted.

1.6 **Lessee's Share of Common Area Operating Expenses:** _____ ~~percent~~ (21.38%) **("Lessee's Share")**. Lessees's Share has been calculated by dividing the approximate square footage of the Premises by the approximate square footage of the Building ~~Project~~. In the event that the size of the Premises and/or the Project are modified during the term of this Lease, Lessor shall recalculate Lessee's Share to reflect such modification.

1.7 **Base Rent and Other Monies Paid Upon Execution:**

(a) **Base Rent:** $100,269.05 for the period February 2008

(b) **Common Area Operating Expenses:** $24,367.86 ~~for the period~~ representing the payment for Common Area Operating Expenses due for the First calendar month of the Term. See Addendum.

_____ _____
INITIALS INITIALS

(c) ~~**Security Deposit:**~~ Letter of Credit: $450,000,000 **("Security Deposit").** (See also Paragraph 5: See Addendum)

(d) ~~**Other: $**~~ _____ ~~for~~ _____

(e) **Total Due Upon Execution of this Lease:** $ _____

1.8 **Agreed Use**: Office research and development assembly, light manufacturing, warehousing and distributor in connection with Lessee's business of custom solar equipment and installation and, subject to compliance with Applicable. Requirement, any other business related thereto which Lessee may become involved in (See also Paragraph 6)

1.9 ~~**Insuring Party:** Lessor is the **"Insuring Party"** (See also~~ Paragraph 8~~)~~

1.10 **Real Estate Brokers**: (See also Paragraph 15)

(a) **Representation:** The following real estate brokers (the "**Brokers**") and brokerage relationships exist in this transaction (check applicable boxes):

☐ [Illegible] represents Lessor exclusively (**"Lessor's Broker"**);
☑ [Illegible] represents Lessee exclusively (**"Lessee's Broker"**), or
☐ _____ represents both Lessor and Lessee (**"Dual Agency"**),

(b) **Payment to Brokers**: ~~Upon execution and delivery of this Lease by both Parties~~ Lessor shall pay to the Brokers the brokerage fee agreed to in a separate written agreement (~~or if there is no such agreement the sum of~~ _____ ~~or~~ _____ ~~% of the total Base Rent for the brokerage services rendered by the Brokers~~).

1.11 **Guarantor**. ~~The obligations of the Lessee under this Lease are to be guaranteed by~~ _____ (~~"**Guarantor**") (See also Paragraph 37)~~

1.12 **Attachments**. Attached hereto are the following, all of which constitute a part of this Lease

☑ an Addendum consisting of Paragraphs 50 through 78
☑ a site plan depicting the Premises (Exhibit A),
☐ a site plan depicting the Project;
☐ a current set of the Rules and Regulations for the Project;
☐ a current set of the Rules and Regulations adopted by the owners' association;
☑ a Work Letter (Exhibit B).
☑ other (specify) _____

Exhibit C (Rules and Regulations); Exhibit D (Confirmation of Commencement Date); Exhibit E (Form of First Source Agreement); Exhibit F (Form of SNDA); Exhibit G (Form of Letter of Credit)

2. **Premises**

2.1 **Letting**. Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, the Premises for the term at the rental, and upon all of the terms, covenants and conditions set forth in this Lease. See Addendum. ~~Unless otherwise provided herein any statement of size set forth in this Lease, or that may have been used in calculating Rent, is an approximation which the Parties agree is reasonable and any payments based thereon are not subject to revision whether or not the actual size is more or less. NOTE: Lessee is advised to verify the actual size prior to executing this Lease.~~

2.2 **Condition**. Lessor shall deliver that portion of the Premises contained within the Building ("Unit") to Lessee broom clean and free of debris on the Commencement Date ~~or the Early Possession Date, whichever first occurs (**"Start Date"**)~~, and, so long as the required service contracts described in Paragraph 7.1(b) below are obtained by Lessee and in effect within ~~thirty~~ Sixty (60) days following the Commencement ~~Start~~ Date warrants that the existing electrical, plumbing, fire sprinkler, lighting, heating, ventilating and air conditioning systems ("**HVAC**"), loading doors, and sump pumps, if any, and all other such elements in the Unit, other than those constructed by Lessee, shall be in good operating condition on said date that the structural elements of the roof, bearing walls and foundation of the Unit shall be free of material defects, and that the Unit does not contain hazardous levels of any mold or fungi defined as toxic under applicable state or federal law. If a non-compliance with such warranty exists as of the ~~Start~~ Commencement Date, or if one of such systems or elements should malfunction or fail within the appropriate warranty period. Lessor shall as Lessor's sole obligation with respect to such matter except as otherwise provided in this Lease, promptly after receipt of written notice from Lessee setting forth with specificity the nature and extent of such non-compliance, malfunction or failure, rectify same at Lessor's expense. The warranty periods shall be as follows (i) ~~6~~ 12 months as to the HVAC systems, and (ii) ~~30~~ 180 days as to the remaining systems and other elements of the Unit and (iii) 12 months with respect to the roof of the Premises including the skylights. If Lessee does not give Lessor the required notice within the appropriate warranty period correction of any such non-compliance malfunction or failure shall be the obligation of Lessee at Lessee's sole cost and expense to the extent of Lessee's repair obligations set forth in Paragraph 7.1 below (~~except for~~ and, subject to the reimbursement of such costs as part of Common Area Operating Expenses, Lessor shall be responsible for the repairs to the fire sprinkler systems, roof, foundations, and/or bearing walls – see Paragraph 7).

_____ _____
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2.3 **Compliance.** Lessor warrants that to the best of its knowledge the improvements on the Premises and the Common Areas comply with the building codes that were in effect at the time that each such improvement or portion thereof, was constructed, and also with all applicable laws, covenants or restrictions of record regulations, and ordinances in effect on the ~~Start~~ Commencement **Date ("Applicable Requirements").** ~~Said warranty does not apply to the use to which Lessee will put the Premises.~~ Lessee, at Lessee's sole costs and expense, shall be responsible for any and all modifications to the Premises which may be required by the Americans with Disabilities Act or any similar laws as a result of Lessee's use (see Paragraph 49), or to any Alterations or Utility Installations (as defined in Paragraph 7.3(a)) made or to be made by Lessee. NOTE: **Lessee is responsible for determining whether or not the Applicable Requirements and especially the zoning are appropriate for Lessee's intended use, and acknowledges that past uses of the Premises may no longer be allowed.** If the Premises do not comply with said warranty, Lessor shall, except as otherwise provided, promptly after receipt of written notice from Lessee setting forth with specificity the nature and extent of such non-compliance, rectify the same at Lessor's expense. If Lessee does not give Lessor written notice of a non-compliance with this warranty within 6-18 months following the ~~Start~~ Commencement Date, correction of that non-compliance item within the Premises shall be the obligation of Lessee at Lessee's sole costs and expense. If the Applicable Requirements are hereafter changed so as to require during the term of this Lease the construction of an addition to or an alteration of the Unit. Premises and/or Building, the remediation of any Hazardous Substance or the reinforcement or other physical modification of the Unit. Premises and/or Building (**"Capital Expenditure"**) (subject to the limitations set forth below), Lessor and Lessee shall allocate the cost of such work as follows:

(a) Subject to Paragraph 2.3 (c) below, if such Capital Expenditures are required as a result of the specific and unique use of the Premises by Lessee as compared with uses by tenants in general. Lessee shall be fully responsible for the cost thereof, ~~provided, however that if such Capital Expenditure as required during the last 2 years of this Lease and the cost thereof exceeds 6 months, Base Rent. Lessee may instead terminate this Lease unless Lessor notifies Lessee, in writing, within 10 days after receipt of Lessee's termination notice that Lessor has elected to pay the difference between the actual cost thereof and the amount equal to 6 months, Base Rent. If Lessee elects termination, Lessee shall immediately cease the use of the Premises which requires such Capital Expenditure and deliver to Lessor written notice specifying a termination date at least 90 days thereafter. Such termination date shall, however, in no event be earlier than the last day that Lessee could legally utilize the Premises without commencing such Capital Expenditure.~~

(b) If such Capital Expenditure is not the result of the specific and unique use of the Premises by Lessee (such as, governmentally mandated seismic modifications), then the cost of such Capital Expenditure shall be amortized using a commercially reasonable interest rate over the useful life of such Expenditures as reasonably determined by Lessor ~~Lessor~~ and Lessee shall reimburse Lessor for Lessee's share of the amortized cost of such Expenditure allocable to the remaining term of this Lease, which amount shall be payable in monthly installments together with Lessee's payments of Base Rent ~~allocate the obligation to pay for the portion of such costs reasonably attributable to the Premises pursuant to the formula set out in Paragraph 7.1(d)~~, provided, ~~however, that if such Capital Expenditure is required during the last 2 years of this Lease or if Lessor reasonably determines that it is not economically feasible to pay its share thereof, Lessor shall have the option to terminate this Lease upon 90 days prior written notice to Lessee unless Lessee notifies Lessor in writing, within 10 days after receipt of Lessor's termination notice that Lessee will pay for such Capital Expenditure. If Lessor does not elect to terminate and fails to tender its share of any such Capital Expenditure, Lessee may advance such funds and deduct some with interest from Rent until Lessor's share of such costs have been fully paid. If Lessee is unable to finance Lessor's share, or if the balance of the Rent due and payable for the remainder of this Lease is not sufficient to fully reimburse Lessee on an offset basis. Lessee shall have the right to terminate this Lease upon 30 days written notice to Lessor.~~

(c) Notwithstanding the above, the provisions concerning Capital Expenditures are intended to apply only to non-voluntary unexpected, and new Applicable Requirements. If the Capital Expenditures are instead triggered by Lessee as a result of an actual or proposed change in use, change in intensity of use, or modification to the Premises then, and in that event, Lessee shall either: (i) immediately cease such changed use or intensity of use and/or take such other steps as may be necessary to eliminate the requirement for such Capital Expenditure, or (ii) complete such Capital Expenditure at its own expense. If the Capital Expenditures are instead triggered by Lessor as a result of any actual or proposed change in use of any portion of the Building (e.g., use as a public performance space or restaurant), change in intensity of use or modification of the Building by Lessor or any other tenant or user, then Lessor shall complete such Capital Expenditure at its own expense and not as part of Operating Expenses or other pass-throughs. Lessee shall not have any right to terminate this Lease.

2.4 **Acknowledgements.** Lessee acknowledges that: (a) it has been advised by Lessor and/or Brokers to satisfy itself with respect to the condition of the Premises (including but not limited to the electrical, HVAC and fire sprinkler systems, security, environment aspects, and compliance with Applicable Requirements and the Americans with Disabilities Act), and their suitability for Lessee's intended use, (b) Lessee has made or shall make such investigation as it deems necessary with reference to such matters and assumes all responsibility therefor as the same relate to its occupancy of the Premises, and (c) neither Lessor. Lessor's agents nor Brokers have made any oral or written representations or warranties with respect to said matters other than as set forth in its Lease. ~~In addition, Lessor acknowledges that (i) Brokers have made no representations, promises or warranties concerning Lessee's ability to honor the Lease or suitability to occupy the Premises, and (ii) it is Lessor's sole responsibility to investigate the financial capability and/or suitability of all proposed tenants~~

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2.5 ~~**Lessee as Prior Owner/Occupant.** The warranties made by Lessor in Paragraph 2 shall be of no force or effect if immediately prior to the Start Date Lessee was the owner or occupant of the Premises. In such event, Lessee shall be responsible for any necessary corrective work.~~

2.6 **Vehicle Parking.** Lessee shall be entitled to use the number of parking spaces specified in Paragraph 1.2(b) on those portions of the Common Areas designated from time to time by Lessor for parking. Lessee shall not use more parking spaces than said number. Said parking spaces shall be used for parking by vehicles no larger than full-size passenger automobiles, box delivery trucks or pick-up trucks, herein called **"Permitted Size Vehicles."** Lessor may regulate the loading and unloading of vehicles by adopting Rules and Regulations as provided in Paragraph 2.9. No vehicles other than Permitted Size Vehicles may be parked in the Common Area without the prior written permission of Lessor. Lessee may store up to ten (10) vehicles (automobiles or pickup trucks) in the parking area (in a location to be designated by Lessor in its sole discretion) on an overnight or long-term basis; no other overnight parking of vehicles shall be permitted. Lessor reserves the right to designate portions of the parking area for the exclusive use of particular tenants or occupants of the Project and Lessee shall abide by such designation so long as Lessee continues to enjoy the benefits of its proportionate share of parking spaces in the Project. Lessor shall install signage designating twenty (20) parking spaces as "visitor parking" located in front of the main entrance to the Premises. In addition:

(a) Lessee shall not permit or allow any vehicles that belong to or are controlled by Lessee or Lessee's employees suppliers, shippers, customers, contractors or invitees to be loaded, unloaded, or parked in areas other than those designated by Lessor for such activities

(b) Lessee shall not service or store any vehicles in the Common Areas.

(c) If Lessee permits or allows any of the prohibited activities described in this Paragraph 2.6, then Lessor shall have the right, without notice, in addition to such other rights and remedies that it may have, to remove or tow away the vehicle involved and charge the cost to Lessee, which cost shall be immediately payable upon demand by Lessor

2.7 **Common Areas - Definition.** The term **"Common Areas"** is defined as all areas and facilities outside the Premises and within the exterior boundary line of the Project and interior utility raceways and installations within the Unit that are provided and designated by the Lessor from time to time for the general non-exclusive use of Lessor, Lessee and other tenants of the Project and their respective employees, suppliers, shippers, customers, contractors and invitees, including parking areas, loading and unloading areas, trash areas, roadways, walkways, driveways and landscaped areas.

2.8 **Common Areas - Lessee's Rights.** Lessor grants to Lessee, for the benefit of Lessee and its employees, suppliers, shippers, contractors, customers and invitees, during the term of this Lease, the non-exclusive right to use, in common with others entitled to such use, the Common Areas as they exist from time to time, subject to any rights, powers, and privileges reserved by Lessor under the terms hereof or under the terms of any rules and regulations or restrictions governing the use of the Project. Under no circumstances shall the right herein granted to use the Common Areas be deemed to include the right to store any property, temporarily or permanently, in the Common Areas Any such storage shall be permitted only by the prior written consent of Lessor or Lessor's designated agent, which consent may be revoked at any time. In the event that any unauthorized storage shall occur then Lessor shall have the right, without notice, in addition to such other rights and remedies that it may have to remove the property and charge the cost to Lessee, which cost shall be immediately payable upon demand by Lessor.

2.9 **Common Areas - Rules and Regulations.** Lessor or such other person(s) as Lessor may appoint shall have the exclusive control and management of the Common Areas and shall have the right, from time to time, to establish, modify, amend and enforce reasonable rules and regulations (**"Rules and Regulations"**) for the management, safety, care, and cleanliness of the grounds, the parking and unloading of vehicles and the preservation of good order, as well as for the convenience of other occupants or tenants of the Building and the Project and their invitees. Lessee agrees to abide by and conform to all such Rules and Regulations, and shall use its best efforts to cause its employees, suppliers, shippers, customers, contractors and invitees to so abide and conform Lessor shall not be responsible to Lessee for the non-compliance with said Rules and Regulations by other tenants of the Project. The initial set of rules and regulations for the Project are attached hereto as Exhibit C.

2.10 **Common Areas - Changes.** So long as such changes do not materially interfere with the operation of Lessee's business for the Agreed Use or Lessee's parking rights. Lessor shall have the right, in Lessor's sole discretion, from time to time:

(a) To make changes to the Common Areas, including, without limitation, changes in the location, size, shape and number of driveways, entrances, parking spaces, parking areas, loading and unloading areas, ingress, egress, direction of traffic, landscaped areas, walkways and utility raceways,

(b) To close temporarily any of the Common Areas for maintenance purposes so long as reasonable access to the Premises remains available;

~~(c) To designate other land outside the boundaries of the Project to be a part of the Common Areas~~ Intentionally deleted.

~~(d) To additional buildings and improvements to the Common Areas~~ Intentionally deleted.

(e) To use the Common Areas while engaged in making additional improvements, repairs or alterations to the Project, or any portion thereof and

(f) To do and perform such other acts and make such other changes in, to or with respect to the Common Areas and Project as Lessor may in the exercise of sound business judgment, deem to be appropriate.

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3. **Term**

3.1 **Term**. The Commencement Date. Expiration Date and Original Term of this Lease are as specified in Paragraph 1.3. Promptly following the Commencement Date, the Parties shall confirm the Commencement Date and the Expiration Date by completion of the Confirmation of Commencement Date in the form attached hereto as Exhibit D. Lessee's failure to complete and return such Confirmation within ten (10) days of receipt of same from Lessor shall be deemed Lessee's agreement with the terms thereof.

3.2 **Early Possession**. If Lessee totally or partially occupies the Premises prior to the Commencement Date, the obligation to pay Base Rent shall be abated for the period of such early possession. All other terms of this Lease (including but not limited to the obligations to pay Lessee's Share of Common Area Operating Expenses. Real Property Taxes and insurance premiums and to maintain the Premises) shall be in effect during such period. Any such early possession shall not affect the Commencement Dates or the Expiration Date.

3.3 **Delay In Possession**. See Addendum. ~~Lessor agrees to use its best commercially reasonable efforts to deliver possession of the Premises to Lessee by the Estimated Commencement Date. If despite said efforts, Lessor is unable to deliver possession as agreed, Lessor shall not be subject to any liability therefor, nor shall such failure affect the validity of this Lease or change the Expiration Date. Lessee shall not, however, be obligated to pay Rent or perform its other obligations until Lessor delivers possession of the Premises and any period of rent abatement that Lessee would otherwise have enjoyed shall run from the date of the delivery of possession and continue for a period equal to what Lessee would otherwise have enjoyed, but minus any days of delay caused by the acts or omissions of Lessee. If possession is not delivered within 60 days after the event the Parties shall be discharged from all obligations hereunder. If such written notice is not received by Lessor within said 10 day period. Lessee's right to cancel shall terminate. Except as otherwise provided, if possession is not tendered to Lessee by the Start Date and Lessee does not terminate this Lease as aforesaid; any period of rent abatement that Lessee would otherwise have enjoyed shall run from the date of delivery of possession and continue for a period equal to what Lessee would otherwise have enjoyed under the terms hereof, but minus any days of delay caused by the acts or omissions of Lessee. If possession of the Premises is not delivered within 4 months after the Commencement Date, this Lease shall terminate unless other agreements are reached between Lessor and Lessee in writing.~~

3.4 **Lessee Compliance**. Lessor shall not be required to tender possession of the Premises to Lessee until Lessee complies with its obligation to provide evidence of insurance (Paragraph 8.5). Pending delivery of such evidence. Lessee shall be required to perform all of its obligations under this Lease from and after the Start Commencement Date, including the payment of Rent, notwithstanding Lessor's election to withhold possession pending receipt of such evidence of insurance. ~~Further, if Lessee is required to perform any other conditions prior to or concurrent with the Start Date, the Start Date shall occur but Lessor may elect to withhold possession until such conditions are satisfied.~~

4. **Rent**.

4.1 **Rent Defined**. All monetary obligations of Lessee to Lessor under the terms of this Lease (except for the Security Deposit) are deemed to be rent **("Rent").**

4.2 **Common Area Operating Expenses**. Commencing on the Commencement Date and throughout the remainder of the Term hereof. Lessee shall pay to Lessor during the term hereof, in addition to the Base Rent. Lessee's Share (as specified in Paragraph 1.6) of all Common Area Operating Expenses, as hereinafter defined, during each calendar year of the term of this Lease, in accordance with the following provisions:

(a) "**Common Area Operating Expenses**" are defined, for purposes of this Lease, as all costs incurred by Lessor relating to the ownership and operation of the Project, including, but not limited to the following:

(i) The operation, repair and maintenance, in neat, clean, good order and condition and if necessary the replacement of the following:

(aa) The Common Areas and Common Area improvements, including parking areas, loading and unloading areas, trash areas, roadways, parkways, walkways, driveways, landscaped areas, bumpers, irrigation systems, Common Area lighting facilities, fences and gates, elevators, roofs, and roof drainage systems.

(bb) Exterior signs and any tenant directories.

(cc) Any fire sprinkler systems.

(ii) The cost of water, ~~gas, electricity and telephone to service the Common Areas and any facilities~~ which is not separately metered

(iii) Trash disposal, pest control services property management, security services, and ~~owners' association dues and fees~~, the cost to repaint the exterior of any structures ~~and the cost of any environmental inspections~~.

(iv) ~~Reserves set aside for maintenance, repair and/or replacement of Common Area improvements and equipment~~.

(v) Real Property Taxes (as defined in Paragraph 10)

(vi) The cost of the premiums for the insurance maintained by Lessor pursuant to Paragraph 8.

(vii) Any deductible portion of an insured loss concerning the Building or the Common Areas

(viii) Auditors', accountants' and attorneys' fees and costs related to the operation, maintenance, repair and replacement of the Project.

_____ _____

_____ _____

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(ix) See Addendum. ~~The cost of any capital improvement to the Building or the Project not covered under the provisions of Paragraph 2.3 provided, however, that Lessor shall allocate the cost of any such capital improvement over a 12 year period and Lessee shall not be required to pay more than Lessee's Share of 1/144th of the cost of such capital improvement in any given month.~~

(x) Labor, salaries and reasonable applicable fringe benefits of employees directly participating in the maintenance and operation of the Building.

(xi) All costs associated with the operation of the Shuttle Service to and from the Project to the Richmond BARI stations.

(xii) Any other services to be provided by Lessor that are stated elsewhere in this Lease to be a Common Area Operating Expense.

(b) Any Common Area Operating Expenses and Real Property Taxes that are specifically attributable to the Unit, the Building or to any other building in the Project or to the operation, repair and maintenance thereof, shall be allocated entirely to such Unit, Building, or any other building However, any Common Area Operating Expenses and Real Property Taxes that are not specifically attributable to the Building or to any other building or to the operation, repair and maintenance thereof, shall be equitably allocated by Lessor to all buildings in the Project. In addition, Lessor shall have the right to establish separate and reasonable operating expense pools for the residential, retail, industrial and office tenants of the Project provided, in no event shall Landlord be entitled to collect more than 100% of Common Area Operating Expenses and Real Property Taxes.

(c) The inclusion of the improvements, facilities and services set forth in Subparagraph 4.2(a) shall not be deemed to impose an obligation upon Lessor to either have said improvements or facilities or to provide those services unless the Project already has the same. Lessor already provides the services, or Lessor has agreed elsewhere in this Lease to provide the same or some of them.

(d) Lessee's Share of Common Area Operating Expenses is payable monthly on the same day as the Base Rent is due hereunder. The amount of such payments shall be based on Lessor's estimate of the annual Common Area Operating Expenses. ~~Within 60 days after written request (but not more than once each year)~~ By April 1 of each calendar year, or as soon thereafter as practicable, Lessor shall deliver to Lessee a reasonably detailed statement showing Lessee's Share of the actual Common Area Operating Expenses incurred during the preceding year (the "Common Area Cost Statement"). If Lessee's estimated payments during such year exceed Lessee's Share as indicated on the Common Area Cost Statement, Lessor shall credit the amount of such over-payment against Lessee's future payments or, if the Lease has terminated, refund such overpayment to Lessee within thirty (30) days of the Statement. If Lessee's estimated payments during such year were less than Lessee's Share as indicated on the Common Area Cost Statement. Lessee shall pay to Lessor the amount of the deficiency within ~~10~~ thirty (30) days after delivery by Lessor to Lessee of the Common Area Cost Statement.

(e) Common Area Operating Expenses shall not include any expenses paid by any tenant directly to third parties, or as to which Lessor is otherwise reimbursed by any third party, other tenant, or insurance proceeds. Also, see Addendum.

4.3 **Payment.** Lessee shall cause payment of Rent to be received by Lessor in lawful money of the United States, without offset or deduction (except as specifically permitted in this Lease), on or before the day on which it is due. All monetary amounts shall be rounded to the nearest whole dollar in the event that any invoice prepared by Lessor is inaccurate such inaccuracy shall not constitute a waiver and Lessee shall be obligated to pay the amount set forth in this Lease Rent for any period during the term hereof which is for less than one full calendar month shall be prorated based upon the actual number of days of said month. Payment of Rent shall be made to Lessor at its address stated herein or to such other persons or place as Lessor may from time to time designate in writing. Acceptance of a payment which is less than the amount then due shall not be a waiver of Lessor's rights to the balance of such Rent, regardless of Lessor's endorsement of any check so stating. In the event that any check, draft, or other instrument of payment given by Lessee to Lessor is dishonored for any reason. Lessee agrees to pay to Lessor the sum of $25 in addition to any Late Charge and Lessor, at its option, may require all future Rent be paid by cashier's check. Payments will be applied first to accrued late charges and attorney's fees, second to accrued interest, then to Base Rent and Common Area Operating Expenses, and any remaining amount to any other outstanding charges or costs.

5 **Security Deposit.** See Addendum. Lessee shall deposit with Lessor upon execution hereof the Security Deposit as security for Lessee's faithful performance of its obligations under this Lease. If Lessee fails to pay Rent, or otherwise Defaults under this Lease, Lessor may use, apply or retain all or any portion of said Security Deposit for the payment of any amount due Lessor or to reimburse or compensate Lessor for any liability, expense, loss or damage which Lessor may suffer or incur by reason thereof. If Lessor uses or applies all or any portion of the Security Deposit. Lessee shall within 10 days after written request therefor deposit monies with Lessor sufficient to restore said Security Deposit to the full amount required by this Lease. ~~If the Base Rent increases during the term of this Lease shall upon written request from Lessor, deposit additional monies with Lessor so that the total amount of the Security Deposit shall at all times bear the same proportion to the increased Base Rent as the initial Security Deposit bore to the initial Base Rent.~~ Should the Agreed Use be amended to accommodate a material change in the business of Lessee or to accommodate a sublessee or assignee. Lessor shall have the right to increase the Security Deposit to the extent necessary. In Lessor's reasonable judgment, to account for any increased wear and tear that the Premises may suffer as a result thereof. ~~If a change in control of Lessee occurs during this Lease and following such change the financial condition of Lessee is in Lessor's reasonable judgment, significantly reduced, Lessee shall deposit~~

~~Such additional monies with Lessor as shall be sufficient to cause the Security Deposit to be at a commercially reasonable level based on such change in financial condition.~~ Lessor shall not be required to keep the Security Deposit separate from its general accounts. Within 14 days after the expiration or termination of this Lease, if Lessor elects to apply the Security Deposit only to unpaid Rent, and otherwise within 30 days after the Premises have been vacated pursuant to Paragraph 7.4(c) below, Lessor shall return that portion of the Security Deposit not used or applied by Lessor. No part of the Security Deposit shall be considered to be held in trust, to bear interest or to be prepayment for any monies to be paid by Lessee under this Lease. Tenant hereby waives the protection of Section 1950.7 of the California Civil Code, as it may hereafter be amended, or similar laws of like import which provide that Lessor may claim from a security deposit only those sums reasonably necessary to remedy defaults in the payment of rent, to repair damage caused by Lessee or to clean the Premises, it being agreed that Lessor may, in addition, claim those sums reasonably necessary to compensate Lessor for any other loss or damage, foreseeable or unforeseeable, caused by the act or omission of Lessee or any officer, employee, agent or invitee of Lessee.

6. **Use**

6.1 **Use**. Lessee shall use and occupy the Premises only for the Agreed Use, ~~or any other legal use which is reasonably comparable thereto~~, and for no other purpose whatsoever without the express written consent of Lessor, which consent may be withheld in Lessor's sole discretion; provided, however, that Lessor shall not unreasonably withhold its consent to a change in use in connection with the assignment of this Lease or subletting of the Premises so long as the proposed use is: (a) meets the criteria described in clauses (i), (ii) and (iii) herein, (b) the nature of the business operated by the proposed assignee or subtenant is consistent with the first class use of the other tenancies in the Project, as reasonably determined by Lessor, and (c) the nature of the business operated by the proposed assignee or subtenant is compatible with the then-existing tenant mix in the Project, as reasonably determined by Lessor. Lessee shall not use or permit the use of the Premises in a manner that is unlawful, creates damage, waste or a nuisance, or that disturbs occupants of or causes damage to neighboring premises or properties. Other than guide, signal and seeing eye dogs, Lessee shall not keep or allow in the Premises any pets, animals, birds, fish, or reptiles. Lessor shall not unreasonably withhold or delay its consent to any written request for a modification of the Agreed Use, so long as (i) the same will not impair the structural integrity of the Building or the mechanical or electrical systems therein, (ii) such use is consistent with the office, research and development, light assembly or warehouse/distribution nature of other tenancies in the Project, as reasonably determined by Lessor, and/or (iii) is not significantly more burdensome to the Project. If Lessor elects to withhold consent, Lessor shall within 7 days after such request give written notification of same, which notice shall include an explanation of Lessor's objections to the change in the Agreed Use.

6.2 **Hazardous Substances**

(a) **Reportable Uses Require Consent**. The term **"Hazardous Substance"** as used in this Lease shall mean any product, substance, or waste whose presence, use, manufacture, disposal, transportation, or release, either by itself or in combination with other materials expected to be on the Premises, is either: (i) potentially injurious to the public health, safety or welfare, the environment or the Premises, (ii) regulated or monitored by any governmental authority, or (iii) a basis for potential liability of Lessor to any governmental agency or third party under any applicable statute or common law theory. Hazardous Substances shall include, but not be limited to, hydrocarbons, petroleum gasoline, and/or crude oil or any products, by-products or fractions thereof. Lessee shall not engage in any activity in or on the Premises which constitutes a Reportable Use of Hazardous Substances without the express prior written consent of Lessor and timely compliance (at Lessee's expense) with all Applicable Requirements. **"Reportable Use"** shall mean (i) the installation or use of any above or below ground storage tank, (ii) the generation, possession, storage, use, transportation, or disposal of a Hazardous Substance that requires a permit from, or with respect to which a report, notice, registration or business plan is required to be filed with, any governmental authority, and/or (iii) the presence at the Premises of a Hazardous Substance with respect to which any Applicable Requirements requires that a notice be given to persons entering or occupying the Premises or neighboring properties. Notwithstanding the foregoing, Lessee may use any ordinary and customary materials reasonably required to be used in the normal course of the Agreed Use, ordinary office supplies (copier toner, liquid paper, glue, etc.) and common household cleaning materials, so long as such use is in compliance with all Applicable Requirements, is not a Reportable Use, and does not expose the Premises or neighboring property to any meaningful risk of contamination or damage or expose Lessor to any liability therefor. In addition, Lessor may condition its consent to any Reportable Use upon receiving such additional assurances as Lessor reasonably deems necessary to protect itself, the public, the Premises and/or the environment against damage, contamination, injury and/or liability, including, but not limited to, the installation (and removal on or before Lease expiration or termination) of protective modifications (such as concrete encasements) and/or increasing the Security Deposit.

(b) **Duty to inform Lessor**. If Lessee knows, or has reasonable cause to believe, that a Hazardous Substance has come to be located in, on, under or about the Premises, other than as previously consented to by Lessor, Lessee shall immediately give written notice of such fact to Lessor, and provide Lessor with a copy of any report, notice, claim or other documentation which it has concerning the presence of such Hazardous Substance.

(c) **Lessee Remediation**. Lessee shall not cause or permit any Hazardous Substance to be spilled or released in, on, under, or about the Premises (including through the plumbing or sanitary sewer system) and shall promptly, at Lessee's expense, comply with all Applicable Requirements and take all investigatory and/or remedial action reasonably recommended, whether or not formally ordered or required, for the cleanup of any contamination of and for the maintenance, security and/or monitoring of the Premises or neighboring properties, that was caused or materially contributed to by Lessee, or pertaining to or involving any Hazardous Substance brought onto the Premises during the term of this Lease, by or for Lessee, or any third party.

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(d) **Lessee Indemnification**. Lessee shall indemnify, defend and hold Lessor, its agents, employees, lenders and ground lessor, if any, harmless from and against any and all loss of rents and/or damages, liabilities, judgments, claims, expenses, penalties, and attorneys' and consultants' fees arising out of or involving any Hazardous Substance brought onto the Premises by or for Lessee, or any third party (provided, however, that Lessee shall have no liability under this Lease with respect to, (i) Hazardous Substances existing at the Building on the Commencement Date (and not brought onto the Project by Lessee or Lessee's agents, contractors or employees), (ii) Hazardous Substances brought onto the Premises by Lessor or Lessor's agents, employees or contractors or other tenants or users, or (iii) underground migration of any Hazardous Substance under the Premises from areas outside of the ~~Project~~ Premises not caused or contributed to by Lessee) Lessee's obligations shall include, but not be limited to, the effects of any contamination or injury to person, property or the environment created or suffered by Lessee, and the cost of investigation, removal, remediation, restoration and/or abatement, and shall survive the expiration or termination of this Lease No termination, cancellation or release agreement entered into by Lessor and Lessee shall release Lessee from its obligations under this Lease with respect to Hazardous Substances, unless specifically so agreed by Lessor in writing at the time of such agreement.

(e) **Lessor indemnification**. Lessor and its successors and assigns shall indemnify, defend, reimburse and hold Lessee, its employees and lenders, harmless from and against any and all environmental damages, including the cost of remediation, which are suffered as a direct result of Hazardous Substances on the Premises prior to the Commencement Date (to the extent such Hazardous Substances are not the result of Lessees acts or omissions) ~~Lessee taking possession~~ or which are caused by the gross negligence or willful misconduct of Lessor its agents or employees Lessor's obligations, as and when required by the Applicable Requirements, shall include, but not be limited to, the cost of investigation, removal, remediation, restoration and/or abatement, and shall survive the expiration or termination of this Lease.

(f) **Investigations and Remediations**. Lessor shall retain the responsibility and pay for any investigations or remediation measures required by governmental entities having jurisdiction with respect to the existence of Hazardous Substances on the Premises prior to the Lessee taking possession, ~~unless such remediation measure is required as a result of Lessee's use (including "Alterations" as defined in~~ Paragraph 7.3(a) ~~below, of the Premises in which event Lessee shall be responsible for such payment.~~ Lessee shall cooperate fully in any such activities at the request of Lessor, including allowing Lessor and Lessor's agents to have reasonable access to the Premises at reasonable times in order to carry out Lessor's investigative and remedial responsibilities.

(g) **Lessor Termination Option**. If a Hazardous Substance Condition (see Paragraph 9.1(e)) occurs during the term of this Lease, unless Lessee is legally responsible therefor (in which case Lessee shall make the investigation and remediation thereof required by the Applicable Requirements and this Lease shall continue in full force and effect, but subject to Lessor's rights under Paragraph 6.2(d) and Paragraph 13), Lessor may, at Lessor's option, either (i) investigate and remediate such Hazardous Substance Condition, if required, as soon as reasonably possible at Lessor's expense, in which event this Lease shall continue in full force and effect, or (ii) if the estimated uninsured cost to remediate such condition exceeds 12 times the average ~~then~~ monthly Base Rent or $1,000,000 ~~$100,000~~, whichever is greater, give written notice to Lessee, within 30 days after receipt by Lessor of knowledge of the occurrence of such Hazardous Substance Condition, of Lessor's desire lo terminate this Lease as of the date 60 180 days following the date of such notice in the event Lessor elects to give a termination notice, Lessee may, within 10 days thereafter, give written notice to Lessor of Lessee's commitment to pay the amount by which the cost of the remediation of such Hazardous Substance Condition exceeds an amount equal to 12 times the average ~~then~~ monthly Base Rent or $1,000,000 ~~$100,000~~, whichever is greater Lessee shall provide Lessor with said funds or satisfactory assurance thereof within 30 days following such commitment. In such event, this Lease shall continue in full force and effect, and Lessor shall proceed to make such remediation as soon as reasonably possible after the required funds are available if Lessee does not give such notice and provide the required funds or assurance thereof within the time provided, this Lease shall terminate as of the date specified in Lessor's notice of termination.

6.3 **Lessee's Compliance with Applicable Requirements** . Except as otherwise provided in this Lease, Lessee shall, at Lessee's sole expense, fully, diligently and in a timely manner, materially comply with all Applicable Requirements, the requirements of any applicable fire insurance underwriter or rating bureau, and the recommendations of Lessor's engineers and/or consultants which relate in any manner to such Requirements, without regard to whether said Requirements are now in effect or become effective after the ~~Start~~ Commencement Date. Lessee shall, within 10 days after receipt of Lessor's written request, provide Lessor with copies of all permits and other documents, and other information evidencing Lessee's compliance with any Applicable Requirements specified by Lessor, and shall immediately upon receipt, notify Lessor in writing (with copies of any documents involved) of any threatened or actual claim, notice, citation, warning, complaint or report pertaining to or involving the failure of Lessee or the Premises to comply with any Applicable Requirements Likewise. Lessee shall immediately give written notice to Lessor of (i) any water damage to the Premises and any suspected seepage, pooling, dampness or other condition conducive to the production of mold; or (ii) any mustiness or other odors that might indicate the presence of mold in the Premises, In addition, Lessee shall have sole responsibility for compliance With all provisions of the California Labor Code as it pertains to its own employees, contractors, contractors' employees, and any and all individuals performing work in the Premises on behalf of Lessee.

6.4 **Inspection; Compliance** Lessor and Lessor's " **Lender**" (as defined in Paragraph 30) and consultants shall have the right to enter into Premises at any lime, in the case of an emergency, and otherwise at reasonable times after twenty-four (24) hours advance written notice ~~reasonable notice~~, for the purpose of inspecting the condition of the Premises and for verifying compliance by Lessee with this Lease The cost of any

such inspections shall be paid by Lessor, unless a violation of Applicable Requirements, or a Hazardous Substance condition for which Lessee is responsible (see Paragraph 9.1) is found to exist or be imminent, or ~~the inspection is requested or ordered by a governmental authority~~. In such case, Lessee shall upon request reimburse Lessor for the cost of such inspection, so long as such inspection is reasonably related to the violation or contamination for which Lessee is responsible. In addition, Lessee shall provide copies of all relevant material safety data sheets (**MSDS**) to Lessor within 10 days of the receipt of written request therefor.

7. **Maintenance; Repairs, Utility Installations; Trade Fixtures and Alterations**

7.1 **Lessee's Obligations.**

(a) **In General.** Subject to the provisions of Paragraph 2.2 (Condition), 2.3 (Compliance), 6.3 (Lessee's Compliance with Applicable Requirements), 7.2 (Lessor's Obligations), 9 (Damage or Destruction), ~~and~~ 14 (Condemnation) and the Addendum, Lessee shall, at Lessee's sole expense, keep the Premises. Utility Installations (intended for Lessee's exclusive use, no matter where located), and Alterations in good order, condition and repair (whether or not the portion of the Premises requiring repairs, or the means of repairing the same, are reasonably or readily accessible to Lessee, and whether or not the need for such repairs occurs as a result of Lessee's use, ~~any prior use~~, the elements or the age of such portion of the Premises), including, but not limited to, all equipment or facilities, such as plumbing, HVAC equipment, electrical, lighting facilities, ~~boilers, pressure vessels~~, fixtures, interior walls, interior surfaces of exterior walls, ceilings, floors, windows, doors, and plate glass, ~~and skylights~~ but excluding any items which are the responsibility of Lessor pursuant to Paragraph 7.2, Lessee, in keeping the Premises in good order, condition and repair, shall exercise and perform good maintenance practices, specifically including the procurement and maintenance of the service contracts required by Paragraph 7.1 (b) below. Lessee's obligations shall include restorations, replacements or renewals when necessary to keep the Premises and all improvements thereon or a part thereof in good order, condition and state of repair. Lessee shall also maintain the PV Equipment (as defined in the Addendum) it installed at the Building and Lessor shall permit reasonable access to the roof to perform such maintenance and repair. See Addendum.

(b) **Service Contracts.** Lessee shall, at Lessee's sole expense, procure and maintain contracts, with copies to Lessor, in customary form and substance for and with contractors specializing and experienced in the maintenance of the following equipment and improvements, if any, if and when installed on the Premises: ~~(i)~~ HVAC equipment, ~~(ii) boiler and pressure vessels, (iii) clarifiers~~, and (iv) any other equipment, if reasonably required by Lessor. However, Lessor reserves the right, upon notice to Lessee, to procure and maintain any or all of such service contracts, and Lessee shall reimburse Lessor, ~~upon~~ within ten (10) business days of demand, for the cost thereof.

(c) **Failure to Perform.** If Lessee fails to perform Lessee's obligations under this Paragraph 7.1, Lessor may enter upon the Premises after 10 days' prior written notice to Lessee (except in the case of an emergency, in which case no notice shall be required), perform such obligations on Lessee's behalf, and put the Premises in good order, condition and repair, and Lessee shall promptly pay to Lessor a sum equal to 115% of the cost thereof.

(d) **Replacement.** Subject to Lessee's indemnification of Lessor as set forth in Paragraph 8.7 below, and without relieving Lessee of liability resulting from Lessee's failure to exercise and perform good maintenance practices, if an item described in Paragraph 7. 1(b) cannot be repaired other than at a cost which is in excess of 50% of the cost of replacing such item, then such item shall be replaced by Lessor, and the cost thereof shall be prorated between the Parties and Lessee shall only be obligated to pay, each month during the remainder of the term of this Lease, on the date on which Base Rent is due, an amount equal to the product of multiplying the cost of such replacement by a fraction, the numerator of which is one, and the denominator of which is the number of months in the useful life of such item as reasonably determined by Lessor ~~144 (ie 1/144th of the cost per month~~). Lessee shall pay interest on the unamortized balance but may prepay its obligation at any time.

7.2 **Lessor's Obligations.** Subject to the provisions of Paragraphs *2.2* (Condition), 2.3 (Compliance), 4.2 (Common Area Operating Expenses), 6 (Use), 7.1 (Lessee's Obligations), 9 (Damage or Destruction), ~~and~~ 14 (Condemnation) and the Addendum, Lessor, subject to reimbursement pursuant to Paragraph 4.2, shall keep in good order, condition and repair the foundations, exterior walls, structural condition of interior bearing walls, exterior roof, skylights, roof membrane, fire sprinkler system, Common Area fire alarm and/or smoke detection systems, fire hydrants, parking lots, walkways, parkways, driveways, landscaping, fences, signs and utility systems serving the Common Areas and all parts thereof, as well as providing the services for which there is a Common Area Operating Expense pursuant to Paragraph 4.2. Lessor shall also maintain the base building systems, including the plumbing, electrical and HVAC in each case to the extent such systems do not exclusively serve any single tenant's premises or the Premises, all common area restrooms and elevators. Lessor shall not be obligated to paint the exterior or interior surfaces of exterior walls nor shall Lessor be obligated to maintain, repair or replace windows, doors or plate glass of the Premises. Lessee expressly waives the benefit of any statute now or hereafter in effect to the extent it is inconsistent with the terms of this Lease.

7.3 **Utility installations; Trade Fixtures; Alterations**

(a) **Definitions.** The term **"Utility Installations"** refers to all floor and window coverings, air and/or vacuum lines, power panels, electrical distribution, security and fire protection systems, communication cabling, lighting fixtures, HVAC equipment, plumbing, and fencing in or on the Premises. The term **"Trade Fixtures"** shall mean Lessee's machinery and equipment that can be removed without doing material damage to the Premises. The term **"Alterations"** shall mean any modification of the improvements, other than Utility Installations or Trade Fixtures, whether by addition or deletion. **"Lessee Owned Alterations and/or Utility Installations"** are defined as Alterations and/or Utility Installations made by Lessee that are not yet owned by Lessor pursuant to Paragraph 7.4(a).

(b) **Consent. Lessee** shall not make any Alterations or Utility installations to the Premises without Lessor's prior written consent. Lessee may, however, make non-structural Utility Installations to the interior of she Premises (excluding the roof) without such consent but upon notice to Lessor, as long as they are not visible from the outside, do not involve puncturing, relocating or removing the roof or any existing walls, will not affect the electrical, plumbing, HVAC, and/or life safety systems, and the cumulative cost thereof during any Calendar year ~~this Lease as extended~~ does not exceed $30,000 ~~a sum equal to 3 month's Base Rent in the~~ ~~aggregate or a sum equal to one month's Base Rent~~ in any one year. Notwithstanding the foregoing, Lessee shall not make or permit any roof penetrations and/or install anything on the roof [Other than the PV Equipment] without the prior written approval of Lessor Lessor may as a precondition to granting such approval, require Lessee to utilize a contractor ~~chosen~~ and/or approved by Lessor such approval not to be unreasonably withheld. Any Alterations or Utility installations that Lessee shall desire to make and which require the consent of the Lessor shall be presented to Lessor in written form with detailed plans. Consent shall be deemed conditioned upon Lessee's: (i) acquiring all applicable governmental permits, (ii) furnishing Lessor with copies of both the permits and the plans and specifications prior to commencement of the work, and (iii) compliance with all conditions of said permits and other Applicable Requirements in a promo and expeditious manner. Any Alterations or Utility installations shall be performed in a workmanlike manner with good and sufficient materials. Lessee shall promptly upon completion furnish Lessor with as built plans and specifications and copies of unconditional final lien waivers and releases from all contractors, subcontractors, laborers and suppliers with contracts costing in excess of $5,000.00 ~~For work which costs an amount in excess of one month's Base Rent, Lessor may condition its consent upon Lessee providing a lien and completion bond in an amount equal to 150% of the estimated cost of such Alteration or Utility installation and/or upon Lessee's posting an additional Security Deposit with Lessor~~.

(c) **Liens; Bonds,** Lessee shall pay, when due, all claims for labor or materials furnished or alleged to have been furnished to or for Lessee at or for use on the Premises, which claims are or may be secured by any mechanic's or materialman's lien against the Premises or any interest therein Lessee shall give Lessor not less than 10 days notice prior to the commencement of any work in, on or about the Premises, and Lessor shall have the right to post notices of non-responsibility If Lessee shall contest the validity of any such lien, claim or demand, then Lessee shall, at its sole expense defend and protect itself. Lessor and the Premises against the same and shall pay and satisfy any such adverse judgment that may be rendered thereon before the enforcement thereof. If Lessor shall require, Lessee shall furnish a surety bond in an amount equal to 150% of the amount of such contested lien, claim or demand, indemnifying Lessor against liability for the same. If Lessor elects to participate in any such action. Lessee shall pay Lessor's attorneys' fees and costs

7.4 Ownership; Removal; Surrender; and Restoration .

(a) **Ownership;** Subject to Lessor's right to require removal or elect ownership as hereinafter provided, all Alterations and Utility installations made by Lessee shall be the property of Lessee, but considered a part of the Premises. ~~Lessor may at any time elect~~ ~~in writing to be the owner of all or any specified part of the Lessee Owned Alterations and Utility Installations~~. Unless otherwise instructed per Paragraph 7.4{b} hereof, all Lessee Owned Alterations and Utility Installations shall, at the expiration or termination of this Lease, become the property of Lessor and be Surrendered by Lessee with the Premises.

(b) **Removal.** Lessee shall not be required to remove any Alteration or Utility Installation at the end of the term of this Lease unless Lessor both: (i) upon receipt of Lessee's written notice delivered with the plans and specifications for the subject Alteration or Utility Installation, which written notice specifically requests that Lessor reserve the right to require such removal at the time Lessor consents to such Alteration or Utility Installation and Lessor did so reserve its right to require such removal and (ii) delivered ~~By delivery to Lessee of written notice from Lessor~~ not earlier than 90 and not later than 30 days prior to the end of the term of this Lease, subject to the foregoing, Lessor may require that ~~any or all~~ such Lessee Owned Alterations or Utility Installations be removed by the expiration or termination of this Lease. Lessor may require the removal at any time of all or any part of any Lessee Owned Alterations or Utility installations made without the required consent.

(o) **Surrender; Restoration.** Lessee shall surrender the Premises by the Expiration Date or any earlier termination date, with all of the improvements, parts and surfaces thereof broom clean and free of debris, and in good operating order, condition and state of repair, ordinary wear and tear excepted. "Ordinary wear and fear" shall not include any damage or deterioration that would have been prevented by good maintenance practice. ~~Notwithstanding the foregoing if this Lease is for 12 months or less then Lessee shall surrender the Premises in the same condition as delivered to Lessee on the Start Date with NO allowance for ordinary wear and tear~~. Lessee shall repair any damage occasioned by the installation maintenance or removal of Trade Fixtures. Lessee owned Alterations and/or Utility installations, furnishings, and equipment as well as she removal of any storage tank installed by or for Lessee. Lessee shall also completely remove from the Premises any and a!! Hazardous Substances for which Lessee is responsible hereunder ~~brought onto the Premises by or for Lessee or any third party (except Hazardous Substances which were deposited via underground migration from areas outside of the Project) even if such removal would require Lessee to perform or pay for work that exceeds statutory requirements~~. Trade Fixtures shall remain the property of Lessee and shall be removed by Lessee Any personal property of Lessee not removed on or before the Expiration Date or any earlier termination date shall be deemed to have been abandoned by Lessee and may be disposed of or retained by Lessor as Lessor may desire. The failure by Lessee to timely vacate the Premises pursuant to this Paragraph 7.4(c) without the express written consent of Lessor shall constitute a holdover under the provisions of Paragraph 26 below.

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8. **Insurance; Indemnity**

8.1 **Payment of Premiums**. The cost of the premiums for the insurance policies required to be carried by Lessor, pursuant to Paragraphs 8.2(b), 8.3(a) and 8.3(b), shall be a Common Area Operating Expense. Premiums for policy periods commencing prior to or extending beyond the term of this Lease shall be prorated to coincide with the corresponding Commencement ~~Start~~ Date or Expiration Date.

8.2 **Liability Insurance**.

(a) **Carried by Lessee**. Lessee shall obtain and keep in force a Commercial General Liability and Liquor Liability (if the use and occupancy of the Premises will include the sale, service or consumption of alcoholic beverages) policy of insurance protecting Lessee and Lessor as an additional insured against claims for bodily injury, personal injury and property damage based upon or arising out of the ownership, use, occupancy or maintenance of the Premises and all areas appurtenant thereto and Lessee's use of the RDA Lot (as defined in Paragraph 77 of the Addendum), with coverage for premises/operations, personal and advertising injury, products/completed operations and contractual liability. This policy shall contain a broad form contractual liability endorsement. Such insurance shall be on an occurrence basis providing single limit coverage in an amount not less than $3,000,000 ~~$1,000,000~~ per occurrence with an annual aggregate of not less than $5,000,000 ~~$2,000,000~~ If Lessee uses vehicle owned and non-owned, in any way to carry out business on or about the Project, Lessee shall maintain Motor Vehicle Liability Insurance; such insurance shall have a combined single limit of not less than One Million Dollars ($1,000,000) for bodily injury and property damage. Lessee shall add Lessor as an additional insured on its general liability policy by means of an endorsement at least as broad as the insurance Service Organization's "Additional insured-Managers or Lessors of Premises" Endorsement and coverage shall also be extended to include damage caused by heat, smoke or fumes from a hostile fire. The policy shall ~~not contain any intra-insured exclusions as between insured persons or organizations, but shall~~ include coverage for liability assumed under this Lease as an "Insured contract" for the performance of Lessee's indemnity obligations under this Lease. The limits of said insurance shall not, however, limit the liability of Lessee nor relieve Lessee of any obligation hereunder. Lessee shall provide an endorsement on its liability policy(ies) which provides that its insurance shall be primary to and not contributory with any similar insurance carried by Lessor, whose insurance shall be considered excess insurance only.

(b) **Carried by Lessor**. Lessor shall maintain liability insurance as described in Paragraph 8.2(a), in addition to, and not in lieu of, the insurance required to be maintained by Lessee. Lessee shall not be named as an additional insured therein.

8.3 **Property Insurance – Building, Improvements and Rental Value**

(a) **Building and Improvements**. Lessor shall obtain and keep in force a policy or insurance in the name or Lessor with loss payable to Lessor, any ground-lessor, and to any Lender insuring against loss or damage to the Building ~~Premises~~. The amount of such insurance shall be equal to the full insurable replacement cost of the Building ~~Premises~~, as the same shall exist from time to time, or the amount required by any Lender, but in no event more than the commercially reasonable and available insurable value thereof. Lessee Owned Alterations and Utility Installations. Trade Fixtures, and Lessee's personal property shall be insured by Lessee under Paragraph 8.4 If the coverage is available and commercially appropriate, such policy or policies shall insure against all risks under a special cause of loss form against risk of direct physical loss or damage (except the perils of flood and/or earthquake unless required by a Lender), including coverage for debris removal and the enforcement of any Applicable Requirements requiring the upgrading, demolition, reconstruction or replacement of any portion of the Premises as the result of a covered loss. ~~Said policy or policies shall also contain an agreed valuation provision in lieu of any coinsurance clause, waiver of subrogation, and inflation guard protection causing an increase in the property insurance coverage amount by a factor of not less than the adjusted U.S. Department of Labor Consumer Price Index for All Urban Consumers for the city nearest to where the Premises are located. If such insurance coverage has a deductible clause the deductible amount shall not exceed $1,000 per occurrence.~~

(b) **Rental Value**. Lessor shall also obtain and keep in force a policy or policies in the name of Lessor with loss payable to Lessor and any Lender, insuring the loss of the full Rent for one year with an extended period of indemnity for an additional 180 days ("Rental Value Insurance"). Said insurance shall contain an a agreed valuation provision in lieu of any coinsurance clause, and the amount of coverage shall be adjusted annually to reflect the projected Rent otherwise payable by Lessee, for the next 12 months period.

(c) **Adjacent Premises**. Lessee shall pay for any increase in the premiums for the property insurance of the Building and for the Common Areas or other buildings in the Project if said increase is caused by Lessee's acts, omissions, use or occupancy of the Premises.

(d) **Lessee's Improvements**. Since Lessor is the Insuring Party, Lessor shall not be required to Insure Lessee Owned Alterations and Utility Installations unless the item in question has become the property of Lessor under the terms of this Lease.

8.4 **Lessee's Property; Business Interruption Insurance**

(a) **Property Damage**. Lessee shall obtain and maintain insurance coverage on all of Lessee's ~~personal property~~, Trade Fixtures and Lessee Owned Alterations and Utility Installations, whether located on the Premises or the RDA Lot. Such insurance shall be full replacement cost coverage with a deductible of not to exceed $5,000 ~~$1,000~~ per occurrence. The proceeds from any such insurance shall be used by Lessee for the replacement of personal property. Trade Fixtures and Lessee Owned Alterations and Utility Installations. Lessee shall provide Lessor with written evidence that such insurance is in force.

(b) **Business Interruption**. Lessee shall obtain and maintain loss of income and extra expense insurance in amounts as will reimburse Lessee for direct or indirect loss of earnings attributable to all perils commonly insured against by prudent lessees in the business of Lessee or attributable to prevention of access to the Premises as a result of such perils.

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(c) **No Representation of Adequate Coverage**. Lessor makes no representation that the limits or forms of coverage of insurance specified herein are adequate to cover Lessee's property business operations or obligations under this Lease.

8.5 **Insurance Policies** insurance required herein shall be by companies duly licensed or admitted to transact business in the state where the Premises are located, and maintaining during the policy term a "General Policyholders Rating" of at least A-. VIII ~~vi~~. as set forth in the most current issue of "Best's insurance Guide" or such other rating as may be required by a Lender. Lessee shall not do or permit to be done anything which invalidates the required insurance policies. Lessee shall, prior to the Start earlier to occur of the Commencement Date or the date on which Lessee first enters the Premises, deliver to Lessor ~~certified copies of policies of such insurance or~~ certificates evidencing the existence and amounts of the required insurance. No such policy shall be cancelable or subject to modification except after 30 days prior written notice to Lessor Lessee shall, at least 10 days prior to the expiration of such policies, furnish Lessor with evidence of renewals or "insurance binders" evidencing renewal thereof, or Lessor may order such insurance and charge the cost thereof to Lessee, which amount shall be payable by Lessee to Lessor upon demand. Such policies shall be for a term of at least one year, or the length of the remaining term of this Lease, whichever is less. ~~If either Party shall fail to procure and maintain the insurance required to be carried by it the other Party may, but shall not be required to procure and maintain the same.~~

8.6 **Waiver of Subrogation** ~~Without affecting any other rights or remedies~~ Notwithstanding any other provision of this Lease, Lessee and Lessor each hereby release and relieve the other, and waive their entire right to recover damages against the other, for loss of or damage to its property arising out of or incident to the perils either which it has insured against or is required to be insured against herein The effect of such releases and waivers is not limited by the amount of insurance carried or required, or by any deductibles applicable hereto. The Parties agree to have their respective property damage insurance carriers waive any right to subrogation that such companies may have against Lessor or Lessee, as the case may be, so long as the insurance is not invalidated thereby.

8.7 **Indemnity**. Except for Lessor's gross negligence or willful misconduct breach of this Lease or violation of law. Lessee shall indemnify, protect, defend and hold harmless the Premises, Lessor and its agents. Lessor's master or ground lessor, partners and Lenders, from and against any and all claims, loss of rents and/or damages, liens, judgments, penalties, attorneys' and consultants' fees, expenses and/or liabilities arising out of, involving, or in connection with the use and/or occupancy of the Premises by Lessee and the use of the RDA Lot by Lessee. If any action or proceeding is brought against Lessor by reason of any of the foregoing matters, Lessee shall upon notice defend the same at Lessee's expense by counsel reasonably satisfactory to Lessor and Lessor shall cooperate with Lessee in such defense. Lessor need not have first paid any such claim in order to be defended or indemnified. Lessor and Lessee intend that Lessee shall carry insurance to protect Lessor and Lessee against all claims, losses, damages and liabilities arising out of, involving, or in connection with, the use and/or occupancy of the Premises by Lessee and Lessee therefore agrees that the indemnity provisions of this Paragraph 8.7 and the waiver provisions of Paragraph 8.8 shall apply notwithstanding any negligence of Lessor (except only that the indemnity and exculpation provisions shall not apply to the extent that any claim, loss, liability, damage, fees or cost arising due to the gross negligence, willful misconduct, breach of this Lease or violation of law by Lessor, or any of Lessor's agents, contractors or employees.)

8.8 **Exemption of Lessor and its Agents from Liability**. ~~Notwithstanding~~ Except to the extent solely caused by the gross negligence or willful misconduct, breach of this Lease or violation of law by ~~or breach of this Lease by~~ Lessor or its agents, ~~neither~~ Lessor ~~nor~~ and its agents shall not be liable to Lessee under any circumstances for; (i) injury or damage to the person or goods, wares, merchandise or other property of Lessee, Lessee's employees, contractors, invitees, customers, or any other person in or about the Premises, whether such damage or injury is caused by or results from fire, steam, electricity, gas, water or rain, indoor air quality, the presence of mold or from the breakage, leakage, obstruction or other defects of pipes, fire sprinklers, wires, appliances, plumbing, HVAC or lighting fixtures, or from any other cause, whether the said injury or damage results from conditions arising upon the Premises or upon other portions of the Building, or from other sources or places, (ii) any damages arising from any act or neglect of any other tenant of Lessor or from the failure of Lessor or its agents to enforce the provisions of any other lease in the Project, or (iii) injury to Lessee's business or for any loss of income or profit therefrom. Instead, it is intended that Lessee's sole recourse in the event of such damages or injury shall be to file a claim on the insurance policy(ies) that Lessee is required to maintain pursuant to the provisions of Paragraph 8.

8.9 **Failure to Provide Insurance**. Lessee acknowledges that any failure on its part to obtain or maintain the insurance required herein will expose Lessor to risks and potentially cause Lessor to incur costs not contemplated by this Lease, the extent of which will be extremely difficult to ascertain. Accordingly, for any month or portion thereof that Lessee does not maintain the required insurance and/or does not provide Lessor with the required binders or certificates evidencing the existence of the required insurance, the Base Rent shall be automatically increased, without any requirement for notice to Lessee, by an amount equal to 10% of the then existing Base Rent or $100, whichever is greater. The parties agree that such increase in Base Rent represents fair and reasonable compensation for the additional risk/costs that Lessor will incur by reason of Lessee's failure to maintain the required insurance. Such increase in Base Rent shall in no event constitute a waiver of Lessee's Default or Breach with respect to the failure to maintain such insurance, prevent the exercise of any of the other rights and remedies granted hereunder nor relieve Lessee of its obligation to maintain the insurance specified in this Lease.

9. **Damage or Destruction**.

9.1 **Definitions**.

(a) "**Premises Partial Damage**" shall mean, damage or destruction to the improvements on the Premises, other than

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Lessee Owned Alterations and Utility Installations, which can reasonably be repaired in 3 Six (6) months or less from the date of the damage or destruction, and the cost thereof does not exceed a sum equal to 6 nine (9) month's Base Rent. Lessor shall notify Lessee in writing within 30 days from the date of the damage or destruction as to whether or not the damage is Partial or Total. Notwithstanding the foregoing, Premises Partial Damage shall not include damage to windows, doors, and/or other similar items which Lessee has the responsibility to repair or replace pursuant to the provisions of Paragraph 7.1.

(b) **"Premises Total Destruction"** shall mean damage or destruction to the improvements on the Premises, other than Lessee Owned Alterations and Utility Installations and Trade Fixtures, which cannot reasonably be repaired in ~~3~~ 9 months or less from the date of the damage or destruction and/or the cost thereof exceeds a sum equal to ~~6~~ nine (9) month's Base Rent Lessor shall notify Lessee in writing within 30 days from the date of the damage or destruction as to whether or not the damage is Partial or Total

(c) **"Insured Loss"** shall mean damage or destruction to improvements on the Premises, other than Lessee Owned Alterations and Utility Installations and Trade Fixtures, which was caused by an event required to be covered by the insurance described in Paragraph 8.3(a) or actually covered by insurance carried by either Party, irrespective of any deductible amounts or coverage limits involved.

(d) **"Replacement Cost"** shall mean the cost to repair or rebuild the improvements owned by Lessor at the time of the occurrence to their condition existing immediately prior thereto, including demolition, debris removal and upgrading required by the operation of Applicable Requirements, and without deduction for depreciation.

(e) **"Hazardous Substance Condition"** shall mean the occurrence or discovery of a condition involving the presence of, or a contamination by, a Hazardous Substance as defined in Paragraph 6.2(a), in, on, or under the Premises which requires repair, remediation, or restoration.

9.2 **Partial Damage - Insured Loss**. If a Premises Partial Damage that is an Insured Loss occurs, then Lessor shall, at Lessor's expense, repair such damage (but not Lessee's Trade Fixtures or Lessee Owned Alterations and Utility Installations) as soon as reasonably possible and this Lease shall continue in full force and effect, provided, however, that Lessee shall, at Lessor's election, make the repair of any damage or destruction the total cost to repair of which is $50,000 ~~$10,000~~ or less, and, in such event, Lessor shall make any applicable insurance proceeds available to Lessee on a reasonable basis for that purpose. Notwithstanding the foregoing, if the required insurance was not in force or the insurance proceeds are not sufficient to effect such repair, ~~the insuring Party~~ Lessor shall promptly contribute the shortage in proceeds as and when required to complete said repairs. In the event, however, such shortage was due to the fact that, by reason of the unique nature of the improvements, full replacement cost insurance coverage was not commercially reasonable and available. Lessor shall have no obligation to pay for the shortage in insurance proceeds or to fully restore the unique aspects of the Premises unless Lessee provides Lessor with the funds to cover same, or adequate assurance thereof, within ~~10~~ twenty (20) days following receipt of written notice of such shortage and request therefor. If Lessor receives said funds or adequate assurance thereof within said ~~10~~ twenty (20) day period, the party responsible for making the repairs shall complete them as soon as reasonably possible and this Lease shall remain in full force and effect. If such funds or assurance are not received, Lessor may nevertheless elect by written notice to Lessee within 10 days thereafter to: (i) make such restoration and repair as is commercially reasonable with Lessor paying any shortage in proceeds, in which case this Lease shall remain in full force and effect, or (ii) have this Lease terminate 60 ~~30~~ days thereafter. Lessee shall not be entitled to reimbursement of any funds contributed by Lessee to repair any such damage or destruction unless Lessor terminates this Lease Premises Partial Damage due to flood or earthquake shall be subject to Paragraph 9.3, notwithstanding that there may be some insurance coverage, but the net proceeds of any such insurance shall be made available for the repairs if made by either Party. If a Premises Partial Damage occurs and any portion of the Premises is tenantable, Lessee shall be permitted to occupy such portion of the Premises to the extent such occupancy does not interfere with Lessor's reconstruction work. During such occupancy rent shall be proportionately abated as more particularly set forth in Paragraph 9.6(a) below.

9.3 **Partial Damage - Uninsured Loss**. If a Premises Partial Damage that is not an Insured Loss occurs, unless caused by a negligent or willful act of Lessee (in which event Lessee shall make the repairs at Lessee's expense), Lessor may either: (I) repair such damage as soon as reasonably possible at Lessor's expense, in which event this Lease shall continue in full force and effect, or (ii) terminate this Lease by giving written notice to Lessee within 30 days after receipt by Lessor of knowledge of the occurrence of such damage. Such termination shall be effective 90 60 days following the date of such notice. In the event Lessor elects to terminate this Lease, Lessee shall have the right within twenty (20) 10 days after receipt of the termination notice to give written notice to Lessor of Lessee's commitment to pay for the repair of such damage without reimbursement from Lessor in excess of insurance proceeds. Lessor, however, shall deliver and assign to Lessee all insurance proceeds payable with respect to such damage. Lessee shall provide Lessor with said funds or satisfactory assurance thereof within 30 days after making such commitment. In such event this Lease shall continue in full force and effect, and Lessor shall proceed to make such repairs as soon as reasonably possible after the required funds are available. If Lessee does not make the required commitment, this Lease shall terminate as of the data specified in the termination notice

9.4 **Total Destruction**. Notwithstanding any other provision hereof if a Premises Total Destruction occurs, this Lease shall terminate 60 days following such Destruction. If the damage or destruction was caused by the gross negligence or willful misconduct of Lessee. Lessor shall have the right to recover Lessor's damages from Lessee, except as provided in Paragraph 8.6.

9.5 **Damage Near End of Term**. If at any time during the last 6 months of this Lease there is damage for which the cost to repair

exceeds one month's Base Rent, whether or not an Insured Loss, Lessor may terminate this Lease effective 60 days following the date of occurrence of such damage by giving a written termination notice to Lessee within 30 days after the date of occurrence of such damage. Notwithstanding the foregoing, if Lessee at that time has an exercisable option to extend this Lease or to purchase the Premises then Lessee may preserve this Lease by (a) exercising such and (b) providing Lessor with any shortage in insurance proceeds (or adequate assurance thereof) needed to make the repairs on or before the earlier of (i) the date which is 10 days after Lessee's receipt of Lessor's written notice purporting to terminate this Lease, or (ii) the day prior to the date upon which such option expires. If Lessee duly exercises such option during such period and provides Lessor with funds (or adequate assurance thereof) to cover any shortage in insurance proceeds. Lessor shall, at Lessor's commercially reasonable expense, repair such damage as soon as reasonably possible and this Lease shall continue in full force and effect subject to the provisions of this Paragraph 9. If Lessee fails to exercise such option and provide such funds or assurance during such period, then this Lease shall terminate on the date specified in the termination notice and Lessee's option shall be extinguished.

9.6 **Abatement of Rent; Lessee's Remedies**

(a) **Abatement.** In the event of Premises Partial Damage or Premises Total Destruction or a Hazardous Substance Condition for which Lessee is not responsible under this Lease, the Rent payable by Lessee for the period required for the repair, remediation or restoration of such damage shall be abated in proportion to the degree to which Lessee's use of the Premises is impaired ~~but not to exceed the proceeds received from the Rental Value insurance~~. All other obligations of Lessee hereunder shall be performed by Lessee, and Lessor shall have no liability for any such damage, destruction, remediation, repair or restoration except as provided herein.

(b) **Remedies.** If Lessor shall be obligated to repair or restore the Premises and does not commence in a substantial and meaningful way, such repair or restoration within 90 days after such obligation shall accrue. Lessee may, at any time prior to the commencement of such repair or restoration and following the expiration of such 90-day period , give written notice to Lessor and to any Lenders of which Lessee has actual notice, of Lessee's election to terminate this Lease on a date not less than 60 days following the giving of such notice. ~~If Lessee gives such notice and such repair or restoration is not commenced within 30 days thereafter, this Lease shall terminate as of the date specified in said notice. If the repair or restoration is commenced within such 30 days this Lease shall continue in full force and effect.~~ "Commence" shall mean either the unconditional authorization of the preparation of the required plans, or the beginning of the actual work on the Premises, whichever first occurs.

9.7 **Termination; Advance Payments.** Upon termination of this Lease pursuant to Paragraph 6.2(g) or Paragraph 9. an equitable adjustment shall be made concerning advance Base Rent and any other advance payments made by Lessee to Lessor. Lessor shall, in addition, return to Lessee so much of Lessee's Security Deposit as has not been, or is not then required to be, used by Lessor as permitted herein.

9.8 **Waive Statutes.** Lessor and Lessee agree that the terms of this Lease shall govern the effect of any damage to or destruction of the Premises with respect to the termination of this Lease and hereby waive the provisions of ~~any present~~ Section 1932(2) and Section 1933(4) of the California Civil Code and any or future statutes of similar or like import ~~to the extent inconsistent herewith.~~

10. **Real Property Taxes**

10.1 **Definition.** As used herein, the term "Real Property Taxes" shall include any form of assessment; real estate, general, special, ordinary or extraordinary, or rental levy or tax (other than inheritance, personal income or estate taxes); improvement bond; and/or license fee imposed upon or levied against any legal or equitable interest of Lessor in the Project, Lessor's right to other income therefrom, and/or Lessor's business of leasing, by any authority having the direct or indirect power to tax and where the funds are generated with reference to the Project address and where the proceeds so generated are to be applied by the city, country or other local taxing authority of a jurisdiction within which the Project is located. The term "Real Property Taxes" shall also include any tax, fee, levy, assessment or charge, or any increase therein (i) imposed by reason of events occurring during the term of this Lease, including but not limited to, a change in the ownership of the Project, (ii) a change in the improvements thereon, and/or (iii) levied or assessed on machinery or equipment provided by Lessor to Lessee pursuant to this Lease. In calculating Real Property Taxes for any calendar year, the Real Property Taxes for any real estate tax year shall be included in the calculation of Real Property Taxes for such calendar year based upon the number of days which such calendar year and tax year have in common. Real Property taxes Shall not include any documentary transfer taxes,

10.2 **Payment of Taxes.** Except as otherwise provided in Paragraph 10.3, Lessor shall pay the Real Property Taxes applicable to the Project, and said payments shall be included in the calculation of Common Area Operating Expenses in accordance with the provisions of Paragraph 4.2.

10.3 **Additional Improvements.** Common Area Operating Expenses shall not include Real Property Taxes specified in the tax assessor's records and work sheets as being caused by additional improvements placed upon the Project by other lessees or by Lessor for the exclusive enjoyment of such other lessees. Notwithstanding Paragraph 10.2, hereof, Lessee shall, however, pay to Lessor at the time Common Area Operating Expenses are payable under Paragraph 4.2. the entirety of any increase in Real Property Taxes if assessed solely by reason of Alterations, Trade Fixtures or Utility installations placed upon the Premises by Lessee or at Lessee's request or by reason of any alterations of improvements to the Premises made by Lessor subsequent to the execution of this Lease by the Parties.

10.4 **Joint Assessment.** If the Building is not separately assessed, Real Property Taxes allocated to the Building shall be an equitable proportion of the Real Property Taxes for all of the land and Improvements included within the tax parcel assessed, such proportion to be determined by Lessor from the respective valuations assigned in the assessor's work sheets of such other information as may be reasonably available Lessor's reasonable determination thereof, in good faith, shall be conclusive.

10.5 **Personal Property Taxes**. Lessee shall pay prior to delinquency all taxes assessed against and levied upon Lessee Owned Alterations and Utility Installations, Trade Fixtures, furnishings, equipment and all personal property of Lessee contained in the Premises. When possible, Lessee shall cause its Lessee Owned Alterations and Utility Installations, Trade Fixtures, furnishings, equipment and all other personal property to be assessed and billed separately from the real property of Lessor. If any of Lessee's said property shall be assessed with Lessor's real property, Lessee shall pay Lessor the taxes attributable to Lessee's properly within 10 days after receipt of a written statement setting forth the taxes applicable to Lessee's property.

11. **Utilities and Services**. Lessee shall pay for all ~~water~~, gas heat, light, power, telephone, trash disposal and other utilities and services supplied to the Premises, together with any taxes thereon. Notwithstanding the provisions of Paragraph 4.2, if at any time in Lessor's sole judgment. Lessor determines that Lessee is using a disproportionate amount of water, ~~electricity~~ or other commonly metered utilities, or that Lessee is generating such a large volume of trash as to require an increase in the size of the trash receptacle and/or an increase in the number of times per month that it is emptied, then Lessor may Charge to Lessee ~~increase Lessee's Base Rent by~~ an amount equal to such increased costs. There shall be no abatement of Rent and Lessor shall not be liable in any respect whatsoever for the inadequacy, stoppage, interruption or discontinuance of any utility or service due to riot, strike, labor dispute, breakdown, accident, repair or other cause beyond Lessor's reasonable control or in cooperation with governmental request or directions.

12. **Assignment and Subletting**. See Addendum

12.1 **Lessor's Consent Required**

(a) Lessee shall not voluntarily or by operation of law assign, transfer, mortgage or encumber (collectively, **"assign or assignment"**) or sublet all or any part of Lessee's interest in this Lease or in the Premises without Lessor's prior written consent which consent shall not be unreasonably withheld, conditioned or delayed

(b) Unless Lessee is a corporation and its stock is publicly traded on a national stock exchange, a change in the control of Lessee shall constitute an assignment requiring consent. The transfer, on a cumulative basis, of ~~25%~~ 49% or more of the voting control of Lessee shall constitute a change in control for this purpose. See Addendum.

(c) The involvement of Lessee or its assets in any transaction, or series of transactions (by way of merger, sale, acquisition, financing, transfer, leveraged buy-out or otherwise), whether or not a formal assignment or hypothecation of this Lease or Lessee's assets occurs, which results or will result in a reduction of the Tangible Net Worth (as defined in Paragraph 6.1(B) of the Addendum) of Lessee by an amount greater than 25% of such Net Worth as it was represented at the time of the execution of this Lease or at the time of the most recent assignment to which Lessor has consented, or as it exists immediately prior to said transaction or transactions constituting such reduction, whichever was or is greater, shall be considered an assignment of this Lease to which Lessor may withhold its consent. ~~**"Net Worth of Lessee"** shall mean the net worth of Lessee (excluding any guarantors) established under generally accepted accounting principles.~~

(d) An assignment or subletting without consent shall, at Lessor's option, be a Default curable after notice per Paragraph 13.l(c), or a noncurable Breach without the necessity of any notice and grace period. ~~If Lessor elects to treat such unapproved assignment or subletting as a noncurable Breach. Lessor may either (i) terminated this Lease or (ii) upon 30 days written notice, increase the monthly Base Rent to 110% of the Base Rent than in effect. Further, in the event of such Breach and rental adjustments, (i) the purchase price of any option to purchase the Premises held by Lessee shall be subject to similar adjustment to 110% of the price previously in effect, and (ii) all fixed and non-fixed rental adjustments scheduled during the remainder of the Lease term shall be increased to 110% of the scheduled adjusted rent.~~

(e) Lessee's remedy for any breach of Paragraph 12.1 by Lessor shall be limited to compensatory damages and/or injunctive relief.

(f) Lessor may reasonably withhold consent to a proposed assignment or subletting if Lessee is in Breach ~~Default~~ at the time consent is requested

(g) Notwithstanding the foregoing, allowing a diminimus portion of the Premises, ie. 20 square feet or less, to be used by a third party vendor in connection with the installation of a vending machine or payphone shall not constitute a subletting

12.2 **Terms and Conditions Applicable to Assignment and Subletting.**

(a) Regardless of Lessor's consent, no assignment or subletting shall (i) be effective without the express written assumption by such assignee or sublessee of the obligations of Lessee under this Lease to the extent of the term and space involved, (ii) release Lessee of any obligations hereunder, or (iii) after the primary liability of Lessee for the payment of Rent or for the performance of any other obligations to be performed by Lessee.

(b) Lessor may accept Rent or performance of Lessee's obligations from any person other than Lessee pending approval or disapproval of an assignment. Neither a delay in the approval or disapproval of such assignment nor the acceptance of Rent or performance shall constitute a waiver or estoppel of Lessor's right to exercise its remedies for Lessee's Default or Breach.

(c) Lessor's consent to any assignment or subletting shall not constitute consent to any subsequent assignment or subletting.

(d) In the event of any Default or Breach by Lessee, Lessor may proceed directly against Lessee, any Guarantors or anyone else responsible for the performance of Lessee's obligations under this Lease, including any assignee or sublessee, without first exhausting Lessor's remedies against any other person or entity responsible therefore to Lessor, or any security held by Lessor

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(e) Each request for consent to an assignment or subletting shall be in writing, accompanied by information relevant to Lessor's determination as to the financial and operational responsibility and appropriateness of the proposed assignee or sublessee, including but not limited to the intended use and/or required modification of the Premises, if any, together with a fee of $500 as consideration for Lessor's considering and processing said request. See Addendum. Lessee agrees to provide Lessor with such other or additional information and/or documentation as may be reasonably requested (~~See also Paragraph 36~~)

(f) Any assignee of or sublessee under this Lease shall, by reason of accepting such assignment entering into such sublease, or entering into possession of the Premises or any portion thereof, be deemed to have assumed and agreed to conform and comply with each and every term covenant condition and obligation herein to be observed or performed by Lessee during the term of said assignment or sublease, other than such obligations as are contrary to or inconsistent with provisions of an assignment or sublease to which Lessor has specifically consented to in writing

~~(g) Lessor's consent to any assignment or subletting shall not transfer to the assignee or sublessee any Option granted to the original Lessee by this Lease unless such transfer is specifically consented to by Lessor in writing. (See Paragraph 39.2)~~

12.3 **Additional Terms and Conditions Applicable to Subletting**. The following terms and conditions shall apply to any subletting by Lessee of all or any part of the Premises and shall be deemed included in all subleases under this Lease whether or not expressly incorporated therein:

(a) Lessee hereby assigns and transfers to Lessor all of Lessee's interest in all Rent payable on any sublease, and Lessor may collect such Rent and apply same toward Lessee's obligations under this Lease; provided, however, that until a Breach shall occur in the performance of Lessee's obligations, Lessee may collect Rent. In the event that the amount collected by Lessor exceeds Lessee's then outstanding obligations any such excess shall be refunded to Lessee. Lessor shall not, by reason of the foregoing or any assignment of such sublease, nor by reason of the collection of Rent be deemed liable to the sublessee for any failure of Lessee to perform and comply with any of Lessee's obligations to such sublessee Lessee hereby irrevocably authorizes and directs any such sublessee, upon receipt of a written notice from Lessor stating that a Breach exists in the performance of Lessee's obligations under this Lease, to pay to Lessor all Rent due and to become due under the sublease. Sublessee shall rely upon any such notice from Lessor and shall pay all Rents to Lessor without any obligation or right to inquire as to whether such Breach exists, notwithstanding any claim from Lessee to the contrary.

(b) In the event of a Breach by Lessee, Lessor may at its option require sublessee to attorn to Lessor in which event Lessor shall undertake the obligations of the sublessor under such sublease from the time of the exercise of said option to the expiration of such sublease; provided, however, Lessor shall not be liable for any prepaid rents or security deposit paid by such sublessee to such sublessor or for any prior Defaults of Breaches of such sublessor

(c) Any matter requiring the consent of the sublessor under a sublease shall also require the consent of Lessor

(d) No sublessee shall further assign or sublet all or any part of the Premises without Lessor's prior written consent

~~(e) Lessor shall deliver a copy of any notice of Default or Breach by Lessee to the sublessee, who shall have the right to cure the Default of Lessee within the grace period, if any specified in such notice. The sublessee shall have a right of reimbursement and offset from and against Lessee for any such Defaults cured by the sublessee~~.

13. **Default; Breach; Remedies**.

13.1 **Default; Breach.** A **"Default"** is defined as a failure by the Lessee to comply with or perform any of the terms, covenants, conditions or Rules and Regulations under this Lease. A **"Breach"** is defined as the occurrence of one or more of the following Defaults, and the failure of Lessee to cure such Default within any applicable grace period:

(a) The abandonment of the Premises, or the vacating of the Premises without providing a commercially reasonable level of security or where the coverage of the property insurance described in Paragraph 8.3 is jeopardized as a result thereof, or without providing reasonable assurances to minimize potential vandalism

(b) The failure of Lessee to make any payment of Rent or any Security Deposit required to be made by Lessee hereunder whether to Lessor or to a third party, when due, to provide reasonable evidence of insurance or surely bond, or to fulfill any obligation under this Lease which endangers or threatens life or property, where such failure continues for a period of ~~3~~ five (5) business days following written notice to Lessee.

(c) The commission of waste, act or acts constituting public or private nuisance, and/or an illegal activity on the Premises by Lessee, where such actions continue for a period of 3 business days following written notice Lessee.

(d) The failure by Lessee to provide (i) reasonable written evidence of compliance with Applicable Requirements, (ii) the service contracts, (iii) the rescission of an unauthorized assignment or subletting, (iv) an Estoppel Certificate, (v) a requested subordination, (vi) evidence concerning any guaranty and/or Guarantor, (vii) any document requested under Paragraph 41, (viii) material data safety sheets (MSDS), or (ix) any other documentation or information which Lessor may reasonably require of Lessee under the terms of this Lease, where any such failure continues for a period of 10 days following written notice to Lessee

(e) A Default by Lessee as to the terms, covenants conditions or provisions of this Lease, or of the rules adopted under Paragraph 2.9 hereof other than those described in subparagraphs 13.1(a), (b), (c) or (d), above, where such Default continues for a period of 30 days after written notice provided, however, that if the nature of Lessee's Defaults is such that more than 30 days are reasonably required for its cure then it shall not be deemed to be a Breach if Lessee commences such cure within said 30 days period and thereafter diligently prosecutes such cure to completion

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(f) The occurrence of any of the following events: (i) the making of any general arrangement or assignment for the benefit of creditors, (ii) becoming a "debtor" as defined in 11 U.S.C. § 101 or any successor statute thereto (unless, in the case of a petition filed against Lessee, the same is dismissed within 60 days); (iii) the appointment of a trustee or receiver to take possession of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease, where possession is not restored to Lessee within 30 days: or (iv) the attachment, execution or other judicial seizure of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease, where such seizure is not discharged within 30 days; provided, however, in the event that any provision of this subparagraph is contrary to any applicable law, such provision shall be of no force or effect, and not affect the validity of the remaining provisions

(g) The discovery that any financial statement of Lessee or of any Guarantor given to Lessor was materially false

~~(h) If the performance of Lessee's obligations under the Lease is guaranteed (i) the death of a Guarantor. (ii) the termination of a Guarantor's liability with respect to this Lease other than in accordance with the terms of such guaranty. (iii) a Guarantor's becoming insolvent or the subject of a bankruptcy filing. (iv) a Guarantor's refusal to honor the guaranty, or (v) a Guarantor's breach of its guaranty obligation on an anticipatory oasis, and Lessee's failure, within 60 days following written notice of any such event, to provide written alternative assurance or security which, when coupled with the then existing resources of Lessee, equals or exceeds the combined financial resources of Lessee and the Guarantors that existed at the time of execution of the Lease.~~

13.2 **Remedies.** If Lessee fails to perform any of its affirmative duties or obligation, within 10 days after written notice (or in case of an emergency, without notice). Lessor may at its option, perform such duty or obligation on Lessee's behalf, including but not limited to the obtaining of reasonably required bonds, insurance policies, or governmental licenses, permits or approvals. Lessee shall pay to Lessor an amount equal to 115% of the costs and expenses incurred by Lessor in such performance upon receipt of an invoice therefor, in the event of a Breach, Lessor may, with or without further notice or demand, and without limiting Lessor in the exercise of any right or remedy which Lessor may have by reason of such Breach:

(a) Terminate Lessee's right to possession of the Premises by any lawful means, in which case this Lease shall terminate and Lessee shall immediately surrender possession to Lessor in such event Lessor shall be entitled to recover from Lessee: (i) the unpaid Rent which had been earned at the time of termination, (ii) the worth at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that the Lessee proves could have been reasonably avoided: (iii) the worth at the lime of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of such rental loss that the Lessee proves could be reasonably avoided; and (iv) any other amount necessary to compensate Lessor for all the detriment proximately caused by the Lessee's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, including but not limited to the cost of recovering possession of the Premises, expenses of reletting, including necessary renovation and alteration of the Premises, reasonable attorneys* fees, and that portion of any (easing commission paid by Lessor in connection with this Lease applicable to the unexpired term of this Lease. The worth at the time of award of the amount referred to in provision (iii) of the immediately preceding sentence shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of the District within which the Premises are located at the time of award plus one percent. Efforts by Lessor to mitigate damages caused by Lessee's Breach of this Lease shall not waive Lessor's right to recover damages under Paragraph 12. If termination of this Lease is obtained through the provisional remedy of unlawful detainer. Lessor shall have the right to recover in such proceeding any unpaid Rent and damages as are recovefable therein, or Lessor may reserve the fight to recover all or any part thereof in a separate suit. If a notice and grace period required under Paragraph 13.1 was not previously given, a notice to pay rent or quit, or to perform or quit given to Lessee under the unlawful detainer statute shall also constitute the notice required by Paragraph 13.1. In such case, the applicable grace period required by Paragraph 13.1 and the unlawful detainer statute shall run concurrently, and the failure of Lessee to cure the Default within the greater of the two such grace periods shall constitute both an unlawful detainer and a Breach of this Lease entitling Lessor to the remedies provided for in this Lease and/or by said statute

(b) Continue the Lease and Lessee's right to possession and recover the Rent as it becomes due, in which event Lessee may sublet or assign, subject only to reasonable (imitations Acts of maintenance, efforts to relel!, and/or the appointment of a receiver to protect the Lessor's interests, shall not constitute a termination of the Lessee's right to possession

(c) Pursue any other remedy now or hereafter available under the saws or judicial decisions of the state wherein the Premises are located. The expiration or termination of this Lease and/or the termination of Lessee's right to possession shall not relieve Lessee from liability under any indemnity provisions of this Lease as to matters occurring or accruing during the term hereof or by reason of Lessee's occupancy of the Premises,

13.3 Inducement Recapture, Any agreement for free or abated rent or other charges, or for the giving or paying by Lessor to or for Lessee of any cash or other bonus, inducement or consideration for Lessee's entering into this Lease, all of which concessions are hereinafter referred to as "Inducement Provisions" , shall be deemed conditioned upon Lessee's full and faithful performance of all of the terms, covenants and conditions of this Lease. Upon Breach of this Lease by Lessee, any such Inducement Provision shall automatically be deemed deleted from this Lease and of no further force or effect, and any rent, other charge, bonus, inducement or consideration theretofore abated, given or paid by Lessor under such an inducement Provision shall be immediately due and payable by Lessee to Lessor, notwithstanding any subsequent cure of said Breach by Lessee The acceptance by Lessor of rent or the cure of the Breach which initiated the operation of this paragraph shall not be deemed a waiver by Lessor of the provisions of this paragraph unless specifically so stated in writing by Lessor at the time of such acceptance

13.4 Late Charges Lessee hereby acknowledges that late payment by Lessee of Rent will cause Lessor to incur costs not

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contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain Such costs include, but are not limited to, processing and accounting charges, and late charges which may be imposed upon Lessor by any Lender. Accordingly, if any Rent shall not be received by Lessor within 5-10 days after such amount shall be due then, without any requirement for notice to Lessee. Lessee shall immediately pay lo Lessor a one-time late charge equal to 5%-10% of each such overdue amount or $100, whichever is greater. The parties hereby agree that such late charge represents a fair and reasonable estimate of the costs Lessor will incur by reason of such late payment. Acceptance of such late charge by Lessor shall in no event constitute a waiver of Lessee's Default or Breach with respect to such overdue amount, nor prevent the exercise of any of the other rights and remedies granted hereunder. In the event that a late charge is payable hereunder, whether or not collected, for 3 consecutive installments of Base Rent, then notwithstanding any provision of this Lease to the contrary Base Rent shall at Lessor's option, become due and payable quarterly in advance.

13.5. **Interest.** Any monetary payment due Lessor hereunder, other than late charges, not received by Lessor, when due as to scheduled payments (such as Base Rent) or within 30 days following the date on which it was due for non-scheduled payment, shall bear interest from the date when due, as to scheduled payments, or the 31st day after it was due as to non-scheduled payments. The interest (**"Interest"**) charged shall be computed at the rate of 10% per annum but shall not exceed the maximum rate allowed by law. Interest is payable in addition to the potential late charge provided for in Paragraph 13.4.

13.6. **Breach by Lessor.**

(a) **Notice of Breach.** Lessor shall not be deemed in breach of this Lease unless Lessor fails within a reasonable time to perform an obligation required to be performed by Lessor. For purposes of this Paragraph, a reasonable time shall in no event be less than 30 days after receipt by Lessor, and any Lender whose name and address shall have been furnished Lessee in writing for such purpose, of written notice specifying wherein such obligation of Lessor has not been performed, provided, however, that if the nature of Lessor's obligation is such that more than 30 days are reasonably required for its performance, then Lessor shall not be in breach if performance is commenced within such 30 day period and thereafter diligently pursued to completion.

(b) ~~**Performance by Lessee on Behalf of Lessor.** In the event that neither Lessor nor Lender cures said breach within 30 days after receipt of said notice, or if having commenced said cure they do not diligently pursue it to completion, then Lessee may elect to cure said breach at Lessee's expense and offset from Rent the actual and reasonable cost to perform such cure, provided however, that such offset shall not exceed an amount equal to the greater of one month's Base Rent or the Security Deposit, reserving Lessee's right to reimbursement from Lessor for any such expense in excess of such offset. Leasse shall document the cost of said cure and supply said documentation to Lessor.~~

14. **Condemnation.** If the Premises or any portion thereof are taken under the power of eminent domain or sold under the threat of the exercise of said power (collectively **"Condemnation"**), this Lease shall terminate as to the part taken as of the date the condemning authority takes title or possession, whichever first occurs. If more than 10% of the floor area of the Unit, or more than 25% of Lessee's Reserved Parking Spaces, is taken by Condemnation, Lessee may at Lessee's option, to be exercised in writing within 10 days after Lessor shall have given Lessee written notice of such taking (or in the absence of such notice, within 10 days after the condemning authority shall have taken possession) terminate this Lease as of the date the condemning authority takes such possession if Lessee does not terminate this Lease in accordance with the foregoing, this Lease shall remain in full force and effect as to the portion of the Premises remaining, except that the Base Rent shall be reduced in proportion to the reduction in utility of the Premises caused by such Condemnation. Condemnation awards and/or payments shall be the property of Lessor, whether such award shall be made as compensation for diminution in value of the leasehold, the value of the part taken, or for severance damages; provided, however, that Lessee shall be entitled to any compensation for Lessee's relocation expenses, loss of business goodwill and/or Trade Fixtures, without regard to whether or not this Lease is terminated pursuant to the provisions of this Paragraph. All Alterations and Utility Installations made to the Premises by Lessee, for purposes of Condemnation only shall be considered the property of the Lessee and Lessee shall be entitled to any and all compensation which is payable therefor. In the event that this Lease is not terminated by reason of the Condemnation, Lessor shall repair any damage to the Premises caused by such Condemnation Lessor and Lessee each waives the provisions of Section 1285.130 and Section 1265.150 of the California Code of Civil Procedure and any future laws of like or similar import.

15. **Brokerage Fees.**

~~15.1. **Additional Commission.** In addition to the payments owed pursuant to Paragraph 1.10 above, and unless Lessor and the Brokers otherwise agree in writing, Lessor agrees that: (a) if Lessee exercise any Option, (b) if Lessee acquires from Lessor any rights to the Premises or other premises owned by Lessor and located within the Project, (c) if Lessee remains in possession of the Premises, with the consent of Lessor, after the expiration of this Lease, or (d) if Base Rent is increased whether by agreement or operation of an escalation clause herein, then, Lessor shall pay Brokers a fee in accordance with the schedule of the Brokers in effect at the time of the execution of this Lease.~~

~~15.2. **Assumption of Obligations.** Any buyer or transferee of Lessor's interest in this Lease shall be deemed to have assumed Lessor's obligation hereunder. Broker's shall be third party beneficiaries of the previsions of Paragraph 1.10, 15, 22 and 31. If Lessor fails to pay to Brokers any amounts due as and for brokerage fees pertaining to this Lease when due, than such amounts shall accrue interest. In addition, if Lessor fails to pay any amounts to Lessee's Broker when due, Lessee's Broker may send written notice to Lessor and Lessee of such failure and if Lessor fails to pay such amounts within 10 days after said notice. Lessee shall pay said monies to its Broker and offset such amounts against Rent. In addition, Lessee's Broker shall be deemed to be a third party beneficiary of any commission agreement entered into by and/or between Lessor and Lessor's Broker for the limited purpose of collecting any brokerage fee owed.~~

15.3**. Representations and Indemnities of Broker Relationships.** Lessee and Lessor each represent and warrant to the other that it

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has had no dealings with any person, firm, broker or finder (other than the Brokers, ~~if any~~) in connection with this Lease, and that no one other than said named Brokers is entitled to any commission or finder's fee in connection herewith. Lessee and Lessor do each hereby agree to indemnify, protect defend and hold the other harmless from and against liability for compensation or charges which may be claimed by any such unnamed broker, finder or other similar party by reason of any dealings or actions of the indemnifying Party, including any costs, expenses, attorneys' fees reasonably incurred with respect thereto.

16. **Estoppel Certificates.**

(a) Each Party (as **"Responding Party"**) shall within 10 days after written notice from the other Party (the **"Requesting Party"**) execute, acknowledge and deliver to the Requesting Party a statement in writing in form similar to the then most current **"Estoppel Certificate"** form published by the AIR Commercial Real Estate Association, plus such additional information, confirmation and/or statements as may be reasonably requested by the Requesting Party.

(b) if the Responding Party shall fail to execute or deliver the Estoppel Certificate within such 10 day period, the Requesting Party may execute an Estoppel Certificate stating that: (i) the Lease is in full force and effect without modification except as may be represented by the Requesting Party, (ii) there are no uncured defaults in the Requesting Party's performance, and (iii) if Lessor is the Requesting Party, not more than one month's rent has been paid in advance. Prospective purchasers and encumbrancers may rely upon the Requesting Party's Estoppel Certificate, and the Responding Party shall be estopped from denying the truth of the facts contained in said Certificate.

(c) If Lessor desires to finance, refinance, or self the Premises, or any part thereof, Lessee ~~and all Guarantors~~ shall deliver to any potential lender or purchaser designated by Lessor such financial statements as may be reasonably required by such lender or purchaser, including but not limited to Lessee's financial statements for the past 3 years. All such financial statements shall be received by Lessor and such tender or purchaser in confidence and shall be used only for the purposes herein set forth

17. **Definition of Lessor.** The term **"Lessor"** as used herein shall mean the owner or owners at the time in question of the fee title to the Premises, or, if this is a sublease, of the Lessee's interest in the prior lease in the event of a transfer of Lessor's title of interest in the Premises or this Lease. Lessor shall deliver to the transferee or assignee (in cash or by credit) any unused Security Deposit held by Lessor. ~~Except as provided in Paragraph 15~~. Upon such transfer or assignment and delivery of the Security Deposit, as aforesaid, the prior Lessor shall be relieved of all liability with respect to the obligations and/or covenants under this Lease thereafter to be performed by the Lessor. Subject to the foregoing, the obligations and/or covenants in this Lease to be performed by the Lessor shall be binding only upon the Lessor as hereinbove defined.

18. **Severability.** The invalidity of any provision of this Lease, as determined by a court of competent jurisdiction, shall in no way affect the validity of any other provision hereof.

19. **Days.** Unless otherwise specifically indicated to the contrary, the word **"days"** as used in this Lease shall mean and refer to calendar days.

20. **Limitation on Liability.** The liability of Lessor for any default of the obligations of Lessor under this Lease; (a) shall be limited to Lessee's actual direct (but not consequential or other speculative) damages therefor, (b) shall be recoverable only from the interest of Lessor in the Building including its interest in all rents and sale proceeds arising therefrom, and (c) shall not constitute personal obligations of Lessor, or its partners, members, directors, officers or shareholders. ~~and~~ Moreover Lessee shall look to the Building ~~Premises~~ and to no other assets of Lessor, for the satisfaction of any liability of Lessor with respect to this Lease, and shall not seek recourse against Lessor's partners, members, directors, officers or shareholders, or any of their personal assets for such satisfaction

21 **Time of Essence.** Time is of the essence with respect to the performance of all obligations to be performed or observed by the Parties under this Lease.

22 **No Prior or Other Agreements; Broker Disclaimer.** This Lease contains all agreements between the Parties with respect to any matter mentioned herein, and no other prior or contemporaneous agreement or understanding shall be effective. Lessor and Lessee each represents and warrants to the Brokers that it has made, and is relying solely upon, its own investigation as to the nature, quality, character and financial responsibility of the other Party to this Lease and as to the use, nature, quality and character of the Premises. ~~Brokers have no responsibility with respect thereto or with respect to any default or breach hereof by either Party. The liability (including court costs and attorneys fees), of any Broker with respect to negotiation, execution, delivery or performance by either Lessor or Lessee under this Lease or any amendment or modification hereto shall be limited to an amount up to the fee received by such Broker pursuant to the Lease, provided, however, that the foregoing on each Broker's liability shall not be applicable to any gross negligence or willful misconduct of such Broker.~~

23. **Notices,**

23.1 **Notice Requirements.** All notices required or permitted by this Lease of applicable law shall be in writing and may be delivered in person (by hand or by courier) or may be seat by regular, certified or registered mail or U.S. Postal Service Express Mail, with postage prepaid, or by facsimile transmission, and shall be deemed sufficiently given if served in a manner specified in this Paragraph 23. The addresses noted adjacent to a Party's signature on this Lease shall be that Party's address for delivery or mailing of notices. Either Party may by written notice to the other specify a different address for notice, except that upon Lessee's taking possession of the Premises, the Premises shall constitute Lessee's address for notice. A copy of all notices to Lesser shall be concurrently transmitted to such party or parties at such addresses as Lessor may from time to time hereafter designate in writing.

23.2 **Date of Notice.** Any notice sent by registered or certified mail, return receipt requested, shall be deemed given on the date of delivery shown on the receipt card, or if no delivery date is shown, the postmark thereon. If sent by regular mail the notice shall be deemed given 72 hours after

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the same is addressed as required herein and mailed with postage prepaid. Notices delivered by United States Express Mail or overnight courier that guarantee next day delivery shall be deemed given 24 hours after delivery of the same to the Postal Service or courier. Notices transmitted by facsimile transmission or similar means shall be deemed delivered upon telephone confirmation of receipt (confirmation report from fax machine is sufficient), provided a copy is also delivered via delivery or mail. If notice is received on a Saturday, Sunday or legal holiday, it shall be deemed received on the next business day.

24. **Waivers**. No waiver by either Lessee or Lessor of the Default or Breach of any term, covenant or condition hereof by the other party hereto ~~Lessee~~ shall be deemed a waiver of any other term, covenant or condition hereof, or of any subsequent Default or Breach by the other party ~~Lessee~~ of the same or of any other term, covenant or condition hereof. Lessor's consent to, or approval of, any act shall not be deemed to render unnecessary the obtaining of Lessor's consent to, or approval of, any subsequent or similar act by Lessee, or be construed as the basis of an estoppel to enforce the provision or provisions of this Lease requiring such consent. The acceptance of Rent by Lessor shall not be a waiver of any Default or Breach by Lessee. Any payment by Lessee may be accepted by Lessor on account of moneys or damages due Lessor, notwithstanding any qualifying statements or conditions made by Lessee in connection therewith, which such statements and/or conditions shall be of no force or effect whatsoever unless specifically agreed to in writing by Lessor at or before the time of deposit of such payment.

25. **Disclosure Regarding The Nature of a Real Estate Agency Relationship**

~~(a) When entering into a discussion with a real estate agent regarding a real estate transaction; a Lessor or Lessee should from the outset understand what type of agency relationship or representation it has with the agent or agents in the transaction. Lessor and Lessee acknowledge being advised by the Brokers in this transaction, as follows:~~

~~(i) *Lessor's Agent*. A Lessor's agent under a listing agreement with the Lessor acts as the agent for the Lessor only. A Lessor's agent or subagent has the following affirmative obligations: To the Lessor: A fiduciary duty of utmost care, integrity, honesty, and loyalty in dealings with the Lessor. To the Lessee and the Lessor: (a) Diligent exercise of reasonable skills and care in performance of the agent's duties. (b) A duty of honest and fair dealing and good faith. (c) A duty to disclose all facts known to the agent materially affecting value of desirability of the property that are not known to, or within the diligent attention and observation of the Parties. An agent is not obligated to reveal to either Party any confidential information obtained from the other Party which does not involve the affirmative duties set forth above.~~

~~(ii) *Lessee's Agent*. An agent can agree to act as agent for the Lessee only. In these situations, the agent is not the Lessor's agent, even if by agreement the agent may receive compensation for services rendered either in full or in part from the Lessor. An agent acting only for a Lessee has the following affirmative obligations: To the Lessee: A fiduciary duty of utmost care, integrity, honesty and loyalty in dealings with the Lessee. To the Lessee and the Lessor: (a) Diligent exercise of reasonable skills and care in performance of the agents duties. (b) A duty of honest and fair dealing and good faith. (c) A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of the Parties. An agent is not obligated to reveal to either Party any confidential information obtained from the other Party which does not involve the affirmative duties set forth above.~~

~~(iii) *Agent Representing Both Lessor and Lessee*. A real estate agent, either acting directly or through one or more associate licenses can legally be the agent of both the Lessor and the Lessee in a transaction, but only with the knowledge and consent of both the Lessor and the Lessee in a dual agency situation, the agent has the following affirmative obligations to both the Lessor and the Lessee: (a) A fiduciary duty of utmost care, integrity, honesty and loyalty in the dealings with either Lessor or the Lessee. (b) Other duties to the Lessor and Lessee as stated above in subparagraphs (i) or (ii). In representing both Lessor and Lessee, the agent may not without the express permission of the respective Party disclose to the other Party that the Lessor will accept rent in an amount less than that indicated in the listing or that the Lessee is willing to pay a higher rent than that offered. The above duties of the agent in a real estate transaction do not relieve a Lessor or Lessee from the responsibility to present their own interests. Lessor and Lessee should carefully read all agreements to assure that they adequately express their understanding of the transaction. A real estate agent is a person qualified to advise about real estate. If legal or tax advice is desired, consult a competent professional.~~

~~(b) Brokers have no responsibility with respect to any Default or Breach hereof by either Party. The Parties agree that no lawsuit or other legal proceeding involving any breach of duty, error or omission relating to this Lease may be brought against Broker more than one year after the Start Date and that the liability (including court costs and attorneys' fees), of any Broker with respect to any such lawsuit and/or legal proceeding shall not exceed the fee received by such Broker pursuant to this Lease; provided, however, that the foregoing limitation on each Broker's liability shall not be applicable to any gross negligence or willful misconduct of such Broker.~~

~~(c) Buyer and Seller agree to identify to Brokers as "Confidential" any communication or information given Brokers that is considered by such Party to be confidential.~~

26. **No Right To Holdover**. See Addendum. Lessee has no right to retain possession of the Premises or any part thereof beyond the expiration or termination of this Lease. In the event that Lessee holds over, then the Base Rent shall be increased to 125%-150% of the Base Rent applicable immediately preceding the expiration or termination. Nothing contained herein shall be construed as consent by Lessor to any holding over by Lessee.

27. **Cumulative Remedies**. No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

28. **Covenants and Conditions; Construction of Agreement**. All provisions of this Lease to be observed or performed by Lessee are both covenants and conditions. In construing this Lease, all headings and titles are for the convenience of the Parties only and shall not be considered a part of this Lease. Whenever required by the context, the singular shall include the plural and vice versa. This Lease shall not be construed as if prepared by one of the Parties, but rather according to its fair meaning as a whole, as if both Parties had prepared it.

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29. **Binding Effect; Choice of Law**. This Lease shall be binding upon the parties, their personal representatives, successors and assigns and be governed by the laws of the State in which the Premises are located. Any litigation between the Parties hereto concerning this Lease shall be initiated in the country in which the Premises are located.

30. **Subordination; Attornment; Non-Disturbance**.

30.1 **Subordination**. This Lease and any Option granted hereby shall be subject and subordinate to any ground lease, mortgage deed of trust or other hypothecation or security device (collectively. **"Security Device"**), now or hereafter placed upon the Premises, to any and all advances made on the security thereof and to all renewals, modifications, and extensions thereof. Lessee agrees that the holders of any such Security Devices (in this Lease together referred to as "Lender") shall have no liability or obligation to perform any of the obligations of Lessor under this Lease. Any Lender may elect to have this Lease and/or any Option granted hereby superior to the lien of its Security Device by giving written notice thereof to Lessee, whereupon this Lease and such Options shall be deemed prior to such Security Device, notwithstanding the relative dates of the documentation or recordation thereof.

30.2 **Attornment**. In the event that Lessor transfers little to the Premises, or the Premises are acquired by another upon the foreclosure or termination of a Security Device to which this Lease is subordinated (i) Lessee shall, subject to the non-disturbance provisions of Paragraph 30.3, attorn to such new owner, and upon request, enter into a new lease, containing all of the terms and provisions of this Lease, with such new owner for the remainder of the term hereof or, at the election of the new owner, this Lease will automatically become a new lease between Lessee and such new owner and (ii) Lessor shall thereafter be relieved of any further obligations hereunder and such new owner shall assume all of Lessor's obligations, except that such new owner shall not (a) be liable for any act or omission of any prior lessor or with respect to events occurring prior to acquisition of ownership (b) be subject to any offsets or defenses which Lessee might have against any prior lessor, (c) be bound by prepayment of more than one month's rent, or (d) be liable for the return of any security deposit paid to any prior lessor.

30.3 **Non-Disturbance**. With respect to Security Devices entered into by Lessor after the execution of this Lease. Lessee's subordination of this Lease shall be subject to receiving a commercially reasonable non-disturbance agreement (a "**Non-Disturbance Agreement**") from the Lender which Non-Disturbance Agreement provides that Lessee's possession of the Premises, and this Lease, including any options to extend the term hereof, will not be disturbed so long as Lessee is not in Breach hereof and attorns to the record owner of the Premises. Further, within 60 days after the execution of this Lease, Lessor shall use its commercially reasonable efforts to obtain a Non-Disturbance Agreement in the form attached hereto as Exhibit F from the holder of any pre-existing Security Device which is secured by the Premises provided, however, that Lessor's failure to obtain same shall not constitute a default by Lessor hereunder if Lessor has used commercially reasonable efforts to obtain same. ~~In the event that Lessor is unable to provide the Non-Disturbance Agreement within said 60 days, then Lessee may at Lessee's option, directly contact Lender and attempt to negotiate for the execution and delivery of a Non-Disturbance Agreement.~~

30.4 **Self-Executing**. The agreement contained in this Paragraph 30 shall be effective without the execution of any further documents, provided, however, that, upon written request from Lessor or a Lender in connection with a sale, financing of the Premises, Lessee and Lessor shall execute such further writings as may be reasonably required to separately document any subordination, attornment and/or Non-Disturbance Agreement provided for herein.

31. **Attorney's Fees**. If any Party ~~or Broker~~ brings an action or proceeding involving the Premises whether founded in tort, contract or equity, or to declare rights hereunder, the Prevailing Party (as hereafter defined) in any such proceeding, action, or appeal thereon, shall be entitled to reasonable attorney's fees. Such fees may be awarded in the same suit or recovered in a separate suit, whether or not such action or proceeding is pursued to decision or judgment. The term, "**Prevailing Party**" shall include, without limitation, a Party ~~or Broker~~ who substantially obtains or defeats the relief sought, as the case may be, whether by compromise, settlement, judgment, or the abandonment by the other Party ~~or Broker~~ of its claim or defense. The attorney's fees award shall not be computed in accordance with any court fee schedule, but shall be such as to fully reimburse all attorney's fees reasonably incurred. In addition, Lessor shall be entitled to attorney's fees, costs and expenses incurred in the preparation and services of notices of Default and consultations in connection therewith whether or not a legal action is subsequently commenced in connection with such Default or resulting Breach ($200 is a reasonable minimum per occurrence for such services and consultation).

32. **Lessor's Access: Showing Premises; Repairs**. Lessor and Lessor's agents shall have the right to enter the Premises at any time, in the case if an emergency and otherwise at reasonable times after ~~reasonable prior~~ twenty-four (24) hours advance written notice for the purpose of (i) showing the same to prospective purchasers, or lenders, (ii) during the last nine (9) months of the Term of this Lease, showing the Premises to prospective tenants, and (iii) making such alterations, repairs, improvements or additions to the Premises as Lessor may deem necessary or desirable and the erecting, using and maintaining of utilities, services, pipes and conduits through the Premises and/or other premises as long as there is no material adverse effect on Lessee's use of the Premises. In addition, Lessor shall have the right to enter the Premises in order to access the sewer systems serving the Premises in order to connect the upstairs tenant space with such system. All such activities shall be without abatement of rent or liability to Lessee.

33. **Auctions**. Lessee shall not conduct, nor permit to be conducted, any auction upon the Premises without Lessor's prior written consent Lessor shall not be obligated to exercise any standard of reasonableness in determining whether to permit an auction.

34. **Signs**. See Addendum. Lessor may place on the Premises ordinary "For Sale" signs at any time and ordinary "For Lease" signs during the last 6 months of the term hereof, Except for ordinary "For Sublease" signs which may be placed only on she Premises, Lessee shall not place any sign upon the Project without Lessor's prior written consent. All signs, must comply with all Applicable Requirements.

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35. **Termination; Merger.** Unless specifically slated otherwise in writing by Lessor, the voluntary of other surrender of this Lease by Lessee, the mutual termination or cancellation hereof, or a termination hereof by Lessor for Breach by Lessee, shall automatically terminate any sublease or lesser estate in the Premises; provided, however, that Lessor may elect to continue any one or all existing subtenancies. Lessor's failure within 10 days following any such event to elect to the contrary by written notice to the holder of any such lesser interest, shall constitute Lessor's election to have such event constitute the termination of such interest.

36. **Consents.** Except as otherwise provided herein, wherever this Lease the consent of Party is required to an act by or for the other Party, such consent shall not be unreasonably withheld or delayed. Lessor's actual reasonable costs and expenses (including but not limited to architects' attorneys', engineers' and other consultants' fees) incurred in the consideration of, or response to, a request by Lessee for any Lessor consent, including but not limited to consents to an assignment, a subletting or the presence or use of a Hazardous Substance, shall be paid by Lessee upon receipt of an invoice and supporting documentation therefor. Lessor's consent to any act, assignment or subletting shall not constitute an acknowledgment that no Default or Breach by Lessee of this Lease exists, nor shall such consent be deemed a waiver of any then existing Default or Breach, except as may be otherwise specifically stated in writing by Lessor at the time of such consent. The failure to specify herein any particular condition to Lessor's consent shall not preclude the imposition by Lessor at the time of consent of such further or other conditions as are then reasonable with reference to the particular matter for which consent is being given. In the event that either Party disagrees with any determination made by the other hereunder and reasonably requests the reasons for such determination, the determining party shall furnish its reasons in writing and in reasonable detail within 10 business days following such request.

~~37 **Guarantor**.~~

~~37.1 **Execution**. The Guarantors, if any, shall each execute a guaranty in the form most recently published by the AIR Commercial Real Estate Association.~~

~~37.2 **Default**. It shall constitute a Default of the Lessee if any Guarantor fails or refuses, upon request to provide: (a) evidence of the execution of the guaranty including the authority of the party signing on Guarantor's behalf to obligate Guarantor and in the case of a corporate~~ Guarantor, a certified copy of ~~a resolution of its board of directors authorizing the making of such guaranty, (b) current financial~~ statements, (c) an ~~Estoppel Certificate, or (d) written confirmation that the guaranty~~ is still in effect.

38, **Quiet Possession**. Subject to payment by Lessee of the Rent and performance of all of the covenants, conditions and provisions on Lessee's part to be observed and performed under this Lease, Lessee shall have quiet possession and quiet enjoyment of the Premises during the term hereof.

~~39. **Options**. If Lessee is granted an option as defined below, then the following provisions shall apply.~~

~~39.1 **Definition.** "**Option**" shall mean: (a) the right to extend the term of or renew this Lease or to extend or renew any lease that Lessee has on other property of Lessor (b) the right of first refusal or first offer to lease either the Premises or other property of Lessor (c) the right to purchase or the right of first refusal to purchase the Premises or other property of Lessor.~~

~~39.2 **Options Personal To Original Lessee.** Any Option granted to Lessee in this Lease is personal to the original Lessee and cannot be assigned or exercised by anyone other than said original Lessee and only while the original Lessee is in full possession of the Premises and if requested by Lessor with Lessee certifying that Lessee has no intention of thereafter assigning or subletting.~~

~~39.3 **Multiple Options.** In the event that Lessee has any multiple Options to extend or renew this Lease, a later Option cannot be exercised unless the prior Options have been validly exercised.~~

~~39.4 Effect of Default on Options~~

~~(a) Lessee shall have no right to exercise an Option (i) during the period commencing with the giving of any notice of Default and continuing until said Default is cured (ii) during the period of time any Rent is unpaid (without regard to whether notice thereof is given Lessee), (iii) during the time Lessee is in Breach of this Lease, or (iv) in the event that Lessee has been given 3 or more notices of separate Default, whether or not the Defaults are cured during the 12 month period immediately proceeding the exercise of the Option.~~

~~(b) The Period of time within which an Option may be exercised shall not be extended or enlarged by reason of Lessee's inability to exercise an Option because of the provision of Paragraph 39.4(a)~~

~~(c) An Option shall terminate and be of no further force or effect notwithstanding Lessee's due and timely exercise of the Option, if after such exercise and prior to the commencement of the extended term or completion of the purchase (i) Lessee fails to pay Rent for a Period of 30 days after such Rent becomes due (without any necessity of Lessor to give notice thereof) or (ii) If Lessee commits a Breach of this Lease.~~

40. **Security Measures**. Lessee hereby acknowledges that the Rent payable so Lessor hereunder does not include the cost of guard service or other security measures, and that Lessor shall have no obligation whatsoever to provide same. Lessee assumes all responsibility for the projection of the Premises, Lessee, its agents and invitees and their property from the acts of third parties. See Addendum.

41 **Reservations**. Lessor reserves the right: (j) to grant, without the consent or joinder of Lessee, such easements, rights and dedications that Lessor deems necessary, (ii) to cause the recordation of parcel maps and restrictions, and (iii) to create and/or install new utility raceways, so long as such easements, rights, dedications, maps, restrictions, and utility raceways do not unreasonably interfere with use Premises by Lessee. Lessee agrees to sign any documents reasonably requested by Lesser agrees effectuate such rights.

INITIALS INITIALS

42. **Performance Under Protest.** If at any time a dispute shall arise as to any amount or sum of money to be paid by one Party to the other under the provisions hereof, the Party against whom the obligation to pay the money is asserted shall have the right to make payment "under protest" and such payment shall not be regarded as a voluntary payment and there shall survive the right on the part of said Party to institute suit for recovery of such sum. If it shall be adjudged that there was no legal obligation on the part of said Party to pay such sum or any part thereof, said Party shall be entitled to recover such sum or so much thereof as it was not legally required to pay. A Party who does not initiate suit for the recovery of sums paid "under protest" within 6 months shall be deemed to have waived its right to protest such payment.

43. **Authority; Multiple Parties; Execution.**

(a) If either Party hereto is a corporation, trust, limited liability company, partnership, or similar entity, each individual executing this Lease on behalf of such entity represents and warrants that he or she is duly authorized to execute and deliver this Lease on its behalf Each Party shall, within 30 days after request, deliver to the other Party satisfactory evidence of such authority.

(b) If this Lease is executed by more than one person or entity as "Lessee", each such person or entity shall be jointly and severally liable hereunder. It is agreed that any one of the named Lessees shall be empowered to execute any amendment to this Lease, or other document ancillary thereto and bind all of the named Lessees, and Lessor may rely on the same as if all of the named Lessees had executed such document.

(c) This Lease may be executed by the Parties in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

44. **Conflict.** Any conflict between the printed provisions of this Lease and the typewritten or handwritten provisions shall be controlled by the typewritten or handwritten provisions.

45. **Offer.** Preparation of this Lease by either party or their agent and submission of same to the other Party shall not be deemed an offer to lease to the other Party. This Lease is not intended to be binding until executed and delivered by all Parties hereto.

46. **Amendments.** This Lease may be modified only in writing, signed by the Parties in interest at the time of the modification. As long as they do not materially change Lessee's obligations hereunder. Lessee agrees to make such reasonable non-monetary modifications to this Lease as may be reasonably required by a Lender in connection with the obtaining of normal financing or refinancing of the Premises.

47. **Waiver of Jury Trial. THE PARTIES HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING INVOLVING THE PROPERTY OR ARISING OUT OF THIS AGREEMENT.**

48. **Mediation and Arbitration of Disputes.** An Addendum requiring the Mediation and/or the Arbitration of all disputes between the Parties and/or Brokers arising out of this Lease ☐ is ☑ is not attached to this Lease.

49. ~~**Americans with Disabilities Act.** Since compliance with the Americans with Disabilities Act (ADA) is dependant upon Lessee's specific use of the Premises, Lessor makes no warranty or representation as to whether or not the Premises comply with ADA or any similar legislation. In the event that Lessee's use of the Premises requires modifications or additions to the Premises in order to be in ADA compliance. Lessee agrees to make any such necessary modifications and/or additions at Lessee's expense~~.

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INITIALS INITIALS

LESSOR AND LESSEE HAVE CAREFULLY READ AND REVIEWED THIS LEASE AND EACH TERM AND PROVISION CONTAINED HEREIN, AND BY THE EXECUTION OF THIS LEASE SHOW THEIR INFORMED AND VOLUNTARY CONSENT THERETO. THE PARTIES HEREBY AGREE THAT AT THE TIME THIS LEASE IS EXECUTED, THE TERMS OF THIS LEASE ARE COMMERCIALLY REASONABLE AND EFFECTUATE THE INTENT AND PURPOSE OF LESSOR AND LESSEE WITH RESPECT TO THE PREMISES.

ATTENTION: NO REPRESENTATION OR RECOMMENDATION IS MADE BY THE AIR COMMERCIAL REAL ESTATE ASSOCIATION OR BY ANY BROKER AS TO THE LEGAL SUFFICIENCY, LEGAL EFFECT, OR TAX CONSEQUENCES OF THIS LEASE OR THE TRANSACTION TO WHICH IT RELATES THE PARTIES ARE URGED TO:

1. SEEK ADVICE OF COUNSEL AS TO THE LEGAL AND TAX CONSEQUENCES OF THIS LEASE.

2. RETAIN APPROPRIATE CONSULTANTS TO REVIEW AND INVESTIGATE THE CONDITION OF THE PREMISES SAID INVESTIGATION SHOULD INCLUDE BUT NOT BE LIMITED TO THE POSSIBLE PRESENCE OF HAZARDOUS SUBSTANCES, THE ZONING OF THE PREMISES, THE STRUCTURAL INTEGRITY, THE CONDITION OF THE ROOF AND OPERATING SYSTEMS, COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT AND SUITABILITY OF THE PREMISES FOR LESSEE'S INTENDED USE.

~~WARNING: IF THE PREMISES ARE LOCATED IN A STATE OTHER THAN CALIFORNIA CERTAIN PROVISIONS OF THE LEASE MAY NEED TO BE REVISED TO COMPLY WITH THE LAWS OF THE STATE IN WHICH THE PREMISES ARE LOCATED.~~

The parties hereto have executed this Lease at the place and on the dates specified above their respective signatures.

Executed at: _____
On: _____

By LESSOR:
FPOC, LLC,
a California Limited liability company

By: FB MANAGEMENT, LLC, a California limited liability company, its Manager

By: /s/ J. R. Orton, III
Name Printed: J. R. Orton, III
Title: Manager

By: _____
Name Printed: _____
Title: _____
Address: 3049 Research Drive.
Richmond, CA 94806

Telephone: (510) 758-7690
Facsimile: (510) 758-7692
Federal ID No. _____

BROKER:

_____

Attn: _____
Title: _____
Address: _____

Telephone: _____
Facsimile: _____
Email: _____
Federal ID No.: _____

Executed at: Berkeley, California
On: December 15, 2006

By LESSEE:
POWERLIGHT CORPORATION
a California Corporation

By: /s/ Thomas Dinwoodie
Name Printed: Thomas Dinwoodie
Title: Chief Executive Officer

By: /s/ Bruce Ledesma
Name Printed: Bruce Ledesma
Title: General Counsel and Corporate Secretary
Address: 2954 San Pablo Avenue, Berkeley, CA 94598

Telephone: (510) 548-0550
Facsimile: (510) 548-0552
Federal ID No. 94-3217658

BROKER:

_____

Attn: _____
Title: _____
Address: _____

Telephone: _____
Facsimile: _____
Email: _____
Federal ID No.: _____

These forms are often modified to meet changing requirements of law and needs of the industry. Always write or call to make sure you are utilizing the most current form: AIR COMMERCIAL REAL ESTATE ASSOCIATION, 700 South Flower Street, Suite 600, Los Angeles, CA 90017. (213) 687-8777.

INITIALS INITIALS

INITIALS INITIALS

Addendum to

Standard Multi-Tenant Industrial Lease - Net
Dated December 15, 2006, between
FPOC, LLC (Lessor)
and
Power Light Corporation (Lessee)
1414 Harbour Way South, Richmond, California

The following additional Paragraphs are included as part of the Standard Multi-Tenant Industrial Lease – Net entered into between FPOC, LLC, a California limited liability company (**"Lessor"**) and PowerLight Corporation, a California corporation (**"Lessee"**) dated December 15. 2006, concerning 1414 Harbour Way South, Richmond, California. In the event of any conflict between any of the provisions in this Addendum and any of the provisions set forth in Paragraphs 1 – 49 of the Lease, the provisions in this Addendum shall prevail.

50. Base Rent (§1.5). Subject to adjustment as provided in Paragraphs 52 and 72 below, the Base Rent for each year of the initial term of this Lease shall be as follows.

Period:	Monthly Base Rent for Office Portion	Monthly Base Rent for R&D Portion
10/1 '07 - 1/31/08*	$ 0.00	$ 0.00
2/1/08 - 9/30/08	$ 88,592.00	$11,677.05
10/1/08 - 9/30/09	$ 127,123.20	$12,017.06
10/1/09 - 9/3 0/10	$ 131,537.20	$12,377.57
10/1/10 - 9/30/11	$ 135,068.40	$12,749.00
10/1/11 - 9/30/12	$ 139,482,40	$13,131.36
10/1/12 - 9/30/13	$ 143,013.60	$13,525.30
10/1/13 - 9/30/14	$ 147,427.60	$13,931.06
10/1/14 - 9/30/15	$ 151,841.60	$14,349.00
10/1/15 - 9/30/16	$ 156,255.60	$14,779.46
10/1 /16 - 9/30/17	$ 61,259.47	$15,222.85
10/1 /17 - 9/30/18	$ 166,097.25	$15,679.53

* if the Commencement Date occurs after October 1, 2007, then the foregoing rent schedule shall be adjusted so that Lessee receives a total rental credit equal to four (4) months of Base Rent at the rate of $100,269.05 (the sum of $88,592.00 and $11,677.05) per month.

* Includes Base Rent for the Second Increment.

51. Condition of Premises (§2.2); Early Access; Moving Costs. (a) Prior to delivering the Premises to Lessee, Lessor shall Substantially Complete the Lessor's Work, as described in Exhibit B, Work Letter attached hereto and incorporated herein (**"Work Letter"**). Lessee has thoroughly inspected the Premises, has elected to lease the Premises pursuant to the terms of this Lease on a strictly **"AS IS"** and "with all faults" basis, subject to: (A) completion of Lessor's Work, (B) latent defects which could not be discovered by a reasonably thorough visual inspection, by Lessee; (C) the warranty set forth in Paragraph 2.2, Paragraph 2.3, and Paragraph 51(b) below, and agrees that Lessor shall have no obligation to make or to pay for any improvements or renovation work to prepare the Premises for use and occupancy by Lessee other than as set forth in Paragraph 2.2, Paragraph 2.3, and Paragraph 51 (b) below of the Lease and the Work Letter attached to the Lease, and (D) the punchlist items identified by Lessee. Lessee shall, at Lessee's sole cost and expense, perform such work, if any, as may be necessary to prepare the Premises for use and occupancy by Lessee other than Lessor's Work, Lessee shall comply with all applicable provisions of this Lease, specifically including (but not limited to) the provisions of Paragraph 7.3 governing Utility Installations and Alterations, in connection with all of the work mentioned above and any and all other work required or desired by Lessee to prepare the Premises for use and occupancy by Lessee for the conduct of Lessee's business in the Premises.

(b) Notwithstanding anything in Paragraph 51 (a) to the contrary, on the Commencement Date Lessor warrants that for twelve (12) months thereafter (the **"Warranty Period"**) the Premises shall be free from leaks or water intrusion issues commonly associated with historic window openings, door openings, and the roof system. Lessor, at Lessor's cost and not as part of Operating Expenses, shall repair any leaks or defective or malfunctioning component of such windows, skylights or roofing systems of which Lessor has received written notice from Lessee describing the failure or malfunction within the applicable Warranty Period. Any such repairs after said date may be included in Operating Expenses, subject to the exclusion and amortisation provisions set forth herein.

(c) Lessee shall be permitted early access to the Premises commencing on the date which Lessor estimates to be thirty (30) days prior to Substantial Completion of Lessor's Work in the Premises (the **"Access Date"**), subject to the terms and conditions set forth herein. Subject to and in accordance with all of the terms and conditions of this Lease, except for Lessee's obligation to pay Rent (which obligation shall commence as provided in Paragraph 50 above), Lessee shall have access to the Premises on fhe Access Date. The period of early access shall commence on the Access Date and continue through the date immediately preceding the Commencement Date (the **"Early Access Period"**). During the Early Access Period, Lessee may enter the Premises for the purpose of installing Lessee's furniture, fixtures and equipment, provided that Lessee shall be solely responsible for any loss or damage to its equipment and fixtures from any cause whatsoever. Such early access to the Premises and the performance of such installation activity shall be permitted only to the extent that Lessor determines that such early access and the performance of such installation activity will not delay the Substantial Completion of Lessor's Work. Lessor and Lessee shall cooperate in the scheduling of Lessee's early access to the Premises and of the performance of the installation activities in an attempt to maximize the benefits to Lessee of this Paragraph 5.1 (c) without interfering with the Substantial Completion of Lessor's Work.

(d) Lessor shall reimburse Lessee for Lessee's reasonable out-of-pocket expenses for moving Lessee's furniture, fixtures, computers. equipment, cabling, telecommunications installation and supplies from its current premises in Berkeley, California to the Premises (collectively, the "**Moving Costs**"). Following the Commencement Date, Lessee shall submit to Lessor documented invoices for the Moving Costs and Lessor shall reimburse Lessee for such costs within fifteen (15) business days of receipt of same up to a maximum amount of $150,000.00. Notwithstanding the foregoing. Lessor shall have no obligation to reimburse Lessee for the Moving Costs in connection with invoices submitted more than ninety (90) days after the Commencement Date or at any time that there is an outstanding Default under the Lease.

52. **Delay in Delivery (§3.3).** (a) So long as the date on which the final space plans (excluding finishes) for Lessor's Work have been approved by Lessor and Lessee (the **"Plan Approval Date"**) occurs no later than January 15, 2007, then Lessor shall use commercially reasonable efforts to deliver the Premises to Lessee with Lessor's Work Substantially Completed not later than October 1, 2007; provided that in the event that such Lessor's Work is not Substantially Completed by such date, then Lessor shall not be liable to Lessee for such failure to deliver the Premises and such failure shall not affect the validity of this Lease, except that Lessor shall continue to use its commercially reasonable efforts to achieve Substantial Completion as quickly as reasonably feasible and neither rent nor the four-month rent abatement period shall commence until such Lessor's Work is Substantially Completed and the Premises are delivered to Lessee.

(b) Notwithstanding the foregoing, if: (A) Substantial Completion of Lessor's Work has not occurred on or before December 1, 2007 (**"Outside Delivery Date"**) as extended by any (a) Tenant Delay (as defined in the Work Letter), or (b) events of Force Majeure, then commencing on the fifth month of the Lease Term. Lessee shall be entitled to an additional abatement of Base Rent on a per diem basis for each day of such delay. The Outside Delivery Date shall be delayed one day for each day of delay in the occurrence of the Plan Approval Date on and after January 15, 2007. Further, in the event Lessor fails to Substantially Complete Lessor's Work and deliver the Premises to Lessee by May 1, 2008 (**"Trigger Date"**), other than due to a Tenant Delay or Force Majeure, then Lessee shall be entitled to terminate this Lease upon five (5) business days notice to Lessor delivered to Lessor at any time after the Trigger Date (as such date has been extended as a result of Tenant Delays or delays due to Force Majeure) and prior to the occurrence of Substantial Completion of Lessor's Work in the Premises. Upon termination of this Lease in connection with Lessor's failure to deliver the Premises as provided above, Lessor shall immediately return to Lessee all prepaid rent and the Security Deposit, and the parties shall be released from all further liabilities hereunder. The Trigger Date shall be delayed one day for each day of delay in the occurrence of the Plan Approval Date on and after January 15, 2007.

53. Common Area Operating Expense (§4.2(a)). Common Area Operating Expenses shall also include: costs for improvements made to the Project, during Lessee's tenancy in the Premises, which, although capital in nature, are (i) reasonably expected to reduce the normal Common Area Operating Expenses (including all utility costs) of the Project as amortized using a commercially reasonable interest rate over the time period reasonably estimated by Lessor to recover the costs thereof taking into consideration the anticipated cost savings, as determined by Lessor using its good faith, commercially reasonable judgment; (ii) improvements made in order to comply with any Applicable Requirement promulgated by any governmental authority after the Commencement Date or any interpretation hereafter rendered with respect to any existing Applicable Requirement after the Commencement Date, as amortized using a commercially reasonable interest rate over the useful economic life of such improvements as determined by Lessor in its reasonable discretion; (iii) improvements made to improve the health, safety and welfare of the Project and its occupants, as amortized using a commercially reasonable interest rate over the useful economic life of such improvements as determined by Lessor in its reasonable discretion; (iv) property repairs or replacements which provide a functional benefit for Lessee and the other tenants of the Project for the duration of their respective lease terms, as amortized using a commercially reasonable interest rate over the useful economic life of such repairs or replacements as determined by Lessor in its reasonable discretion; and (v) costs of repairing a casualty to the extent of Lessor's commercially reasonable deductible, as amortized using a commercially reasonable interest rate over the useful economic life of such repairs as determined by Lessor in its reasonable discretion.

54. Exclusions from Operating Expenses. Notwithstanding the foregoing or any provisions set forth in Paragraph 4.2 of the Lease, the following shall be excluded from Common Area Operating Expenses:

(i) Depreciation, interest, or amortization on mortgages or ground lease payments;

(ii) Legal fees, brokerage commissions, advertising costs, other related expenses incurred in connection with the leasing of the Building, including negotiating tenant leases and in enforcing tenant leases other than this Lease;

(iii) Initial improvements or alterations to tenant spaces, including alterations or expenditures of a capital nature;

(iv) Repairs, alterations, additions, improvements or replacements made to rectify or correct any defect in the design, materials or workmanship of the Building or Common Areas or to comply with any requirements of any governmental authority in effect as of the Commencement Date;

(v) The cost of providing any service directly to and paid directly by any tenant;

(vi) Insurance premiums to the extent of any refunds of those premiums;

(vii) Any bad debt loss, rent loss or reserves for bad debt or rent loss;

(viii) Interest and penalties due to late payment of any amounts owed by Lessor, except such as may be incurred as a result of Lessee's failure to timely pay its portion of such amounts or as a result of Lessor's contesting such amounts in good faith;

(ix) Increases in taxes due to the first sale or transfer of ownership of the Building which occurs during the first ten (10) years following the date of this Lease;

(x) Management fees in excess of four percent (4%) of the gross receipts from the Building;

(xi) Costs related to the existence and maintenance of Lessor as a legal entity, except to the extent attributable to the operation and management of the Building;

(xii) Hazardous Substances remediation costs which are not the result of the acts or omissions of Lessee or Lessee's agents, contractors or employees;

(xiii) Any advertising expenses and promotional activities for the Building (including gifts and promotional services to tenants or other parties):

(xiv) Salaries of officers and executives of Lessor and salaries of service personnel to the extent that the service personnel perform services not solely in connection with the management, operation, repair or maintenance of the Building or Common Areas;

(xv) Charitable or political contributions made by Lessor;

(xvi) Fees or dues payable to trade associations, industry associations or similar associations;

(xvii) Entertainment, dining or travel expenses for any purpose:

(xviii) Flowers, gifts, balloons or similar items provided to any entity, including Lessee, and other tenants, employees, vendors, contractors, protective tenants or agents;

(xix) Damage and repairs covered under any insurance policy carried by Lessor in connection with the Building or Common Areas plus the amount of any deductible;

(xx) Damage and repairs necessitated by the gross negligence or willful misconduct of Lessor or Lessor's employees, contractors or agents;

(xxi) Lessor's general overhead expenses not related to the Building;

(xxii) Legal fees, accountants' fees and other expenses incurred in connection with disputes with Lessee, tenants or other occupants or associated with the enforcement of any leases or defense of Lessor's title to or interest in the Building or any part thereof;

(xxiii) Costs (including permit, license and inspection fees) incurred in renovating or otherwise improving, decorating, painting or altering space for other tenants or other occupants or vacant space in the Building;

(xxiv) Costs incurred due to violation by Lessor or any other tenant in the Building of the terms and conditions of any lease;

(xxv) Cost of any service provided to Lessee or other occupants of the Building for which Lessor is reimbursed;

(xxvi) Overhead and profit paid to subsidiaries or affiliates of Lessor for management or other services for the Property or Building or for supplies or other materials to the extent that costs of the services, supplies or materials exceed the competitive costs of the services, supplies or materials if they were not provided by a subsidiary or an affiliate: and

(xxvii) Rent for space within the Building or other locations.

55. Audit Right. Within ninety (90) days (the **"Audit Election Period")** after Lessor furnishes to Lessee the Common Area Cost Statement for any calendar year. Lessee may, at its expense during Lessor's normal business hours at Lessor's offices, elect to audit Lessor's Common Area Operating Expenses for such calendar year only, subject to the following conditions: (1) there is no uncured Breach under this Lease; (2) the audit shall be prepared by an independent and reputable certified public accounting firm; (3) in no event shall any audit be performed by a firm retained by Lessee on a "contingency fee" basis; (4) the audit shall commence within thirty (30) days after Lessor makes Lessor's books and records available to Lessee's auditor and shall conclude within sixty (60) days after commencement; (5) the audit shall not unreasonably interfere with the conduct of Lessor's business; and (6) Lessee and its accounting firm ("**Lessee's Accountant**") shall treat any audit in a confidential manner and shall each execute Lessor's confidentiality agreement for Lessor's benefit prior to commencing the audit. Lessee shall deliver a copy of such audit to Lessor within five (5) business days of receipt by Lessee. This paragraph shall not be construed to limit, suspend, or abate Lessee's obligation to pay Rent when due, including Lessee's Share of estimated Common Area Operating Expenses. If Lessor reasonably disagrees with the results of Lessee's review and Lessee's contention that an error exists with respect to the Common Area Cost Statement (and the Common Area Operating Expenses described therein) in dispute. Lessor shall have the right to cause another review of the Common Area Cost Statement to be made by a firm of independent and reputable certified public accountants ("**Lessor's Accountant**") which shall conclude within sixty (60) days after Lessor's receipt of Lessee's review prepared by Lessee's Accountant. In the event that the parties are unable to resolve any dispute concerning Lessee's obligation to pay Lessee's Share of Common Area Operating Expenses within thirty (30) days after the later to occur of the end of Lessee's review as set forth above or the review by Lessor's Accountant, either party shall have the right to submit the dispute to binding arbitration. In the event that it is determined that Lessee's Share Common Area Operating Expenses for the subject calendar year was overstated by more than seven percent (7%), then all of Lessee's

reasonable costs in connection with such review (including for Lessee's Accountant), and the arbitration, if applicable, shall be paid for by Lessor within thirty (30) days of receipt of the arbitration award or Lessor's agreement with the results of the audit conducted by Lessee's Accountant or Lessor's Accountant as the case may be. After verification by Lessor's Accountant or arbitration, as the case may be, Lessor shall credit any overpayment determined by the audit report against the next Rent due and owing by Lessee or, if no further Rent is due, refund such overpayment directly to Lessee within thirty (30) days of determination. Likewise, Lessee shall pay Lessor any underpayment determined by Lessee's audit report or arbitration, as the case may be, within thirty (30) days of determination. The foregoing obligations shall survive the expiration or earlier termination of the Lease. If Lessee does not give written notice of its election to audit during the Audit Election Period, Lessor's Common Area Operating Expenses for the applicable calendar year shall be deemed approved for all purposes, and Lessee shall have no further right to review or contest the same.

56. Security Deposit; Letter of Credit (§5). (a) Lessee acknowledges that Lessor is unwilling to execute this Lease unless Lessee provides Lessor with additional security for Lessee's obligations under this Lease. Therefore, contemporaneously with the execution of this Lease by Lessee, Lessee shall deliver to Lessor an Irrevocable Standby Letter of Credit ("**Letter of Credit**") which shall (1) be in the form attached hereto as Exhibit G, with the parties acknowledging and agreeing that such form will be acceptable for the purposes of this Paragraph 56(a), (2) be issued by a bank reasonably acceptable to Lessor with minimum assets of Two Billion Dollars ($2,000,000,000.00), upon which presentment may be made in Contra Costa County or the City and County of San Francisco, California, (3) be in an initial amount (subject to increase as provided below) equal to Four Hundred Fifty Thousand and 00/100 Dollars ($450,000.00), (4) allow for partial and multiple draws thereunder, and (5) have an expiration date not earlier than sixty (60) days after the Expiration Date or in the alternative, have a term of not less than one (1) year and be automatically renewable for an additional one (1) year period unless, on or before the date thirty (30) days prior to the expiration of the term of such Letter of Credit, the issuer of such Letter of Credit gives notice via U.S. registered mail to Lessor of its election not to renew such Letter of Credit for any additional period pursuant thereto. In addition, the Letter of Credit shall provide that, in the event of Lessor's assignment of its interest in this Lease, the Letter of Credit shall be freely transferable by Lessor, without charge, to the assignee. The Letter of Credit shall provide for same day payment to Lessor upon the issuer's receipt of a sight draft from Lessor together with Lessor's certificate certifying that either: (i) the requested sum is due and payable from Lessee and Lessee has failed to pay, or (ii) Lessor has received notice of nonrenewal of the Letter of Credit and a replacement Letter of Credit has not been received, and with no other conditions. Lessee agrees that it shall from time to time, as necessary, whether as a result of a draw on the Letter of Credit by Lessor pursuant to the terms hereof or as a result of the expiration of the Letter of Credit then in effect, renew or replace the original and any subsequent Letter of Credit so that a Letter of Credit, in the amount required hereunder less the amount of any unapplied draws on the Letter of Credit then being held by Lessor, and satisfying al! the conditions hereof, is in effect until a date which is at least sixty (60) days after the Expiration Date. If Lessee fails to furnish such renewal or replacement at least ten (10) business days prior to the stated expiration date of the Letter

of Credit then held by Lessor, Lessor may draw upon such Letter of Credit and hold the proceeds thereof (and such proceeds need not be segregated) as a security deposit pursuant to the terms of Paragraph 5 of the Lease. In the event that Lessor funds the Additional Allowance (as defined in the attached Work Letter), then the amount of the Letter of Credit required hereunder shall be increased by an amount equal to fifty percent (50%) of such Additional Allowance, Lessee shall deliver an Additional Letter of Credit in such amount within ten (10) days of Lessor's delivery of the Lessor's Additional Allowance Notice (as defined in the Work Letter) to Lessee.

(b) In the event that Lessee is in Breach of its obligations under this Lease, then Lessor shall have the right, at any time after and during the continuation of such Breach, without giving any further notice to Lessee, to draw upon said Letter of Credit (or Additional Letter of Credit, as defined below, as the case may be) (i) the amount necessary to cure such Breach or (ii) if such Breach cannot reasonably be cured by the expenditure of money, to exercise all rights and remedies Lessor may have on account of such Breach, the amount which, in Lessor's reasonable opinion, is necessary to satisfy Lessee's liability to Lessor on account thereof (provided that the foregoing shall not be deemed to preclude Lessee from disputing the amount of such liability as determined by Lessor); provided, however, that Lessor shall also have the right to draw upon the Letter of Credit in the event of either: (x) the occurrence of a default which is continuing after the expiration of the Lease (even if Lessee has a remaining cure and/or grace period for such default); or (y) the occurrence of any of the following events: (aa) the making of any general assignment or assignment for the benefit of creditors; (bb) becoming a debtor (as defined in Paragraph 13.1(f)(ii)); (cc) the appointment of a trustee or receiver to take possession of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease; or (dd) the attachment, execution or other judicial seizure of substantially all of Lessee's assets located in the Premises or of Lessee's interest in this Lease. In the event of any such draw by Lessor, Lessee shall, within ten (10) days of written demand therefor, deliver to Lessor an additional Letter of Credit satisfying the conditions specified in Paragraph 56(a) above ("**Additional Letter of Credit**"), except that the amount of such Additional Letter of Credit shall be the amount of such draw less the amount of any unapplied proceeds from the Letter of Credit then being held by-Lessor. Lessee's failure to provide the Additional Letter of Credit upon written notice from Lessor shall be a Breach of this Lease. In addition, in the event of a termination, based upon the default of Lessee under this Lease or a rejection of this Lease pursuant to the provisions of the Federal Bankruptcy Code. Lessor shall have the right to draw upon the Letter of Credit (from time to time, if necessary) to cover the full amount of damages and other amounts due from Lessee to Lessor under this Lease. Any amounts so drawn shall, at Lessor's election, be applied first to any unpaid rent and other charges which were due prior to the filing of the petition for protection under the Federal Bankruptcy Code. Any such draw on the Letter of Credit shall not constitute a waiver of any other rights of Lessor with respect to Lessee's default under this Lease. Lessee hereby covenants and agrees not to oppose, contest or otherwise interfere with any attempt by Lessor to draw upon said Letter of Credit including, without limitation, by commencing an action seeking to enjoin or restrain Lessor from drawing upon said Letter of Credit. Lessee also hereby expressly waives any right or claim it may have to seek such equitable relief. In addition to whatever other rights and remedies it may have against Lessee if

Lessee breaches its obligations under this Paragraph 56(b), Lessee hereby acknowledges that it shall be liable for any and all damages which Lessor may suffer as a result of any such breach.

(c) In the event that Lessee fails timely to deliver to Lessor a replacement letter of credit when required hereunder. then Lessor shall have the right, at any time after such event, without giving any further notice to Lessee, to draw down the entire Letter of Credit (and/or Additional Letter(s) of Credit) and to hold the proceeds thereof in the same manner as a security deposit pursuant to the terms of Paragraph 5 of the Lease.

(d) Notwithstanding the foregoing provisions of this Paragraph 56 or the provisions of Paragraph 5 to this Lease to the contrary, provided that: (i) the criteria set forth in Paragraph 56(e) have been satisfied, (ii) Lessee has not been late in the payment of any rent due under the Lease during the immediately preceding 12 month period, and (iii) no Breach (or Default that subsequently matures into a Breach) by Lessee under this Lease has occurred and is still continuing as of the effective date of reduction, then Lessee shall not be required to increase the Letter of Credit as provided herein. If: (x) the criteria set forth in Paragraph 56(e) has not been satisfied on or before March 31, 2007, or (ii) Lessee has been late in the payment of any rent due under the Lease during the immediately preceding 12 month period, or (iii) a Breach (or Default that subsequently matures into a Breach) by Lessee under this Lease has occurred and is still continuing as of April 1, 2007, then Lessee shall be required to increase the Letter of Credit by an additional amount of Four Hundred Fifty Thousand and 00/100 Dollars ($450,000.00). If Lessee is unable to satisfy the foregoing criteria on or before March 31, 2007, then Lessee shall deliver an Additional Letter of Credit in such amount no later than April 15, 2007.

(e) In order for Lessor to waive the requirement to increase the amount of the Letter of Credit as specified in the foregoing paragraph, Lessee shall provide Lessor with satisfactory documentary evidence that on or before March 31, 2007, Lessee satisfies the following criteria: (i) Lessee can demonstrate at least $6,000,000.00 in net profits for calendar year 2006 evidenced by independently audited financial statements, ***or*** (iii) Lessee has become a wholly owned subsidiary of Sun Power Corp. and Sun Power Corp. has agreed to guarantee the obligations of Lessee under this Lease.

57. Signage. On or before the Commencement Date, Lessor shall add Lessee's name to the Building directory. In addition, Lessee shall be permitted to install its standard corporate logo as Lessee's actual signage on the Building above the entry to the Premises and on the canopy to be installed above the entry walkway, subject to compliance with Applicable Requirements. In the event Lessor installs monument or street signage for the Building, Lessor shall permit Lessee to place its signage thereon in proportion to other tenants of the Building appearing thereon and subject to compliance with all Applicable Requirements. Except as set forth in the immediately preceding sentence. Lessee shall not place or permit to be placed any signs upon: (i) the roof of the Building; or (ii) the Common Areas; or (iii) any area visible from the exterior of the Premises without Lessor's prior written approval, which approval shall not be unreasonably withheld, conditioned or delayed provided any proposed sign is placed only in those locations as

may be designated by Lessor, and complies with the sign criteria promulgated by Lessor from time to time. Upon request of Lessor, Lessee shall immediately remove any sign, advertising material or lettering which Lessee has placed or permitted to be placed upon the exterior or interior surface of any door or window or at any point inside the Premises which has not been approved by Lessor and which, in Lessor's reasonable opinion, is of such a nature as to not be in keeping with the standards of the Building, and if Lessee fails to do so, Lessor may without liability remove the same at Lessee's expense. Lessee shall comply with such regulations as may from time to time be promulgated by Lessor governing signs, advertising material or lettering of ail tenants in the Project. Lessee, upon vacation of the Premises, or the removal or alteration of its sign for any reason, shall be responsible for the repair, painting or replacement of the Building fascia surface or other portion of the Building where signs are attached. If Lessee fails to do so. Lessor may have the sign removed and the cost of removal plus fifteen percent (15%) as an administrative fee shall be payable by Lessee within ten (10) days of invoice.

58. Insurance (§8.2). In addition to the coverages required by Paragraphs 8.2(a), 8.3(a) and 8.4 of the Lease, Lessee shall also obtain and maintain throughout the term of the Lease, the following coverages: (i) State Worker's Compensation Insurance in the statutorily mandated limits; and (ii) Employer's Liability Insurance with limits of not less than One Million Dollars ($1,000,000) for bodily injury per accident and each disease, per employee, and a total combined limit for bodily injury in amounts not less than One Million Dollars ($1,000,000) per accident and Five Hundred Thousand ($500,000) per each disease, or such greater amount as Lessor may from time to time require.

59. Insurance (§8.9). In addition, if Lessee fails to comply with the insurance requirements set forth in this Lease or to deliver to Lessor the certificates or evidence of coverage required by this Lease, Lessor, in addition to any other remedy available pursuant to this Lease or otherwise, may, but shall not be obligated to, obtain such insurance and Lessee shall pay to Lessor on demand the premium costs thereof, plus an administrative fee of fifteen percent (15%) of such cost. It is expressly understood and agreed that the foregoing minimum limits of insurance coverage shall not limit the liability of Lessee for its acts or omissions as provided in this Lease.

60. Shuttle Service. During the term of this Lease and subject to reimbursement pursuant to Paragraph 4.2(a) of the Lease, Lessor shall operate a shuttle service to and from the front door of the Premises and other points in the Project to the Richmond Bart station and the Amtrak station between the hours of 7:00 am to 9:00 am and 4:00 pm to 7:00 pm (the **"Shuttle Service"**). The Shuttle Service shall be at such intervals and with such capacity that the wait for a shuttle departure shall not exceed a reasonable period of time.

61. Assignment & Subletting (§12). (A) Any proposed assignment, sublease or other transfer of Lessee's interest under this Lease shall be subject to the provisions of Paragraph 12 of this Lease, including the requirement for Lessor's prior written consent. In addition, the provisions set forth below shall apply:

(a) Notice to Lessor. If Lessee (or any assignee, subtenant or other transferee of Lessee) desires to enter into any assignment of this Lease or a sublease of all or any

part of the Premises, Lessee will first give Lessor written notice (the **"Assignment Notice"**) of the proposed assignment, sublease or other transfer, which notice will contain the name and address of the proposed transferee, the proposed use of the Premises, statements reflecting the proposed transferee's current financial condition and income and expenses for the past two years, and the principal terms of the proposed assignment or sublease, and shall be accompanied by payment of a fee of $500 required pursuant to Paragraph 12.2(e) of the Lease as consideration for Lessor's considering and processing the proposed transfer.

(b) Processing Fee and Costs. In addition, to the processing fee described in Paragraph 12.2(e), the proposed transferor shall pay Lessor within ten (10) days of written demand therefor an amount equal to the sum of the attorneys' fees and other out of pocket expenses reasonably incurred by Lessor in connection with Lessor's consideration and processing of the proposed transfer not to exceed $1.000.00.

(c) Cancellation. Lessor shall have the option, by giving written notice to Lessee (**"Lessor's Termination Notice"**) within thirty (30) days after receipt of the Assignment Notice, to terminate this Lease with respect to the Premises or portion thereof identified in the Assignment Notice as of the date thirty (30) days after Lessor's election; provided, however, that Lessor may not exercise such recapture right with respect to a proposed subletting: (i) for a term equal to less than fifty percent (50%) of the then remaining term of this Lease and (ii) for less than fifty percent (50%) of the square footage of the Premises. If pursuant to Lessor's Termination Notice, this Lease shall be terminated with respect to less than the entire Premises, then: (a) the Base Rent. Lessee's Share of Common Area Operating Expenses and the number of parking spaces Lessee may use shall be adjusted on the basis of the number of square feet of the Premises retained by Lessee in proportion to the number of square feet contained in the original Premises, and this Lease as so amended shall continue thereafter in full force and effect, and upon request of either party, the parties shall execute written confirmation of same, (b) Lessor shall construct and erect at Lessor's sole cost such partitions as may be required to sever the space to be retained by Lessee from the space recaptured by Lessor and such space shall be in demisable units, (c) Lessor may, at its option, lease any recaptured portion of the Premises to any prospective subtenant or assignee or to any other person or entity without liability to Lessee, and (d) Lessee shall not be entitled to any portion of the profit, if any. Lessor may realize on account of such termination and reletting. Lessee acknowledges that the purpose of this Paragraph 61(A)(c) is to enable Lessor to receive profit in the form of higher rent or other consideration to be received from an assignee or subtenant, to give Lessor the ability to meet additional space requirements of other tenants of the Project and to permit Lessor to control the leasing of space in the Project. Lessee acknowledges and agrees that the requirements of this Paragraph 61(A)(c) are commercially reasonable and are consistent with, the intentions of Lessor and Lessee.

(d) Sublease/Assignment Profit. In the event of any assignment, sublease, or other transfer of Lessee's interest in or under this Lease (or the interest of any assignee, subtenant or other transferee), Lessee shall pay to Lessor fifty percent (50%) of the rentals and other consideration received in connection with such assignment, sublease or

other transfer in excess of all rent payable by Lessee hereunder, after Lessee has recovered its brokerage commission (not to exceed market rates for same), reasonable attorneys fees and reasonable improvements costs incurred in connection with the assignment or sublease.

(c) Waiver. Lessee hereby waives any suretyship defenses it may now or hereafter have to an action brought by Lessor including those contained in Sections 2787 through 2856, inclusive, 2899 and 3433 of the California Civil Code, as now or hereafter amended, or similar laws of like import.

(B) Permitted Transfers. Notwithstanding Paragraph 12 of the Lease, including, without limitation, clauses (b) and (c) of Paragraph 12.1 of the Lease, Lessee may assign its interest in this Lease or sublease all or any portion of the Premises (a **"Permitted Transfer")** to the following types of entities **(**a **"Permitted Transferee")** without the written consent of Lessor and without triggering any recapture or rent sharing provisions herein:

(1) an Affiliate of Lessee, as used herein **"Affiliate"** shall mean any person or entity which, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with PowerLight Corporation and/or Sun Power Corporation (provided that Sun Power has previously acquired a 100% ownership interest in PowerLight Corporation);

(2) any corporation, limited partnership, limited liability partnership, limited liability company or other business entity in which or with which Lessee, or its corporate successors or assigns, is merged or consolidated, in accordance with applicable statutory provisions governing merger and consolidation of business entities, so long as (A) Lessee's obligations hereunder are assumed by the entity surviving such merger or created by such consolidation; and (B) the Tangible Net Worth of the surviving or created entity is not less than $50,000,000; or

(3) any corporation, limited partnership, limited liability partnership, limited liability company or other business entity acquiring all or substantially all of Lessee's assets if such entity's Tangible Net Worth after such acquisition is not less than $50,000,000.

Lessee shall remain liable for the performance of all of the obligations of Lessee hereunder, or if Lessee no longer exists because of a merger, consolidation, or acquisition, the surviving or acquiring entity shall expressly assume in writing the obligations of Lessee hereunder. Additionally, the Permitted Transferee shall comply with all of the terms and conditions of this Lease, including the Agreed Use. No later than five (5) business days after the effective date of any Permitted Transfer, Lessee agrees to furnish Lessor with (I) a copy of the instrument effecting the Permitted Transfer, (2) documentation establishing Lessee's satisfaction of the requirements set forth above applicable to the proposed Permitted Transfer, and (3) evidence of insurance as required under this Lease with respect to the Permitted Transferee. The occurrence of a Permitted Transfer shall not waive Lessor's rights to consent or deny consent to any subsequent assignment or sublettings. **"Tangible Net Worth"** means the excess of total assets over total liabilities, in each case as determined in accordance with generally

accepted accounting principles consistently applied (**"GAAP"**), excluding, however, from the determination of total assets all assets which would be classified as intangible assets under GAAP including goodwill, licenses, patents, trademarks, trade names, copyrights, and franchises.

62. No Right to Holdover (§26). The Parties hereto acknowledge that the 125% holdover rate set forth in Paragraph 26 refers to a holding over with Lessor's consent and that such holding over shall otherwise be upon the terms herein specified for the period immediately prior to such holding over and shall continue in such status until the tenancy is terminated by either party upon not less than thirty (30) days prior written notice. If Lessee holds possession of the Premises after the term of this Lease without Lessor's written consent, then Lessor in its sole discretion may elect (by written notice to Lessee) to have Lessee become a tenant either from month to month or at sufferance, at one hundred and fifty percent (150%) of the rental (prorated on a daily basis for an at-will tenancy, if applicable) and otherwise upon the terms herein specified for the period immediately prior to such holding over, or may elect to pursue any and all legal remedies available to Lessor under applicable law with respect to such unconsented holding over by Lessee, Lessee shall indemnify, defend and hold Lessor harmless from any loss, damage, claim, liability, cost or expense (including reasonable attorneys' fees) resulting from any delay by Lessee in surrendering the Premises (except with Lessor's prior written consent), including but not limited to any claims made by a succeeding tenant by reason of such delay. Acceptance of rent by Lessor following expiration or termination of this Lease shall not constitute a renewal of this Lease.

63. Non-Discrimination. Lessee herein covenants by and for Lessee and Lessee's heirs, personal representatives and assigns and all persons claiming under Lessee or through Lessee that this Lease is made subject to the condition that there shall be no discrimination against or segregation of any person or of a group of persons on account of race, color, religion, creed, sex, sexual orientation, marital status, ancestry or national origin in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the land herein leased nor shall Lessee or any person claiming under or through Lessee establish or permit any such, practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants, licensees or vendees in the Premises.

64. First Source Agreement. The Parties hereto acknowledge that this Lease is specifically subject to: (i) the City of Richmond's Living Wage Ordinance (Richmond Municipal Code Chapter 2.60); (ii) the City of Richmond's Business Opportunity Ordinance (Richmond Municipal Chapter 2.50); and (iii) the City of Richmond's Local Employment Program Ordinance (Richmond Municipal Chapter 2.56). No later than the date which is thirty (30) days prior to the Commencement Date, Lessee shall enter into a First Source Agreement in the form attached hereto as Exhibit E with RichmondWorks, an employment and training program of the City of Richmond. If Lessee assigns its interest in this Lease or sublets the Premises in accordance with the terms of this Lease, any assignee or subtenant shall also enter into a First Source Agreement in the form attached as Exhibit E with RichmondWorks.

65. Subordination; Applicable Local Ordinances. Lessee acknowledges that this Lease is subject and subordinate to: (a) that certain Disposition and Development Agreement dated as of November 18, 2003, as amended (the **"DDA"**); and (b) that certain Master Lease Agreement dated as of October 31, 2005 (the **"Master Lease"**) by and between Ford Point LLC, a California limited liability company (**"Master Landlord"**), as landlord, and Lessor, as tenant. This Lease is conditioned upon Lessor's obtaining the approval of the Richmond Redevelopment Agency pursuant to the DDA, which approval shall not be unreasonably withheld.

66. Patriot Act. Lessee warrants and represents to Lessor that Lessee is not, and shall not become, a person or entity with whom Lessor is restricted from doing business under regulations of the Office of Foreign Asset Control (**"OFAC"**) of the Department of the Treasury (including, but not limited to, those named on OFAC's Specially Designated and Blocked Persons list) or under any statute, executive order (including but not limited to the September 24, 2001, Executive Order Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism) or other governmental actions, and is not and shall not engage in any dealings or transactions or be otherwise associated with such persons or entities.

67. Force Majeurc. Notwithstanding anything to the contrary set forth in this Lease, whenever a period, of time is herein prescribed for action to be taken by either Party (other than for Lessee's obligations under this Lease that can be performed by the payment of money, such as payment of Rent and maintenance of insurance), such party shall not be liable or responsible for and there shall be excluded from the computation of any such period of time, any delays due to strikes, riots, acts of God, shortages of labor or materials, war (declared or undeclared), acts of terrorism, governmental laws, regulations or restrictions or any other causes of any kind whatsoever which are beyond the reasonable control of such Party (**"Force Majeure"**).

68. Lessee's Option to Extend.

(a) Grant of Option. Lessee shall have the option to extend the term of the Lease for two (2) additional periods of five (5) years each (each, an **"Extension Period"**), by delivering written notice of Lessee's unequivocal, irrevocable and unconditional exercise of Lessee's extension option to Lessor (each, an **"Renewal Notice"**) not earlier than twelve (12) months prior to and not later than nine (9) months prior to the initial Expiration Date with respect to the first Extension Period or the expiration of the first Extension Period with respect to the second Extension Period: provided, however, that any such election by Lessee shall be null and void at the option of Lessor (i) if Lessee is in Breach under the Lease at the time of such notice or at any time thereafter until the beginning of the subject Extension Period or (ii) if PowerLight Corporation or a Permitted Transferee does not, at both the time of exercise of the extension option and at the time of the commencement of the subject Extension Period (referred to below as the **"Adjustment Date"**), itself occupy at least seventy-five percent (75%) of the Premises (it being the intent of the parties that the extension option is strictly personal to PowerLight Corporation, and shall not be assignable to or exercisable for the benefit of any assignee, sublessee or other transferee other than a Permitted Transferee). At Lessee's option,

Lessee may elect to exclude from the Premises for the Extension Period any Expansion Space or Negotiation Space which has become part of the Premises, provided Lessee so notifies Lessor in the Renewal Notice. No later than the date which is thirty (30) days prior to the date on which Lessee must exercise the subject renewal option, Lessee may request in writing that Lessor provide an estimate of the Market Rate (as defined subparagraph (b) below) for the subject Extension Period ("**Rental Inquiry Notice**"). Upon Lessee's request set forth in the Rental Inquiry Notice, Lessor shall provide Lessor's good faith estimate of the Market Rate for the subject Extension Period to Lessee within thirty (30) days' of Lessor's receipt of the Rental Inquiry Notice: provided, however, that such estimate shall be deemed an estimate only and the remaining provisions of this Paragraph 68 shall govern the determination of the Market Rate.

(b) Effect of Exercise. Unless Lessee's election to extend shall become null and void under the provisions of this Lease, delivery of the Renewal Notice to Lessor shall, without further action by Lessor or Lessee, automatically extend the term of this Lease upon all of the terms, covenants and conditions set forth in this Lease, except that: (i) Lessee shall have no further right to extend the term of this Lease except as set forth herein; and (ii) effective on the Adjustment Date, the Base Rent shall be increased to the Market Rate (as provided below), provided, however, in no event shall the Base Rent for any Extension Period be less than 103% of the Base Rent in effect on the initial Expiration Date for the first Extension Period and in effect on the last day of the first Extension Period for the second Extension Period. The "**Market Rate**" shall be the then prevailing rental rate for comparable commercial space at the applicable Adjustment Date, based on prevailing rentals then being charged to new tenants in the Building in which the Premises are located and in other comparable office and warehouse buildings in the City of Richmond located south of Interstate 580, for direct lease of comparable space of comparable size, street frontage and location, which is not subleased, is not subject to expansion rights of other tenants, does not require the construction or installation of leasehold improvements, and is leased for uses comparable to the Agreed Use for a term comparable to the Extension Period.

(c) Appointment of Appraisers. If Lessor and Lessee are unable to agree upon the Market Rate within 21 days after Lessor's receipt of Lessee's Renewal Notice, Lessor and Lessee shall each appoint, by written notice delivered to the other by the 28th day following Lessor's receipt of the Renewal Notice, a licensed real estate broker or professional appraiser who has significant current experience appraising rental rates for commercial real property in western Contra Costa County, to participate in the determination of the Market Rate. The two professionals so appointed shall be instructed to appoint, within 20 days thereafter, a third broker or appraiser who is similarly qualified. If either Lessor or Lessee fails timely to appoint a qualified broker or appraiser as provided above, then the determination of Market Rate to be made hereunder shall be made solely by such qualified broker or appraiser as may have theretofore been appointed by the other party, and such determination of the Market Rate by such sole broker or appraiser shall be binding upon both Lessor and Lessee. If the two professionals appointed by Lessor and Lessee cannot agree on the appointment of a third within the time period described above, then either Lessor or Lessee may seek the appointment of a third broker or appraiser by the presiding judge for the Contra Costa County Superior

Court or by the American Arbitration Association in San Francisco. The brokers or appraisers shall work together and share information in their efforts to determine and agree upon the Market Rate. The brokers or appraisers appointed in accordance with the procedures described above are referred to below as the "appraisers." The Market Rate shall be determined in accordance with the procedure set forth below.

(d) Appraisal Procedure. Each party shall state in writing the amount the party contends to be the Market Rate, including whatever support for such contention the party wishes to have considered. The third appraiser shall arrange for simultaneous exchange of such written contentions and for presentation of such additional evidence, rebuttals, or other matters as the parties may wish to present and the appraisers may elect to hear or otherwise receive. After presentation of such additional evidence and argument as the appraisers may elect to receive, if any. each party may submit a modified statement of contended Market Rate. The role of the appraisers shall be to select from the two final contended Market Rates submitted by the parties the one which is closest to the actual Market Rate as determined by the appraisers. The appraisers shall have no power to adopt a compromise or "middle ground" between the contended Market Rates submitted by the parties or to adopt any Market Rate other than the contended Market Rate submitted by the party which is closest to the appraisers' determinations as to actual Market Rate, and if the difference between each of the contended Market Rates submitted by the parties and the Market Rate determined by the appraisers is the same the Market Rate shall be the Market Rate determined by the appraisers (i.e., the midpoint between the contended Market Rates submitted by Lessor and Lessee). If the appraisers do not agree upon the actual Market Rate, then each appraiser shall determine which of the two final contended Market Rates submitted by the parties is closest to the actual Market Rate determined by such appraiser and the contended Market Rate so selected by at least two of the appraisers shall be the Market Rate. The Market Rate as so determined by the appraisers as provided herein shall be binding upon both Lessor and Lessee as the Market Rate.

(e) Base Rent Pending Determination. Lessor and Lessee will use all reasonable diligence to cause the appointed appraisers to perform in good faith and in a timely manner in order to make the determination of the Market Rate prior to the Adjustment Date. If the appraisers do not make the determination prior to the Adjustment Date, Lessee shall pay as Base Rent commencing on the Adjustment Date the amount asserted by Lessee to be the Market Rate (but in no event less than the Base Rent payable for the final month of the initial term of this Lease with respect to the first Extension Period and for the final month of the first Extension Period for the second Extension Period). Upon the determination by such appraisers of the Market Rate, any deficiency in the amount paid to Lessor by Lessee as provided above for the portion of the subject Extension Period that has elapsed prior to such determination, based upon the Base Rent ultimately determined hereunder applicable to the period from the Adjustment Date to the date on which the Market Rate was so determined, shall be paid by Lessee to Lessor within ten (10) days of such determination, together with interest on such amount at the rate of ten percent (10%) per annum. The payment by Lessee of Base Rent in the amount of the Market Rate as so determined shall commence on the first day of the month following the date of such determination.

(f) Costs and Expenses. All fees and expenses of the appraisers shall be paid as follows. Lessor shall pay the fees and expenses of the appraiser appointed by Lessor. Lessee shall pay the fees and expenses of the appraiser appointed by Lessee. Lessor and Lessee shall each pay one half of any fees and expenses of the third appraiser. The attorneys' fees and expenses of counsel for the respective parties and of witnesses shall be paid and borne by the party engaging such counsel or calling such witness, as the case may be.

(g) Loss of Extension Right. Lessee's rights under this Paragraph 68 shall terminate if (1) this Lease or Lessee's right to possession of the Premises is terminated following a Breach by Lessee, (2) Lessee assigns any of its interest in this Lease, or sublets any portion of the Premises other than to a Permitted Transferee, or (3) Lessee fails to timely exercise its option under this Paragraph 68, time being of the essence with respect to Lessee's exercise thereof.

69. **Option to Expand**. Lessee shall have the right to expand ("**Right to Expand**") to: (A) an increment of light assembly space located on the ground floor consisting of up to approximately 53,280 square feet ("**Expansion Space A**"), which space would be available for occupancy by the Commencement Date, and/or (B) an increment of light assembly space located on the ground floor consisting of up to approximately 56,900 square feet of space or a reasonable portion thereof ("**Expansion Space B**"), which space would be available for occupancy by the Commencement Date. Each increment of Expansion Space will include: (w) one break room with HVAC; (x) linoleum flooring and plumbing; (y) two industrial offices with HVAC; and (z) two (2) ADA-compliant restrooms ("**Expansion Space Improvements**"). Each Expansion Space shall be leased: (i) at the then applicable rental rate set forth in the Lease with respect to the initial Premises, (ii) with Lessor paying for Standard Base Building Costs and constructing the improvements described as Base Building in *Exhibit B-1* attached hereto and Lessor constructing but Lessee paying for the Expansion Space Improvements, and (iii) the term of the Lease with respect to each Expansion Space shall be co-terminous with the Term of the initial Premises and otherwise in an "AS-IS" condition when such space becomes available for lease. If Lessee elects to lease an increment of Expansion Space, Lessee shall so notify Lessor in writing (the "**Expansion Election Notice**") on or before December 15, 2006 with respect to Expansion Space A and on or before January 15, 2007 with respect to Expansion Space B. If Lessee does not deliver the Expansion Election Notice on or before December 15, 2006 with respect to Expansion Space A and on or before January 15, 2007 with respect to Expansion Space B, then (x) Lessor shall be relieved of its obligation to make the Expansion Space available for lease to Lessee, (y) the provisions of this Paragraph 69 shall be of no further force or effect and, (z) Lessor shall be entitled to grant options and rights with respect to each Expansion Space free and clear of Lessee's Right to Expand under this Paragraph 69 to other tenants and prospective tenants. Upon Lessee's delivery of the Expansion Election Notice, Lessor and Lessee shall promptly enter into an amendment to the Lease adding the Expansion Space to the Premises on the terms and conditions set forth in this Paragraph 69. Lessee may not exercise its rights under this Paragraph 69, if a Breach then exists.

70. **Right of First Negotiation to Lease**. Provided no Breach under this Lease then exists and Lessee has not then exercised its Termination Right (as defined in Paragraph 76 below), during the Term, Lessor shall, prior to offering the same to any party, first offer to lease to Lessee any additional space in the Building including the mezzanine space in the craneway if Lessor decides to convert such mezzanine craneway space to leasable space. Provided no Breach under this Lease then exists, if any space currently leased to a tenant becomes available during the Term (the "**Negotiation Space**"), Lessor shall, prior to offering the same to any party, first offer to lease such Negotiation Space to Lessee. The terms of a lease of an increment of Negotiation Space would: (A) be at the then applicable rental rate set forth in the Lease with respect to the initial Premises if such Space would be delivered to Lessee during the period commencing on the Commencement Date through the last day of the 36th Lease Month following the Commencement Date OR be at the then fair market rental rate if such Space would be delivered to Lessee after the expiration of the 36th Lease Month following the Commencement Date, (B) Lessor paying for Standard Base Building Costs and constructing the improvements described as Base Building in *Exhibit B-1* attached hereto, and otherwise such Negotiation Space shall be delivered in an AS IS condition when such space becomes available for lease, and (C) provide for the term of the Lease with respect to the Negotiation Space shall be co-terminous with the Term of the initial Premises (collectively, the "**Negotiation Space Terms**"). For purposes hereof, the Negotiation Space shall become "available for lease" immediately prior to the first time within the Term Lessor intends to submit to a third party a bona fide proposal or letter of intent to lease such Negotiation Space. Lessor shall provide a written offer identifying the subject Negotiation Space and outlining the Negotiation Space Terms (the "**Negotiation Notice**"). On or before the date which is five (5) business days after Lessee's receipt of the Negotiation Notice (the "**Negotiation Election Date**"), Lessee shall deliver written notice to Lessor ("**Lessee's Election Notice**") pursuant to which Lessee shall have the one-time right to elect either to: (i) lease the subject increment of First Negotiation Space described in the Negotiation Notice on the Negotiation Space Terms; (ii) enter into good faith negotiations with Lessor regarding the terms of the lease of the subject increment of the First Negotiation Space; or (iii) decline to lease the entire increment of Negotiation Space described in the Negotiation Notice. If Lessee elects to enter into good faith negotiations for the subject increment of Negotiation Space, Lessee and Lessor shall negotiate in good faith for a period of

ten (10) business days following Lessor's receipt of Lessee's Election Notice (the "**Negotiation Phase**"). If Lessee and Lessor are unable to reach agreement on the terms of leasing the subject increment of Negotiation Space during the Negotiation Phase or if Lessee does not respond in writing to the Negotiation Notice by the Negotiation Election Date, Lessee shall be deemed to have elected not to lease the Negotiation Space. If Lessee timely elects to lease the Negotiation Space, then Lessor and Lessee shall execute an amendment to this Lease, effective as of the date the Negotiation Space is to be included in the Premises, on the Negotiation Space Terms or such other terms as Lessor and Lessee shall agree upon. If Lessee elects or is deemed to have elected not to lease such Negotiation Space, then such right shall lapse, time being of the essence with respect to the exercise thereof (it being understood that Lessee's right hereunder is a one-time right only with respect to each increment of Negotiation Space), and Lessor may lease all or a portion of the subject Negotiation Space to third parties on

such terms as Lessor may elect in Lessor's sole discretion. Lessee may not exercise its rights under this Paragraph 70, if a Breach exists or the original Lessee (or an Affiliate of Lessee or Permitted Transferee) is not then occupying at least seventy-five percent (75%) of the Premises and the remaining twenty-five (25%) is not then occupied by a valid subtenant. After the expiration of the 120th Lease Month of the Term, Lessor shall not be obligated to pay a commission with respect to any space leased by Lessee under this Paragraph 70, and Lessee shall indemnify, defend, and hold Lessor harmless from and against all costs, expenses, attorneys' fees, and other liability for commissions or other compensation claimed by any broker or agent claiming the same by, through, or under Lessee. Lessee's rights under this Paragraph 70 shall terminate if: (i) this Lease or Lessee's right to possession of the Premises is terminated; (ii) Lessee (or an Affiliate of Lessee or Permitted Transferee) is no longer physically occupying the Premises and operating for business therein; or (iii) Lessee assigns any of its interest in this Lease (other than in accordance with Paragraph 61 hereto).

71. **Right to Negotiate to Purchase Building**. Provided no Breach under this Lease then exists and Lessee has not then exercised its Termination Right (as defined in Paragraph 76 below), during the Term of this Lease, Lessor shall cause its affiliate (the fee owner of the Building), prior to entering into a binding purchase agreement to sell the Building and the legal parcel on which the Building is located to any third party, to first offer in writing to negotiate to sell the Building to Lessee (the "**Purchase Negotiation Notice**"). On or before the date which is ten (10) business days after Lessee's receipt of the Purchase Negotiation Notice (the "**Purchase Negotiation Election Date**"), Lessee shall deliver written notice to Lessor ("**Lessee's Purchase Election Notice**") pursuant to which Lessee shall have the one-time right to elect either to: (i) enter into good faith negotiations with Lessor regarding the terms of the purchase of the Building; or (ii) decline to enter into negotiations to purchase the Building. If Lessee elects to enter into good faith negotiations for the purchase of the Building, Lessee and Lessor shall negotiate in good faith for a period of thirty (30) days following Lessor's receipt of Lessee's Purchase Election Notice (the "**Purchase Negotiation Phase**"). If Lessee and Lessor are unable to reach agreement on the terms of the purchase of the Building during the Purchase Negotiation Phase or if Lessee does not respond in writing to the Purchase Negotiation Notice by the Purchase Negotiation Election Date. Lessee shall be deemed to have elected not to enter into negotiations with Lessor to purchase the Building. If Lessee elects not to enter into negotiations to purchase the Building or if Lessor and Lessee have failed to reach agreement on the terms of such purchase during the Purchase Negotiation Phase, then such right shall lapse, time being of the essence with respect to the exercise thereof (it being understood that Lessee's right hereunder is a one-time right only), and Lessor may sell the Building to third parties on such terms as Lessor may elect in Lessor's sole discretion. Lessee may not exercise its rights under this Paragraph 71, if a Breach exists or the original Lessee (or an Affiliate of Lessee or Permitted Transferee) is not then occupying at least seventy-five percent (75%) of the Premises and the remaining twenty-five (25%) is not then occupied by a valid subtenant. Lessee's rights under this Paragraph 71 shall terminate if: (i) this Lease or Lessee's right to possession of the Premises is terminated; (ii) Lessee (or an Affiliate of Lessee or Permitted Transferee) is no longer physically occupying the Premises and operating for business therein; or (iii.) Lessee assigns any of its interest in this Lease or sublets more than twenty-five percent (25%) of the Premises (other than in accordance with Paragraph 61 hereto).

72. **Remeasurement.** Within ten (10) business days following the Commencement Date each of Lessor and Lessee shall have the right to cause its architect or consultant to measure the actual square feet of rentable area within the Premises and Building in accordance with the rentable standards set forth in ANSI/BOMA Z65.1-1996, as promulgated by the Building Owners and Managers Association **("BOMA Standard"),** and all provisions of this Lease which are dependent upon the number of square feet *(e.g;* Base Rent. Lessee's Share) shall be appropriately adjusted.

73. **PV on the roof of the Building.** Lessee shall have the right to put PowerGuard (Photovoltaic) ["**PV Equipment"]** on the roof of the Premises to support Lessee's electrical use of the Premises in a manner that preserves the roof condition and Lessor's roof warranty. Lessee shall also have the right to solicit photovoltaic or any other products to other tenants and Lessor with such rights covering the entire roof top. Lessee shall be responsible for obtaining all necessary permits for its PV Equipment. In order to preserve its roof warranty. Lessor may require that Lessee utilize Lessor's roofing contractor in performing any rooftop penetrations to which Lessor has consented in writing. Lessee shall be responsible for all costs relating to equipment installation, maintenance, utilities and removal of such equipment, including without limitation the repair of any damage to the roof, the Premises or the Building caused by such installation, operation, maintenance and removal. Lessee shall promptly repair any such damage or Lessor may elect to do so at Lessee's cost. With Lessor's approval as to location and manner of installation of the PV Equipment, which shall not be unreasonably withheld, conditioned or delayed, Lessee shall be entitled to install, connect, run and maintain wiring within the Building ("**Wiring**") which shall be reasonably located so as not to interfere with other tenants. Subject to compliance with Applicable Requirements and Lessor's reasonable rules and regulations, Lessee may access the roof to show the PV Equipment to customers and potential customers. Upon vacating the Premises. Lessee shall remove any PV Equipment and Wiring installed pursuant to this Paragraph 73 and shall restore the roof to substantially its condition prior to installation of Lessee's equipment described herein, reasonable wear and tear and casualty damage excepted. Lessee shall indemnify, defend and hold Lessor harmless from any and all claims, damages, liabilities or costs (including without limitation reasonable attorneys' fees) incurred by or asserted against Lessor arising out of Lessee's installation, maintenance, use or removal of the PV Equipment and/or the Wiring,

74. **Intentionally Deleted.**

75. **Lessee's Self-Help**. (a) Subject to Paragraph 75(b) below, if Lessor fails to make any repairs or to perform any maintenance required of Lessor pursuant to the terms of the Lease and within Lessor's reasonable control, and such failure shall persist for an unreasonable time (not less than thirty (30) days except in the event of an Emergency) after Lessee's written notice to Lessor of the need for such repairs or maintenance (the "**Initial Repair Notice**") is given to Lessor and unless Lessor has commenced such repairs or maintenance during such period and is diligently pursuing the same, Lessee

may (but shall not be required to) following a second written notice (which notice shall have a heading in at least 14-point type, bold and all caps **"FAILURE TO RESPOND SHALL RESULT IN TENANT EXERCISING SELF-HELP RIGHTS")** and Lessor's failure to commence repairs within five (5) days after receipt of such second notice, perform such repairs or maintenance in accordance with the provisions of this Lease governing Lessee's repairs and Alterations and Lessor shall reimburse Lessee in an amount not to exceed $50,000.00 for the reasonable costs and expenses therefor within thirty (30) days after Lessor's receipt of appropriate invoices and back-up documentation. Notwithstanding the foregoing, in the event of an Emergency, which is defined as an event which poses the threat of imminent, severe damage to Lessee's customers or employees or Lessee's personal property, then Lessee may pursue such repairs if Lessee is unable to notify Lessor of such Emergency condition after using diligent efforts to notify Lessor, provided that the reasonable cost of such repairs does not exceed $50,000.00. All work performed by Lessee or its agents in accordance with this Paragraph 75 must be performed: (i) at a reasonable cost, and rate, and (ii) so as to minimize interference with the rights of other tenants to use their premises in the Building.

(b) Notwithstanding the foregoing, if following Lessor's receipt of the Initial Repair Notice, Lessor notifies Lessee in writing that Lessor disagrees with Lessee's determination of the necessity and/or the scope for such non-emergency maintenance or repairs (the **"Dispute** Notice"), then Lessor and Lessee shall promptly meet and attempt to agree on the nature of the maintenance or repair, if any. If within thirty (30) days of Lessor's delivery of the Dispute Notice to Lessee, the parties are unable to agree on the necessity and/or scope for such maintenance or repair, then the matter shall be resolved by arbitration as set forth herein; provided, however, that if the failure to perform such maintenance or repair would result in a material interference with the operation of Lessee's business in the Premises, then Lessee shall be permitted to complete such work of maintenance or repair and the cost of such work shall be the subject of the arbitration. Upon the written demand of either party hereto, any controversy or dispute arising out of the matters set forth in this Paragraph 75 shall be settled by arbitration. The arbitration shall be conducted in accordance with the then existing rules of the American Arbitration Association. The controversy or dispute shall be submitted to three (3) arbitrators, each of whom shall have at least ten (10) years' experience in the real estate business. The party that demands arbitration shall include in its written demand for arbitration a designation of the person that party chooses as its arbitrator. Within ten (10) days after receipt by the other party of the written demand for arbitration, the other party shall give written notice of the choice of its arbitrator. The third arbitrator shall be designated by the two (2) previously designated arbitrators (or, if they cannot agree on the third arbitrator within ten (10) days after the designation of the second arbitrator, the third arbitrator shall be designated by the American Arbitration Association at the request of either party). If the party receiving the written demand for arbitration does not notify the other party of the designation of its arbitrator within ten (10) days after receiving notice of the demand for arbitration, then the arbitrator that has already been designated shall have the right to proceed ex parte with the arbitration, and the parties hereby expressly so empower such arbitrator. If there is one (1) arbitrator, his decision shall be binding. If

there are three (3) arbitrators, the decision of any two (2) shall be binding. Judgment on any award rendered pursuant to the arbitration may be entered in any Federal or California State court having jurisdiction over the Premises. Each party shall bear the costs and fees of its arbitrator. The costs and fees of the third arbitrator shall be shared equally by the parties.

76. **Early Termination Right.** (a) So long as PowerLight becomes a wholly-owned subsidiary of Sun Power Corporation in calendar year 2007 and continues to be an affiliate or division of Sun Power Corporation or any successor in interest to Sun Power Corporation, Lessee shall have a right to terminate this Lease (the **"Termination Right"**), to be effective as of the last day of any calendar month commencing on and following the seventy-sixth (76th) full calendar month following the Commencement Date (the **"Early Termination Date"**), by delivering to Lessor not less than nine (9) months prior written notice (the **"Termination Notice"**), and provided further, that concurrently with delivery of the Termination Notice to Lessor, Lessee pays to Lessor a **"Termination Payment"** equal to the sum of (A) the unamortized portions of the Standard Base Building Costs and any Additional Allowance paid by Lessor, plus (B) the unamortized portion of leasing commissions, and legal fees paid by Lessor on account of this Lease, plus (C) an amount equal to nine (9) months Base Rent in effect for the month ending on the Early Termination Date (the **"Termination Rental Sum"**). The amortization calculation shall be computed as of the last day of the period covered by the Termination Rental Sum. For example, if the Early Termination Date is the last day of the 80th month and the Termination Rental Sum covers Base Rent through the 89th month, then the amortization calculations shall be as of the end of the 89th month. Lessor shall use good faith efforts to re-let the Premises following receipt of the Termination Notice. If Lessor is able to lease the Premises or any portion thereof to a third party and such replacement tenant begins paying rent for any portion of the period commencing on the day after the Early Termination Date through the date which is nine (9) months thereafter (the **"Overlap Period"**), then PowerLight shall be entitled to a refund equal to the difference between the Termination Rental Sum and the amount of rental received by Lessor from such third party during the Overlap Period. Lessor shall promptly notify Lessee if Lessor enters into a lease with a replacement tenant or tenants for all or a portion of the Premises (the **"Reletting Notice"**) and such notice shall indicate the date on which Lessor shall require Lessee to surrender possession of the Premises or any portion thereof to Lessor (the **"Required Surrender Date"**) if other than the Early Termination Date. In addition if Lessor does not require that Lessee surrender possession of all the Premises to Lessor on the Early Termination Date in order to prepare the Premises for occupancy by such replacement tenant or tenants, Lessee may elect by written notice to Lessor delivered within thirty (30) days of Tenant's receipt of the Reletting Notice to remain in the Premises for the period between the Early Termination Date and the Required Surrender Date, such holdover to be on the same terms and conditions of the Lease with Base Rent payable at the then applicable Base Rent rate. If Lessee delivers a valid Termination Notice together with the Termination Payment then the Lease shall terminate at 11:59 p.m. on the Early Termination Date, subject to Lessee's right to remain in the Premises after the Early Termination Date as provided herein. Lessee covenants and agrees to surrender full and complete possession of the Premises, broom clean, without debris, with all of Lessee's personal property, inventory and trade fixtures removed and all damage caused by the removal repaired.

(b) Subject to Lessee's right to remain in the Premises after the Early Termination Date as provided in Paragraph 76(a) above, if Lessee shall fail to deliver possession of the Premises on or before the Early Termination Date, Lessee shall be deemed a holdover tenant with respect to the Premises from and after such date in accordance with the provisions of Paragraph 26 of this Lease. Lessee's rights under this Paragraph 76 shall terminate if (1) Lessee assigns any of its interest in this Lease, or sublets any portion of the Premises other than to a Permitted Transferee, or (2) Lessee fails to timely exercise the Termination Right under this Paragraph 76, time being of the essence with respect to Lessee's exercise thereof. Lessee may not exercise its rights under this Paragraph 76 if a Breach exists.

77. **Parking.** The parties hereto acknowledge that a portion of Lessee's parking allotment will be located at that certain parking lot owned by the Richmond Community Redevelopment Agency. Such parking lot is located on Harbour Way South, Richmond, California, immediately south of Terminal 3 (the **"RDA Lot"**). As of the date hereof or promptly after the full execution of this Lease by Lessor and Lessee, Lessor shall enter into an agreement with the Richmond Community Redevelopment Agency pursuant to which Lessor shall rent the RDA Lot. During the initial Term of this Lease, Lessee's use of the RDA Lot shall be free of charge.

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78. **Security Services.** Lessor shall provide Building security system plus 24 hour security guard services which shall be part of the Common Area Operating Expenses. Such service shall include escort service to all parking lots during evening (i.e., after dark) hours. Lessee shall provide its own security within the Premises.

EO	TD BL
Lessor's Initials	Lessee's Initials

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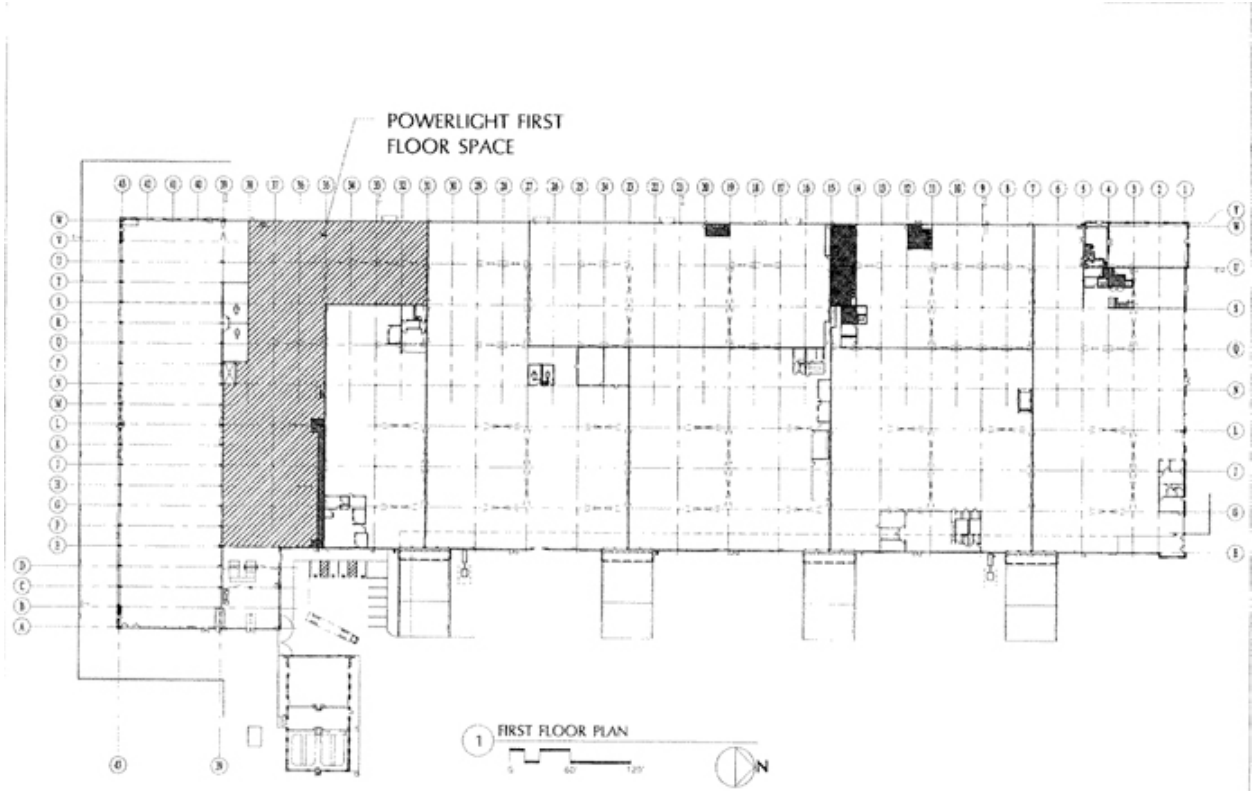
EXHIBIT A

Outline of Premises

[Must show Expansion Space A & B]



MARCY WONG
& DONN LOGAN
ARCHITECTS
800 Bancroft Way
Berkeley, CA 94710
(510) 843-0936 phn
(510) 843-0949 fax
office@wonglogan.com

Developer
Orton
Development, Inc.
3049 Research Dr.
Richmond, CA 94806
tel: (510) 428-0800

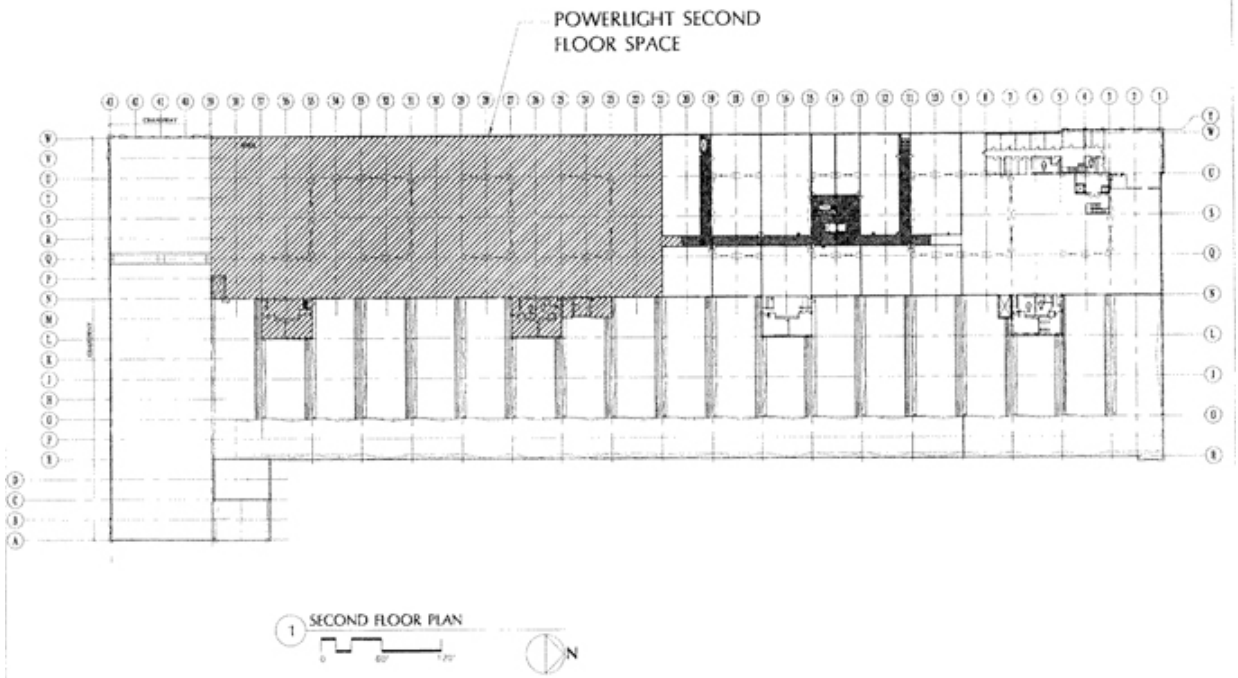
POWERLIGHT

FORD ASSEMBLY BUILDING

1414 HARBOUR WAY SOUTH
RICHMOND, CA 94806

DATE 12 DEC., 2006
JOB 0313
SHEETS A1, A2
SCALE 1" = 120'

EXHIBIT A
1 OF 2



MARCY WONG
& DONN LOGAN
ARCHITECTS
800 Bancroft Way
Berkeley, CA 94710
(510) 843-0986 phn
(510) 843-0949 fax
office@wonglogan.com

Developer:
Orton
Development, Inc.
3049 Research Dr.
Richmond, CA 94806
tel: (510) 428-0830

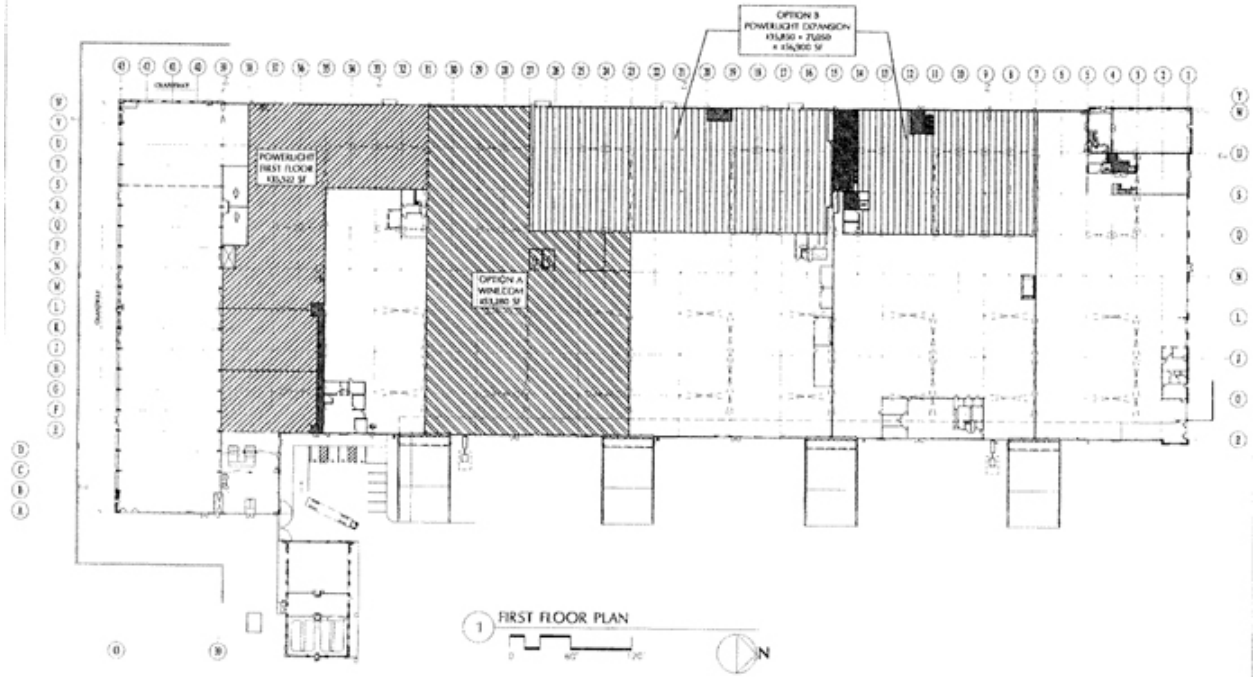
POWERLIGHT

FORD ASSEMBLY BUILDING

1414 HARBOUR WAY SOUTH
RICNMOND, CA 94806

12 DEC. 2008

EXHIBIT A
2 OF 2



MARCY WONG
& DONN LOGAN
ARCHITECTS
800 Bancroft Way
Berkeley, CA 94710
(510) 843-0916 phn
(510) 843-0949 fax
office@wonglogan.com

Developer
Orton
Development, Inc.
3049 Research Dr.
Richmond, CA 94806
tel (510) 428-0800

POWERLIGHT

FORD ASSEMBLY BUILDING

1414 HARBOUR WAY SOUTH
RICHMOND, CA 94806

10 NOV. 2006

EXHIBIT A

Exhibit B
BUILDING STANDARD WORK LETTER

This Building Standard Work Letter (**"Work Letter"**) sets forth the terms and conditions relating to the construction of the tenant improvements in the Premises. Lessor's contractor shall conduct all tenant improvement work described in this Work Letter.

SECTION I
LESSOR'S WORK

1.1 Lessor's Work. Prior to tendering possession of the Premises to Lessee, Lessor, at Lessor's cost, shall design and construct the following improvements in the Building and Premises (collectively, the **"Lessor's Work"**): (i) the Base Building improvements, as described in *Exhibit B-l* and *Exhibit B-2* attached hereto; and (ii) those tenant improvements (the **"Tenant Improvements")** and exclusions shown on the preliminary space plans attached hereto as *Exhibit B-2* and, if Lessee so elects, the items of work listed as Tenant Improvements and Exclusions on *Exhibit B-3*, The preliminary space plans attached hereto as *Exhibit B-2* are hereby approved by Lessor and Lessee (the **"Space Plans"**). For purposes of this Lease, the cost of Lessor's Work to be performed in the Premises is divided into three categories:

(i) ***"Standard Base Building Costs"*** means all costs of designing and installing (including without limitation architecture fees, permit fees, labor, construction and supply costs and the contractor's overhead and general conditions, contingencies, and any other hard and soft costs) the base building improvements described on *Exhibit B-l* using the standards, materials, finishes and systems described on *Exhibit B-2* under the column headed Building Standards. Lessor shall be responsible for all Standard Base Building Costs even if the actual cost exceeds the amount estimated or budgeted by Lessor as of the date of this Lease.

(ii) ***"Above-Standard Base Building Costs"*** means all costs of designing and installing any base building improvements described in *Exhibit B-l* and *Exhibit B-2* but only to the extent such costs exceed Lessor's Standard Base Building Cost. Lessor shall credit Tenant with the amount of the Standard Base Building Cost with respect to each line item of work if Lessee elects to instead have an above-standard building item installed in the Premises. The cost of each such item shall be established as of the date of approval of the working drawings.

(iii) ***"Tenant Improvement Costs"*** means all costs of designing and installing the Tenant Improvements and the Exclusions listed on *Exhibit B-3.*

In the event the parties disagree as to whether a cost is a Standard Base Building Cost, an Above-Standard Base Building Cost or a Tenant Improvement Cost, the parties agree that

(a) Lessor shall not delay the design and construction of any of Lessor's Work on account of such dispute but shall proceed with due diligence to complete Lessor's Work, and (b) either party may submit the matter to non-binding mediation with J.A.M.S. or other mediation service acceptable to both parties.

1.2 Working Drawings. On or before the date which is forty-five (45) days following the date on which this Lease is fully executed by Lessor and Lessee, Lessor shall cause to be prepared working drawings (**"Working Drawings"**) of the Lessor's Work to be installed in the Premises pursuant to the Space Plans and deliver the same to Lessee for its review and approval (which approval shall not be unreasonably withheld, delayed or conditioned). Lessee shall notify Lessor whether it approves of the submitted Working Drawings within ten (10) business days after Lessor's submission thereof. If Lessee disapproves of such Working Drawings, then Lessee shall notify Lessor thereof specifying in reasonable detail the reasons for such disapproval, in which case Lessor shall, within five (5) business days after such notice, revise such Working Drawings in accordance with Lessee's reasonable objections and submit the revised Working Drawings to Lessee for its review and approval. Lessee shall notify Lessor in writing whether it approves of the resubmitted Working Drawings within five (5) business days after its receipt thereof. This process shall be repeated until the Working Drawings have been finally approved by Lessor and Lessee. If Lessee fails to notify Lessor that it disapproves of the initial Working Drawings within ten (10) business days (or, in the case of resubmitted Working Drawings, within five (5) business days) after the submission thereof, then each day after such time period shall constitute a day of Tenant Delay (as defined below).

1.3 Approved Working Drawings. As used herein. **"Approved Working Drawings"** shall mean the final Working Drawings approved by Lessor and Lessee, as amended from time to time by any approved changes thereto. Lessor shall provide a final copy of the Approved Working Drawings to Lessee no later than the date which is twenty (20) days following the approval of the Approved Working Drawings by Lessor and Lessee. Lessee shall make no changes or modifications to the Approved Working Drawings without the prior written consent of Lessor, which consent may be withheld in Lessor's sole discretion if such change or modification would directly or indirectly delay the "Substantial Completion" of Lessor's Work, as that term is defined in Section 4.1 of this Work Letter, or increase the cost of designing or performing Lessor's Work. Lessor shall hire an established general contractor who shall put subcontractors through a competitive bid process reviewed by Lessee's project manager and such hiring process shall include the general contractor's ability to meet Lessee's reasonable timing and budget requirements. Lessor's Work shall be performed in compliance with all Applicable Requirements.

SECTION *2*
COSTS

2,1 Prior to commencing Lessor's Work, Lessor shall competitively bid Lessor's Work to three (3) subcontractors approved by Lessor for each of the major

trades. Lessor shall provide copies of each bid to Lessee. Lessee shall be allowed to review the submitted bids from such subcontractors and to make suggestions to Lessor with respect to each such bid; provided such suggestions are delivered to Lessor no later than the date which is three (3) business days following receipt of such bid(s) by Lessee.

2.2 Following Lessee's delivery of written request therefor, Lessor shall contribute an additional sum (the **"Additional Allowance")** toward additional permanent leasehold improvements Lessee elects to install in the Premises in excess of the Standard Base Building Costs; provided, however, that Lessor reserves the right to refuse to make available Additional Allowance funds to pay for the cost of certain elements of the Tenant Improvements which will only benefit PowerLight Corporation and not subsequent tenants of the Premises, as reasonably determined by Lessor. The amount of the Additional Allowance actually utilized by Lessee shall be amortized as additional Base Rent over the initial Term at 9% per annum, in the same manner as a loan having equal monthly payments of principal and interest and such amount shall be deemed additional rent due hereunder. Lessee shall deliver written notice to Lessor **("Additional Allowance Notice"**) of the amount of the requested Additional Allowance which shall itemize the components of the Above-Standard Base Building Costs and the Tenant Improvement Costs and/or the cost of the Exclusions which Lessee would like to fund through the Additional Allowance. Lessor shall notify Lessee of whether or not its has elected to fund the entire amount of the Additional Allowance or some portion thereof (the **"Lessor's Allowance Notice"**) within ten (10) days of Lessor's receipt of the Additional Allowance Notice and shall fund the Additional Allowance in the amount indicated in the Lessor's Allowance Notice within ten (10) days of delivery of Lessor's Allowance Notice provided Lessee effects the corresponding increase in the Letter of Credit as provided in Paragraph 56(a) of the Lease. Within ten (10) days after Lessor's request, Lessee shall execute and return an amendment to this Lease modifying the Base Rent accordingly. If Lessee fails timely: (i) to make its election regarding utilization of the Additional Allowance by timely delivery of the Additional Allowance Notice; or (ii) to execute and return the required lease amendment, then Lessor shall automatically be released from its obligation to contribute the Additional Allowance. If, for any reason, less than all of the Term remains at the time the required lease amendment is executed and returned to Lessor, then Lessee shall, upon demand, promptly pay all amortization payments (including interest) which would have been payable for the elapsed portion of the Term through the month in which such lease amendment is actually so executed and returned. Any failure by Lessee to make any payments required under the foregoing provisions shall constitute a Breach under the Lease. Any costs for Lessor's Work in excess of the amount of the Standard Base Building Costs and the Additional Allowance (if any), including without limitation any Above-Standard Base Building Costs, shall be payable by Lessee within ten (10) business days of Lessee's receipt of documentary evidence therefor.

SECTION 3
INTENTIONALLY OMITTED.

SECTION 4
COMPLETION OF THE LESSOR'S WORK

4.1 Substantial Completion. For purposes of this Lease, **"Substantial Completion"** of the Premises shall occur upon: (i) the completion of Lessor's Work in the Premises pursuant to the Approved Working Drawings as certified by Lessor's architect, with the exception of any punch list items and any tenant fixtures, workstations, built-in furniture, or equipment to be installed by Lessee or under the supervision of the contractor, (ii) the issuance of a certificate of occupancy or temporary certificate of occupancy from the relevant local governmental authority for the Premises, (iii) the date on which the Premises is sufficiently finished for Lessee so that the warehouse portion of the Premises shall be secure and accessible for shipping/receiving, and (iv) all essential utilities (e.g., electrical power, gas, telephone, water, sewage, and trash collection) are readily available to the Premises. Notwithstanding the foregoing, Lessee acknowledges that Lessee is solely responsible for contracting with the relevant utility company for the provision of all utilities to the Premises in accordance with the terms of the Lease.

4.2 Tenant Delay. As used herein, a **"Tenant Delay"** shall mean any delay in the completion of Lessor's Work that occurs directly (a) because of Lessee's failure to timely deliver or approve any required documentation such as the Working Drawings, (b) because Lessee fails to timely furnish any information or deliver or approve any required documents such as the Working Drawings (whether preliminary, interim revisions or final), pricing estimates, construction bids, and the like, (c) because of any change by Lessee to the Space Plans or Approved Working Drawings, (d) because Lessee fails to attend any previously scheduled meeting with Lessor, Lessor's architect, any design professional, or any contractor, or their respective employees or representatives, as may be required or scheduled hereunder or otherwise necessary in connection with the preparation or completion of any construction documents, such as the Space Plans, Working Drawings, or in connection with the performance of Lessor's Work, (e) because of any specification by Lessee of materials or installations in addition to or other than Lessor's standard finish-out materials, including without limitation, the Tenant Improvements and/or Exclusions, or (f) because Lessee otherwise delays completion of Lessor's Work. Lessor shall promptly notify Lessee of any acts, omissions or conditions which Lessor alleges will cause a Tenant Delay. If any Tenant Delays occur, then the date on which Lessor's Work is deemed to be Substantially Completed hereunder shall be accelerated one day for each day of Tenant Delay and the Commencement Date shall be accelerated one day for each day of Tenant Delay.

SECTION 5
MISCELLANEOUS

5.1 Intentionally Deleted.

5.2 Lessee's Representative. Lessee has designated Renee Wise as its sole representative with respect to the matters set forth in this Work Letter, who, until further notice to Lessor, shall have full authority and responsibility to act on behalf of the Lessee as required in this Work Letter.

5.3 Lessee's Agents. Any subcontractors, laborers, materialmen. and suppliers retained directly by Lessee shall conduct their activities in and around the Premises, Building and the Project in a harmonious relationship with all other subcontractors, laborers, materialmen and suppliers at the Premises, Building and Project and, if necessary. Lessee shall employ union labor to achieve such harmonious relations.

5.4 Time of the Essence in This Work Letter. Unless otherwise indicated, all references herein to a "number of days" shall mean and refer to calendar days. In all instances where Lessee is required to approve or deliver an item, if no written notice of approval is given or the item is not delivered within the stated time period, at Lessor's sole option, at the end of such period the item shall automatically be deemed approved or delivered by Lessee and the next succeeding time period shall commence.

[Remainder of Page Intentionally Left Blank}

5.5 Lessee's Lease Default. Notwithstanding any provision to the contrary contained in this Lease, if a Breach (as defined in Paragraph 13.1 of the Lease), or a material default by Lessee under this Work Letter, has occurred at any time on or before the Substantial Completion of the Premises, then (i) in addition to all other rights and remedies granted to Lessor pursuant to the Lease, Lessor shall have the right to cause the contractor to cease the construction of the Premises (in which case, Lessee shall be responsible for any delay in the Substantial Completion of the Premises caused by such work stoppage), and (ii) all other obligations of Lessor under the terms of this Work Letter shall be forgiven until such time as such default is cured pursuant to the terms of the Lease.

EO
Lessor's Initials

TD BL
Lessee's Initials

5.5 Lessee's Lease Default. Notwithstanding any provision to the contrary contained in this Lease, if a Breach (as defined in Paragraph 13.1 of the Lease), or a material default by Lessee under this Work Letter, has occurred at any time on or before the Substantial Completion of the Premises, then (i) in addition to all other rights and remedies granted to Lessor pursuant to the Lease, Lessor shall have the right to cause the contractor to cease the construction of the Premises (in which case, Lessee shall be responsible for any delay in the Substantial Completion of the Premises caused by such work stoppage), and (ii) all other obligations of Lessor under the terms of this Work Letter shall be forgiven until such time as such default is cured pursuant to the terms of the Lease.

[illegible]

Lessee's Initials

Lessor's Initial

INITIALS

INITIALS

5.5 Lessee's Lease Default. Notwithstanding any provision to the contrary contained in this Lease, if a Breach (as defined in Paragraph 13.1 of the Lease), or a material default by Lessee under this Work Letter, has occurred at any time on or before the Substantial Completion of the Premises, then (i) in addition to all other rights and remedies granted to Lessor pursuant to the Lease, Lessor shall have the right to cause the contractor to cease the construction of the Premises (in which case, Lessee shall be responsible for any delay in the Substantial Completion of the Premises caused by such work stoppage), and (ii) all other obligations of Lessor under the terms of this Work Letter shall be forgiven until such time as such default is cured pursuant to the terms of the Lease.

TD BL **EO**

Lessee's Initials Lessor's Initial

TD BL EO

INITIALS INITIALS

 FORM MTM-5-5/05E

Exhibit B-l
BASE BUILDING

The type of design and finishes as specified below utilizes sustainable, recyclable and salvageable materials and the cost of all items on this Exhibit B-l shall be deemed “Standard Base Building Costs’; unless otherwise noted.

1. The Building structure will be designed and constructed for a minimum floor load required by applicable building codes and regulations of 100 lbs. per square foot. Lessor shall provide Lessee with structural calculations of representative floor areas to conform compliance.
2. Construction of restroom facilities in the Premises and the Building sufficient to accommodate Lessee’s estimated employee population of 350 people as required by applicable building codes and one additional unisex restroom adjacent to restrooms located on the second floor.
3. The Premises shall include electrical and telephone closets, employee kitchens and lunchroom/cafe with millwork and industrial-level appliances appropriate to the population and size of space. Premises will include several conference rooms with one Level 5 finished wall to accommodate Walltalkers white boards in each room, two with wet bars, one located on the ground floor (signature conference room) and others located throughout the second floor office space. Premises shall include locker rooms with showers (minimum 4 showers with two HC similar to Title 9 shower) and restrooms in the ground floor warehouse space. Two additional executive restrooms shall be provided in conjunction with a signature conference room located on the first floor of the Premises. Kitchenettes with millwork shall also be constructed in the second floor offices. Lessor and Lessee shall agree upon all finishes for bathrooms, locker rooms, kitchen and lunch rooms, wet bars and kitchenettes. Standard Base Building Costs shall include the cost of reasonable, attractive commercial grade, and Lessee shall be responsible for upgrades from that standard all as further defined on the spreadsheet attached as *Exhibit B-2.* All such facilities shall comply with all Applicable Requirements, including the ADA.
4. Perimeter walls and interior beams may be utilized for grounded electrical, data communications and telephone wiring installations within the Premises. Lessee shall have the option for power poles for power distribution or distributed power in the floor. Lessee shall be allowed a reasonable number of first and second story floor vertical and horizontal penetrations and chases in the floors and cores for power and data cabling as identified during the working drawings stage of the project.
5. The Life Safety system will be in accordance with the more stringent of NFPA 13 (Code for Life Safety) and the National Electrical Code or applicable national, state and local codes, including without limitation accessibility codes, and the

ADA, throughout the Building, including all corridors. It shall consist of sprinklers, smoke detectors, internal fire alarm and annunciator system, emergency lighting, self-illuminating exit signs, and extinguishers as required by applicable codes for core and shell protection and expandable to accommodate normal office use. The sprinkler system will have an approved water flow alarm connection and tamper-proof detection device, connected to a central monitoring service.

6. Electrical distribution will be provided to the main panel boxes for distribution throughout the Premises by Lessor. Electrical capacity for the Building and the Premises shall be adequate for Lessee's Agreed Use and pursuant to Lessee's specifications. Electrical capacity shall also apply to Lessee's server room. Power and lighting shall be in accordance with Lessee's specifications and may include 4 watts power, including 2 watts for lighting, per square foot. Installation of lighting for the office shall be T8 at 50' candled non-shadowed level with a Lessee specified fixture that provide 80% or greater uplighting, installation of 100' candles non-shadowed that are direct lit and installation of T5 high bay instant start ballast lighting in the warehouse, shipping and receiving and light assembly. Lessor and Lessee shall mutually agree upon all other lighting needs. Lessor and Lessee shall take into consideration the unique attributes of the space shall mutually agree upon all lighting needs. Lessor to provide entire building electrical system single line diagram detailed in accordance with generally accepted electrical symbols and information, clearly identifying Lessee's lighting and power panels, specifically identifying room location for Lessee reference. Upon completion of work, Lessor to turn over to Lessee copies of all electrical panel schedules as built and confirmation that all wall plate, wiremold, and lights j-box is accurately labeled referencing both the panel schedule and single line drawing.

7. HVAC: VAV with hot water re-heat system provided for standard normal office occupancy. System capable of expanding into multiple zones as required. Conditioned air for Lessee's use delivered to the space at a point selected by Lessor, for distribution by Lessor. Installation of VAV box, distribution ducts, and controls. Installation of separate air for Lessee's server room. HVAC shall be a custom-designed system taking into consideration all of the above details and the unique attributes of the space. Electrical/lighting/HVAC plan shall be part of the Working Drawings.

8. All elevators, parking, common areas, landscaping and roadways necessary for Lessee's use of, access to and egress from the Building will be completed and comply with all Applicable Requirements. The building standard elevator is a combination passenger & freight elevator made by Minnesota Elevator, Inc. with inside cab (platform) dimensions of 7'-0" x 8'-6". Installation of an internal stairway and an internal elevator within the Premises.

9. Lessee shall have its own meter(s). Standard Base Building Costs shall include the cost to separately meter the Premises. Lessor will provide any future adjacent tenant's use, function, and hours to determine shared electrical usage. Heating of water is not included within the building core.

10. Installation of a dedicated telephone or AT&T closet to create privacy between tenants and security of tenant's intellectual or customer information. Telephone service, as provided by the local utility, will be brought to Building main telephone room and Lessee's telephone closet in the Premises. Expansion of telecommunications throughout the Premises will be at Lessee's expense.

11. At Lessee's option, the floor will be improved by Lessor with a smoothed trowel finish for installation of glued-down carpet or carpet with pad. The floor will be finished in accordance with current AC1 Standard Specifications 117 and will be level to within 1/4" overall by a topping of Gyp-Crete 2000 or approved equivalent. Paint, floor and carpet quality and finish, which shall be a non-VOC paint and shall be agreed upon by Lessor and Lessee. Standard Base Building Costs shall include the cost of reasonable, attractive commercial grade as further defined in *Exhibit B-2*, and Lessee shall be responsible for upgrades from that standard.

12. Installation of provide two 2 inch conduits from MPOE for the Building to Lessee's telco/IT room.

13. Lessor shall complete landscaping and any common area renovations prior to the Commencement Date.

14. Installation of ventilation, electrical capacity and fan supporting R&D space in the Premises.

15. Installation of window treatments and shades, except on skylights, throughout the office space for glare, abatement, privacy.

16. Subject to regulatory approval, Standard Base Building Costs shall include the cost of a canopy covering the walkway to the entrance of the Premises as per Lessee's specifications.

17. Installation of grade level access, dry wall, appropriately sized electrical panel, electrical outlets every 40' on perimeter walls, ventilation, heaters, and code bathrooms on the first floor of the Premises.

18. In the non-office areas, the installation of 1 heater & 1 air handler per bay similar to the Title 9 premises in the Building; watertight windows and doors; subject to City of Richmond, State Historic Preservations Office and NPS approval, construction of a loading dock and a fully functional roll-up door subject to the size of grade door which the City of Richmond. State Historic

Preservations Office and NPS will allow; all holes and cracks in floors greater than 1/4 inch filled and repaired; and solid wood internal doors in hollow metal frames with commercial grade hardware.

19. In the office areas, installation of hard lid or drop ceilings; watertight building exterior doors and windows with Thermoveil shade cloth or similar treatments; fire rated demising walls with level 3 drywall, finished and painted; interior walls framed with level 3 finished to 10' above finished floor with metal stud/drywall construction, painted; all walls between offices and conference rooms to have a minimum 36 STC rating; solid wood interior doors installed in hollow metal frames with glass side light and commercial grade hardware; kitchen area to include custom grade (WIC) cabinets VCT flooring; stainless steel or Vetraxzo countertops and sink at Lessor's option, hot and cold water; commercial grade appliances with all connections; eight feet premium grade wall cabinets hung; balanced HVAC sufficient to maintain temperatures between 70°F and 76°F in private offices and other rooms; commercial grade fluorescent lighting fixtures sufficient to provide 50 candlefoot at all locations in the office areas of the Premises,
20. Pentangular openings between the Premises finished with an approximately 42 inch high wall and window above. The Pentangles between the Premises and neighboring spaces will be made into one hour level 3 gypboard finish. .
21. Raised floor at executive area allowing for vision (including stairs, rails, structural, AFS, and leveling); Adequate hot water at all points of use sized to accommodate employee load.
22. Structural supports of framed walls shall be concealed where possible; top of walls exposed to open office shall be finished similar to walls; walls and ceiling shall be insulated in new interior construction.
23. Carpet and stained concrete floors for office, broomswept clean for warehouse
24. Bathroom, porcelain tile wainscote, stainless partitions, commercial fixtures
25. Commercial grade Locks and Hardware. Schlage or equivalent to code.
26. Lessor to provide single line electrical plan of space from Utility connection to Main distribution panel, to Lessee's subpanels.
27. Data and Telecommunications: installation of dedicated phone or AT&T closet to create privacy between tenants and security of Lessee's intellectual or customer information will be clearly identified. Telephone service, as provided by the local utility, will be brought to Building main telephone room and Lessee's telephone closet in the Premises.

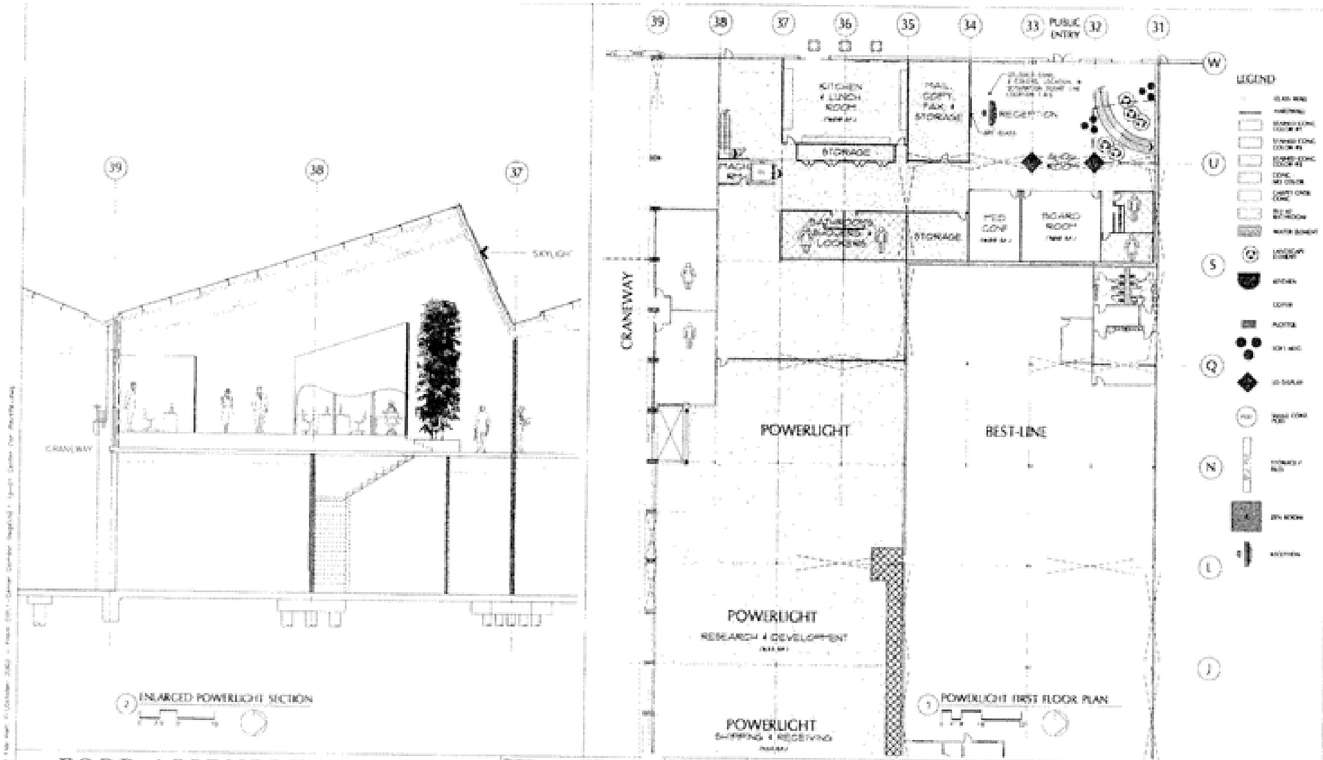
28. Floor cut for feature staircase.

29. Roof work per that certain report prepared by State Roofing Systems, Inc. and dated November 3, 2006 or equivalent roof work as reasonably determined by Lessor, excluding any work necessary for the installation of the PV Equipment,

30. Water shall be readily available and in close proximity to the location of planters in the Premises

Exhibit B-2

Lessee’s Approved Space Plan



FORD ASSEMBLY BUILDING

1414 HARBOUR WAY SOUTH
RICHMOND, CALIFORNIA 94804

Orton Development, Inc.

MARCY WONG & DONN LOGAN ARCHITECTS

POWERLIGHT - DRAFT
1ST FLOOR PLAN - SOUTH ENTRY

POWERLIGHT CONCEPT 115
12 DECEMBER 2006

A2.2


POWERLIGHT SECOND FLOOR PLAN
ENLARGED POWERLIGHT SECTION LOOKING WEST
LEGEND
FORD ASSEMBLY BUILDING
1414 HARBOUR WAY SOUTH
RICHMOND, CALIFORNIA 94804
Orton Development, Inc.
MARCY WONG & DONN LOGAN ARCHITECTS
POWERLIGHT - DRAFT 2ND FLOOR PLAN
A2.4

Exhibit B-2

Landlord shall build the improvements substantially similar to the first and second floor space plans in this Exhibit B-2 and the notes below. For certain items, however. Tenant may ask LL to install upgrades. Tenant shall receive credit for the building standard and be responsible for the difference between the actual cost and the building standard credit.

Location	Item	Area	Building Standard	Credit Value	Upgrades
First Floor		35,522 sqft			
Office Area		13,280 sqft			
	HVAC		VAV forced air	$11 sqft	Tenant Choice
Executive conf rooms					
	Ceiling		Drop Ceiling	$3.50 sqft	Vent Wood Ceiling
	Glass wall		10’ metal stud	$10 sqft	Glass Walls per tenant choice
	Glass door		door with side vane	$500 each	Glass door of Tenant Choice
	Glass wall shade		None	none	Tenant Choice
	Floor		Carpet	$25 yard	Tenant Choice
	Lighting		T-8	Per MM quote	Tenant Choice
Executive Bathrooms					
	Design and buildout		Building standard with stainless steel partitions	Per Dalzell quote	Tenant Choice
Bathroom, showers, locker rooms					
	Design and buildout		Building standard similar to Bestline Bathroom		
	Showers		2 HC similar to Title 9 shower		
Kitchen/Break room					
	Ceiling		Existing		
	Walls		6” thick, framed w/ metal studs, 5/8” Gyp Board - taped and painted	$10 sqft	
	Floor		stained concrete		
	Doors		Solid - wood	$400 each	
	Cabinetry		36 linear ft of base and wall cabinets - Custom grade	$200 ft	Additional cabinets
	Window Treatment		ThermoVeil Shadecloth or similar - 5% openness	$22 sqft	Motorize
	Lighting		T-8		
Staircases					
	Engineering and installation		Historic staircases	$17,000 each	Custom design and build
Circulation					
	Floor		Stained concrete or carpet	$25 yd	Scored concrete
Light Industrial		22,242 sqft.			
	Ceiling		Existing ceiling		
	Floor		Broom swept		
	Door to office		Solid - wood	$400 each	
	Window Treatment		None		
	HVAC		Reznor (1 per bay)		
	Lighting		High bay HID warehouse fixtures		
	Ventilation		Powered exhaust Fan, 1 per bay		
	Approx. 12 foot upward acting door or similar on E side				

Notes:

1) Landlord will perform all tenant improvement work. Landlord will pay for Building Standard finishes and fixtures. No furnishings will be provided by Landlord. The costs of all fixtures and finished upgraded from Building Standard will be tenants financial.

2) Custom grade cabinets as per Woodworking Institute.

Exhibit B-2

Landlord shall build the improvements substantially similar to the first and second floor space plans in this Exhibit B-2 and the notes below. For certain items, however. Tenant may ask LL to install upgrades. Tenant shall receive credit for the building standard and be responsible for the difference between the actual cost and the building standard credit.

Location	Item	Area	Building Standard	Credit Value	Upgrades
Second Floor		75,000 sqft			
Individual offices and other rooms					
	HVAC		Custom	$ 11 sqft	
	Ceiling		Hard lid	$ 3.50 sqft	Vent Wood Ceiling
	front walls		10’ metal frame	$ 10 sqft	Glass walls, curved walls
	Doors		Wood door with side pane	$ 600 each	Tenant choice
	Floor		Carpet or stained concrete	$ 25 yard	Bamboo, scored concrete
	Window treatment		ThermoVeil Shadecloth or similar - 5% openness	$ 22 sqft	Motorized
	Lighting		T-8 level		
	Planters		none		Tenant design
Bathrooms					
	Ceiling		Existing or hard lid		
	Floor		Green matte tile		
	Doors		Solid - wood	$ 400 each	
	Partitions		Stainless Steel		
	HVAC		Building Code		
	Fixtures		American Standard, porcelain wall mounted		
	Lighting		T-8		
Kitchenettes-3					
	Ceiling		Existing ceiling or hard lid		
	Floor		VCT	$ 3 sqft	Bamboo, scored concrete, stained concrete
	Cabinetry		8 linear ft of wall cabinets - premium grade	$ 200 ft	
	Counter top		Stainless steel and sink	$ 150 ft	Under counter fridge, dishwasher
	Lighting		t-8		
Atrium					
	Floor cut		N/A	$ 0	Floor cut design by tenant
	Structural		N/A	$ 0	Custom design and build
Circulation					
	flooring		stained concrete or carpet	$ 25 yard	Scored concrete

Notes:

1) Landlord will perform all tenant improvement work. Landlord will pay for Building Standard finishes and fixtures. No furnishings will be provided by Landlord. The costs of all fixtures and finishes upgraded from Building Standard will be tenants financial responsibility. Tenant will receive a credit for Building Standard finishes not selected

2) The cut out atrium doesn’t come out of storage

[Illegible]

INITIALS INITIALS

[Illegible]

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[Illegible]

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[Illegible]

INITIALS INITIALS

Exhibit B-3

Exclusions:

Shades other than West wall
Displays
Library casework
Zen Room, Focus room interiors
soft meeting arrangements
3D displays
Pods – Credit back conference room
Art Glass
Furnishings
Custom upgrade of HVAC systems

Tenant Improvements:

1. Atrium work – feature stairwell, entry, glazing
2. Roof access by stair with weatherproof observation enclosure allowing for safe assembly of 10 people minimum
3. Water feature, Water supply and drainage for Interior landscape areas, planter boxes, plants
4. Expansion of telecommunications throughout the Premises
5. Finish upgrades
6. wood floors
7. scored concrete
8. specialized ceilings
9. glass walls
10. motorized shades

Exhibit 1

Approved Working Drawings

EXHIBIT C

Rules & Regulations

1) No vending machines or machines of any description shall he installed, maintained or operated upon the Premises without the prior written consent of Lessor; provided, however, that Lessee shall be permitted to install, maintain and operate a snack and soda vending machine in the Premises for use by Lessee's employees.

2) All loading and unloading of goods shall he done only at times, in the areas, and through the entrances designated for such purposes by Lessor. The delivery of shipping of merchandise, supplies, and fixtures to and from the Premises shall be subject to such reasonable rules and regulations as in the judgment of Lessor are necessary for the proper operation of the Premises.

3) All garbage and refuse shall be kept in the kind of container specified by Lessor or duly constituted public authority, and shall be placed outside of the lease premises prepared for collection in the manner and at the times and places specified by Lessor. If Lessor shall provide or designate a service for picking up refuse and garbage. Lessee shall use same at Lessee's cost. Lessee shall pay the cost of removal of any of Lessee's refuse or rubbish and maintain all common loading areas and areas adjacent to garbage receptacles in a clean manner satisfactory to the Lessor. Should Lessee fail to keep the area around its garbage receptacle in manner satisfactory to the Lessor, Lessor or its agents or subcontractors may clean such area and bill Lessee for the cost of cleaning plus fifteen percent (15%) overhead, to be paid upon presentation of the bill.

4) Lessee will not utilize any unlawful method of business operation, nor shall any space in the Premises be used for living quarters, whether temporary or permanent.

5) Lessee shall have full responsibility for protecting the Premises and the property located therein from theft and robbery, and shall keep all doors and windows in the Premises securely fastened when not in use.

6) Lessee shall not be permitted to install any additional lock or locks on any door in the Building unless written consent of Lessor. Upon termination of its tenancy. Lessee shall return ail keys to offices, rooms, mailboxes, toilet rooms, etc.

7) Lessee shall not overload the floor of the Premises or in any way deface the Premises or any part thereof. Lessee shall be aware at all times of the safety codes.

8) No cooking shall be done or permitted by any tenant on the Premises other than the cafeteria, nor shall the Premises be used for washing clothes, for lodging, or

for any improper, objectionable or immoral purpose; except that use by Lessee of Underwriter's Laboratory approved equipment for brewing coffee, tea, hot chocolate and similar beverages or use of microwave ovens for employee use shall be permitted, provided that such equipment and use is in accordance with all applicable federal, state and local laws, codes, ordinances, rules and regulations.

9) No radio or television or other similar device shall be installed without first obtaining in each instance. Lessor's consent in writing. No aerial shall be erected on the roof or exterior walls of the Premises or on the grounds without, in each instance, the written consent of Lessor. Any aerial so installed without such written consent shall be subject to removal without notice at anytime without liability to Lessor, and the expenses involved in said removal shall be charged to and paid by Lessee upon demand.

10) No loudspeaker, television, phonographs, radios, or other devises shall be used in a manner so as to be heard or seen outside of the Premises without the prior written consent of Lessor.

11) The plumbing facilities shall not be used for any other purpose that for which they are constructed, and no foreign substance of any kind shall be deposited therein, and the expense of any breakage, stoppage, or damage resulting from a violation of this provision shall be borne by Lessee.

12) Lessee shall not cause or permit any unusual or objectionable odors to be produced upon or permeated from the Premises, nor shall Lessee vent any cooking fumes or odors into the interior of the building. Lessee shall not use or keep in the Premises or the Building any kerosene, gasoline or inflammable explosive or combustible fluid or material, unless consent is given by Lessor, in writing, and material are used in a manner consistent with all applicable laws and are stored in rooms or containers consistent with all code requirements. No Lessee shall use any method of heating or air conditioning other than that supplied by Lessor.

13) The sidewalk, entrances, passages, quarters, and halls shall not be obstructed or encumbered by any Lessee or used for any purpose other than ingress or egress to and from the Premises. Neither Lessee nor any employees or invitees of Lessee shall go upon the roof of the Building, except as specifically permitted in the Lease.

14) Lessor reserves the right to close and keep locked all entrance and exit doors of the Building and otherwise regulate access of all persons to the Building on Saturday and Sundays and public holidays and on other days between the hours of 6:00 PM and 7:00 AM and at such other times as Lessor may deem advisable for the adequate protection and safety of the Building, its tenants and occupants, and property in the Building; provided, however, that subiect to events of force majeure Lessee shall have access to the Premises via key or card lock twenty-four

(24) hours per day, seven (7) days per week. Lessor reserves the right to exclude or expel from the Building any person, who, in the judgment of Lessor, is intoxicated or under the influence of liquor or drugs, or who shall in any manner do any act in violation of any of the rules and regulations of the Building.

15) Except as specifically provided in the Lease, Lessee, its employees, or agents shall not park campers, trucks, boats, trailers or cars in the parking areas overnight or over weekends. Lessee will from time to time, upon request of Lessor, supply Lessor with a list of license plate numbers of vehicles owned or operated by its employees and agents.

16) No sales tables, merchandise displays, signs or other articles shall be put on front of or affixed to any part of the exterior building, nor placed in the halls, common passageways, corridors, vestibules or parking areas without the prior written consent of Lessor.

17) Lessee shall not erect or maintain any barricades or scaffolding which may obscure the signs, entrances or show windows of any other Lessee in the Building, or interfere with such other Lessee's business.

18) Lessee shall not create or maintain nor allow others to create or maintain, any nuisances, including without limiting the foregoing general language, loud noises, sound effects, bright lights, changing flashing, flickering or lighting devices or similar devices, smoke or dust, the effect of which will be visible from the exterior of the Premises.

19) Lessor reserves the right to waive any rule in any particular instance or as to any particular person or occurrence, and further, Lessor reserves the right to amend or rescind any of these rules or make, amend and rescind new rules to the extent Lessor, in its sole judgment deems suitable for the safety, care and cleanliness of the Building and the conduct of high standard of merchandising and services therein. Lessee agrees to conform to such new or amended rules upon receiving written notice of the same.

20) No animals shall be kept in or about the Premises or permitted therein.

Lessor's Initials

Lessee's Initials

(24) hours per day, seven (7) days per week. Lessor reserves the right to exclude or expel from the Building any person, who, in the judgment of Lessor, is intoxicated or under the influence of liquor or drugs, or who shall in any manner do any act in violation of any of the rules and regulations of the Building.

15) Except as specifically provided in the Lease, Lessee, its employees, or agents shall not park campers, trucks, boats, trailers or cars in the parking areas overnight or over weekends. Lessee will from time to time, upon request of Lessor, supply Lessor with a list of license plate numbers of vehicles owned or operated by its employees and agents.

16) No sales tables, merchandise displays, signs or other articles shall be put on front of or affixed to any part of the exterior building, nor placed in the halls, common passageways, corridors, vestibules or parking areas without the prior written consent of Lessor.

17) Lessee shall not erect or maintain any barricades or scaffolding which may obscure the signs, entrances or show windows of any other Lessee in the Building, or interfere with such other Lessee's business.

18) Lessee shall not create or maintain nor allow others to create or maintain, any nuisances, including without limiting the foregoing general language, loud noises, sound effects, bright lights, changing flashing, flickering or lighting devices or similar devices, smoke or dust, the effect of which will be visible from the exterior of the Premises.

19) Lessor reserves the right to waive any rule in any particular instance or as to any particular person or occurrence, and further, Lessor reserves the right to amend or rescind any of these rules or make, amend and rescind new rules to the extent Lessor, in its sole judgment deems suitable for the safety, care and cleanliness of the Building and the conduct of high standard of merchandising and services therein. Lessee agrees to conform to such new or amended rules upon receiving written notice of the same.

20) No animals shall be kept in or about the Premises or permitted therein.

	BL
Lessor's Initials	Lessee's Initials

EXHIBIT D

CONFIRMATION OF COMMENCEMENT DATE

_____, 2007

PowerLight Corporation

_____
_____
_____

Re: Standard Multi-Tenant Industrial Lease—Net (the "Lease") dated December 15, 2006, between, FPOC, LLC, a California limited liability company ("Lessor'), and PowerLight Corporation, a California corporation ("Lessee"), Capitalized terms used herein but not defined shall be given the meanings assigned to them in the Lease.

Ladies and Gentlemen:

Lessor and Lessee agree as follows:

1. **Condition of Premises**. Lessee has accepted possession of the Premises pursuant to the Lease. Any improvements required by the terms of the Lease to be made by Lessor have been completed to the full and complete satisfaction of Lessee in all respects except for the punchlist items described on Exhibit A hereto (the "**Punchlist Items**'"), and except for such Punchlist Items, Lessor has fulfilled all of its duties under the Lease with respect to such initial tenant improvements in the Premises. Furthermore, Tenant acknowledges that the Premises are suitable for the Agreed Use.

2. **Commencement Date**. The Commencement Date of the Lease is _____, 2007.

3. **Expiration Date**. The Term is scheduled to expire on September 30, 2018.

4. **Contact Person**. Tenant's contact person in the Premises is:

_____
_____
_____
Attention: _____
Telephone: _____
Telecopy: _____

5. **Ratification**. Tenant hereby ratifies and confirms its obligations under the Lease, and represents and warrants to Lessor that to its knowledge. Lessee has no defenses thereto. Additionally, Tenant further confirms and ratifies that, as of the date hereof, (a) the Lease is and remains in good standing and in full force and effect, and (b) to its knowledge, Lessee has no claims, counterclaims, set-offs or defenses against Lessor arising out of the Lease or in any way relating thereto or arising out of any other transaction between Lessor and Lease.

6. **Binding Effect; Governing Law**. Except as modified hereby, the Lease shall remain in full effect and this letter shall be binding upon Lessor and Lease and their respective successors and assigns. If any inconsistency exists or arises between the terms of this letter and the terms of the Lease, the terms of this letter shall prevail. This letter shall be governed by the laws of the state in which the Premises are located.

Please indicate your agreement to the above matters by signing this letter in the space indicated below and returning an executed original to us.

Sincerely,

FPOC, LLC,
a California limited liability company

BY: FP Management, LLC, a California limited liability company, its Manager

By: _____
J.R. Orton, III, Manager

Agreed and accepted:

PowerLight Corporation,
a California corporation

By: _____
Name: _____
Title: _____

EXHIBIT A to Confirmation of Commencement Date Letter

PUNCHLIST ITEMS

Please insert any punchlist items that remain to be performed by Lessor. If no items are listed below by Lessee, none shall be deemed to exist.

EXHIBIT E

CITY OF RICHMOND
FIRST SOURCE AGREEMENT

RECITALS:

THIS AGREEMENT entered into this ____ day of _____, 2007 by and between the City of Richmond ("City") and PowerLight Corporation a California corporation ("PowerLight").

RECITALS:

WHEREAS PowerLight supports the employment development efforts of the City and desires to hire locally;

WHEREAS PowerLight has entered into a lease with FPOC, LLC for a premises located at 1414 Harbour Way South, Richmond, California, (the "Lease"); and

WHEREAS the City and PowerLight have agreed that PowerLight will enter into this First Source Agreement with the City of Richmond in order to make the residents of Richmond aware of jobs created in PowerLight premises located at 1414 Harbour Way South, Richmond through the City's Employment & Training Department.

NOW, THEREFORE, the parties hereto mutually agree as follows:

PowerLight, through the City's Employment and Training Department, agrees that, during the term of the Lease, or any extensions thereto, PowerLight shall enter into this First Source Agreement to seek qualified employees to fill entry-level and new employment positions for operations and maintenance and management personnel whether such positions be full-time, part-time, or seasonal, PowerLight shall follow the following procedures:

A. PowerLight shall work with the Employment and Training Department and the local union to hire a minority workforce reflecting parity with the minority West Contra Costa County population, based on the 1990 census. PowerLight shall adopt the following goal:

- hire 20% of its workforce from bona fide residents of the City of Richmond.

PowerLight must achieve the overall goal or document a good faith effort to achieve the goal.

B. Prior to announcing or advertising the availability of an employment position created by vacancy of an existing position or of a new employment position in any communication medium (other than compliance with internal posting

procedures) or with any employment or referral agency, PowerLight shall notify Employment and Training Department in writing of such position, including a general description of the position and PowerLight's minimum requirements for qualified applicants therefor, and shall request the Employment and Training Department to refer qualified applicants for such position to PowerLight's personnel representative, as appropriate. PowerLight shall refrain from any general announcement or advertisement of the availability of such position for a period of five (5) business days after notification to the Employment and Training Department. Such five-business day period is hereinafter referred to as the "Advance Notice Period."

C. Upon receipt from PowerLight of a notice of an employment position, the Employment and Training Department shall refer to PowerLight a minimum of one (1) and up to a maximum of five (5) candidates for employment who the Employment and Training Department believes are qualified for each position and who meet PowerLight's minimum requirements for such position, and shall make arrangements for the person or persons referred to be interviewed by PowerLight within the Advance Notice Period.

In the event that the Employment and Training Department believes that it is unable to refer qualified candidates for such position within in the Advance Notice Period, it shall so inform PowerLight, as soon as possible, thereby waiving the obligation of PowerLight to refrain from further announcement or advertisement to fill such position during the balance of the Advance Notice Period.

D. In the event that any persons seek employment with PowerLight at the job site, PowerLight shall have the person complete a Job Site Application consisting of name, address, telephone number, social security number and trade. PowerLight will then submit this information to the Employment and Training Department.

E. Nothing contained herein shall prevent PowerLight from filling job vacancies or newly created positions without compliance with the foregoing procedures by transfer or promotion from its existing staff or from a file of qualified applicants maintained by PowerLight, provided, however, that PowerLight shall give consideration first to those applicants in such file or qualified applicants previously referred by the Employment and Training Department. Further, nothing contained herein shall be construed to require PowerLight or any construction, operations and maintenance or management agent or independent subcontractor engaged by PowerLight to hire any candidate referred by the Employment and Training Department.

If there is determined by the City that PowerLight is in non-compliance, City will notice PowerLight with a right to cure any non-compliance in 15 days. In the event that PowerLight remains in non-compliance with Article II Chapter 2.50 of the City of Richmond Municipal Code after the 15 day notice, the City reserves its rights to invoke the Remedies set forth in such Article.

This Agreement may be executed in counterparts and multiple originals.

Executed this ____ day of _____, 2007.

PowerLight Corporation:

By: _____
Its: _____

Approved as to form

CITY OF RICHMOND
ACTING BY AND THROUGH
THE RICHMOND EMPLOYMENT AND
TRAINING DEPARTMENT

By: _____
City Attorney

By: _____
Its: _____

STATE OF CALIFORNIA)
) ss
CITY OF)

On this ____ day of _____, 2007, before me appeared _____, to me personally known, who, being duly sworn, did execute the foregoing affidavit, and did state that he or she was properly authorized by PowerLight to execute the affidavit and did so as his or her free act and deed.

NOTARY PUBLIC
Commission Expires

EXHIBIT F

FORM OF SNDA

RECORDING REQUESTED BY

AND WHEN RECORDED MAIL TO:

Bank of Alameda
P.O. Drawer F Alameda,
CA 94501

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

SUBORDINATION, ATTORNMENT, AND NON-DISTURBANCE AGREEMENT

NOTICE: THIS SUBORDINATION, ATTORNMENT, AND NON-DISTURBANCE AGREEMENT RESULTS IN YOUR LEASEHOLD INTEREST BECOMING SUBJECT TO AND OF LOWER PRIORITY THAN THE LIEN OF SOME OTHER. OR LATER SECURITY INSTRUMENT.

THIS SUBORDINATION, ATTORNMENT, AND NON-DISTURBANCE AGREEMENT, is dated for reference purposes and entered into as of December __, 2006 by and among **BANK OF ALAMEDA**, a California state banking corporation ("Lender"), Ford Point LLC, a California limited liability company ("Master Landlord"). FPOC, LCC, a California limited liability company ("Lessor"), and PowerLight Corporation, a California corporation ("Lessee").

1. RECITALS

1.1 Master Landlord is the owner of that certain real property commonly known as 1414 Harbour Way South, Richmond, California, and more particularly described on Exhibit A attached hereto and incorporated herein by this reference ("**Real Property**").

1.2 Master Landlord, as landlord, and Lessor, as tenant, are parties to that certain Master Lease Agreement dated as of October 31, 2005 (the "**Master Lease**") pursuant to which Lessor leases the Real Property together with all the improvements located thereon.

1.3 Lessor and Lessee have entered into that certain Standard Multi-Tenant Industrial Lease –Net dated December 15, 2006 ("Lease"), covering all or a portion of the Real Property more particularly described in the Lease ("Premises").

1.4 Lender has made a loan to Lessor in the principal amount of Twelve Million Five Hundred Thousand Dollars ($12,500,000,00) ("Loan"), evidenced by that certain promissory note dated December 6, 2004, in the amount of the Loan and executed by Master Landlord to the order of Lender ("Note"). Repayment of the Note is secured by, among other things, (i) a deed of trust encumbering the Real Property recorded on December 17, 2004 in the official records of Contra Costa County as Series #2004- 484773 ("Primary Deed of Trust"), and (ii) that certain Construction Deed of Trust recorded on December 17, 2004 in the official records of Contra Costa County as Series #2004-484774 (the "Construction Deed of Trust"). The Primary Deed of Trust and the Construction Deed of Trust are hereinafter referred to collectively, as the "Deed of Trust".

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL BENEFITS ACCRUING TO THE PARTIES HERETO AND OTHER VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH CONSIDERATION IS HEREBY ACKNOWLEDGED, AND IN ORDER TO INDUCE LENDER TO MAKE THE LOAN, IT IS HEREBY DECLARED, UNDERSTOOD AND AGREED AS FOLLOWS:

2. SUBORDINATION

2.1 Subordination of Lease. Lessee, for itself, its successors and its assigns, hereby covenants and agrees that the Lease and all of Lessee's rights thereunder shall be and is hereby made subordinate to the lien of the Deed of Trust and to any extensions, consolidations, modifications thereof and supplements thereto with the same force and effect as if the Deed of Trust had been executed, acknowledged, delivered and recorded prior to the execution and delivery of the Lease,

2.2 No Default Under the Lease. Lessee warrants that, as of the date of this Agreement, to the best knowledge of Lessee, Lessor is not in default under the Lease, and no event has occurred which, with the passage of time or the giving of notice will become a default under the Lease,

2.3 Leader Not Liable for Security Deposit. Lessee acknowledges and agrees that should Lender or any third party take title to the Property either as a result of foreclosure or by deed in lieu of foreclosure. Lender or such third party shall not be liable for the repayment or the return of any security deposit paid by Lessee to Lessor under the Lease, except to the extent that Lender or such third party has actually received such security deposit.

2.4 No Credit For Prepaid Rent. Lessee acknowledges and agrees that should Lender or any third party take title to the Property either as a result of foreclosure or by deed in lieu of foreclosure, Lessee shall not receive credit for any rent paid by Lessee more than thirty (30) days in advance and that Lessee shall be liable for all rent payable under the Lease, even if rent has been prepaid more than thirty (30) days in advance.

3. NON-DISTURBANCE

3.1 Litigation. In the event of foreclosure of the Deed of Trust, Lender will not join Lessee in any summary proceedings so long as Lessee is not in default under any of the terms, covenants or conditions of the Lease beyond applicable notice and/or cure periods.

3.2 Power of Sale or Judicial Foreclosure. It is the express intent of the parties hereto that a foreclosure of the Deed of Trust, the exercise of the power of sale or the exercise of any other remedies provided therein, or provided in any other instrument securing the indebtedness secured by the Deed of Trust, or the delivery of a deed to the subject premises in lieu of foreclosure, shall not, of itself, result in the termination of or otherwise affect the Lease, but Lender, assignee of Lender or purchaser from Lender, shall upon foreclosure of the Deed of Trust or conveyance in lieu of foreclosure shall thereby automatically succeed to the position of Lessor under the Lease.

3.3 Succession to Position of Lessor. If, by dispossession, foreclosure, exercise of the power of sale, or otherwise, Lender, its successors or assigns, or any purchaser at a foreclosure sale or otherwise, shall come into possession of or become Lessor of the Premises, such person shall succeed to the interest of Lessor under the Lease, and, if no default then exists under the terms, conditions and provisions of the Lease beyond applicable notice and/or cure periods, then the Lease shall remain in effect as a lease of the demised Premises, together with all of the rights and privileges therein contained, between such person and Lessee for the balance of the term of the Lease, including any extension or renewal provisions.

3.4 Waiver of Lease Obligations. Unless Lessee is in default under the terms of the Lease beyond applicable notice and/or cure periods. Lender, its successors or assigns, or any purchaser at a foreclosure or trustee's sale or otherwise, will not disturb the possession of the Premises by Lessee, and will be bound by all of the obligations imposed by the Lease upon the lessor therein. Lender, or any purchaser at a foreclosure or trustee's sale or otherwise, shall not be:

3.4.1 Liable for any act or omission of a prior lessor (including Lessor): or

3.4.2 Subject to any offsets or defense which Lessee might have against any prior lessor (including Lessor); or

3.4.3 Bound by any rent or additional rent which Lessee might have paid in advance to any prior lessor (including Lessor) for any period beyond the month in which the foreclosure or conveyance occurs; or

3.4.4 Bound by any agreement or modification of the Lease made without the consent of Lender.

3.5 New Lease. Upon the written request of either Lessee or Lender, given to the other at the time of a foreclosure of the Deed of Trust or sale under power of sale therein contained or conveyance in lieu of foreclosure, and if no default then exists under the terms, conditions and provisions of the Lease beyond applicable notice and/or cure periods, Lessee and Lender or Lender's successor in interest shall execute a lease of the Premises upon the same terms and conditions as the Lease between Lessor and Lessee, which lease shall cover any unexpired term of the Lease, existing prior to such foreclosure, trustee's sale or conveyance in lieu of foreclosure.

4. ATTORNMENT

4.1 Attornment. Lessee covenants and agrees to attorn to and to accept Lender or Lender's assignee, successor, or assign or any purchaser from Lender or from the trustee in a foreclosure sale, as lessor under the Lease, and to be bound by and to perform all of the obligations imposed by the Lease upon Lessee including, without limitation, the payment of rent to the successor of Lessor therein. Lessee further agrees to make rental payments directly to Lender, in accordance with the terms of an Assignment of Rents Agreement or an assignment of rents provision contained in the Deed of Trust, as applicable, in the event that Lender notifies Lessee that Master Landlord is in default in any term or condition of the obligations secured by the Deed of Trust.

4.2 Foreclosure. Lessee hereby covenants and agrees that, notwithstanding any provisions to the contrary in the Lease, Lender may exercise all rights and remedies granted to it under the Deed of Trust to foreclose its interest and dispose of the Real Property without the consent of or notice to Lessee.

4.3 Termination of Lease. Concurrently upon Lessee's receipt or delivery of any notice of termination or default under the Lease. Lessee will deliver a complete and correct copy of such notice to Lender at the address set forth below.

5. MISCELLANEOUS

5.1 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of Lender and the parties hereto and their respective successors and assigns including, without limitation, the beneficiary under any deed of trust encumbering the Lease.

5.2 Notices. Except as otherwise provided herein, any notice or other communication required or permitted to be given under this Agreement shall be in writing and shall be personally served by messenger, or sent by a commercial overnight delivery service (such as Federal Express), or by certified mail, return receipt requested, and shall be deemed given on the date actually received if served by messenger, or on the next business day after deposit with an overnight delivery service, or on the date of receipt as shown on the return receipt if sent by certified mail. The addresses of the parties to which notices and other communications shall be sent (until notice of a change thereof is served as provided herein) are set forth below. Any party to this Agreement may change its address for giving notices or demands hereunder by written notice of such change to the other party in accordance with the provisions hereof.

Notice Addresses are:

Bank of Alameda
Attn.: Loan Department
1321 Harbor Bay Parkway, Suite 201
Alameda, CA 94502

Ford Point, LLC
c/o FPOC, LLC
3049 Research Drive
Richmond, CA 94806

FPOC, LLC
3049 Research Drive
Richmond, CA 94806

PowerLight Corporation

_____

_____

5.3 Construction. The terms of this Agreement shall supersede and contravene the terms of the Lease to the extent that the terms of this Agreement are inconsistent with the terms of the Lease. In all other respects this Agreement shall be construed consistently with the terms of the Lease.

5.4 Prior Agreements. This Agreement shall be the whole and only agreement between the parties hereto and shall supersede and cancel any prior agreements, including without limitation provisions contained in the Lease which may or do provide for the subordination of the Lease and leasehold interest of Lessee to a deed or deeds of trust or a mortgage or mortgages to be thereafter executed or which restrict the right of the beneficiary of any deed of trust from foreclosing its interest in the Real Property or to sell the Real Property obtained through a foreclosure sale.

5.5 Severability. Each provision of this Agreement shall be severable from every other provision of this Agreement for the purpose of determining the legal enforceability of any specific provision.

5.6 Headings. All section headings and section numbers have been set forth herein for convenience of reference only, and shall not limit or affect the meaning or interpretation of any section hereof.

5.7 Governance. This Agreement shall be governed, and interpreted in accordance with California law.

5.8 Counterpart Execution. This Agreement may be executed in several counterparts, each of which shall constitute an original, but all of which together shall constitute one and the same Agreement.

5.9 Attorneys' Fees. If by reason of any party's breach or claimed breach of any provision of this Agreement, another party incurs legal expenses whether or not there is a lawsuit, including legal expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated post-judgment collection services, the defaulting party shall pay such sums, including reasonable attorneys' fees, court costs, all witness fees and such other associated sums and expenses as provided by law, to such other party.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, this Agreement is executed on behalf of the parties' duly authorized representatives on the date(s) indicated below and effective as of the date set forth above.

LENDER:
BANK OF ALAMEDA

By: _____
Name: _____
Its: _____
Date: _____

MASTER LANDLORD:

FORD POINT, LLC,
a California limited liability company

By: _____
Name: _____
Its: _____
Date: _____

FPOC, LLC,
a California limited liability company

BY: FP Management, LLC, a California limited liability company, its Manager

By: _____
J.R. Orton, III, Manager

LESSEE:

POWERLIGHT CORPORATION,
a California corporation

By: _____
Name: _____
Its: _____
Date: _____

CERTIFICATE OF ACKNOWLEDGMENT [FPOC]

STATE OF CALIFORNIA)
) SS
COUNTY OF _____)

On _____, before me, _____
_____, personally appeared _____
_____, personally known to me (or 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.

WITNESS my hand and official seal.

Signature _____
(Seal)

CERTIFICATE OF ACKNOWLEDGMENT [PowerLight]

STATE OF CALIFORNIA)
) SS
COUNTY OF _____)

On _____, before me, _____
_____, personally appeared _____
_____, personally known to me (or 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.

WITNESS my hand and official seal.

Signature _____
(Seal)

CERTIFICATE OF ACKNOWLEDGMENT [Ford Point]

STATE OF CALIFORNIA)
) SS
COUNTY OF _____)

On _____, before me, _____
_____, personally appeared _____
_____, personally known to me (or 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.

WITNESS my hand and official seal.

Signature _____
(Seal)

CERTIFICATE OF ACKNOWLEDGMENT (Bank of Alameda]

STATE OF CALIFORNIA)
) SS
COUNTY OF _____)

On _____, before me, _____
_____, personally appeared _____
_____, personally known to me (or 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.

WITNESS my hand and official seal.

Signature _____
(Seal)

EXHIBIT A
LEGAL DESCRIPTION OF REAL PROPERTY

That certain real property situated in the County of Contra Costa, City of Richmond, and described as follows:

PARCEL ONE (F1):

A portion of State Tide Land Lots 18, 19, 30 and 31 in Section 24 and a portion of State Tide Land Lots 2 and 3 in Section 25, Township 1 North, Range 5 West, Mount Diablo Base and Meridian, and all of Parcel H, as shown on the Parcel Map MS 753-98, filed December 29, 1998, in Book 176 of Parcel Maps, Page 11, Contra Costa County Records, described as follows:

Commencing at the Southwestern corner of Parcel G as shown on Parcel Map MS 753-98, recorded December 9, 1998, in Book 176 of Parcel Maps, Page 11, Contra Costa County Records; thence South 01° 08’ 16” West, a distance of 27.88 feet to the point of beginning; thence North 88° 52’ 00” West, a distance of 93.39 feet; thence North 01° 08’ 16” East, a distance of 18.00 feet; thence North 88° 52’ 00” West, a distance of 500.00 feet; thence South 01° 08’ 16” West, a distance of 18.00 feet; thence North 88° 52’ 00” West, a distance of 59.26 feet to a point on the Eastern line of Parcel “A” as shown on Parcel Map MS 755-84, recorded August 21, 1984, in Book 111 of Parcel Maps, Page 26, Contra Costa County Records; thence along said Eastern line North 04° 19’49” West, a distance of 416.32 feet to the Southern line of Harbour Way South as shown on said last mentioned Parcel Map; thence along said Southern line South 88° 52’ 15” East, a distance of 100.46 feet to the Eastern line of said Harbour Way South; thence along said Eastern line and the Western line of Parcel H as shown on said Parcel Map (176 M 11); thence North 04° 19’ 49” West, a distance of 1,132.94 feet to the Northern line of said Parcel H; thence along said Northern line South 88° 53’ 41” East, a distance of 699.81 feet to the Eastern line of said Parcel H and Western lines of Parcel Map MS 758-89, recorded October 3, 1989, in Book 142 of Parcel Maps, Page 36, and said Parcel Map (176 M11); thence along the Eastern line of said Parcel H and the Western lines of said Parcel Map (142 M 36) and said Parcel Map (176 M11) South 01 ° 08’ 16” West, a distance of 1,542.58 feet to the point of beginning.

EXCEPTING THEREFROM: All oil, gas, minerals and geothermal energy existing 500 feet below the surface of the lands conveyed by this deed to the Richmond Redevelopment Agency, however, this reservation of rights to said oil, gas, mineral and geothermal energy shall not include any rights to utilize the surface of the lands conveyed herein for access; the reserved right to exploit said oil, gas, mineral and geothermal energy is limited to slant drilling or similar methods from adjacent or nearby properties with said drilling to be at least 200 feet below the surface of said conveyed lands, and in any event such slant drilling shall be done in a manner and at such depth as to not endanger the safety of any improvements erected hereafter upon the lands conveyed herein, as excepted in the Deed from the Regents of the University of California, a public California corporation, recorded March 29, 1979, in Book 9283, OR, Page 983.

EXHIBIT G

FORM OF LETTER OF CREDIT

Irrevocable Standby Letter of Credit No._____

Beneficiary: Issuance Date:

Landlord Name
Address

Accountee/Applicant:

Tenant's Name
Address

Ladies and Gentlemen:

We hereby establish our irrevocable letter of credit no. _____ in your favor for the account of PowerLight Corporation for an amount not to exceed in the aggregate $_____ .

Funds under this credit are available against presentation of this original letter of credit and the attached Exhibit A, with the blanks appropriately completed.

This Letter of Credit expires and is payable at the office of _____ [**Issuing Bank's name, address, department, and fax number**], on or prior to _____ [**enter the Expiration Date**], or any extended date as hereinafter provided for (the "Expiration Date").

It is a condition of this letter of credit that the Expiration Date will be automatically extended without amendment for one year from the Expiration Date hereof, or any future Expiration Date, unless at least thirty (30) days prior to any Expiration Date we notify you by registered mail, return receipt requested, or overnight courier service with proof of delivery to the address shown above, attention: _____, and notify _____, attention: _____, in the same delivery method, that we elect not to extend the Expiration Date of this letter of credit. Upon your receipt of such notification, you may draw against this letter of credit by presentation of this original letter of credit and the attached Exhibit B, with the blanks appropriately completed.

Demands presented by fax (to fax number _____) are acceptable; provided that if any such demand is presented by fax, the original exhibit and letter of credit shall be simultaneously forwarded by overnight courier service to our office located at the address stated above; provided further that the failure of the courier service to timely deliver shall not affect the efficacy of the demand. Further, you shall give telephone notice of a drawing to the Bank, attention: _____ at _____, on the day of such demand, provided that your failure to provided such telephone notification shall not invalidate the demand.

Drawing(s) in compliance with all of the terms of this Letter of Credit, presented prior to 11:00 A.M., Pacific time, on a Business Day, shall be made to the account number or address designated by you of the amount specified, in immediately available funds, on such Business Day.

Drawing(s) in compliance with all of the terms of this Letter of Credit, presented on or after 11:00 A.M. Pacific time, on a Business Day, shall be made to the account number or address designated by you of the amount specified, in immediately available funds, on the next Business Day.

This Letter of Credit is transferable without charge to you. Transfer must be requested in accordance with our transfer form, which is attached as Exhibit C, accompanied by the return of this original Letter of Credit and all amendments thereto for endorsement thereon by us to the transferee. This Letter of Credit is transferable provided that such transfer would not violate any governmental rule, order or regulation applicable to us.

We hereby engage with you that documents (including fax documents) presented in compliance with the terms and conditions of this Letter of Credit will be duly honored if presented to our bank on or before the Expiration Date of this Letter of Credit, which is _____.

Multiple and partial drawings are permitted.

This Letter of Credit is subject to the International Standby Practices 1998, International Chamber of Commerce Publication No. 500.

[Issuing Bank's name]

By: _____
Name: _____
Title: _____

Exhibit A

Irrevocable Standby Letter of Credit No. _____

Date: _____

To:

Name of Issuing Bank
Address

Ladies and Gentlemen:

Re: Irrevocable Standby Letter of Credit No. _____

The undersigned, a duly authorized official of FPOC, LLC (hereinafter referred to as "'Landlord"), hereby certifies that Landlord is entitled to draw upon Irrevocable Standby Letter of Credit No. _____ in the amount of $ _____ **(amount in words U.S. Dollars]** pursuant to the Standard Multi-Tenant Industrial Lease (the "Lease") dated December 15, 2006, by and between Landlord and PowerLight Corporation, as Tenant.

Drawn under Irrevocable Standby Letter of Credit No. _____ issued by _____ **[name of Issuing Bank]**.

Payment of the amount demanded is to be made to the Beneficiary by wire transfer in immediately available funds in accordance with the following instructions:

[Payment instructions to be Inserted]

[Beneficiary's name]

By: _____
Name: _____
Title: _____

Exhibit B

Irrevocable Standby Letter of Credit No. _____

Date: _____

To:

Name of Issuing Bank
Address

Ladies and Gentlemen;

Re: Irrevocable Standby Letter of Credit No.

The undersigned, a duly authorized official of FPOC, LLC (hereinafter referred to as "Landlord"), hereby certifies that Landlord is entitled to draw upon Irrevocable Standby Letter of Credit No. _____ in the amount of $ _____ **[amount in words U.S. Dollars]** as we have been notified that the Letter of Credit will not be extended and PowerLight Corporation has not provided us with an acceptable substitute irrevocable standby letter of credit in accordance with the terms of the Standard Multi-Tenant Industrial Lease (the "Lease") dated December 15. 2006 by and between Landlord and PowerLight Corporation, as Tenant.

Drawn under Irrevocable Standby Letter of Credit No. _____ issued by _____ **[name of Issuing Bank]**.

Payment of the amount demanded is to be made to the Beneficiary by wire transfer in immediately available funds in accordance with the following instructions:

[Payment instructions to he inserted)

(Beneficiary's name)

By: _____
Name: _____
Title: _____

Exhibit C

Irrevocable Standby Letter of Credit No. _____

Date: _____

To:

Name of Issuing Bank
Address

Ladies and Gentlemen:

Re: Irrevocable Standby Letter of Credit No. _____

For value received, the undersigned beneficiary hereby irrevocably transfers to:

_____
(Name of Transferee)

_____
(Address)

_____
(City, State, Zip Code)

all rights of the undersigned beneficiary to draw under the above Letter of Credit in its entirely.

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 thereof, 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 direct to the transferee without necessity of any consent of or notice to the undersigned beneficiary.

The advice of such Letter of Credit is returned herewith, and we ask you to reissue the Letter of Credit in the name of the new beneficiary and substantially in the same format as the original Letter of Credit, and forward it direct to the transferee with your customary notice of transfer.

Very truly yours,

[Beneficiary's name]

By: _____
Name: _____
Title: _____

The above signature with title as stated conforms to that on file with us and is authorized for the execution of said instruments.

[Name of Authenticating Bank]

By: _____
Name: _____
Title: _____

*****CONFIDENTIAL TREATMENT REQUESTED – CONFIDENTIAL PORTIONS OF THIS DOCUMENT HAVE BEEN REDACTED AND HAVE BEEN SEPARATELY FILED WITH THE COMMISSION*****

Contract for the Delivery of Solar Cells

Contract No. PL-ES-v1

between

ErSol Solar Energy AG, Wilhelm-Wolff-Strasse 23, D-99099 Erfurt, Germany, represented by its Management Board members Dr. Claus Beneking and Frank Müllejans

- hereinafter referred to as the Seller -

and

PowerLight Corporation, 2954 San Pablo Avenue, Berkeley CA 94702, USA represented by its President Dan Sugar

- hereinafter referred to as the Customer -

Preamble

The Seller is a manufacturer of solar cells and the Customer a system integrator and manufacturer of solar modules.

The Seller has concluded a long-term delivery contract with a third-party company for the delivery of poly-silicon, whereby, as a basic element of the production chain poly-silicon – wafer - solar cell – module, in principle delivery obligations towards the Customer can in turn also be

secured long-term. To protect its own contractual rights, the Seller must by 2006, 2007 and 2008 make advance payments of a specific amount to the relevant silicon suppliers.

The Parties are agreed that against this background of the establishment and securing of delivery obligations in the delivery chain, it is necessary within the framework of this Delivery Contract to establish a fixed price range for the solar cells to be delivered to the Customer following the fixed price for silicon agreed in turn by the Seller with its third-party suppliers, and also to establish an obligation for the Customer to make ***.

Against this background, the Parties agree the following:

1. Subject Matter of the Contract

a) The Seller shall deliver to the Customer monocrystalline solar cells of the quality and technical specifications stated in **Exhibit 1**. The Seller reserves the right to improve the products and by reason of this to introduce changes. The Customer will be informed about these changes at least ***, in the case of significant changes, before they are made. The Customer is obliged to accept delivery of ***. As the cell classes improve, the Seller will continue to make available to Customer cells in the tolerance range described in Exhibit 2. ***

b) ***

c) The sale and delivery of the solar cells shall be made successively over the period between 2007 and 2011. Subject to clause (d) below, in total, the Seller shall sell to the Customer, and the Customer shall purchase from the Seller, in each case on a firm commitment basis, 50 MWp at the prices indicated in this Contract. The individual annual delivery volumes and delivery amounts through the year are set out in **Exhibit 2**. The Customer is aware that the classes of

cells to be delivered (see **Exhibit 1**) are dependent upon the wafers available for the cell production. Any resulting amount modifications within the classes expressly permitted elsewhere in this contract are considered to be the result of market and sector conditions and are therefore to be regarded as conforming to the contract.

(d) To the extent provided on **Exhibit 2**, the Customer shall have the option to increase the quantity of cells the Seller agrees to sell hereunder on an annual, firm commitment basis (the "Option"). For any year subject to the Option, the Customer must deliver to the Seller written notice of its intention to exercise the Option for such year no later than *** of the preceding year. In case the Option is exercised, both Multicrystalline and Monocrystalline cells can be delivered in Seller's decision.

e) Depending on the *** distributed delivery of silicon from Seller´s silicon supplier, and unless otherwise mutually agreed by the Parties, the Seller shall ship the yearly amount of cells *** distributed throughout the year to the Customer. The Seller shall provide the Customer with *** forecasts indicating the most likely dates and quantities of shipments, and shall in addition notify the Customer at least *** in advance of a specific delivery date and quantity. In the event that the Customer failed to take delivery of the contracted volume in a calendar year, the Seller is not obliged to reimburse the corresponding advance payment, but is released from his obligation to delivery the amount the Customer failed to take delivery.

2. Duration of the Contract

a) The Contract enters into effect on the date it is signed by each party and has a fixed term ending on 31st December 2011.

b) Should the Delivery Contract for poly-silicon mentioned in the Preamble not be fulfilled or be terminated for good cause by the Seller, then the Seller is entitled to reduce its firm commitment obligations by the cell production reduction directly caused by such termination. ***.

3. Prices and Terms of Payment

a) The Customer is obliged to pay by *** by way of *** and as *** into the account of the Seller at the *** account number: ***. Relevant for the fulfillment of this obligation is the date of the credit note on the aforementioned account of the Seller. Should the Customer not effect the payments on time or not effect them in full, the Seller is entitled to terminate the Contract for good cause with immediate effect and cease delivery without relinquishing its entitlement to any other rights and claims.

Unless Seller breaches this Contract, there is no entitlement to ***.

b) The prices for the solar cells to be delivered are agreed in accordance with the following table. The prices refer to solar cells of average efficiency within each respective class (**Exhibit 1**), relative in each case to the specifications in force upon the date the contract was concluded (**Exhibit 1**):

Year	2007	2008	2009	2010	2011
average power per cell					
Multi Wp	***	***	***	***	***
Mono Wp	***	***	***	***	***
***					
***	***	***	***	***	***
***					
***	***	***	***	***	***
****					
in MWp	**3.5**	**10.5**	**12**	**12**	**12**

The given power values represent typical target annual averages.

All the prices are quoted ex works excluding packaging and the statutory Mehrwertsteuer (German value-added tax) valid on the day of delivery (currently 16%).

c) The agreed prices are always fixed for the duration of the contract taking into account the price range laid down in 3.b). Price adjustments upwards or downwards up to an aggregate of *** are possible on at least *** prior written notice if the silicon supplier increases or decreases the price of the silicon within the terms of its contract which is limited to changes due to energy price index and labour cost index. Variations in the silicon price shall be only accounted in the solar cell prices at *** of the silicon price variation, reflecting the silicon raw material cost portion in the solar cell. ***.

d) Should the technological goal given in the table above (No. 3. b) for a power increase in the solar cells from 2009 to 2011 be reached more rapidly than planned, the Seller may at his discretion reduce the cell price per Wp from the calendar year 2009.

***

f) The basis for calculation of the average delivered cell performance is exclusively the annual assessment of the Seller's merchandise information system. A possible reimbursement in the case of the technological goals being exceeded for the previous year will be calculated by 1st March of each following year and refunded to the Customer.

g) The Seller shall send to the Customer at the same time as each partial delivery an invoice for this partial delivery. The purchase price for the relevant solar cells delivered is to be paid net within ***days from the date of invoice for the delivery. After expiry of the *** following each partial delivery, the Customer is to add interest to the invoiced amount at a total rate of ***. ***.

h) Should the Customer fail to fully settle a default payment amount even after a reminder from the Seller giving a reasonable period for payment, the Seller is entitled to withdraw from the next partial deliveries until full settlement of the default payment. Liability for default damages remains unaffected. Repayment of the advance payment made by the Customer will not be made to the extent necessary to satisfy the default payment and damage compensation, and the Customer is not able to make any additional claims as a result.

Should the amount of the advance payment not yet set off in accordance with 3.a) in conjunction with 3.e) be disproportionately high, then, at the request of the Customer, a reasonable

repayment can be established by judgment. In assessment of the reasonableness, particular attention is to be paid to the fact that the advance payments which the Seller was obliged to make to the silicon suppliers as outlined in the Preamble were full and final.

4. Currency Clause

a) At the start of the contractual term an exchange rate of *** is established. Over the rest of the contractual term the $/€ exchange rate will be set by the Seller each quarter in accordance with the published offered rate on each of the relevant dates fixed below, beginning with 15th November 2006 with effect for the following quarter from January to March (then 15.02. for April to June, 15.05. for July to September, 15.08. for October to December), always at 12.00 midday. This rule shall remain in force until the completion of the Contract. The first price adjustment shall be made on 15th November 2006 for the first quarter of 2007.

b) The payments arising out of the Contract to be made by the Customer shall be reduced or increased in such a way that the amount invoiced each time correspond to the €-equivalent amount resulting from the foreign currency debt established on the relevant day (4.a)) for the relevant quarter.

c) As variations in the silicon cost shall be accounted in the solar cell prices at a maximum of *** of the silicon price variation, the influence of the currency variation shall be limited to ***. *** is the maximum impact of the currency impact over the term of this Contract. ***. In the event parties cannot agree, variation influence will be limited to ***.

5. Terms of Delivery

a) The costs of packaging are to be borne by the Customer.

b) The solar cells are delivered EXW Erfurt (Incoterms 2000). The Title and the risk of damage or loss of the goods passes to the Customer at the point at which the Seller informs the Customer that the goods are ready for collection.

c) The Customer shall bear the costs for transport and insurance in the case of delivery to a place other than the place of performance.

6. Self supply saving clause

a) The Seller is in the fulfillment of its delivery obligations entered into by way of this Contract itself dependent upon receiving delivery of poly-silicon or wafers from third parties. The Seller has secured its supply of poly-silicon or wafers, both with regard to its delivery obligations arising out of this contract and also with regard to its delivery of other customers, within the scope of what is possible within the market, by contracts with third parties. It could occur that despite the Seller's best efforts, as a result of delivery delays on the part of its suppliers, the amounts of poly-silicon or wafers supplied to it are not sufficient to enable the Seller to deliver the intended amounts, which were agreed on the basis of due fulfillment of preliminary contracts with the silicon supplier and wafer producer.

b) The Parties are therefore agreed that in the case that its supply of poly-silicon or wafers is reduced, the Seller is entitled to reduce its deliveries to the Customer accordingly, unless the Seller is responsible for its reduced supply.

c) In such a case, the Seller will, with at least *** prior written notice, pass on the reduced supply to the purchasers of the solar cells proportionally within the context of the delivery chain mentioned in the Preamble. ***. In addition, the Seller will endeavour and is entitled to effect delayed deliveries at a later date, provided its poly-silicon or wafer supply situation allows this, particularly in relation to the other customers with whom the Seller has concluded contracts in conjunction with the long-term poly-silicon delivery contract. ***.

d) Should such late delivery not be possible before the end of the contractual term or the subsequent 3 months of the following year as a result of his own poly-silicon or wafer supply situation, the Seller is entitled to partially reduce its firm commitment quantities from the Contract due to non-effected deliveries to the Customer as a result of its own reduced supply, unless the Seller was itself responsible for the reduced supply of poly-silicon or wafers. ***.

e) Should the amount of the advance payment not yet set off in accordance with 3. a) in conjunction with 3.e) be disproportionately high, then at the request of the Customer a reasonable repayment can be established by judgment. In assessment of the reasonableness, particular attention is to be paid to the fact that the advance payments which the Seller was obliged to make to the silicon suppliers as outlined in the Preamble were full and final.

7. ***

b) The Customer is obliged to inspect the delivered goods for defects after receipt of the delivery and to notify the Seller in writing within 48 hours of any obvious defects; hidden defects are also to be reported in writing within 48 hours of discovery.

c) Notice of all complaints regarding defects arising out of the Seller's deliveries must be given to the Seller without delay by means of a properly completed "Notification of Defects" form (see **Exhibit 3**). The current version of this form is to be used, which in each case will be sent to the Customer without delay in written and electronic form if the Customer requests this.

If afterwards the Seller wishes the cells to which objection was made to be sent to it, the Customer must send these to the Seller at its own cost without delay, so that the Seller can itself examine the defects to which objection was made.

d) The average breakage rate of the delivered solar cells is *** and will be regarded by the Parties as a normal part of the Customer's production process and will therefore not entitle the Customer to raise complaints regarding defects. Only if the cell breakage rate is more than *** can the Customer raise warranty claims on account of cell breakage exceeding this ***.

e) ***

f) With the exception of liability for damage to life, limb and health, the Seller's liability is limited to that for deliberate acts and gross negligence.

g) The solar cells to be delivered will be classed according to their performance by way of the highest possible quality standards customary in this branch of business. A regular calibration of the cell grading against reference cells of the Fraunhofer ISE in Freiburg will be carried out. Any complaint regarding the performance of the delivered solar cells can be accepted only if Fraunhofer ISE has confirmed the performance deviation of the unused cell. Both Parties will recognise the assessments of Fraunhofer ISE as binding.

***

8. Assignment

No Party shall assign this Contract without the prior written consent of the other Party except that each Party may assign this Contract in connection with a merger, acquisition, change of

control of such Party or sale of substantially all assets of such Party without any such consent; provided, however, that to the extent permitted by applicable law no such assignment shall relieve the assigning Party of its obligations under this Contract. Neither party shall withhold any consent required by this Clause 8 unreasonably.

9. Force Majeure

Neither of the Parties will be liable if, as a result of force majeure – in particular natural catastrophes, war, unrest, industrial action, business shut down or interruption – by reason of extreme factors, administrative measures or other events outside the Parties' control, it is prevented from fulfilling this Contract. Both Parties will be released from performance under this Contract until the obstacle no longer exists. In such circumstances the Parties will immediately contact each other and discuss the measures that are to be taken. The Parties agree that the fulfillment of this Contract is to be re-established by all reasonable technical and economic means. The Parties will agree between themselves as to whether deliveries defaulted upon should be made up.

10. Confidentiality

Both Parties are herewith obliged to keep strictly confidential from third parties the content of this Contract, unless the Parties are obliged by law or administrative order to reveal information. The other Party must then be informed of such an obligation in advance of information being revealed. Third Parties do not include companies associated with the Parties within the meaning of § 15 AktG (German Stock Corporation Law), if these are bound by a corresponding confidentiality duty. The Parties retain the right to reveal individual clauses of the Contract if this should become necessary as a result of capital market measures. The non-revealing Party is to be informed that information is to be revealed before its publication.

The confidentiality duty remains in force for the duration of the contractual term and beyond this for a further 4 years after completion of the Contract.

11. Applicable Law, Jurisdiction

a) The law of the Federal Republic of Germany shall apply in relation to the content of this Contract, its implementation as well as to rights arising out of or in connection with this Contract, and German international private law and the UN Sales Convention (CISG) shall not apply.

b) Place of jurisdiction is Erfurt.

12. Intellectual Property Infringement.

a) The Seller shall defend, at its own expense, any suit or claim that may be instituted against the Customer or any customer of the Customer for alleged infringement of patents, trade secrets, copyrights or other intellectual property rights relating to the cells, and the Seller shall indemnify the Customers and its customers for all costs and damages arising out of such alleged infringement.

13. Liability Limitation. EXCEPT AS OTHERWISE EXPRESSLY STATED HEREIN, IN NO EVENT SHALL ANY PARTY HERETO BE LIABLE TO ANY OTHER PARTY OR ANY THIRD PARTY FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, PUNITIVE OR SPECIAL DAMAGES WHATSOEVER, WITHOUT REGARD TO CAUSE OR THEORY OF LIABILITY (INCLUDING, WITHOUT LIMITATION, DAMAGES INCURRED BY SUCH OTHER PARTY OR SUCH THIRD PARTY FOR LOSS OF BUSINESS PROFITS OR REVENUE, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION OR OTHER PECUNIARY LOSS) ARISING OUT OF THIS ORDER, EVEN IF THE APPLICABLE PARTY HAS BEEN ADVISED

OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL THE ENTIRE LIABILITIES OF ANY PARTY UNDER THIS AGREEMENT EXCEED THE PURCHASE PRICE UNDER THIS AGREEMENT FOR THE CELLS GIVING RISE TO THE CLAIM.

14. Concluding Provisions

a) By way of supplement to this Contract there apply, in addition to the Exhibits mentioned in this Contract, the Seller's General Terms and Conditions for the Delivery of Solar Cells and Solar Modules in the version from time to time current. The Customer has received a copy of the most recent version - March 2006 - **(Exhibit 4)** which it hereby confirms. In the event of any conflict between Exhibit 4 and this Contract, the terms of this Contract shall prevail.

b) No further agreements have been made outside this Contract. Changes or supplements must be made in written form, this also applies to the suspension of the requirement for written form.

c) Should a provision of this Contract be or become invalid, this will not affect the effectiveness of the remaining provisions. The Parties agree to replace the invalid provision with another one that will in its economic effect accord most closely to the provision that is to be replaced. The same will apply if there is a gap in this Contract that must be filled.

ErSol Solar Energy AG

Erfurt, dated

/s/ Dr. Claus Beneking
Dr. Claus Beneking

/s/ Frank Müllejans
Frank Müllejans

PowerLight Corporation

Berkeley, dated

/s/ Dan Shugar
Dan Shugar

Exhibit 1: Datasheets and technical specifications for the solar cells

Exhibit 2: Delivery amounts and delivery period

Exhibit 3: Form for notification of defects

Exhibit 4: General Terms and Conditions for the Delivery of Solar Cells and Solar Modules (as of March 2006)

Exhibit 1: Datasheets and technical specifications for the solar cells

***

Exhibit 2: Delivery Amounts and Delivery Period

Year	2007	2008	2009	2010	2011
average power per cell					
Multi Wp*	***	***	***	***	***
Mono Wp	***	***	***	***	***
***					
***	***	***	***	***	***
***					
***	***	***	***	***	***
Quantity in MWp	**3.5**	**10.5**	**12**	**12**	**12**

Option: The Customer shall have the option to purchase up to an additional *** in each of 2010 and 2011 on the same pricing indicated in the table above for such years.

* The Seller shall only supply monocrystalline cells under this Contract unless otherwise agreed by Customer; provided that the Seller shall be permitted to allocate multicrystalline cells to satisfy the additional quantities represented by the Option.

The delivery of cells within the tolerance range *** performance based upon the average annual values given in the table is permissible in accordance with the Seller's production distribution.

Example for 2007:

Monocrystalline cell delivery: ***

The row MWp. is an estimate of the annual cell performance to be expected of the delivered cells in accordance with planned performance average values.

*****CONFIDENTIAL TREATMENT REQUESTED – CONFIDENTIAL PORTIONS OF THIS DOCUMENT HAVE BEEN REDACTED AND HAVE BEEN SEPARATELY FILED WITH THE COMMISSION*****

ENGINEERING, PROCUREMENT AND CONSTRUCTION AGREEMENT

Dated as of March 26, 2007

by and between

Agrupación Solar Llerena-Badajoz 1, A.I.E.,
as Owner

PowerLight Systems S.A.,
as Contractor

and

Solarpack Corporación Tecnológica, S.L.

*** CONFIDENTIAL MATERIAL REDACTED AND SEPARATELY FILED WITH THE COMMISSION***

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ENGINEERING, PROCUREMENT AND CONSTRUCTION AGREEMENT

This ENGINEERING, CONSTRUCTION AND INSTALLATION AGREEMENT, dated as of March 26, 2007 ("Agreement"), is executed in Seville (Spain) by and between Agrupación Solar Llerena-Badajoz 1, A.I.E., an "*agrupación de interés económico*" formed under the laws of Spain ("Owner"), PowerLight Systems S.A., a corporation formed under the laws of Switzerland ("Contractor"), and Solarpack Corporación Tecnológica, S.L. ("Solarpack"), a limited liability company duly incorporated under the laws of Spain.

RECITALS:

WHEREAS, Solarpack is a developer of projects pursuing the creation of solar photovoltaic ("PV") parks in Spain owned by individual equity investors ("Investors") that will each own installations of no more than 100 kW AC nominal inverter rating, which is equivalent to approximately 120kWp DC nameplate rating of PV modules; and

WHEREAS, Contractor designs and builds PV installations and as such is able to engineer and construct solar PV parks consisting of a field of PV modules, inverters, trackers and all the necessary ancillary systems to make available electric energy to the utility grid; and

WHEREAS, Solarpack has collected equity from the Investors[1] and has incorporated Owner, and acts as agent of Owner for the purposes of organizing and supervising the construction and operation of the Park; and

WHEREAS, Owner leases or owns facilities in the municipality of Llerena, (Badajoz), Spain as more fully described in Schedule 4.1 hereto (the "Site"); and

WHEREAS, Owner desires to engage Contractor to supply and install at the Site a PV park divided in installations of no more than 100 kW AC nominal inverter rating. As used in this Agreement, "Unit" shall mean each of such independent PV module installations of 120kWp and 100kWe to be supplied and installed by Contractor at the Site pursuant to the provisions of this Agreement, each of which meet the requirements of the Spanish legislation to earn the feed-in tariff. As used in this Agreement, "Park" shall mean the aggregation of forty (40) Units which will be located at the Site that share a common fence and security infrastructure with an aggregated power of 4.8 MWp (4 MWe). The scope of this Agreement is limited to the Park, as described in Schedule 4.1 hereto; and

WHEREAS, Contractor desires to provide such supply and installation services, all in accordance with the terms and conditions set forth in this Agreement; and

---

[1] This EPC and its Annexes shall be disclosed to the Investors provided that such Investors have executed a confidentiality agreement agreed by PowerLight and Solarpack.

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

AGREEMENT:

1. Definitions.

Unless otherwise required by the context in which any term appears: (a) capitalized terms used in this Agreement shall have the respective meanings set forth in this Section 1; (b) the singular shall include the plural and vice versa; (c) the word "including" shall mean "including, without limitation", (d) references to "Sections", "Schedules" and "Exhibits" shall be to sections, schedules and exhibits hereof; (e) the words "herein", "hereof" and "hereunder" shall refer to this Agreement as a whole and not to any particular section or subsection hereof; and (f) references to this Agreement shall include a reference to all schedules and exhibits hereto, as the same may be amended, modified, supplemented or replaced from time to time.

"Agreement" shall have the meaning set forth in the preamble.

"Applicable Law" shall mean, with respect to any Governmental Authority, any constitutional provision, law, directive, statute, rule, regulation, ordinance, treaty, order, decree, judgment, decision, certificate, injunction, registration, license, permit, authorization, guideline, governmental approval, consent or requirement of such Governmental Authority, as construed from time to time by any Governmental Authority.

"Applicable Permits" shall mean each and every European, national, autonomic, regional and local license, authorization, certification, filing, recording, permit or other approval with or of any Governmental Authority, including, without limitation, each and every environmental, construction or operating permit and any agreement, consent or approval from or with any other Person that is required by any Applicable Law or that is otherwise necessary for the performance of the Work or operation of the Units.

"Bank" shall mean the agent appointed by the financing entities which are financing the Work on a project finance basis by virtue of a facility agreement executed between Owner and such financing entities, a copy of which has been delivered to Contractor prior to the Effective Date.

"Change Order" shall mean a written document signed by the Owner and Contractor authorizing an addition, deletion or revision to the Work or an adjustment of the Contract Price or Construction and Milestone Payment Schedule issued after execution of this Agreement.

"Condition Precedent" shall mean the fulfillment by Owner of the following conditions precedent for each Unit of the Park:

(a) Owner has submitted to Contractor a copy of the execution version of the facility agreement entered into between Owner and the Bank, among others, to finance the construction of the Park;

(b) Owner has submitted to Contractor a certificate issued by the Bank confirming (i) that the conditions precedent for the availability of the full project funding (including the disbursement of equity by the Investors) and the drawdowns under the facility agreement executed between Owner and the Bank, among others, have been fulfilled, and (ii) that the Bank has received the final version of the legal due diligence report issued by the legal advisor to the Bank confirming all the Applicable Permits which may be required to commence the construction of each Unit of the Park (other than the Operational Permits) have been obtained and are in full force and effect; and

(c) Owner has submitted to Contractor a copy of the Applicable Permits which may be required to commence the construction of each Unit of the Park (other than the Operational Permits).

"Construction and Milestone Payment Schedule" shall mean the schedule for prosecution of, and payment for, the Work, in each case as set forth on Schedule 1A.

"Contract Documents" shall mean this Agreement, the exhibits and schedules hereto, and drawings, specifications, plans, calculations, models and designs that are part of Exhibit 1 and that have been prepared by Contractor or any Subcontractor exclusively for the Work.

"Contract Price" shall mean the amount for performing the Work that is payable to Contractor as set forth in Section 17.1, as the same may be modified from time to time in accordance with the terms hereof.

"Contractor" shall have the meaning set forth in the preamble.

"***"

"Contractor Representative" shall mean the individual designated by the Contractor in accordance with Section 3.2.

"Developer Subcontract" shall mean the subcontract executed on the date hereof by PowerLight Systems Spain, S.L. (C.I.F. B-84795319), a Spanish subsidiary wholly-owned by Contractor, and Solarpack by virtue of which Solarpack undertakes, as Subcontractor of Contractor, to diligently prosecute and obtain *** and, in the event that Solarpack fails to timely obtain any ***.

"Disclosing Party" shall have the meaning set forth in Section 34.

"Dispute" shall have the meaning set forth in Section 32.1.

"Effective Date" shall mean March 20, 2007.

"Equipment" shall mean (a) all materials, supplies, apparatus, machinery, equipment, parts, tools, components, instruments, appliances, spare parts and appurtenances thereto that are required for prudent design, construction or operation of the Units in accordance with Industry Standards and (b) all materials, supplies, apparatus, machinery, equipment, parts, tools, components, instruments, appliances, spare parts and appurtenances thereto described in, required by, reasonably inferable from or incidental to the Work or the Contract Documents.

"Euribor" shall mean the Euro Monetary Market reference rate at or about eleven o'clock (11:00) a.m. (Central European Time) on the second business day immediately preceding the scheduled date for any payment under this Agreement that results from the application of the convention in force at any time, under the sponsorship of the FBE (*Federation Bancaire de l'Union Européene*) and the Financial Market Association (ACI), and currently published on Reuter's EURIBOR 01 page, or such other page that may replace it, applicable to financings with disbursement of deposits two (2) business days following the date for setting the interest rate, pursuant to the TARGET (Trans-European Automated Real-Time Gross Settlement Express Transfer System) schedule for deposits in Euros, for a period of time equal to one (1) month.

"Euro" shall mean the lawful currency of Spain.

"Final Completion" shall mean satisfaction or waiver of all of the conditions for the Park set forth in Section 6.

"Force Majeure Event" shall mean, when used in connection with the performance of a Party's obligations under this Agreement, any act or event (to the extent not caused by such Party or its agents or employees or subcontractors) which is unforeseeable, or being foreseeable, unavoidable and outside the control of the Party which invokes it, and which renders said Party unable to comply totally or partially with its obligations under this Agreement. In particular, any of the following shall be considered a Force Majeure Event:

(a) war (whether or not war is declared), hostilities, revolution, rebellion, insurrection against any Governmental Authority, riot, terrorism, acts of a public enemy or other civil disturbance;

(b) acts of God, including but not limited to, storms, floods, lightning, earthquakes, hailstorms, ice storms, tornados, typhoons, hurricanes, landslides, volcanic eruptions, fires, excessive winds (20 m/s) , and objects striking the earth from space (such as meteorites), sabotage or destruction by a third party (other than any contractor retained by or on behalf of the Party) of facilities and equipment relating to the

performance by the affected Party of its obligations under this Agreement; and

(c) strikes, walkouts, lockouts or similar industrial or labor actions or disputes (any of them whether local, regional, national or sectorial, but only if affecting Contractor or Subcontractors or Suppliers and to the extent affecting employees working at the Site, or the logistics of the equipment or materials needed for the Works).

"Governmental Authority" shall mean any European, national, autonomic, regional, province, town, city, or municipal government, whether domestic or foreign, or other administrative, regulatory or judicial body of any of the foregoing.

"Hazardous Material" shall mean oil or petroleum and petroleum products, asbestos and any asbestos containing materials, radon, polychlorinated biphenyl's ("PCBs"), urea formaldehyde insulation, lead paints and coatings, and all of those chemicals, substances, materials, controlled substances, objects, conditions and waste or combinations thereof which are now or become in the future listed, defined or regulated in any manner by any federal, state or Applicable Law.

"Health and Safety Coordinator" shall have the meaning set forth in Section 3.1.

"Health and Safety Manager" shall have the meaning set forth in Section 3.2.

"Health and Safety Plan" shall have the meaning set forth in Section 8.4.

"Health and Safety Study" shall have the meaning set forth in Section 8.4.

"Indemnified Party" shall have the meaning set forth in Section 25.4.

"Indemnifying Party" shall have the meaning set forth in Section 25.4.

"Industry Standards" shall mean those standards of care and diligence normally practiced by solar engineering, construction and installation firms in performing services of a similar nature in jurisdictions in which the Work will be performed and in accordance with good engineering design practices, Applicable Permits, and other standards established for such Work.

"Investors" shall have the meaning set forth in the first recital.

"Operational Permits" shall mean, jointly, the *** for the medium voltage infrastructure and the grid connection for each Unit, the definitive registration of each Unit within the Administrative Register of Power Facilities Included within the Special Regime (*Registro Administrativo de Instalaciones de Producción de Energía Eléctrica Acogidas al Régimen Especial, or "RAIPRE"*) and the municipal operation license for each Unit (*licencia municipal de funcionamiento*).

"Owner" shall have the meaning set forth in the preamble.

"Owner's Representative" shall mean the individual designated by Owner in accordance with Section 3.1.

"Park" shall have the meaning set forth in the sixth recital.

"Park's EPC Rated Value" shall mean the total aggregated Wp set forth in the fifth recital.

"Park's Final Rated Value" shall mean the total aggregated Wp stated in the manufacturers' Flash Test Data of the PV modules finally delivered at Substantial Completion of the Full Park.

"Party" shall mean, individually, each of the parties to this Agreement.

"Person" shall mean any individual, corporation, partnership, company, joint venture, association, trust, unincorporated organization or Governmental Authority.

"Receiving Party" shall have the meaning set forth in Section 32.

"Retention" shall have the meaning set forth in Section 18.2.

"Site" shall have the meaning set forth in the fifth recital, and is more fully described in Schedule 4.1 hereto.

"Site Lessor" shall mean the counterpart of Owner under any lease agreements (or surface rights agreements) executed in connection with the Site.

"Solarpack" shall mean Solarpack Corporación Tecnológica, S.L.

"Subcontractor" shall mean any Person, other than Contractor and Suppliers, retained by Contractor to perform any portion of the Work (including any Subcontractor of any tier) in furtherance of Contractor's obligations under this Agreement.

"Substantial Completion" shall mean, for each Unit of the Park, satisfaction or waiver of all of the conditions set forth in Section 13.3.

"Substantial Completion Date" shall mean the actual date on which the Substantial Completion of the Full Park, as defined in Section 13.4, has occurred.

"Substantial Completion of the Full Park" shall mean satisfaction or waiver of all of the conditions set forth in Section 13.4.

"Suppliers" shall mean those Equipment suppliers with which Contractor contracts to build the Park.

"Technical Advisor to the Bank" shall mean the independent engineering firm appointed by Owner, which appointment shall be approved by the Bank, to supervise the completion of the commissioning tests and execute the certificates approving any commissioning test contemplated in Section 4.6.

"Technical Dispute" shall have the meaning set forth in Section 32.2.

"Unit" shall have the meaning set forth in the sixth recital.

"Unit Price" shall mean the result of dividing the Contract Price between the number of Units of the Park.

"Unit Warranty" shall mean the warranty of Contractor set forth on Schedule 23.

"Unit's EPC Rated Value" shall mean 120kWp.

"Unit's Final Rated Value" shall mean the total aggregated Wp stated in the manufacturers' Flash Test Data of the PV modules that comprise the Unit at Substantial Completion of such Unit.

"Work" shall mean all obligations, duties, and responsibilities assigned to or undertaken by Contractor and described on Schedule 4.1 with respect to each Unit of the Park.

2. Scope.

Contractor shall provide on a turnkey basis all professional design and engineering services, Equipment procurement, supervision, labor, materials, equipment, tools, construction Equipment and machinery, utilities and transportation up to the general protection cabinet ("*Caja General de Protección*") and revenue meter for each Unit, and procurement of the ***, and other facilities, items and services, in each case to the extent necessary for the proper execution and completion of each Unit, in accordance with the Contract Documents, which are each made a part hereof.

Contractor shall supervise and direct the Work in accordance with Industry Standards. Contractor shall have sole control over the engineering, design and construction means, methods, techniques, sequences, and procedures and for coordination of all portions of the Work under this Agreement unless the Agreement specifically provides otherwise.

3. Representatives.

3.1 Owner Representatives. Owner designates, and Contractor agrees to accept, Mr. *** as Owner Representative for all matters relating to Contractor's performance of the Work (except for the execution of the certificates approving any commissioning test contemplated in Section 4.6). However, for the exclusive purposes of executing the certificates approving any commissioning test contemplated in Section 4.6, Owner

unconditionally and irrevocably appoints the Technical Advisor to the Bank as its representative. Owner shall notify Contractor of such appointment in accordance with Section 33 at least one (1) month prior to the beginning of the first commissioning test contemplated in Section 4.6. The actions taken by Owner Representative regarding such performance shall be deemed the acts of Owner and shall be fully binding for Owner.

The Owner shall appoint a coordinator for health and safety labor matters during the performance of the Work (the "Health and Safety Coordinator"). The Health and Safety Coordinator shall perform the functions set out in Section 8.4.

Owner may, upon written notice to Contractor, pursuant to Section 33 hereof, change the designated Owner Representative, Technical Advisor to the Bank or Health and Safety Coordinator. However, the replacement of the Technical Advisor to the Bank shall be notified to Contractor at least one (1) month prior to the beginning of the first commissioning test contemplated in Section 4.6.

3.2 Contractor Representatives. Contractor designates, and Owner agrees to accept, Mr. Marco Miller as Contractor Representative for all matters relating to Contractor's performance under this Agreement. The actions taken by Contractor Representative shall be deemed the acts of Contractor.

Additionally, before commencement of the Work on Site, Contractor shall appoint (i) as Project Manager to supervise all matters related to the performance of the Work, and (ii) a Construction Manager with the necessary experience in order to supervise the construction of the Park. The Construction Manager shall be based on the Site. The Project Manager shall be based in Spain from commencement of the Work on Site.

Not later than thirty (30) days before commencement of the Work on Site, Contractor shall appoint a health and safety manager (the "Health and Safety Manager") to supervise all matters related to health and safety during the performance of the Work. The Health and Safety Manager shall be in permanent contact with the Health and Safety Coordinator and shall perform his functions as set out in Section 8.4.

Contractor may, upon written notice to Owner, pursuant to Section 33 hereof, change the designated Contractor Representative or the Health and Safety Manager.

3.3 The Parties shall vest their Representatives with sufficient powers to enable them to assume the obligations and exercise the rights of Contractor or Owner, as applicable, under this Agreement.

3.4 Notwithstanding Sections 3.1 and 3.2, all amendments, Change Orders, notices and other communications between Contractor and Owner contemplated herein shall be delivered in writing and otherwise in accordance with Section 33.

4. The Work.

4.1 Subject to Section 21, Contractor shall perform the Work in accordance with the express description thereof in Schedule 4.1. In particular, the Work shall include the following:

(i) *** and obtaining and maintaining in force all insurances identified as Contractor's responsibility on Schedule 24.

(ii) Basic and detail engineering (preliminary design and system design engineering). The Geotechnical, Hidrologic and Topographic Studies have been delivered to Contractor by Owner.

(iii) Civil works, Site grading, landscaping, foundations and all necessary earth and other preparatory work if required to prepare the part of the Site where the Park is located.

(iv) Supply and manufacture of Equipment and materials, including the supply and manufacture required for erection, installation and operation of the Units at the Park including, but not limited to, PV modules, inverters, GPT-0 PowerTracker components and steel, GPT-0 PowerTracker construction *** and electrical subcontractors. The Work shall include up to the general protection cabinet ("*Caja General de Protección*") and revenue meter for each Unit, which are included within the scope of the Work but which constitute the limit of such scope. Technical Specifications are attached as Schedule 4.1.

(v) Monitoring systems as specified in Schedule 4.1.

(vi) Up to two (2) days per Site of on-site operation and maintenance training of Owner's personnel (which shall be the same personnel for any Park built by Contractor on the same Site, even if the owners of such other Parks are different from the Owner).

(vii) Supply of sufficient spare parts for the Unit Warranty period stipulated in Schedule 23.

Contractor shall supply, under this Agreement, a total number of forty (40) Units, with a total installed power of 4.80 MWp and 4 MWe.

4.2 Contractor shall perform all Work in accordance with Industry Standards and all relevant EU and national regulations and specifications, including homologation of equipment and installations to EU Directives and national standards, and all relevant specifications as contained in the Applicable Permits, especially the "Declaración de Impacto Ambiental" (Schedule 4.2).

4.3 Contractor shall perform engineering and design services, using qualified architects, engineers and other professionals selected and paid for by Contractor, in each case as are necessary to prepare all Contract Documents and submit the Contract Documents to Owner for its review and approval.

4.4 ***. Owner shall file any documents required to obtain any necessary Applicable Permits and obtain all such Applicable Permits ***. Owner, at its expense, shall file any documents required to obtain such Applicable Permits on a timely basis. Owner shall pay for all taxes, fees and costs required of Owner in order to obtain the Applicable Permits for which the Owner is responsible under this Section 4.4. In particular, Owner represents and warrants to Contractor that Owner has obtained all permits, licenses and other authorizations which may be required to commence the construction of each Unit of the Park.

4.5 Contractor, at its expense, shall purchase, transport, deliver, inspect to the extent it deems necessary, and construct and install all Equipment necessary or useful in order to complete each Unit. Owner will be the importer of record and shall separately pay all VAT. The status of Owner as importer of record shall in no way diminish Contractor's status as a turnkey contractor or alter the risk of loss otherwise allocated to Contractor pursuant to Section 4.10 below. Contractor will (a) provide all the necessary administrative assistance to process the importation of goods on behalf of Owner; and (b) indemnify Owner for any liabilities, penalties or other damages that Owner may incur (excluding Owner's obligation to pay VAT) as a result of its status as importer of record. Pursuant to Section 23, Contractor will provide Owner with a standby letter of credit in accordance with the model of Schedule 23 (b) and for the amount contemplated in Section 23.3. Such standby letter of credit will secure Contractor's warranty performance obligations in accordance with Section 23 (a) and ***. The aforementioned standby letter of credit shall remain in force from the Substantial Completion Date and for the two (2) year period during which the Contractor's warranties for any of the Units remain in force.

Contractor shall obtain and maintain standard manufacturer's and supplier's warranties for the Equipment, which shall be according to that stipulated under Section 23.2 hereof. With respect to a Unit, Contractor shall assign to Owner all of Contractor's right, title and interest in the Equipment as per Section 4.10 (a), free and clear of any lien, encumbrance or charge of any kind created by Contractor or resulting from Contractor's actions. In addition, manufacturer's and/or supplier's warranties for each Unit shall be expressly permitted to be assigned and, upon Substantial Completion of the Unit, Contractor shall assign to Owner all related manufacturer's and/or supplier's warranties for each Unit.

4.6 Contractor shall startup each Unit and perform the commissioning tests for each Unit and for the Park described on Schedule 4.6.

Owner shall provide such electricity and consumables as may be required to carry out the tests. The Contractor's technical personnel (or, when applicable the installer and/or manufacturer's personnel, with Contractor's supervision) shall operate each Unit during the tests, although Owner (and the Owner's personnel) shall be entitled to be present during any test. The Technical Advisor to the Bank and any third party entrusted with the supervision, vigilance and quality control of Contractor shall be entitled to attend at and witness the tests. Contractor shall notify with at least two (2) week notice the start of the relevant tests for Substantial Completion in order to allow Owner's Representative and the Technical Advisor to the Bank to organize properly the test attendance. Contractor shall also notify the number of Units that will be tested on such date.

Upon completion of the relevant commissioning tests, Contractor shall submit to the Technical Advisor to the Bank the certificate of the results thereof for its approval or rejection. Owner and Contractor agree that the approval or rejection by the Technical Advisor to the Bank shall fully bind Owner, and that no certificate of the results of the commissioning tests executed by the Owner's Representative (and not by the Technical Advisor to the Bank) shall be a valid approval or rejection of such commissioning tests.

If the results of the test can be obtained on Site following the performance of the test and the test has been completed successfully, Technical Advisor to the Bank and Contractor's Representative shall execute the relevant certificate including the results achieved in the test. If the results of the test cannot be obtained on Site following the performance of the test, Contractor shall promptly submit to Technical Advisor to the Bank the relevant certificate containing the results of such test. Technical Advisor to the Bank shall promptly review such certificate and results and shall determine whether the test has been successfully completed within five (5) business days following receipt of such certificate.

If any Unit fails to complete any test, the Technical Advisor to the Bank and Contractor's Representative shall execute the relevant certificate including the results achieved in the relevant test for such Unit. Contractor shall repeat the test for such Unit one or several times before the Substantial Completion Date. Contractor shall take all corrective actions so that such Unit may successfully complete the tests, without prejudice to the Owner's rights and remedies in accordance with this Agreement.

Any approval or rejection of the results of the commissioning tests made by the Technical Advisor to the Bank shall always be deemed to be made by Owner and, in the event that any Dispute regarding the commissioning tests arises, Contractor shall be entitled to settle the Dispute in accordance with Section 32. If the independent expert or the Tribunal decide that any test has been completed successfully, such decision shall prevail and shall be binding for Owner, Contractor and the Technical Advisor to the Bank and, therefore, the relevant test shall be approved for all the purposes contemplated in this Agreement.

4.7 Contractor shall provide to Owner a copy of the operations and maintenance manual per Park. Contractor shall provide the drafts and the final version of the operations and maintenance manual on or before the dates contemplated in Section 4.12. Before Final Completion, Contractor shall remove debris, Equipment and surplus materials from the relevant part of Site where the Park is located.

4.8 Owner shall be solely responsible to pursue and obtain any subsidies, rebates or other incentives that may be available from any Governmental Authority pursuant to or in connection with the purchase of each Unit or otherwise, and Contractor makes no representation or warranty to Owner as to the availability of any of such incentives. Contractor shall provide Owner reasonable assistance upon request; provided that Owner shall reimburse Contractor, upon demand by Contractor, for any expense incurred by Contractor in providing such assistance.

4.9 Exclusions.

Contractor shall not perform any work or activity beyond the scope of the Work, as defined in this Agreement. In particular, the following shall not be included in the Work and therefore shall be performed by Owner:

(a) Owner shall provide the Site for the Work, and suitable access thereto so that Contractor may gain access to the Site to perform the Work as soon as any necessary work permits, licenses and authorizations are obtained, as well as to the Technical Advisor to the Bank for the purposes of the commissioning tests. Access to the Site will be done by the ways located on the (north-west; south-west; north) roads, which shall be sufficient to enable the access to the Site of the trucks and the Equipment that Contractor may need to use in the performance of the Work in accordance with Industry Standards applicable to these kind of projects;

(b) Owner shall select its own personnel so that it is present at the tests of the Work prior to the date of Substantial Completion of the first Unit of the Park and operation of the Units;

(c) Owner shall be responsible for hiring any third party entrusted with the supervision, vigilance and quality control of Contractor;

(d) Owner shall obtain every necessary Applicable Permit (including, in particular, the Operational Permits), ***, and Owner shall pay for all fees related to any permits, licenses or authorizations and costs incurred (except for the costs of Contractor's personnel -including Contractor's drafting any documents that may be necessary- and the costs of any third parties subcontracted by Contractor to prosecute *** in order to obtain any Applicable Permits, including ***;

(e) Owner shall be solely responsible for securing and paying for all asset management services relating to the Parks, and will not require any such services from Contractor;

(f) Owner shall provide the fence, gates, lighting and security infrastructure for the Park;

(g) Owner shall be responsible for any engineering, work, Equipment and materials from the general protection cabinet ("*Caja General de Protección*") and revenue meter for each Unit (which are included within the scope of the Work but which constitute the limit of such scope) to the grid connection; and

(h) Contractor shall not be responsible for any environmental liabilities relating to the Site, except for such pollution, toxic emissions, etc. as are caused by Contractor during construction of the Park. However, Contractor shall be required to comply with all applicable environmental laws and regulations during

construction of the Park, including the Declaración de Impacto Ambiental (Schedule 4.2), and without prejudice to the provisions of Section 27.2.

As a consequence, any work or activity necessary for the Substantial Completion of the Park, and not included in this Article 4.9, shall be considered as part of the scope of supply of Contractor.

4.10 Title; Risk of Loss.

(a) Owner shall take title of PV modules, inverters, steel, tracker and other equipment ("Category 1 Items") after receipt of payment and release of Original Bill of Lading by Contractor.

Owner shall take title of the remaining parts of the Park ("Category 2 Items") as payments are received by Contractor; provided, however, that except as otherwise expressly contemplated in this Agreement (and subject to Section 4.10 (d) below), risk of loss for the Units shall remain with Contractor until Substantial Completion of such Unit.

(b) From the Effective Date and until the date of Substantial Completion in respect of each Unit, and subject to paragraphs (c), (d) and (e) of this Section 4.10, Contractor assumes risk of loss and full responsibility for the cost of replacing or repairing any damage to such Unit and all materials, Equipment, supplies and maintenance equipment (including temporary materials, equipment and supplies) that are purchased by Contractor for permanent installation in or for use during construction of such Unit, regardless of whether Owner has title thereto under this Agreement; and

(c) Except when attributable to the performance by Contractor or Subcontractors of any of the Works or Services contemplated in the two (2) year warranty provided by Contractor under Section 23, Owner shall bear the risk of loss and full responsibility in respect of each Unit from and after the date of Substantial Completion of such Unit, and if any portion of such Unit is lost or damaged for whatever reason, then Contractor shall restore or rebuild any such loss or damage and complete the Work in accordance with this Agreement at the sole cost and expense of Owner; provided, however, that Contractor shall not be obligated to restore or rebuild any such loss or damage unless Owner has properly carried and maintained the insurance that Owner is required to maintain pursuant to Section 24 and Contractor has received reasonable assurances from Owner that Owner will prosecute such claim in a commercially reasonable manner and Contractor will receive the insurance proceeds, if any, paid under such Owner-maintained insurance coverages in accordance with the disbursement provisions of this Agreement.

(d) Notwithstanding anything herein to the contrary, Contractor shall bear the risk of loss and full responsibility for the cost of restoring or rebuilding any damage to such Unit and all materials, Equipment, supplies and maintenance equipment (including temporary materials, equipment and supplies) that are purchased by Contractor or Owner for permanent installation in or for use during construction

of such Unit to the extent caused by a Force Majeure Event occurred from the Effective Date until the date Substantial Completion of the relevant Unit in respect of such Unit. For these purposes, and under its responsibility, Contractor will contract a builder's risk policy in accordance with Schedule 24. Specific Force Majeure Events NOT covered by such builder's risk policy, and not assumed by Contractor, are war (whether or not war is declared), hostilities, revolution, rebellion, insurrection against any governmental authority, riot, terrorism, acts of a public enemy or other civil disturbance.

(e) Notwithstanding anything herein to the contrary, Owner shall bear the risk of loss and full responsibility for the cost of replacing or repairing any damage to such Unit and all materials, Equipment, supplies and maintenance equipment (including temporary materials, equipment and supplies) that are purchased by Contractor or Owner for permanent installation in or for use during construction of such Unit to the extent caused by the negligent, grossly negligent or wilful acts of the Site Lessor, the Owner or their respective agents, employees or representatives.

4.11 Training of Owner's personnel.

(a) Contractor shall provide the Owner's personnel with up to two (2) days per Site of on-site operation and maintenance training. The Owner's personnel will have the qualifications needed for the performance of their activities and will be hired by Owner. Contractor shall use its best efforts to enable the Owner's personnel to take part in the Commissioning with the Contractor's personnel, provided that the Owner's personnel follows the instructions of Contractor, does not risk the safety of the tests and does not disturb Contractor's or Subcontractor's regular work.

(b) The schedule for the training lessons will be coordinated with Owner, provided that the operation and maintenance manuals and such training will be provided within the thirty (30) days following the Substantial Completion Date, but not after Contractor has left the Site. The planning of training lessons will be agreed between Owner and Contractor, but will ensure compliance with the Construction and Milestone Schedule.

(c) Contractor will propose to Owner, with enough time in advance, the dates when the Owner's personnel must be at its disposal for the training lessons.

4.12 Technical Contract Documents to be delivered by Contractor.

Contractor undertakes to deliver Owner the following technical documents on or prior to the following dates:

Technical Document	Submitted
1.- Construction drawings	30 days prior to commencement of the Work on Site
2.- O&M Manuals Drafts in English	30 days after to commencement of the Work on Site. Contractor shall translate such O&M Manuals Drafts into Spanish as soon as possible
3.- Final O&M Manuals in Spanish	60 days after Substantial Completion Date
4.- As-Built Drawings	30 days after Substantial Completion Date

For the avoidance of doubt, the final operation and maintenance manuals in Spanish and the as-built drawings shall be included in the punchlist items contemplated in Section 13.4 for the Park.

5. Inspection. All Work performed by Contractor and all Equipment shall be subject to the inspection by Owner and by the Technical Advisor to the Bank, but such right of inspection of the Work or Equipment shall not relieve Contractor of responsibility for the proper performance of the Work or Equipment to the extent provided under this Agreement. Contractor shall provide to Owner or Owner's designee or the Technical Advisor to the Bank access to Contractor's facility or facilities where the Work is being performed upon reasonable prior notice (at least forty-eight (48) hours), during business hours, and subject to compliance with Contractor's safety rules and policies. Owner shall ensure that the inspections and tests do not affect the normal performance of this Agreement.

6. Final Completion. Final Completion of the Park shall be deemed to have occurred only if punchlist items for the Park contemplated in Section 13.4 have been completed or waived. Upon Final Completion of the Park, Contractor shall submit to Owner a written statement requesting acknowledgement of the Final Completion of the Park. The acknowledgment shall be executed by Owner within five (5) business days after the receipt of the written statement unless Owner provides written notice of Contractor's failure to achieve Final Completion of the Park. Execution of the acknowledgment or failure of the Owner to provide written notice of Contractor's failure to achieve Final Completion of the Park within five (5) business days shall constitute Final Completion of the Park.

7. Changes and Extra Work.

7.1 Without invalidating this Agreement, Owner may initiate a change in the Work on a Unit by advising Contractor in writing of the change believed to be necessary. As soon as practicable after notice, Contractor shall prepare and forward to Owner in writing the price for the extra or changed Work on such Unit in accordance with Schedule 1B and any required adjustment to the Construction and Milestone Payment Schedule or any other term or condition of this Agreement. Except for minor modifications in the Work not involving extra cost and not inconsistent with the purposes of the Work, and except in an emergency endangering life or property, all authorized extra Work or changes, and the agreed to price, shall be confirmed through a Change Order to this Agreement in respect of the relevant Unit. No change or extra Work shall be effective without a Change Order signed by Owner and accepted in writing by Contractor and the Technical Advisor to the Bank, subject to the provisions of Section 27.2. The price shall include all costs associated with performing the extra Work or changes, including the impact on the original

scope of Work, inefficiencies created by the extra Work or changes, and overhead associated with the extra Work or changes.

7.2 All extra Work and changes shall be performed in accordance with the provisions and conditions of this Agreement, except as provided in the Change Order.

7.3 All Change Orders shall be paid by the Owner on a cost plus fifteen percent (15%) basis. Contractor will use commercially reasonable efforts to secure at least two (2) bids for any subcontract work required for all Change Orders.

7.4 Contractor may propose Change Orders to Owner if those Change Orders improve the Units or are otherwise advisable for the Work. This shall not affect the obligation of Contractor to perform the Work and to deliver the Units in the form agreed in this Agreement. Any changes to the Units or the Work requested by any Governmental Authority as a condition to issue an Applicable Permit shall entitle Contractor to request a Change Order in accordance with this Section 7, Sections 7.1, 7.2 and 7.3 shall apply *mutatis mutandis.*

8. Protective Measures.

8.1 Contractor shall be responsible for all injury or damage to individuals or property that may occur as a result of its fault or negligence or that of its Subcontractors (other than Solarpack) in connection with the performance of the Work. Contractor shall be responsible for the proper care and protection of all Equipment and materials furnished by Contractor and the Work performed until Final Completion of the Work for each Unit. Given that Owner is responsible for providing the fence, gates, lighting and security infrastructure for the Park, Owner shall arrange for the adequate protection for adjacent property to the extent required by law or by this Agreement, including protection of any Work existing in public property.

8.2 Contractor shall take all reasonably necessary precautions for the safety of its employees on the relevant part of the Site where the Park is located and prevent accidents or injury to individuals on, about, or adjacent to the premises where the Work is being performed.

8.3 Contractor shall keep the relevant part of the Site where the Park is located and surrounding areas free from accumulation of waste materials or rubbish caused by the Work, and upon Final Completion of the Park, shall remove from the relevant part of the Site where the Park is located all waste materials, rubbish, tools, Equipment, machinery and surplus materials.

8.4 Health and Safety

Owner shall undertake and prepare a health and safety study (the "Health and Safety Study") and Contractor shall implement it through a health and safety plan (the "Health and Safety Plan"), as required under Applicable Law. Contractor shall provide the Health and

Safety Coordinator with a draft of the Health and Safety Plan and of the Health and Safety Study that it intends to put in place for the Owner's information and comments, although Contractor shall remain responsible for the correctness and completeness of the Health and Safety Study and its implementation through the Health and Safety Plan.

Contractor will adopt, maintain and supervise all measures and programs required to ensure the safety of all the persons present in the relevant part of the Site where the Park is located. Unless otherwise agreed, Contractor shall, from the commencement of the Work on the Park until Final Completion: (i) provide proper fencing, gates, lighting, security infrastructure and warnings in the Park; (ii) provide proper temporary roadways, footways; and (iii) take all steps to protect the environment on and off the relevant part of the Site where the Park is located and to avoid damage and nuisance to persons or to properties resulting from pollution, including noise or other causes arising as a consequence of its method of operation.

Contractor assumes responsibility for the health and safety of its workers and those of its Subcontractors.

9. Force Majeure. Contractor shall promptly notify Owner in writing of any delay or anticipated delay in Contractor's performance of this Agreement due to a Force Majeure Event, and the reason for and anticipated length of the delay. If reasonably feasible, Contractor shall deliver such notice within forty-eight (48) hours of when Contractor becomes aware of such delay. Contractor shall be excused for any delays or defaults in the performance of its obligations under this Agreement that are the result of a Force Majeure Event or any other event outside the reasonable control of Contractor. Contractor shall be entitled to a reasonable extension of time for delays due to a Force Majeure Event; provided that any Force Majeure Event that prevents performance, or is reasonably expected to prevent performance, for more than ninety (90) days shall entitle either Party to terminate this Agreement, in which case, Section 11.4 shall apply. Any modification to the Construction and Milestone Payment Schedule pursuant to this Section 9 shall be documented by a written Change Order to this Agreement.

10. Unanticipated Conditions. If any unusual or unanticipated conditions exist or arise at the Site (such as hazardous materials, environmental conditions, pollution or archeological findings), which conditions would involve the incurrence by Contractor of any expenses to correct such conditions, Contractor shall submit a request for approval of the corrective work and payment of the related expenses to Owner, which approval shall not be unreasonably withheld, conditioned or delayed. The additional work resulting therefrom will be paid for by Owner as extra Work pursuant to Section 7. ***

11. Termination.

11.1 Termination by Owner:

Contractor agrees that Owner shall be entitled to terminate this Agreement upon the occurrence of any of the following circumstances:

(a) Contractor abandons the entire Work without justified reason for more than three (3) weeks or does not start the Work without justified reason for more than three (3) weeks from Effective Date, or

(b) Contractor shall assign this Agreement in whole without the written authorization of Owner, unless otherwise expressly permitted under this Agreement, or

(c) Contractor violates in any material respect any of the provisions of this Agreement, which violation remains uncured for thirty (30) days following Contractor's receipt of written notice thereof from Owner, or

(d) the Substantial Completion of the Full Park is delayed for more than *** months from the Effective Date hereof as a result of Contractor's default or a default of its Subcontractors, but at least thirty (30) Units have achieved Substantial Completion and such Units have also achieved Substantial Completion of the Full Park, and Owner decides not to grant more time to Contractor to achieve Substantial Completion of the Full Park for every Unit of the Park, or

(e) fewer than thirty (30) Units of the Park achieve Substantial Completion within the *** months following the Effective Date as a result of Contractor's default or a default of its Subcontractors, and Owner decides not to grant more time to Contractor to achieve Substantial Completion of the Full Park for every Unit of the Park, or

(f) ***

(g) Contractor executes this Agreement in bad faith, or

(h) any Force Majeure Event that prevents performance, or is reasonably expected to prevent performance, for more than ninety (90) days, or

(i) the Condition Precedent is not fulfilled on or before May 20, 2007 and Contractor decides not to grant more time to Owner to achieve the fulfillment of the Condition Precedent,

Owner may instruct Contractor to discontinue all or any part of the Work, and Contractor shall thereupon discontinue the Work of such parts thereof. Owner shall thereupon have the right to continue and complete the Work or any part thereof, by contract or otherwise. Upon the occurrence of any of the circumstances contemplated in paragraphs (a), (b), (c), and (g) above, Contractor shall be liable to Owner, unless otherwise contemplate herein, for any and all damage and excess cost incurred by Owner in completing the Work, in each case to the extent caused by Contractor's material breach of this Agreement. Upon the occurrence of any of the circumstances contemplated in paragraphs (d), (e) and (f) above, the Parties shall proceed as follows:

(1) upon the occurrence of the circumstance contemplated in paragraph (d) above:

(I) the Contract Price shall be reduced to reflect those Units of the Park which have achieved Substantial Completion and Substantial Completion of the Full

Park as of the *** month deadline, and Contractor will return the portion of the Contract Price received in excess, according to the new Contract Price, within the following deadlines:

- the portion of the Contract Price received in excess for the Category 1 Items of such Units will be returned within *** months following the Owner's demand; and

- the portion of the Contract Price received in excess for the Category 2 Items of such Units will be returned at Substantial Completion Date; and

(II) in addition, Contractor will pay the Owner, within two (2) months following the Owner's demand, (a) a lump sum payment equal to all Common Expenses for the Park as of the *** month deadline and (b) an amount equal to the Financing Costs as of the *** month deadline. Owner shall promptly transfer the payment described in clause (b) to its Investors who are not able to participate in ownership of the partially completed Park. As used herein, "Common Expenses" means the net present value of that pro rata portion of the uncompleted Park's costs, land lease and security, calculated by Deloitte or any other prestigious international audit firm chosen by Contractor among the three (3) presented by Owner. As used herein, "Financing Costs" means (x) the financing expenses of any Investors of the Owner who are associated with the uncompleted portion of the Park to carry their loan for a period of up to one year following the *** month deadline, assuming such expenses were incurred and (y) the finance charges associated with any early prepayment of loans from such Investors who do not elect to carry their loan. Title to all property and equipment provided by Contractor for the uncompleted Units shall be transferred to Contractor. The Bank shall provide a detailed and justified liquidation of the expenses and charges contemplated in sections (x) and (y) above. Contractor shall review this liquidation taking into account the executed copy of the facility agreement entered into by Owner and the Bank, which has been delivered to Contractor prior to the Effective Date. Contractor undertakes to acknowledge that the liquidation made by the Bank is correct and firm if made in accordance with the provisions of the aforementioned executed facility agreement and, therefore, undertakes to pay the corresponding amount within *** months following the Owner's demand.

(2) upon the occurrence of the circumstance contemplated in paragraph (e) above, within *** months following the Owner's demand, Contractor will return all the payments received from Owner pursuant to this Agreement. In such event title to all property, materials and Equipment provided by Contractor for the Park shall be transferred to Contractor.

(3) upon the occurrence of the circumstance contemplated in paragraph (f) above, Owner shall be entitled to reject such Unit and receive a repayment of such Unit Price for the

Unit for which ***, subject to the following provisions:

(I) If *** have not been achieved for any Unit due to any reason attributable to Contractor's performance of the Work: (a) first, Solarpack will return on demand *** of all payments then received by Solarpack in connection with its services regarding such Park at any time, to the relevant payer (including those payments made by PowerLight Systems Spain, S.L. under the Developer Subcontract); and (b) second, Contractor, within *** months following the Owner's demand, will return the payments received for the applicable Unit Price. A partial or non-fulfillment of (a) in no way diminishes obligation (b) by Contractor.

(II) If *** have not been achieved for any Unit due to any reason not attributable to Contractor: (a) first, Solarpack will return on demand one hundred per cent (100%) of all payments then received by Solarpack in connection with its services regarding such Park at any time, to the relevant payer (including those payments made by PowerLight Systems Spain, S.L. under the Developer Subcontract); and (b) second, Contractor within *** months following the Owner's demand, will return the payments received for the applicable Unit Price. ***. A partial or non-fulfillment of (a) in no way diminishes obligation (b) by Contractor.

For the purposes of allowing Contractor to make the payments contemplated in Sections (3) (I) (b) or (3) (II) (b) above, title to all property, materials and Equipment provided by Contractor for such Unit shall be transferred to Contractor.

For the avoidance of doubt, Contractor shall not be responsible for the Owner's delay in obtaining, or any failure to obtain, in due time and manner the relevant *"acta de puesta en marcha definitiva"* for the medium voltage infrastructure and the grid connection for each Unit or any other Applicable Permit ***.

The remedies herein shall be inclusive and additional to any other remedies that may be available under Applicable Law, and no action by Owner shall constitute a waiver of any such right or remedy.

11.2 Termination by Contractor:

Owner agrees that Contractor shall be entitled to terminate this Agreement upon the occurrence of any of the following circumstances:

(a) Owner shall assign this Agreement, or sublet any part thereof, without the written authorization of Contractor, unless otherwise expressly permitted under this Agreement, or

(b) the Work is suspended for a period exceeding ninety (90) days pursuant to Section 19.1 or two (2) months pursuant to Section 19.2, or

(c) Owner fails to pay any amount due under this Agreement provided that a one (1) month period has elapsed since the date the amount was due, or payment by Owner has been delayed during a minor term of at least ten (10) days at least three (3) times, although this shall not entitle Contractor to termination when said amount is under dispute according to Section 32 hereof, or

(d) Owner violates in any material respect any of the provisions of this Agreement, which violation remains uncured for thirty (30) days following Owner's receipt of written notice thereof from Contractor, or

(e) Owner executes this Agreement in bad faith, or

(f) any Force Majeure Event that prevents performance, or is reasonably expected to prevent performance, for more than ninety (90) days, or

(g) If Owner fails to assume, within thirty (30) days following the termination of the Force Majeure Event, the cost of restoring or rebuilding any damage arising under such specific Force Majeure Events NOT covered by Contractor's builder's risk policy pursuant to Section 4.10 (d), or

(h) the Condition Precedent is not fulfilled on or before May 20, 2007 and Contractor decides not to grant more time to Owner to achieve the fulfillment of the Condition Precedent,

Contractor shall have all rights and remedies that may be available under Applicable Law against Owner with respect to this Agreement, including without limitation the right to suspend performance of the Work, to terminate this Agreement, to require Owner to immediately post payment bonds, and/or Contractor to file mechanics' liens.

11.3 Once this Agreement is terminated due to any circumstance contemplated in paragraphs 11.1 (a), (b), (c), or (g) above, the Parties will execute a verification certificate (*acta de comprobación*) of the Work carried out by Contractor as of that date, settling the price of the part of the Work correctly made and useful for Owner, and the Parties will calculate the amounts to be paid to each other, subject to the limitations provided under Section 25.5 of this Agreement. For the avoidance of doubt, PV modules and inverters shall be always deemed to be useful for Owner. The aforementioned part of the Work correctly made and useful for Owner shall maintain the warranty stated in Schedule 23 (a).

11.4 Once this Agreement is terminated due to any circumstance contemplated in paragraphs 11.1 (h) or 11.2 (a), (b), (c), (d), (e), (f) or (g) above, Owner shall pay to Contractor (as soon as reasonably practicable, and in any event within 21 days, in relation to ascertained amounts and within 21 days of ascertainment in respect of unascertained amounts):

(i) the price of the part of the Work completed at the date of termination, *less* the total of all amounts previously paid to Contractor under the Agreement and in addition, in so far as not included in such price of the Work,

(ii) the costs of any additional Work required by Owner;

(iii) the costs of component parts (PV, steel, inverters) reasonably ordered for the Work which shall have been delivered to Contractor or of which Contractor is legally liable to accept delivery, provided that Contractor has not ordered those component parts unreasonably early and has used all reasonable endeavors to avoid or minimize the amount of those costs, and prior to payment by Owner in respect thereof Contractor has issued the relevant invoice accompanied by a copy of the Bill of Lading and delivered by Contractor to Owner upon shipment from point of origin. These invoices will be due within ten (10) calendar days upon delivery by Contractor. Upon receipt of payment, Contractor will release Original Bill of Lading which evidences transfer of title;

(iv) the cost of delivery under paragraph (iii) above;

(v) all reasonable cancellation charges and administration costs incurred by Contractor in connection with the termination; and

(vi) the reasonable documented direct costs of demobilization.

11.5 Once this Agreement is terminated due to any circumstance contemplated in paragraphs 11.1 (i) or 11.2 (h) above, Owner shall pay to Contractor (as soon as reasonably practicable, and in any event within 21 days) a cancellation fee of five per cent (5%) of the Contract Price. Such cancellation fee shall be the sole compensation for Contractor for all reasonable cancellation charges and administration costs incurred by Contractor in connection with the termination, the direct costs of demobilization and the so-called direct damages (*daños directos*) arising under the termination of this Agreement. Contractor shall retain (or, if applicable, receive from Owner) title to all property and equipment provided by Contractor for the performance of the Work.

11.6 In any event (expressly including every paragraph of Sections 11.1 and 11.2 above), the Parties expressly agree that no Party shall be entitled to claim to the other for any right to profit (*beneficio industrial*) or the so-called indirect damages (*daños indirectos*), including loss of profit (*lucro cesante*) and loss of production (*pérdida de producción*), except for willful misconduct or gross negligence. For the avoidance of doubt, upon the occurrence of any event of termination of this Agreement, (i) the non-defaulting Party may request the other Party the specific performance of the same *in lieu* of termination; and (ii) the non-defaulting Party shall be entitled to claim damages and to be indemnified by the defaulting Party in case of termination of this Agreement upon a defaulting Party's breach.

12. Labor.

12.1 Contractor shall use reasonable efforts to minimize the risk of labor-related delays or disruption of the progress of the Work. Contractor shall promptly take any and all reasonable steps that may be available in connection with the resolution of violations of collective bargaining agreements (*convenios colectivos*) or labor jurisdictional disputes. 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 strikes, walkouts, lockouts or other labor disputes shall be at the discretion of the Party having the difficulty.

12.2 Likewise, Contractor undertakes to comply at all times with the laws and regulations governing Social Security (*Seguridad Social*) obligations and contributions, to register all employees with the Social Security administration and to punctually and correctly make all required payments, contributions, filings (including filing forms TC-1 and TC-2) and information disclosures. Contractor shall promptly submit to Owner copies of forms TC-1 and TC-2 of its employees and of its Subcontractors' employees when required by the Owner.

12.3 Contractor shall also be responsible for the submission of any information required by the labor or tax authorities having jurisdiction over the Site or the Work in respect of the employees working on the Site or from time to time employed or hired by Contractor and its Subcontractors to carry out any Work. Contractor shall also submit copies of that documentation to Owner. Contractor shall keep at all times in the Site a Registry Book (*Libro-Registro*) containing information on its employees and those of its Subcontractors working on the Site. Owner shall have full access to the information contained in such Registry Book.

13. Commencement and Substantial Completion of Work.

13.1 Contractor shall perform the Work in accordance with Schedule 4.1 and the preliminary project schedule which is attached as Schedule 13.1.

13.2 The target date on which Substantial Completion for all the Units of the Park is achieved shall be *** from the Effective Date. Contractor may claim a justified extension of the Substantial Completion date for all the Units of the Park if it is or will be delayed in completing the Work for any of the following causes:

(a) Change Orders agreed pursuant to this Agreement;

(b) breach of this Agreement or of a statutory duty by Owner;

(c) suspension of the Work pursuant to Section 19;

(d) a Force Majeure Event;

(e) any Owner's delay in obtaining (or any failure to obtain) in due time and manner the relevant *"acta de puesta en marcha definitiva"* for the medium voltage infrastructure and the grid connection for each Unit or any other Applicable Permit ***;

(f) if the Owner achieves the fulfillment of the Condition Precedent later than May 20, 2007

(g) inability or material difficulty for Contractor to access the Site and perform the Work due to the activities performed by any other contractors or subcontractors of Owner; or

(h) excessive rain or any other weather conditions that significantly deviate from monthly averages in the municipality of Llerena during the performance of the Work.

In the event of any material delay (other than those contemplated in paragraphs (a) to (h) above) that causes the prosecution of the Work not to substantially conform to the Schedule 1A, Owner may, by written notice to Contractor, direct that the Work be accelerated by means of overtime, additional crews or additional shifts or re-sequencing of the Work.

13.3 The following are conditions precedent to Substantial Completion of each Unit of the Park:

(a) each Unit is mechanically, electrically, and structurally constructed in accordance with the requirements of Schedule 4.1 of this Agreement, the Work and Industry Standards, except for non-critical punchlist items;

(b) each Unit is mechanically, electrically and functionally complete and ready for initial operations, adjustment and testing, except for non-critical punchlist items, and the Unit's Final Rated Value is not below *** of the Unit's EPC Rated Value;

(c) Commissioning according to procedures set forth in sections 1.1.2, 1.1.3, 1.1.4 and 1.2.1 of Schedule 4.6. are completed successfully and the corresponding certificates are duly signed by the Owner's Representative, the Technical Advisor to the Bank and the Contractor's Representative; and

(d) ***.

At Substantial Completion of each Unit Owner and Contractor shall agree on the punchlist items for such Unit. The punchlist shall be dealt with no later than *** months after Substantial Completion. Failure from Contractor to fulfill this obligation shall entitle Owner to complete the pending works on its own and charge the Contractor for the duly justified costs.

Substantial Completion shall not be withheld for failure to obtain any Applicable Permits, including any ***.

13.4 The following are conditions precedent to Substantial Completion of the Full Park:

(a) at least *** Units of the Park have achieved Substantial Completion in accordance with Section 13.3 above;

(b) the tests set forth in Schedule 4.6 (other than those tests contemplated in sections 1.1.2, 1.1.3, 1.1.4 and 1.2.1 of such Schedule) are completed successfully and the corresponding certificates are duly signed by the Technical Advisor to the Bank and the Contractor's Representative; and

(c) Contractor has delivered to Owner the documentation that, according to Section 4.12, has to be delivered at Substantial Completion Date.

At Substantial Completion of the Full Park Owner and Contractor shall agree on the punchlist items (which shall include the operation and maintenance manuals and the *"as-built"* drawings of the Park) for the Park. The punchlist shall be dealt with no later than *** months after Substantial Completion Date. Failure from Contractor to fulfill this obligation shall entitle Owner to complete the pending works on its own and charge the Contractor for the duly justified costs.

13.5 Delay Penalties. If the date of Substantial Completion for each Unit exceeds a *** month period from the Effective Date, as a result of Contractor's default or a default of its Subcontractors, Contractor will be subject to a penalty of *** of the Unit Price of those Units which have not achieved Substantial Completion for every *** in delay following the aforementioned *** term. In no event shall the penalty applicable to each Unit under this Section 13.5 exceed *** of the Unit Price. Delay penalties shall replace the right of Owner to claim damages (*indemnización por daños y perjuicios*) from Contractor for not having achieved Substantial Completion within the aforementioned *** term, and will be deducted from the *** retention contemplated in Section 18.2 (a) below.

14. Reports.

14.1 Contractor shall prepare a monthly progress report for the Park that shall include at a minimum the following and submit it to Owner within ten (10) days after the end of each calendar month: (a) executive summary, (b) progress of Work in comparison to the Construction and Milestone Payment Schedule, (c) safety report, (d) changes in Work and (e) issues/concerns. Contractor will not unreasonably deny any information request made by the Owner in relation with the execution of the Work.

15. Subcontractors and Suppliers.

15.1 Contractor shall at all times be responsible for the acts and omissions of Subcontractors. Contractor shall be responsible for performance of all the Work, whether performed by Contractor or its Subcontractors. Owner shall not undertake any obligation to pay or to be responsible for the payment of any sums to any Subcontractor.

15.2 The subcontracting agreements entered into by Contractor will be formalized in writing, and shall include any provisions which are necessary to guarantee the

rights of Owner under this Agreement and shall be consistent with the terms and conditions of this Agreement. Each subcontracting agreement shall also include a provision under which the Subcontractor waives any rights it may have under Article 1597 of the Spanish Civil Code.

15.3 Subcontractors' personnel shall work in accordance with the instructions and briefings of Contractor, as if they were employees of Contractor. The Subcontractors' personnel shall be subject to the same obligations as those of Contractor pursuant to Section 12 above.

15.4 Contractor shall use commercially reasonable efforts to evaluate and consider Spanish local Subcontractors in the construction activities for the Park, taking into account the benefits using Spanish Subcontractors may have on the permitting process.

15.5 Subject to meeting the warranty requirements described in Section 23.2, Owner accepts that the Park may be built with PV modules provided by one of the following pre-approved Suppliers:

- Sharp
- SunPower
- Sanyo (through Mitsui), ***
- Suntech (through Mitsui) ***.
- Evergreen.
- PowerLight Corporation's own product is acceptable to Owner as long as they carry a 25 year warranty provided by PowerLight Corporation.

Contractor confirms that at the signature of this Agreement, the approved PV module models are:

- PowerLight Solar Module ranging from 190 to 230 Wp
- Suntech STP class ranging from 240 to 280 Wp

Any other PV Module Models from the pre-approved suppliers must count with the written approval of the Technical Advisor to the Bank, which shall not be unreasonably withheld or delayed. In any event, the Technical Advisor to the Bank must provide such written approval or rejection not later than ten (10) days following receipt of Contractor's request.

Any PV Module Model under this agreement should comply with a maximum Temperature coefficient PM of 0,51%/ºC.

15.6 Subject to meeting the warranty requirements described in Section 23.2, Owner agrees that the Park may be built with the following inverter equipment:

Supplier: SMA

Model Number: SC100

15.7 Prior to the Contractor's purchase of the relevant Equipment, Owner shall have the right to veto any other inverter Supplier proposed by Contractor which is not listed above. Contractor undertakes to apply commercially reasonable efforts to involve Spanish Suppliers in the delivery of inverters to the Parks, as well as to engage Spanish local Subcontractors in the mechanical and electrical assembly work.

16. Ownership of Plans, Data, Reports and Material.

16.1 Subject to Sections 16.3 and 34, Contract Documents developed by Contractor under this Agreement shall remain the property of Contractor, even when prepared and delivered to Owner upon completion of the Work, and irrespective of title transfer of the Park to Owner. Nothing in this Agreement shall impair, alter or otherwise affect Contractor's proprietary rights in its patents, products or other intellectual property.

16.2 Any additional inventions or intellectual property created during construction shall be owned by Contractor, provided that Owner shall retain intellectual property ownership for inventions created without Contractor's involvement following Substantial Completion of the Full Park.

16.3 Contractor agrees to grant and hereby grants to Owner an irrevocable, non-exclusive, royalty-free license of use of Contract Documents developed by Contractor under this Agreement for the exclusive use of the operation of the Park. In addition, Contractor agrees to grant and hereby grants to Owner an irrevocable, non-exclusive, royalty-free license under all patents, copyrights and other proprietary information of Contractor related to the Work now or hereafter owned or controlled by Contractor to the extent reasonably necessary for the operation, maintenance or repair of any Unit or any subsystem or component thereof designed, specified, or constructed by Contractor under this Agreement. No other license in such patents and proprietary information is granted pursuant to this Agreement.

17. Contract Price.

17.1 As full compensation for the Work and all of Contractor's obligations hereunder Owner shall pay to Contractor Euros *** VAT excluded (the "Contract Price"). Therefore, the "Unit Price" for each 120kWp/100kWe Unit shall be *** , VAT excluded. The Contract Price shall be changed only by:

1. The Final Price will be ***.

2. Change Orders approved in accordance with Sections 7 or 9; provided that, upon notice by Contractor to Owner from time to time, the Contract Price may be adjusted by Contractor to account for any increase following execution of this Agreement in the cost of materials required for any Unit, but such adjustment may only be effected in the event of an unanticipated delay in the Work with respect to such Unit, which delay is beyond the reasonable control of the Contractor and lasts for at least thirty (30) days which is attributable to Owner.

The Contract Price shall be paid in accordance with Section 18.

17.2 Subject to the Contract Price adjustment mechanisms contemplated in this Agreement, the Contract Price is firm and fixed and not subject to any variation or price adjustments (downward or upward) in this Agreement, and stipulates the full compensation for the design and installation of the Park by Contractor, except as contemplated in Sections 7, 9 and 10. The Contract Price described in this Agreement includes all expenses incurred by Contractor including, but not limited to, design, engineering, Equipment and materials, erection, commissioning, tests and spare parts required at Park completion, as for specified in the technical specification, inclusive of cost of travel and lodging expenses, *** including any custom duties and taxes (other than VAT), related to Contractor's performance of its obligations under this Agreement. The Contract Price does not include Value Added Tax ("VAT") and any fees related to any Applicable Permits, which shall be paid by Owner.

17.3 ***

18. Payment.

18.1 Owner shall pay to Contractor the price set forth in Section 17 in accordance with the Construction and Milestone Payment Schedule for each Unit, subject to retention as provided in Section 18.2.

18.2 At Substantial Completion of each Unit all remaining payments of the Unit Price shall become due other than:

(a) a retention of six point *** of each Unit Price payable on the earlier of: (i) ten (10) days from the date of receipt of the relevant *** for such Unit of the Park; or (ii) sixty (60) calendar days after the date of Substantial Completion of such Unit if the ***

(b) a retention of *** of each Unit Price payable ten (10) days from receipt of the relevant ***; and

(c) a retention of one hundred fifty percent (150%) of the costs of completing an agreed punch list (as estimated by Contractor), payable upon completion of such punch list.

18.3 All invoices for PV modules, inverters, steel, tracker and other equipment ("Category 1 Items") shall be accompanied by a copy of the Bill of Lading and delivered by Contractor to Owner upon shipment from point of origin. These invoices will be due within *** calendar days upon delivery by Contractor. In any event, upon receipt of payment ***, Contractor will release Original Bill of Lading which evidences transfer of title.

All remaining costs ("Category 2 Items") shall be paid by Owner within ***calendar days of invoice delivery by Contractor, which invoice shall be delivered on a percentage completion basis.

Invoices for Category 1 Items and Category 2 Items shall be sent by facsimile or email with confirmation of receipt, and Owner must receive the invoice and, if applicable, the attached documentation, on the same date of invoice delivery by Contractor. Owner shall take title of Category 2 Items as payment is received by Contractor; provided, however, that except as otherwise expressly contemplated in this Agreement (and subject to Section 4.10(d) above), risk of loss for the Units shall remain with Contractor until Substantial Completion of such Unit.

18.4 Overdue payment obligations of the Owner hereunder shall bear interest from the date due until the date paid at a rate per annum equal to Euribor plus two percent ***.

18.5 Any payments due by Contractor to Owner pursuant to this Agreement shall be deposited in the bank account designated by the Bank as long as the facility agreement executed by Owner and the Bank remains in force.

19. Suspension of the Work.

19.1 Contractor may suspend temporarily the Work if Owner fails to pay any payment application in the terms set out in this Agreement, provided that Owner fails to remedy such breach within the ten (10) days following the due date of such payment. Contractor shall be entitled to request (i) an extension of the deadlines of this Agreement for the same period of the suspension, and (ii) the reimbursement of the additional costs and expenses, if any, reasonably incurred and substantiated by Contractor in protecting, securing or insuring the Work, and in resumption of the Work. If this suspension of the Work continues for more than two (2) months, Contractor may terminate this Agreement.

19.2 In the event that the Work is totally or partially suspended by reason of an order from a Governmental Authority, the Party that has caused the issuance of such order (whether by reason of an act, omission or default) shall bear all the damages, costs and expenses caused by the suspension, subject to the limitations provided under Section 25.5 of this Agreement. In addition, if Owner has caused the issuance of such order, the

deadlines of this Agreement will be extended for the same period of the suspension, or for such other period that the Parties deem reasonable in view of the circumstances.

If the suspension is not due to an act, omission or default of any of the Parties, then the deadlines of this Agreement will be extended for the same period of the suspension, or for such other period that the Parties deem reasonable in view of the circumstances, and Owner shall assume any costs arising under the effects of the suspension on the obligations of the Parties under this Agreement.

19.3 After the resumption of the performance of the Work, Contractor shall, after due notice to Owner, examine the Work affected by the suspension. Contractor shall make good any defect, deterioration or loss of the construction or the Work affected that may have occurred during the suspension period. Costs properly incurred by Contractor (including mobilization costs, insurance fees and others) shall be added to the Contract Price, so long as the suspension did not arise due to any act, omission or default on the part of Contractor.

20. Taxes.

20.1 Contractor shall pay before delinquency any custom duties and taxes (other than VAT arising under the Contract Price, although Contractor shall pay any VAT triggered by any payment to its subcontractors for the performance of any works or services in Spain by such subcontractors), related to Contractor's performance of its obligations under this Agreement. Provided that the conditions of indemnification set forth in Section 25 are satisfied, Contractor shall hold harmless, indemnify and defend Owner, together with any and all its officers, directors, agents and employees from any liability, penalty, interest and expense by reason of Owner's failure to pay such taxes or custom duties. Contractor and Owner shall cooperate with each other to minimize the tax liability of both Parties to the extent legally permissible.

21. Owner Obligations. Owner shall provide Contractor with all necessary access to the Site and work areas Contractor requires for completion of the Work. Contractor shall have reasonable access to the Site after the Final Completion Date for inspection and photography. If Contractor is ready to ship ordered materials to the Site, and the Site is not ready to receive materials for any reason, Owner shall pay for all costs associated with such delay, including (to the extent applicable) any delivery, drop-off, insurance and temporary-storage fees.

22. Representations and Warranties.

22.1 Representations and Warranties of Contractor. Contractor represents and warrants to Owner that:

(a) Contractor is a corporation, duly organized, validly existing, and in good standing under the laws of Switzerland, and has full power to engage in the business it presently conducts and contemplates conducting, and is and will be duly licensed or qualified and in good standing under the laws of Switzerland and in each other

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.

(b) Contractor has (either directly or through its Subcontractors) all the required authority, ability, skills, experience and capacity necessary to perform and shall diligently perform the Work in a timely and professional manner, utilizing sound engineering principles, project management procedures, construction procedures and supervisory procedures, all in accordance with Industry Standards. Contractor has (either directly or through its Subcontractors) the experience and skills necessary to determine, and Contractor has reasonably determined, that Contractor can perform the Work for the Contract Price.

(c) The execution, delivery and performance by Contractor of this Agreement will not (i) violate or conflict with any covenant, agreement or understanding to which it is a party or by which it or any of its properties or assets is bound or affected, or its organizational documents or (ii) subject the Units or any component part thereof to any lien other than as contemplated or permitted by this Agreement.

(d) There are no actions, suits, proceedings, patent or license infringements or investigations pending or, to Contractor's knowledge, threatened against it before any court or arbitrator that individually or in the aggregate could result in any materially adverse effect on the business, properties or assets or the condition, financial or otherwise, of Contractor or in any impairment of its ability to perform its obligations under this Agreement.

(e) Contractor and its Representatives have not made any payment or given anything of value, and Contractor will not, and Contractor will direct its employees, agents, and Subcontractors and vendors directly contracting with Contractor, and their employees or agents to not, make any payment or give anything of value, in either case to any government official 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. None of Contractor, its Subcontractors or any of their employees or agents shall take any action that in any way violates the United States Foreign Corrupt Practices Act.

22.2 Representations and Warranties of Owner. Owner represents and warrants to Contractor that:

(a) Owner is an AIE (*Agrupación de Interés Económico*) duly incorporated, validly existing under the laws of Spain and registered with the Commercial Registry to which it corresponds by reason of its corporate domicile, and has full legal capacity and standing to pursue its corporate purpose (including the capacity to dispose of and encumber all of its assets) and full power to engage in the business it presently conducts and contemplates conducting, and is and will be duly licensed or qualified and in good standing under the laws of 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.

(b) The execution, delivery and performance by Owner of this Agreement will not (i) violate or conflict with any covenant, agreement or understanding to which it is a party or by which it or any of its properties or assets is bound or affected, or its organizational documents or (ii) subject the Units or any component part thereof or the Site or any portion thereof to any lien other than as contemplated or permitted by this Agreement.

(c) There are no actions, suits, proceedings, patent or license infringements or investigations pending or, to Owner's knowledge, threatened against it before any court or arbitrator that individually or in the aggregate could result in any materially adverse effect on the business, properties or assets or the condition, financial or otherwise, of Owner or in any impairment of its ability to perform its obligations under this Agreement.

(d) Owner has, and will have, available all the funds that are necessary from time to time to pay Contractor the Contract Price.

23. Warranty.

23.1 Contractor's sole warranty hereunder for each Unit shall be a comprehensive warranty, as set forth in Schedule 23(a), and, except as set forth in such Schedule, Contractor does not make (and hereby expressly disclaims) any other warranties of any kind whatsoever; provided, however, that independent of such warranty, Contractor shall provide Owner a performance guaranty set forth in Schedule 23(c). The letter of credit contained in Schedule 23(b) shall remain in force for a *** period, starting from date of Substantial Completion of the first Unit of the Park, and, to the extent it is dependent upon operation and/or maintenance, is conditional on the operation and maintenance of the Work and/or the Units by or for Owner in accordance with the operation and maintenance manuals prepared and delivered to Owner by Contractor. Contractor shall not be liable for any defect or deficiency to the extent that the same results from the specific written direction of Owner relating to the Work and/or the Units, provided that any such defect or deficiency is not the result of Contractor's failure to properly implement the Works in accordance with this Agreement. The scope of such warranty will include the warranty statements provided under the warranties referenced in Section 23.2 below for claims made by Owner under such warranties during the Contractor's *** period set forth on Schedule 23(a). Contractor's obligations pursuant to this paragraph shall be supported by its parent company under the comfort letter referenced in Clause 23.4.

23.2 Upon expiration of the aforementioned *** period, Contractor will provide Owner with copies of pass-through warranties provided by PV module and inverter Suppliers for the benefit of Owner (the "Third Party Warranties"), which have been approved by Owner and by the Technical Advisor to the Bank and which shall

allow Owner to assign the same. Subject to this Clause 23.2, Owner shall be responsible for supervising such warranties Third Party Warranties to confirm that they warrant (a) in the case of PV modules, a ninety percent (90%) rated power output for years three (3) through ten (10), and a minimum of eighty percent (80%) rated power from years eleven (11) through twenty five (25) and (b) in the case of inverters, a *** from the date of expiration of the aforementioned *** period. Contractor shall include in the subcontracts for the civil works (so long as no additional expenses or liabilities are incurred by Contractor) a provision contemplating the Contractor's faculty to assign at no cost in favor of Owner its legal rights *vis-à-vis* the relevant Subcontractor under the *Ley 38/1999*, of November 5, *de Ordenación de la Edificación*. Notwithstanding the foregoing, Contractor shall include within the scope of its warranty the warranty statements provided under the Third Party Warranties for the benefit of Owner for claims made under such Third Party Warranties during the Contractor's *** period set forth on Schedule 23(a). Contractor's obligations pursuant to the preceding sentence shall be supported by its parent company under the comfort letter referenced in Clause 23.4.

23.3 At Substantial Completion Date Contractor will provide a standby letter of credit representing *** of the Contract Price finally payable to Contractor (net of any fees payable to Solarpack under the Developer Subcontract) minus the Contract Price for PV modules and inverters. The standby letter of credit will be issued by a bank chosen by Contractor (duly confirmed at Owner's cost by a Spanish bank), will be substantially the form of Schedule 23(b), and shall remain in force from the Substantial Completion Date and for the *** period during which the Contractor's warranties for any each of the Units remain in force. The standby letter of credit will secure Contractor's warranty performance obligations and its obligations to indemnify Owner as described in Section 4.5 for any liabilities, penalties or other damages it may incur (excluding the payment of VAT itself) as a result of its status as importer of record.

If the issuing bank of the letter of credit contemplated in Schedule 23(b) decides not to permit such letter of credit to be extended beyond the *** starting from date of Substantial Completion of the first Unit of the Park, and Contractor fails to provide Owner with an acceptable extended or substitute letter of credit at least thirty (30) days prior to expiration of such *** starting from date of Substantial Completion of the first Unit of the Park, Owner shall be entitled to draw the amounts guaranteed by the letter of credit pursuant to the terms and conditions of Schedule 23 (b). In such event, the amounts drawn by Owner shall remain deposited in a bank account during the remaining *** of the warranty period in order to secure Contractor's warranty performance obligations and its obligations to indemnify Owner as described in Section 4.5 for any liabilities, penalties or other damages it may incur (excluding the payment of VAT itself) as a result of its status as importer of record. Upon expiration of the warranty period, Owner shall immediately return to Contractor any surplus deposited in such bank account.

23.4 In addition, Contractor undertakes to provide Owner with a comfort letter in the form attached as Schedule 23.4 from its parent company, POWERLIGHT CORPORATION, domiciled in 2954 San Pablo Avenue, Berkeley, California 94702 USA, not later than thirty (30) days following the Effective Date.

24. Insurance.

24.1 Contractor, at its expense, shall procure or cause to be procured and maintain or cause to be maintained in full force and effect at all times commencing no later than commencement of the work at the Park and until Final Completion, a builder's risk policy with the insurance coverages specified in Part I of Schedule 24, which are agreed by the Parties to be sufficient for construction of the Park. All insurance coverage shall be in accordance with the terms of this Section 24 and Part I of Schedule 24 using companies, to the extent required by Applicable Law, authorized to do business in Spain.

24.2 Owner, at Owner's expense, shall procure or cause to be procured and maintain or cause to be maintained in full force and effect at all times during the period commencing no later than commencement of the work at the Park and until Final Completion, all insurance coverages specified in Part II of Schedule 24. Owner, at Owner's expense, shall procure or cause to be procured and maintain or cause to be maintained in full force and effect at all times during the period commencing no later than Substantial Completion of the Full Park and until the end of the warranty period contemplated in Section 23, all insurance coverages specified in Part III of Schedule 24. All insurance coverages shall be in accordance with this Section 24 and Part II of Schedule 24 using companies, to the extent required by Applicable Law, authorized to do business in Spain. Subject to the prior agreement of the Parties, such insurance coverages can be included, at Owner's cost and responsibility, under Contractor's insurance policies under Section 24.1 above.

24.3 Contractor's policies shall provide for a waiver of subrogation rights against Owner and its affiliates, and their assigns, subsidiaries, affiliates, directors, officers and employees, and of any right of the insurers to any set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any such Person insured under Contractor's Commercial General Liability policy. Contractor releases and waives any and all rights of recovery against Owner and all of its affiliates, subsidiaries, employees, successors, permitted assigns, insurers and underwriters that Contractor may otherwise have or acquire in or from or in any way connected with any loss covered by policies of insurance maintained or required to be maintained by Contractor pursuant to this Agreement or because of deductible clauses in or inadequacy of limits of any such policies of insurance.

24.4 If at any time the insurance to be provided by Owner or Contractor hereunder shall be reduced or cease to be maintained, then (without limiting the rights of the other Party in respect of any default that arises as a result of such failure) the other Party may at its option take out and maintain the insurance required hereby and, in such event, (a) Owner may withhold the cost of insurance premiums expent for such replacement insurance from any payments to Contractor, or (b) Owner shall reimburse Contractor for the premium of any such replacement insurance, as applicable.

24.5 The insurance policies limits in no way shall be construed as limits on the Parties' liability under this Agreement, subject to the provisions of Section 25.5.

24.6 The beneficiaries of the insurance policies shall be Owner, Contractor and the Subcontractors that may be affected by the risks insured. The insurance policies shall permit Owner to assign its rights thereunder to third parties at no cost.

24.7 Each Party shall provide the other Party with executed copies of the insurance policies contemplated in Parts I and II of Schedule 24 and with evidence that the premiums have been paid not later than thirty (30) days following the Effective Date. Owner shall provide Contractor with executed copies of the insurance policies contemplated in Part III of Schedule 24 and with evidence that the premiums have been paid not later than thirty (30) days following Substantial Completion of the Full Park.

25. Indemnity.

25.1 Subject to Section 24, Contractor shall fully indemnify, save harmless and defend Owner from and against any and all costs, claims, and expenses incurred by Owner in connection with or arising from any claim by a third party for physical damage to or physical destruction of property, or death of or bodily injury to any person, but only to the extent caused by (a) the negligence, gross negligence or willful misconduct of Contractor or its agents or employees or others under Contractor's control or (b) a breach by Contractor of its obligations hereunder.

25.2 Subject to Section 24, Owner shall fully indemnify, save harmless and defend Contractor from and against any and all costs, claims, and expenses incurred by Contractor in connection with or arising from any claim by a third party for physical damage to or physical destruction of property, or death of or bodily injury to any person, but only to the extent caused by (a) the negligence, gross negligence or willful misconduct of Owner or any Site Lessor or their respective agents or employees or others under Owner's or any Site Lessor's control or (b) a breach by Owner of its obligations hereunder.

25.3 Each Party shall indemnify, defend and hold the other Party, and its present and future direct and indirect parents, subsidiaries and affiliates and their directors, officers, shareholders, employees, agents and representatives harmless from and against any and all claims, actions, suits, proceedings, losses, liabilities, penalties, damages, costs or expenses (including attorneys' fees and disbursements) of any kind whatsoever arising from (a) actual or alleged infringement or misappropriation by such Party (or in the case of Contractor, any Subcontractor and, in the case of Owner, any Site Lessor) of any patent, copyright, trade secret, trademark, service mark, trade name, or other intellectual property right in connection with the Units, including without limitation, any deliverable, (b) such Party's (or in the case of Contractor, any Subcontractor's and, in the case of Owner, any Site Lessor's) violation of any third-party license to use intellectual property in connection with the Work, including, without limitation, any deliverable.

25.4 If any claim is brought against a Party (the "Indemnifying Party"), then the other Party (the "Indemnified Party") shall be entitled to participate in, and, unless in the opinion of counsel for the Indemnifying Party a conflict of interest between the Parties may exist with respect to such claim, assume the defense of such claim, with counsel

reasonably acceptable to the Indemnifying Party. If the Indemnified Party does not assume the defense of the Indemnifying Party, or if a conflict precludes the Indemnified Party from assuming the defense, then the Indemnified Party shall reimburse the Indemnifying Party on a monthly basis for the Indemnifying Party's defense through separate counsel of the Indemnifying Party's choice. Even if the Indemnified Party assumes the defense of the Indemnifying Party with acceptable counsel, the Indemnifying Party, at its sole option, may participate in the defense, at its own expense, with counsel of its own choice without relieving the Indemnified Party of any of its obligations hereunder.

25.5 IN NO EVENT SHALL THE INDEMNIFYING PARTY BE LIABLE TO THE INDEMNIFIED PARTY FOR INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATED TO THE TERMS OF THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO LOST PROFITS, COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES OR BUSINESS INTERRUPTION, EVEN IF THE INDEMNIFYING PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, BUT EXCEPT FOR LOSS OR DAMAGE ARISING OUT OF THE PARTIES' WILLFUL MISCONDUCT OR GROSS NEGLIGENCE. IN ADDITION, WHETHER AN ACTION OR CLAIM IS BASED ON WARRANTY, CONTRACT, TORT OR OTHERWISE, UNDER NO CIRCUMSTANCE SHALL THE INDEMNIFYING PARTY'S TOTAL LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE TOTAL AMOUNT PAID BY OWNER TO CONTRACTOR HEREUNDER, MINUS THE AGGREGATE AMOUNT OF ANY PENALTIES PAID BY THE INDEMNIFYING PARTY UNDER THIS AGREEMENT.

25.6 The Parties also agree that any proceeds collected by the Indemnified Party as beneficiary of any of the insurance policies contemplated in Schedule 24 shall be deducted from the corresponding claim for damages. Moreover, in the event that the proceeds collected by the Indemnified Party as beneficiary of an insurance policy completely indemnify ("*mantienen indemne*") such Party from all damages and expenses incurred, the Indemnified Party shall not be entitled to claim any amount as damages and expenses, and shall be obliged, if applicable, to return to the Indemnifying Party any surplus received. Any franchises, deductibles, caps of liability and any other deductions which may affect the compensations to be paid by the insurance companies to the Indemnified Party shall not be deducted from the indemnification due.

26. Performance of the Work.

26.1 Contractor agrees to use, and agrees that it shall require each of its Subcontractors to use, only personnel who are qualified and properly trained and who possess every license, permit, registration, certificate or other approval required by Applicable Law or any Governmental Authority to enable such Persons to perform their Work involving any part of Contractor's obligations under this Agreement.

26.2 Contractor agrees that all materials and Equipment to be supplied or used by Contractor or its Subcontractors in the performance of its obligations under this

Agreement shall be in good condition and fit for the use(s) for which they are employed by Contractor or its Subcontractors. Such materials and Equipment shall at all times be maintained, inspected and operated as required by Applicable Law. Contractor further agrees that all licenses, permits, registrations and certificates or other approvals required by Applicable Law or any Governmental Authority will be procured and maintained for such materials and Equipment at all times during the use of the same by Contractor or its Subcontractors in the performance of any of Contractor's obligations under this Agreement.

27. Compliance with Applicable Laws.

27.1 Contractor specifically agrees that it shall at all times fully comply with Applicable Laws and that it shall perform the Work in accordance with the Applicable Laws in force at the date of execution of this Agreement. Notwithstanding the foregoing, Contractor shall not be responsible for any environmental liabilities relating to the relevant part of the Site where the Park is located, except for such pollution, toxic emissions, etc. as are caused by Contractor during construction of the Park; provided, however, that Contractor shall be required to comply with all applicable environmental laws and regulations during construction of the Park. If any hazardous material is found in the Site, the removal shall be at the cost of the Owner.

27.2 In the event of change of any Applicable Law between the date of execution of this Agreement and the Substantial Completion Date, the Parties and the Technical Advisor to the Bank shall execute a Change Order ruling the implementation of the modifications to the Work required by such change in the Applicable Law and, if applicable, the extension of the term to achieve Substantial Completion. Such Change Orders shall be paid by Owner on a cost plus fifteen per cent (15%) basis. Contractor will use commercially reasonable efforts to secure at least two (2) bids for any subcontract work required for all Change Orders.

27.3 Owner (on behalf of itself and each Site Lessor) specifically agrees that in the performance of its obligations under this Agreement it shall at all times fully comply with and cause each Site Lessor to fully comply with Applicable Laws. Owner further specifically agrees that at all times during its performance of this Agreement it shall have and cause the Site Lessors to have and keep in effect all Applicable Permits.

28. Hazardous Materials.

28.1 Subject to Section 27, Contractor hereby specifically agrees to indemnify, defend and hold Owner, its present and future direct or indirect parents, subsidiaries, affiliates, divisions, and their respective directors, officers, employees, shareholders, agents, representatives, successors and assigns harmless from and against any and all losses, liabilities, claims, demands, damages, causes of action, fines, penalties, costs and expenses (including, but not limited to, all reasonable consulting, engineering, attorneys' or other professional fees), that they may incur or suffer by reason of:

(i) any unauthorized release of a Hazardous Material by Contractor;

(ii) any enforcement or compliance proceeding commenced by or in the name of any Governmental authority because of an alleged, threatened or actual violation of any Applicable Law by Contractor; and

(iii) any action reasonably necessary to abate, remediate or prevent a violation or threatened violation of any Applicable Law by Contractor.

28.2 Owner hereby specifically agrees to indemnify, defend and hold Contractor, its present and future direct or indirect parents, subsidiaries, affiliates, divisions, and their respective directors, officers, employees, shareholders, agents, representatives, successors and assigns harmless from and against any and all losses, liabilities, claims, demands, damages, causes of action, fines, penalties, costs and expenses (including, but not limited to, all reasonable consulting, engineering, attorneys' or other professional fees), that they may incur or suffer by reason of:

(i) any unauthorized release of a Hazardous Material by Owner or any Site Lessor;

(ii) any enforcement or compliance proceeding commenced by or in the name of any Governmental authority because of an alleged, threatened or actual violation of any Applicable Law by Owner or any Site Lessor; and

(iii) any action reasonably necessary to abate, remediate or prevent a violation or threatened violation of any Applicable Law by Owner or any Site Lessor.

29. Governing Law. The formation, interpretation and performance of this Agreement shall be governed by and construed in accordance with the Spanish common Law.

30. Liens.

30.1 Contractor warrants good title, free and clear of all liens, claims, charges, security interests, and encumbrances whatsoever, to all Equipment and other items furnished by it or any of its Subcontractors that become part of the Park to the extent payment therefor has been received by Contractor.

30.2 Title to all Equipment shall pass to Owner, free and clear of all liens, claims, charges, security interests, and encumbrances whatsoever, upon the payment therefor to the Contractor.

31. Nonwaiver. The failure of either Party to insist upon or enforce, in any instance, strict performance by the other Party of any of the terms of this Agreement or to exercise any rights herein conferred shall not be construed as a waiver or relinquishment to any extent of its right to assert, or rely upon any such terms or rights on any future occasion. No waiver shall be valid unless stated in writing as set forth in Section 33.

32. Dispute Resolution.

32.1 Good faith negotiations. In the event that any question, dispute, difference or claim arises out or is in connection with this Agreement, including any question regarding its existence, validity, performance or termination (a "Dispute"), which either Party has notified to the other, senior management personnel from both Contractor and Owner shall meet and diligently attempt in good faith to resolve the Dispute for a period of thirty (30) days following one Party's written request to the other Party for such a meeting. If, however, either Party refuses or fails to so meet, or the Dispute is not resolved by negotiation, the provisions of Sections 32.2 and 32.3 shall apply.

32.2 Technical Dispute. Technical Disputes shall be resolved by an independent expert. For the purposes of this Agreement, a "Technical Dispute" shall mean a Dispute regarding whether the Park conforms to the Technical Specifications (Schedule 4.1), whether the relevant part of the Site where the Park is located meets the required site characteristics (Schedule 4.9), whether the tests contemplated by the Unit commissioning plan (Schedule 4.6) have been satisfied, and any other Disputes of a technical or engineering nature. All Technical Disputes shall be resolved on an accelerated basis by one of the following institutions unless otherwise agreed in writing by Contractor and Owner:

(i) PB Power (being part of the Parsons Brinckerhoff group);

(ii) the Energy Research Centre of the Netherlands (or ECN);

(iii) Sandia National Laboratories;

(iv) RW Beck;

(v) MC Meteocontrol GmbH Energy and Weather Services

(vi) Centro Nacional de Energías Renovables; or

(vii) Instituto de Energía Solar.

(viii) Fraunhoffer ISE

32.3 Arbitration. Any Dispute which cannot be settled by negotiation pursuant to Section 31.1 above or which is not a Technical Dispute, shall be exclusively referred to and finally resolved by arbitration at law (*arbitraje de derecho*). The Parties expressly waive their right to any form of legal recourse and submit all disputes arising out of or in connection with this Agreement to arbitration, in accordance with the conditions laid down in this Clause 32.3. For illustrative purposes only, a Dispute submitted to arbitration means any kind of point, claim, dispute or controversy that constitute a difference between the Parties and that they are unable or unwilling to settle by themselves by negotiation pursuant to Section 31.1 above, whether relating to the performance and completion of the Agreement, interpretation, execution, rights and obligations arising out of the Agreement, bilateral services and their execution, or breach, inefficacy, defects and consequences, invalidity or avoidance, termination or cancellation.

Arbitration of law shall be applied under the Rules of Arbitration of the Civil and Mercantile Court of Arbitration (CIMA). The Parties submit to the Rules of Procedure of the Court and its Tariffs (the "Rules"), acknowledging that they are apprised of them and herein undertake to act in good faith during the proceedings at all times and comply with the rulings and arbitral awards, without prejudice to any legal appeals to which they are entitled. Consequently, they undertake to cooperate with the arbitral proceedings in all ways, to establish the exact nature of the difference and to determine whether it is national or international. The Parties also bind themselves to submit any documentation and evidence that may be required from them at any given moment during the course of proceedings, and to pay the advance of costs, fees, expenses and other costs apportioned by the Court without delay.

An arbitral tribunal (the "Tribunal") composed of three arbitrators shall be nominated from among the members of the Civil and Mercantile Court of Arbitration to hear and rule on disputes. The third arbitrator shall preside over the Tribunal and shall be designated by the Court President, in accordance with Court Statutes, which the Parties are apprised of. The remaining two arbitrators shall be nominated by the Parties when the difference arises, one (1) appointed by each Party. Arbitrators shall be fluent in English. In the event of an arbitrator repudiating or rejecting the appointment or the occurrence of any other circumstances that prevent him from acting, a substitute arbitrator shall be nominated by the person or persons who nominated the original arbitrator. If this has not been effected fifteen (15) calendar days after one Party notified the other Party, the arbitrator shall be appointed by the Court President.

The seat of the arbitration shall be Madrid. The arbitration shall be conducted in English. All documents submitted in connection with the arbitration proceedings shall be in the English language or, if in another language, accompanied by an English translation.

The Tribunal shall be entitled to appoint any independent expert (either architect or engineer) to render its opinion on (i) the cause or origin of the relevant damages or defects, and (ii) the Party which is responsible for such damages or defects. The Tribunal shall be entitled to impose to the defaulting Party in the relevant award the performance of any corrective action or the payment of any compensation that shall be determined in accordance with Section 11 and Section 25 hereof. The Tribunal shall issue the award within six (6) months following the date of acceptance of the last of the arbitrators to act as arbitrator. Both Parties undertake to implement the arbitration award, which shall be final and binding. Any award issued by the Tribunal shall include interest from the date of the award until paid in full, at the rate of Euribor plus two percent (2%).

32.4 Arbitrator Confidentiality Obligation The Parties shall ensure that any arbitrator appointed to act under this Section will agree to be bound to the provisions of Section 34 with respect to the terms of this Agreement and any information obtained during the course of the arbitration proceedings.

32.5 The obligation to arbitrate described in this Section 32 shall not apply with respect to requests for preliminary injunctions, temporary restraining orders, specific

performance, or other procedures in a court of competent jurisdiction to obtain interim relief when deemed necessary by such court to preserve the status quo or prevent irreparable injury pending resolution by arbitration of the actual Dispute.

32.6 The parties agree to submit to the tribunals of Madrid for any question which can not be submitted to arbitration, including provisional measures, and for the execution of the obtained award.

33. Notices and Demands. Any notice, request, demand or other communication required or permitted under this Agreement, shall be deemed to be properly given by the sender and received by the addressee if made in writing and (a) if personally delivered; (b) three (3) days after deposit in the mail if mailed by certified or registered air mail, post prepaid, with a return receipt requested; or (c) if sent by facsimile with confirmation. Mailed notices and facsimile notices shall be addressed as follows to:

Owner:	Agrupación Solar Llerena-Badajoz 1, A.I.E. Parque Empresarial Nuevo Torneo, torre 1, 9ª planta 41015 Seville, Spain Facsimile No: +34954962760 Attention: Mr. ***
Contractor:	PowerLight Systems S.A. 42-44, Cardinal Mermillod 1227 Carouge, Switzerland Facsimile No: +41 (0) 22 304 1405 Attention: General Manager
Solarpack:	Solarpack Corporación Tecnológica, S.L. C/ Cristóbal Colón, 8B 48992 GETXO (VIZCAYA) -SPAIN- E-mail: info@solarpack.es Facsimile No: + 34-94 430 92 09 Attention of: Mr. ***

34. Nondisclosure. Each Party (the "Receiving Party") shall not use for any purpose other than performing the Work under this Agreement or divulge, disclose, produce, publish, or permit access to, without the prior written consent of the other Party (the "Disclosing Party"), any confidential information of the Disclosing Party. Confidential information includes, without limitation, this Agreement and exhibits hereto, all information or materials prepared in connection with the Work performed under this or any related subsequent Agreement, designs, drawings, specifications, techniques, models, data, documentation, 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, 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, and any other trade secrets. Confidential information does not include (a) information known to the Receiving Party prior to obtaining the same from the Disclosing Party; (b) information in the public domain at the time of disclosure by the Receiving Party; or (c) information obtained by the Receiving Party from a third party who did not receive same, directly or indirectly, from the Disclosing Party. The Receiving Party shall use the higher of the standard of care that the Receiving Party uses to preserve its own confidential information or a reasonable standard of care to prevent unauthorized use or disclosure of such confidential information. Notwithstanding anything herein to the contrary, the Receiving Party has the right to disclose Confidential Information without the prior written consent of the Disclosing Party: (i) as required by any court or other Governmental Authority, or by any stock exchange the shares of any Party are listed on, (ii) as otherwise required by law, (iii) as advisable or required in connection with any government or regulatory filings, including without limitation, filings with any regulating authorities covering the relevant financial markets, (iv) to its attorneys, accountants, financial advisors or other agents, in each case bound by confidentiality obligations, (v) to banks, investors and other financing sources and their advisors, in each case bound by confidentiality obligations; or (vi) in connection with an actual or prospective merger or acquisition or similar transaction where the party receiving the Confidential Information is bound by confidentiality obligations. If a Receiving Party believes that it will be compelled by a court or other Governmental Authority to disclose Confidential Information of the Disclosing Party, it shall give the Disclosing Party prompt written notice so that the Disclosing Party may determine whether to take steps to oppose such disclosure. This provision shall survive the termination of this Agreement for a ten (10) year period.

35. Time of Essence. Time is expressly agreed to be of the essence of this Agreement and each, every and all of the terms, conditions and provisions herein.

36. Validity. The invalidity, in whole or in part, of any provisions hereof shall not affect the validity of any other provisions hereof.

37. Survival. Sections 1, 15, 17, 18, 20, 21, 23, 24, 25, 26, 27, 28, 29, 30, 32, 33, 34, 37, 41, 44, 45 and 46 shall survive termination of this Agreement and shall survive final payment to Contractor following Final Completion.

38. Binding Effect. This Agreement shall be binding on the Parties hereto and on their respective permitted successors, heirs and assigns.

39. No Oral Modifications. No oral or written amendment or modification of this Agreement by any officer, agent 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 any officer of the Party (or of the managing member or managing partner of the Party on behalf of the Party) to be bound thereby.

40. Headings. The headings in this Agreement are for convenience of 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.

41. Counterparts. This Agreement may be executed in counterparts which, taken together, shall constitute a single instrument.

42. Authority. Each individual executing this Agreement on behalf of Owner and Contractor 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.

43. Announcements and Publications. Contractor shall coordinate with Owner with respect to, and provide advance copies to Owner for review of, the text of any proposed announcement or publication that include any non-public information concerning the Work prior to the dissemination thereof to the public or to any Person other than Subcontractors or advisors of Contractor, in each case, who agree to keep such information confidential. If Owner delivers written notice to Contractor rejecting any such proposed announcement or publication within two (2) business days after receiving such advance copies, the Contractor shall not make such public announcement or publication; provided, however, that Contractor may disseminate or release such information in response to requirements of Governmental Authority.

44. Complete Agreement. This Agreement constitutes the complete and entire agreement between the Parties 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, PRIOR COURSE OF DEALING OR COURSE OF PERFORMANCE UNDER THIS AGREEMENT SHALL BE A PART OF THIS AGREEMENT OR SHALL BE USED IN THE INTERPRETATION OR CONSTRUCTION OF THIS AGREEMENT.

45. No Agency. This Agreement is not intended, and shall not be construed, to create any association, joint venture, agency relationship or partnership between the Parties or to impose any such obligation or liability upon either Party. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act as or be an agent or representative of, or otherwise bind, the other Party.

46. Priority of Documents. In the event of conflicting provisions between any of the Contract Documents, the provisions shall govern in the following priority: first, duly executed amendments to this Agreement (to the extent not superseded by a subsequent amendment), second, this Agreement and third, the other Contract Documents.

47. Assignment.

47.1 No Party shall be entitled to assign this Agreement or any of its rights or obligations under this Agreement and shall not enter into any transaction as a result of which it may transfer, assign, charge or dispose by any title of any of those rights and obligations, without the prior written consent of the other Party, which may be withheld in its sole and absolute discretion.

47.2 Without prejudice to the generality of the foregoing, (i) Owner shall be entitled to assign its right, title and interest in and to this Agreement (and, in particular, any rights arising in relation to any insurance policy and any other right to collect any amount from Contractor) to any lenders by way of security for the performance of obligations to such lenders, and, following Final Completion, to its Investors on a pro rata basis, provided that Solarpack shall continue to act as agent on behalf of such Investors in all communications with Contractor; and (ii) Contractor shall be entitled to assign its right, obligation, title and interest in and to this Agreement to any of its affiliates, provided that the comfort letter delivered by Contractor to Owner covers the obligations of such affiliate under this Agreement. Contractor may assign this Agreement in connection with a merger, sale or other change of control of Contractor or its parent company, PowerLight Corporation, so long as Contractor under this Agreement continues to be a company directly or indirectly controlled by PowerLight Corporation. Owner shall not be entitled undergo a change of control prior to Final Completion without Contractor’s prior written consent.

48. Waivers

No provision of this Agreement shall be considered waived by either Party except when such waiver is made in writing. The failure of either Party to insist, in any one or more instances, upon strict performance of any of the provisions of this Agreement or to take advantage of its rights hereunder or the delay or failure in exercising totally or partially any right or remedy under this Agreement, shall not be construed as a waiver of any such provisions or the relinquishment of any such rights or any other rights for the future, but the same shall continue and remain in full force and effect.

49. Public deed

This Agreement has been executed in a private document. Each Party shall be entitled to request to the other the formalization of this Agreement into a public deed at any moment. In that event, the requesting Party shall bear all costs and expenses relating to such formalization.

50. Language and documentation

All documentation, data, drawings, schedules, diagrams, specifications and details associated with the Work and any equipment, materials or components of the Units shall be provided by Contractor to Owner, and shall be properly referenced and compiled, in the English language except any documents that need to be filed with any Spanish governmental authority.

51. Days

In this Agreement “day” means calendar day unless it is specified that it means a “business day”. Business days means Mondays to Fridays on which banks are open to the public both in Madrid and Berkeley (California, United States of America).

[THE REMAINDER OF THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have duly executed and delivered this Agreement as of the date set forth above.

OWNER:

Agrupación Solar Llerena-Badajoz 1, A.I.E.

By: /s/ Pablo Burgos Galíndez
Name: Pablo Burgos Galíndez
Title: Attorney

CONTRACTOR:

PowerLight Systems S.A.

By: /s/ Marco Antonio Northland
Name: Marco Antonio Northland
Title: General Manager Europe

SOLARPACK:

Solarpack Corporación Tecnológica, S.L.

By: /s/ José Galíndez Zubiria
Name: José Galíndez Zubiria
Title: Chairman

In order to speed up the execution of this Agreement, the Parties have expressly authorized Mercedes Domecq Palomares and Francisco de Borja Oxangoiti Briones to initial each of the pages of this Agreement.

SCHEDULE 1A

PAYMENT SCHEDULE			
	Euros/Wp	**Wp**	
Price	***	4800000	
EPC's SCOPE			
Description	***	%	Payment Terms - Wire Transfer
Category I			
PV	***	***	*** from Date of Invoice & Transfer of Title at Point of Origin
Steel	***	***	
Inverters	***	***	
Category II			
Upon Contract Signature	***	***	*** days from Date of Invoice
Medium Voltage/Grid Connection	***	***	*** days from Date of Invoice on Monthly % Completion Basis
Civil & Electric Construction	***	***	
First Holdback	***	***	The earlier of: ***days from receipt of Acta de Puesta en Marcha or *** days from Substantial Completion
Final Holdback	***	***	*** days from Acta de Puesta en Marcha
Total	***	***	
NOTES:			
	***		
- Warranty LC open for 2 years from date of Substantial Completion for value of *** of EPC price to PowerLight, less cost of PV and Inverters.			

SCHEDULE 1B

Change Order

OWNER: _____

CONTRACTOR: _____

Project: _____

Contract Date: _____

Change Order No. _____

This Change Order is made this _____ day of _____, _____ by

(Owner), and

(Contractor)

for the following changes in the Work:

Owner agrees to pay for all additions, deletions or revisions to the Work performed by Contractor or an adjustment of the Contract Price or Construction and Milestone Payment Schedule, in each case under this Change Order according to the terms of the Agreement. The change, if any, in the Contract Price shall be computed according to one of the following methods.

1. No Change _____
2. Costs Plus a Fee _____
3. Unit Price _____
4. Lump Sum of Euros _____

Unless Item 1 or 4 is marked, Contractor shall submit promptly to Owner such itemized labor and material breakdowns as Owner may require for Work performed or deleted from the Agreement by this Change Order. Contractor shall include the cost of such change in its next application for payment in a separate line item.

The change, if any, in the Construction and Milestone Payment Schedule resulting from the Change Order shall be determined according to the terms of the Agreement and allows for an _____ addition or _____ deletion of _____ days.

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CONTRACTOR: .....

By: _____

Name:

Title:

OWNER: .....

By: _____

Name:

Title:

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SCHEDULE 4.6

****

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SCHEDULE 23 (a)

Unit Warranty

STANDARD SYSTEM AND MANUFACTURER WARRANTIES –

1. **PowerLight System Warranty.** Commencing on the Substantial Completion date of such Unit, and for a period of *** thereafter, Contractor warrants that the Unit will be free from defects in materials and workmanship under normal operating conditions and shall conform to the Technical Specifications. Contractor hereby provides a comprehensive ; provided, however, that this warranty over PVshall include, and hereby incorporates by reference into this warranty, all warranties provided by the applicable pass-through warranties from Contractor's manufacturers identified in the Technical Specifications, including photovoltaic modules and inverters and, subject to the same terms and conditions of the warranties provided to Contractor by ("Other Manufacturers, Contractor shall be directly responsible vis-à-vis the Owner.") if and to the extent warranty claims are made under such Other Manufacturers' warranties during the *** period described above. During such period Owner shall be entitled to make such warranty claims directly against the Contractor. If the Unit fails to conform to the Technical Specifications, referenced in Schedule 4.1 of this Agreement, Contractor will, at its option, either repair or replace any defective parts. Unless this warranty is extended by written agreement, Owner shall pay for any repair costs incurred by Contractor after the *** standard warranty expires. Under this Warranty, Contractor shall be obliged to repair or replace any defective parts in time periods consistent with prevailing industry standards, but in any event within *** of notification of Contractor of such defect. To the extent Contractor fails to act within such *** period, Owner reserves the right to conduct such repair or replacement at Contractor's expense.

2. **Manufacturer Warranties**.

1. Upon expiration of the aforementioned two-year Warranty period, Contractor shall assign to Owner the applicable pass-through warranties from Contractor's manufacturers,

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including photovoltaic modules and inverters ("Other Manufacturers"). Without limiting Owner's rights to pursue claims under Other Manufacturers' warranties directly against Contractor pursuant to Clause 1 above, Contractor assigns to Owner the applicable pass-through warranties from the Other Manufacturers. The Other Manufacturers used for the Work shall be stated in the Technical Specifications.

2. Upon expiration of the aforementioned *** Warranty period, , Contractor makes no representation or warranty, and Owner shall seek no recourse from Contractor, regarding the warranties of Other Manufacturers, including, without limitation, the power output of the PV modules.

3. **Warranty Exceptions.** This warranty shall be void in the event of any of the following:

   (a) alterations or repairs made to the Unit's supporting structure, or to any part of the Unit or associated wiring and parts without Contractor 's written approval;

   (b) failure of the Unit to perform caused by legislative, administrative, or executive regulation, order or requisition of the federal government, local utility or public utilities commission, or any state or municipal government or official;

   (c) use of the Unit beyond the scope contemplated in its operating manuals or technical specifications;

   (d) Force Majeure events; and

   (e) a change in usage of the Site, which may affect building or site permits and related requirements, without the written approval of Contractor, or a change in ownership of building or property and the new owner has not signed an assumption agreement of the terms and conditions herein.

4. **Disclaimer.** Except as expressly provided herein, Contractor expressly disclaims any and all warranties of any kind, express, implied or statutory, including without limitation any implied warranties of merchantability and/or fitness for a particular purpose. Neither this Agreement nor any document furnished under it, unless explicitly stated, is intended to express or imply any warranty or guarantee with regard to the performance of the Unit, including, but not limited to i. electricity output, ii. reduction in energy costs or environmental savings, iii. financial savings or return on investment and iv. public recognition.

5. **Transferability.** Contractor's *** Unit warranty is transferable to the Investors who acquire ownership of the Unit; provided that Owner shall continue to act as agent on behalf of such Investors in all communications with Contractor.

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SCHEDULE 23 (b)

Model of Letter of Credit

EXHIBIT FOR STANDBY LETTER OF CREDIT APPLICATION:
THIS EXHIBIT, IN THIS FINAL FORM, IS AN INTEGRAL PART OF AND MUST BE ATTACHED TO
UNION BANK OF CALIFORNIA, N.A. APPLICATION AND AGREEMENT FOR
IRREVOCABLE STANDBY LETTER OF CREDIT DATED _____ __, _____.
APPLICANT: POWERLIGHT CORPORATION (SPAIN-WARRANTY)

FROM:	UNION BANK OF CALIFORNIA, N.A.
	SOUTHERN CALIFORNIA
	TRADE SERVICE OPERATIONS
	1980 SATURN STREET, MAIL CODE: V01-519
	MONTEREY PARK, CALIFORNIA 91755-7417, U.S.A.
	SWIFT NO.: BOFC US 33 LAX
DATE:	[*BANK USE ONLY*]
SUBJECT:	ISSUANCE OF OUR IRREVOCABLE STANDBY LETTER OF CREDIT NO._____ [*BANK USE ONLY*]
ADVISING BANK AND	
CONFIRMING BANK:	BANCO SANTANDER CENTRAL HISPANO S.A.
	MADRID HEAD OFFICE, SPAIN
	ATTN-FOREIGN DEPARTMENT
SWIFT IDENTIFIER CODE:	BSCHESMM
BENEFICIARY:	AGRUPACIÓN SOLAR LLERENA-BADAJOZ 1 A.I.E. (OWNER)

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	Parque Empresarial Nuevo Torneo, torre 1, 9ª planta
	41015 Seville, Spain
APPLICANT:	POWERLIGHT CORPORATION
	2954 SAN PABLO AVENUE
	BERKELEY, CALIFORNIA 94702 U.S.A.
CURRENCY:	EUR
AMOUNT:	_____ (_____AND __/100 EUROS)
AVAILABLE BY:	PAYMENT AT THE COUNTERS OF THE ADVISING AND CONFIRMING BANK IN MADRID, SPAIN
EXPIRY DATE:	_____, 2008 OR ANY AUTOMATICALLY EXTENDED DATE AS HEREIN SET FORTH AT THE CLOSE OF BUSINESS OF THE ADVISING AND CONFIRMING BANK, IN MADRID AT THE ABOVE ADDRESS.

LADIES/GENTLEMEN:

WE HEREBY ISSUE OUR IRREVOCABLE STANDBY LETTER OF CREDIT NO. _____ [*BANK USE ONLY*] ("LETTER OF CREDIT") IN YOUR FAVOR. THIS LETTER OF CREDIT IS AVAILABLE BY SIGHT PAYMENT WITH THE ADVISING AND CONFIRMING BANK OF THE FOLLOWING DOCUMENTATION:

1. YOUR SIGHT DRAFT (S) DRAWN ON US, PURPORTEDLY SIGNED BY AN AUTHORIZED OFFICER OF THE BENEFICIARY, MARKED: "DRAWN UNDER UNION BANK OF CALIFORNIA, N.A., IRREVOCABLE STANDBY LETTER OF CREDIT NO. _____ *[BANK USE ONLY]*, DATED _____ *[BANK USE ONLY]*."

2. A DATED STATEMENT PURPORTEDLY SIGNED BY AN AUTHORIZED OFFICER OF BENEFICIARY STATING EITHER ONE OF THE FOLLOWING:

   "THE UNDERSIGNED BEING A DULY AUTHORIZED OFFICER OF THE OWNER ("BENEFICIARY") HEREBY REPRESENTS AND WARRANTS THAT POWERLIGHT CORPORATION ("APPLICANT) IS IN DEFAULT OF ITS WARRANTY OBLIGATIONS SET FORTH IN SECTION 23 OF THE EPC

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(ENGINEERING PROCUREMENT AND CONSTRUCTION) AGREEMENT BY AND BETWEEN BENEFICIARY AND APPLICANT DATED MARCH 26, 2007 THEREFORE, THE BENEFICIARY HEREBY DEMANDS PAYMENT UNDER THE LETTER OF CREDIT IN THE AMOUNT OF EUR _____."

OR

"THE UNDERSIGNED BEING A DULY AUTHORIZED OFFICER OF THE OWNER ("BENEFICIARY") HEREBY REPRESENTS AND WARRANTS THAT POWERLIGHT CORPORATION ("APPLICANT") IS IN DEFAULT OF INDEMNITY OBLIGATIONS SET FORTH IN SECTION _____ OF THE EPC AGREEMENT BY AND BETWEEN BENEFICIARY AND APPLICANT DATED _____ THEREFORE, THE BENEFICIARY HEREBY DEMANDS PAYMENT UNDER THE LETTER OF CREDIT IN THE AMOUNT OF EUR _____."

PARTIAL DRAWINGS ARE PERMITTED.

THIS LETTER OF CREDIT SHALL BE DEEMED AUTOMATICALLY EXTENDED WITHOUT AN AMENDMENT FOR A ONE YEAR PERIOD BEGINNING ON THE PRESENT EXPIRATION DATE HEREOF _____, 2008, UNLESS AT LEAST SIXTY (60) DAYS PRIOR TO SUCH EXPIRATION DATE WE HAVE SENT YOU AND BARCLAYS BANK S.A. (ADDRESS: PLAZA DE COLÓN 1, 28046 MADRID (SPAIN)) WRITTEN NOTICE BY TELETRANSMISSION THROUGH THE ADVISING BANK AND CONFIRMING BANK 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.

THIS LETTER OF CREDIT SHALL FINALLY EXPIRE ON _____ 2009, IF IT HAS NOT PREVIOUSLY EXPIRED IN ACCORDANCE WITH THE PRECEDING PARAGRAPH.

UPON RECEIPT BY YOU OF OUR NOTICE THAT WE ELECT NOT TO RENEW, YOU MAY DRAW AGAINST PRESENTATION TO OUR OFFICE AT THE ADDRESS ABOVE OF THE FOLLOWING DOCUMENTATION:

1. YOUR SIGHT DRAFT DRAWN ON US PURPORTEDLY SIGNED BY AN AUTHORIZED OFFICER OF THE BENEFICIARY MARKED: "DRAWN UNDER UNION BANK OF CALIFORNIA, N. A., IRREVOCABLE STANDBY LETTER OF CREDIT NO. _____ *[BANK USE ONLY.]*, DATED _____ *[BANK USE ONLY]*."

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2. A DATED STATEMENT PURPORTEDLY SIGNED BY AN AUTHORIZED OFFICER OF THE BENEFICIARY STATING:

"THE UNDERSIGNED BEING A DULY AUTHORIZED OFFICER OF THE OWNER HEREBY REPRESENTS AND WARRANTS THAT POWERLIGHT CORPORATION HAS FAILED TO PROVIDE AN ACCEPTABLE EXTENDED OR SUBSTITUTE LETTER OF CREDIT AT LEAST THIRTY (30) DAYS PRIOR TO EXPIRATION OF UNION BANK OF CALIFORNIA, N. A. IRREVOCABLE STANDBY LETTER OF CREDIT NO. _____ [*BANK USE ONLY*]."

THIS LETTER OF CREDIT SETS FORTH IN FULL THE TERMS OF OUR UNDERTAKING, AND SUCH TERMS SHALL NOT BE MODIFIED, AMENDED OR AMPLIFIED BY ANY DOCUMENT, INSTRUMENT OR AGREEMENT REFERRED TO IN THIS LETTER OF CREDIT, IN WHICH THIS LETTER OF CREDIT IS REFERRED TO OR TO WHICH THIS LETTER OF CREDIT RELATES.

EXCEPT AS STATED HEREIN, THIS LETTER OF CREDIT IS NOT SUBJECT TO ANY CONDITION OR QUALIFICATION AND IS OUR INDIVIDUAL OBLIGATION WHICH IS IN NO WAY CONTINGENT UPON REIMBURSEMENT OR ANY RIGHT OF SUBROGATION. WE IRREVOCABLY WAIVE ANY AND ALL RIGHTS OF SUBROGATION, WHETHER AS PROVIDED BY STATUTE OR OTHERWISE, NOW OR HEREAFTER THAT MIGHT, BUT FOR SUCH WAIVER, EXIST, IN RESPECT TO THIS LETTER OF CREDIT OR ANY PAYMENT WE MAKE UNDER IT, AS TO THE APPLICANT, YOU, OR THE TRANSACTION BETWEEN YOU AND THE APPLICANT. WE FURTHER GIVE IRREVOCABLE NOTICE THAT WE ARE NOT NOW AND WILL NOT BE THE SECONDARY OBLIGOR OR CO-OBLIGOR OF APPLICANT'S OBLIGATIONS AND LIABILITIES TO YOU FOR ANY PURPOSE. OUR OBLIGATIONS TO YOU UNDER THIS LETTER OF CREDIT ARE OUR PRIMARY OBLIGATIONS AND ARE STRICTLY AS STATED HEREIN.

SPECIAL INSTRUCTIONS:

THE ORIGINAL OF THIS LETTER OF CREDIT MUST BE PRESENTED TOGETHER WITH THE ABOVE DOCUMENTS TO THE ADVISING BANK AND CONFIRMING BANK IN ORDER TO ENDORSE THE AMOUNT OF DRAWING ON THE REVERSE SIDE.

ALL BANKING CHARGES OUTSIDE THE UNITED STATES, INCLUDING ADVISING AND CONFIRMATION FEES ARE FOR BENEFICIARY'S ACCOUNT.

WE HEREBY AGREE WITH YOU THAT DRAFTS DRAWN UNDER AND IN COMPLIANCE WITH THE TERMS OF THIS CREDIT WILL BE DULY HONORED

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UPON PRESENTATION AND DELIVERY TO THE ADVISING AND CONFIRMING BANK, IN MADRID, SPAIN

INSTRUCTIONS TO THE ADVISING AND CONFIRMING BANK:

BANCO SANTANDER CENTRAL HISPANO, S.A., MADRID, SPAIN IS REQUESTED TO ADVISED THE BENEFICIARY WITH ITS CONFIRMATION.

THE ADVISING AND CONFIRMING BANK IS AUTHORISED TO CLAIM REIMBURSEMENT FOR CONFORMING PRESENTATIONS UNDER THIS LETTER OF CREDIT, BY SENDING THEIR TELETRANSMISSION BY AUTHENTICATED SWIFT MESSAGE TO UNION BANK OF CALIFORNIA, N.A., MONTEREY PARK, CALIFORNIA TO OUR BANK IDENTIFIER CODE-BOFCUS33LAX AND CITING—"DEMAND UNDER THE UNION BANK OF CALIFORNIA, N.A., IRREVOCABLE STANDBY LETTER OF CREDIT NO. _____ DATED _____ IN THE AMOUNT OF EUR _____ (AMOUNT OF DRAWING) DATED _____ (DATE OF DRAWING) DOCUMENTS HAVE BEEN SENT BY COURIER SERVICE TO UNION BANK OF CALIFORNIA, N.A."

PROCEEDS WILL BE REMITTED IN ACCORDANCE WITH THE INSTRUCTIONS RECEIVED.

THIS LETTER OF CREDIT IS SUBJECT TO THE "UNIFORM CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDITS (1993 REVISION)", INTERNATIONAL CHAMBER OF COMMERCE PUBLICATION NO.500.

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SCHEDULE 23.4

Model of Comfort Letter

To: AGRUPACIÓN SOLAR LLERENA-BADAJOZ 1, A.I.E.

Parque Empresarial Nuevo Torneo, torre 1, 9ª planta
41015 Seville, Spain

Berkeley, California (USA), on _____, 200[ ]

Dear Sirs

We refer to the Engineering, Procurement and Construction Agreement (hereinafter "EPC'), signed on March 26, 2007 at Seville, between Agrupación Solar Llerena-Badajoz 1 A.I.E., a corporation located at Parque Empresarial Nuevo Torneo, torre 1, 9ª planta 41015 Seville, Spain, (hereinafter "Owner') and our wholly-owned subsidiary POWERLIGHT SYSTEMS, S.A., a company located at 42-44 Cardinal Mermillod, 1227 Carouge (Switzerland), (hereinafter the "Contractor'). Pursuant said EPC the Contractor and Owner engage in the design and installation of a solar Park with a DC rated aggregated capacity up to 4.80 MWp (4.0 MWe). On the EPC, SOLARPACK CORPORACION TECNOLÓGICA, S.L., a corporation located at c/ Cristóbal Colón 8-b, 48992 Guecho (Spain), will act as the duly authorized representative of the Owner.

In accordance with Section 23.4 of said EPC, the Contractor undertakes to provide the Owner with a Comfort Letter from its mother company, POWERLIGHT CORPORATION, a corporation organized and existing under the laws of United States, with its principal offices at 2954 San Pablo Avenue Berkeley, California 94702 USA (hereinafter Powerlight Co.).

NOW THEREFORE, we Powerlight Co. hereby undertake as follow:

(1) Powerlight Co. hereby irrevocably and unconditionally guarantees the performance and fulfilment by the Contractor of all of the Contractor's obligations, tasks and liabilities under the EPC.

(2) In addition, Powerlight Co. hereby acknowledges and confirms that, if the Contractor fails to perform, or delays the performance of, any of the Contractor's obligations, tasks and liabilities under the EPC, shall be liable under this Comfort Letter for performance of such obligations under the EPC, as well as for any and

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all applicable damages, compensation and other remedies under the EPC and/or at law in respect or as a result of such failure or delay.

(3) The amendment or novation of the EPC shall not imply, in any event, the cancellation, termination, restriction or limitation of this Comfort Letter, that shall remain in force and shall extend its effects to any other obligations assumed by the Contractor under the amended EPC.

(4) This Comfort Letter shall be governed by and construed in accordance with the laws of Spain. Any dispute arising in connection with this Comfort Letter shall be finally settled by the Courts and Tribunals of the city of Madrid (Spain).

IN WITNESS WHEREOF, Powerlight Co. issue this Comfort Letter as of the day and year first above written.

By: _____

Name: _____

Title: _____

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SCHEDULE 24

Insurance Requirements:

Part I: Contractor shall secure and maintain the following insurance coverages:

Commercial General Liability

Limits of Liability:

$2,000,000. General Aggregate

$2,000,000. Products/Completed Operations Aggregate

$1,000,000. Personal & Advertising Injury Limit

$1,000,000. Per Occurrence

Endorsements issued in favor to the *Owner*:

- Additional Insured
- Coverage afforded the *Owner* shall be Primary and non-contributing to any other insurance maintained by the *Owner*
- Thirty (30) days notice of cancellation, except ten (10) days for non-payment of premium.

Automobile Liability:

Limits of Liability:

$1,000,000. per accident

Workers' Compensation:

Limits of Liability:

Statutory

Employers' Liability:

Limits of Liability:

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$1,000,000. per occurrence

Umbrella/Excess Liability:

$20,000,000. Aggregate

Excess over Primary Limits of Liability required for Commercial General Liability, Automobile Liability and Employers' Liability.

Professional Liability:

Limits of Liability:

$1,000,000. each claim

$2,000,000. aggregate

Builders' Risk:

Builders Risk insurance covering the entire project for the full cost of replacement of the project at the time of any loss. Coverage shall be written for "All Risks" of physical loss or damage including Earthquake and Flood. Coverage for the project shall be written to include coverage loss of Business Income, Construction Penalties, Expediting Expenses, Interest, Taxes, arising out of physical loss or damage to the project. This insurance shall include Contractor as Additional Insured and Loss Payee as their interest may appear. Contractor shall only be required to pay up to USD$200,000. in aggregate premium for Builders' Risk insurance across all EPC Agreements signed under the BFA. If more than such amount is necessary, Contractor and the relevant Owners shall mutually agree on appropriate cost allocation.

Cargo Coverage:

Cargo coverage to cover loss or damage to project property & equipment while in due course of transit from it's point of origin to the site. Insurance shall be valued at the C.I.F. plus 10% (cost, insurance, freight plus 10%).

Part II: Owner Insurance Requirements until Substantial Completion of the Full Park

Upon commencement of the work at the Park and until Substantial Completion of the Full Park Owner shall procure and maintain comprehensive insurances appropriate for owners risks arising out of the actions or omissions of their representatives and the Technical Advisor to the Bank during the performance of the Work.

Part III: Owner Insurance Requirements after Substantial Completion of the Full Park

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Upon Substantial Completion of the Full Park and until the end of the warranty period contemplated in Section 23, Owner shall procure and maintain comprehensive insurances appropriate for owners risks arising out of their ownership and operation of each Unit and the entire Park.

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*****CONFIDENTIAL TREATMENT REQUESTED – CONFIDENTIAL PORTIONS OF THIS DOCUMENT HAVE BEEN REDACTED AND HAVE BEEN SEPARATELY FILED WITH THE COMMISSION*****

March 30, 2007

MMA NAFB Power, LLC
c/o MMA Renewable Ventures, LLC
44 Montgomery, Suite 2400
San Francisco, CA 94104

Re: Solar Star NAFB, LLC Unit Transfer Agreement

Ladies and Gentlemen:

We refer to the Solar Star NAFB, LLC Unit Transfer Agreement dated as of March 21, 2007 (the "**Agreement**") by and among Solar Star NAFB, LLC (the "**Company**"), PowerLight Corporation (the "**Transferor**") and MMA NAFB Power, LLC (the "**Transferee**"). Capitalized terms used herein but not defined herein shall have the respective meanings ascribed thereto in the Agreement. The Parties desire to achieve the Closing Date as of the date hereof notwithstanding the fact that certain conditions precedent thereto set forth in the Agreement have not been satisfied. In light of the foregoing, the Parties hereby agree as follows:

1. Conditions Precedent.

a. Waivers. The Transferee and, to the extent applicable, the Transferor hereby waive the following conditions precedent (each, a "**Condition**") to the obligation of Transferee to purchase the Units and the obligation of Transferor to sell the Units on the Closing Date:

(1) the Conditions set forth in Sections 5.1.3 and 5.1.4 of the Agreement (but solely with respect to (x) obtaining the consent of the Secretary of the Air Force on behalf of the United States of America to the conveyance of the Site Lease referred to in paragraph 6 of Schedule 1 to the Agreement (the "**Consent**") and (y) the requirement that the Notice of Site Lease referred to paragraph 7 of Schedule 1 to the Agreement be in full force and effect and executed in a form satisfactory to Transferee (the "**Notice of Site Lease**"));

(2) the Condition set forth in Section 5.1.4 of the Agreement that the Interconnection Agreement between NAFB and NPC described in paragraph 18 of Schedule 1 to the Agreement (the "**Interconnection Agreement**") be in full force and effect and executed in a form satisfactory to Transferee;

(3) the Condition set forth in Section 5.1.10 of the Agreement that the meeting between Transferee and NPC referred to in Section 5.1.7 of the Agreement (the "**Meeting**") be arranged and held no later than the Closing Date; and

(4) the Condition set forth in Section 5.1.10 of the Agreement that the form of the replacement letter of credit referred to therein (the "**Replacement LC**") shall have been approved by NPC and become effective as of the Closing Date, and the Condition set forth in Section 5.2.4 of the Agreement that the Replacement LC shall have been provided to NPC by the Transferee.

b. Amendments.

(1) The Condition set forth in Section 5.2.5 of the Agreement is hereby amended by replacing the number "$12,456,200" with the number ***.

(2) Other than the payment amount set forth in 1.b(1), no payment to be made pursuant to Sections 17.1 and 18 and Schedule E of the EPC Contract, referred to in paragraph 14 of Schedule 1 to the Agreement, shall be made until two business days following satisfaction of the conditions subsequent set forth in Section 2.a of this letter.

2. Conditions Subsequent. Notwithstanding the waivers set forth in Section 1 above, but subject to Section 4 below, the Parties hereby agree as follows:

a. the Transferor shall use reasonable best efforts to:

(1) obtain the Consent, described in Section 1(a)(1) of this letter;

(2) obtain a fully executed copy of the Interconnection Agreement, described in Section 1(a)(2) of this letter, in a form reasonably satisfactory to the Transferee; and

(3) (i) cause the Site Lease and the document referred to in paragraph 6 of Schedule 1 to the Agreement to be filed and recorded in the office of the recorder of Clark County, Nevada or (ii) deliver to the Transferee an executed notice of the Site Lease as originally referred to in paragraph 7 of Schedule 1 to the Agreement, in each case no later than April 20, 2007;

b. the Transferee shall provide the Replacement LC to NPC in a form satisfactory to NPC no later than April 20, 2007; and

c. no later than the second business day following the date on which all of the conditions set forth in the foregoing clauses a. and b. have been satisfied, the Transferee shall arrange for the Company to make, and the Company shall make, a payment in an amount equal to *** less the amount received by the Transferee pursuant to Section 5.2.5 of the Agreement (as amended hereby). All subsequent payments of the Contract Price shall be made in accordance with the EPC Contract, as amended by this letter. For the avoidance of doubt, the payment corresponding to the month of April in the Schedule of Values (as defined in the EPC Contract) shall be payable within 15 days after invoice by the Transferor, which invoice shall not be submitted by the Transferor prior to the date on which the conditions set forth in Sections 2.a and 2.b of this letter are satisfied.

3. Amendments to Order of Closing. Subject to Section 1, and acknowledging the provisions of Section 2, of this letter, Section 7.2.1(b), Section 7.2.2(b), Section 7.2.3(d) and Section 7.2.5 of the Agreement are hereby amended to exclude therefrom the delivery or issuance of those items set forth therein that have been expressly waived as Conditions by the provisions of Section 1 of this letter.

4. Reconveyance. If the conditions set forth in Section 2(a) of this letter are not satisfied on or prior to April 20, 2007, the Parties shall negotiate in good faith with a view to modifying the terms of the transaction contemplated by the Agreement in a manner mutually acceptable to the Parties; provided, however, if the Parties are unable to reach agreement as to the modification of such terms by ***, then the Parties shall unwind the Agreement, the result of which will require the Parties, within 2 Business Days thereafter (such date being, the "**Reconveyance Date**"), to execute such instruments, agreements and other documents as are necessary to effect the transfer and reconveyance of the Units to, and the vesting of ownership of the Units in, the Transferor free and clear of all material liabilities (contingent or otherwise) and encumbrances other than those existing under the Project Documents on the Closing Date. Such reconveyance instruments shall require: (i) return of all payments made by Transferee (or through Company) to Transferor under the Agreement or EPC Contract, plus interest accruing daily at the lesser of a rate of 13% per annum and the maximum rate permitted by applicable law; (ii) delivery by the Transferor of a letter of credit in favor of NPC to replace the Replacement LC or confirmation by the Transferor that the letter of credit delivered to NPC and in effect on the date hereof remains in effect and has not been returned by NPC; and (iii) and that Transferor shall hold harmless and indemnify Transferee for all liabilities and obligations of Solar Star pursuant to the Project Documents that may arise due to its brief ownership of the Units, except for those liabilities that arise from Transferee's willful misconduct or negligence during the period in which it owns the Units. In furtherance of the foregoing, the Transferee agrees that it (a) shall cause the Company not to incur any material liabilities (contingent or otherwise), indebtedness, liens or encumbrances on the Company's assets (other than as required by the Project Documents), (b) shall not transfer any of the Units until the earlier to occur of (1) the date on which all of the conditions set forth in Section 2 of this letter are satisfied and (2) the Reconveyance Date and (c) shall not breach any Project Document to which it is a party.

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5. Certificates Regarding Representations and Warranties. The certificates required to be delivered by the Transferor and the Transferee pursuant to Sections 5.1.1 and 5.2.1, respectively, of the Agreement with respect to representations and warranties of the Parties set forth in the Agreement are hereby deemed to be modified to the extent necessary to take into account the waivers set forth in this letter.

6. Continuing Covenants. Notwithstanding Section 6.5 of the Agreement, to the extent still applicable, the covenants set forth in Sections 6.1, 6.3, and 6.4 of the Agreement shall continue to bind the Parties through April 20, 2007, after which date such covenants shall be of no further force and effect.

7. Expenses. If the Reconveyance Date occurs, the Transferor agrees to reimburse the Transferee for all reasonable, documented out-of-pocket expenses incurred by the Transferee from and after the Closing Date until the Reconveyance Date in furtherance of the agreements and undertakings set forth in this letter; provided, however, in no case shall the Transferor be liable to reimburse the Transferee under this Section 6 for expenses in excess of $100,000.

8. Miscellaneous.

a. Except as specifically set forth above, the Agreement shall remain in full force and effect and is hereby ratified and confirmed.

b. This letter (i) may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract and (ii) shall be binding upon and inure to the benefit of the successors and assigns of the Parties.

c. This letter shall be governed by and interpreted in accordance with the laws of the State of California, without regard to its conflict of law provisions. Each Party irrevocably and unconditionally submits, for itself and its property, to the nonexclusive jurisdiction of the courts of the State of California, and any appellate court from any thereof, in any action or proceeding arising out of or relating to this letter or for recognition or enforcement of any judgment, and each of the Parties irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such court. Each of the Parties agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this letter shall affect any right that any Party may otherwise have to bring any action or proceeding relating to this letter in the courts of any jurisdiction.

d. Each Party irrevocably and unconditionally waives, to the fullest extent permitted by applicable law, any objection that it may now or hereafter have to the laying of venue of any action or proceeding arising out of or relating to this letter in any court referred to above. Each of the Parties hereby irrevocably waives, to the fullest extent permitted by applicable law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

*** CONFIDENTIAL MATERIAL REDACTED AND
SEPARATELY FILED WITH THE COMMISSION***

e. EACH PARTY HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS LETTER OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS LETTER BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS HEREIN.

* * * * *

Please sign below in the space indicated to indicate your agreement with the foregoing provisions of this letter agreement.

*** CONFIDENTIAL MATERIAL REDACTED AND
SEPARATELY FILED WITH THE COMMISSION***

Sincerely,

POWERLIGHT CORPORATION

By: /s/ Howard Wenger
Name: Howard Wenger
Title:

Agreed to and Accepted:

MMA NAFB POWER, LLC

by MMA Solar Fund IV, GP, Inc., its general partner

By: /s/ Matthew Cheney
Name: Matthew Cheney
Title: CEO

SOLAR STAR NAFB, LLC

By: PowerLight Corporation, its Member

By: /s/ [Illegible]
Name:
Title:

*** CONFIDENTIAL MATERIAL REDACTED AND
SEPARATELY FILED WITH THE COMMISSION***

Exhibit 10.8

Photovoltaic Module Master Supply Agreement

This Photovoltaic Module Master Supply Agreement (together with all exhibits, schedules, and annexes hereto, the "Agreement") is made and entered into as of November 3, 2005 ("Effective Date") by and between on the one hand, Evergreen Solar, Inc. ("Evergreen") and, on the other, PowerLight Corporation and PowerLight Systems AG (together referred to herein as "PowerLight"). PowerLight and Evergreen are each referred to herein as a "Party" and together the "Parties".

RECITALS

WHEREAS, Evergreen is engaged in the business of manufacturing and selling photovoltaic modules and related products;

WHEREAS, PowerLight is in the business of designing, constructing and installing solar electric systems utilizing photovoltaic modules; and

WHEREAS, Evergreen desires to sell to PowerLight, and PowerLight desires to purchase (directly or through its Subsidiaries) from Evergreen, photovoltaic modules on the terms and conditions set forth below.

NOW THEREFORE, for good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Parties agree as follows:

AGREEMENT

1. Product Sales and Purchase.

(a) Products. The description and specifications for the photovoltaic modules sold and purchased under this Agreement are set forth on Schedule 1 (the "PV Modules") (such

specifications, the "Specifications"). Evergreen shall have the right to make any changes to the PV Modules that do not affect the form, fit or function of the PV Modules without notice; provided, however, that in no event shall the PV Module efficiency be adjusted below the minimum standards set forth on Schedule 1. Items that fall within the meaning of "form, fit or function" are limited to glass, backsheet, frame, cables, color, connectors, junction box, and visual quality criteria of the PV Modules (such as cell blemishes or discolorations); provided that the Parties shall make good faith efforts to mutually discuss and determine whether other items should be treated as form, fit or function items. Evergreen may make changes to the Specifications that affect form, fit or function of the PV Modules; provided, however, that in the event that Evergreen desires to implement such changes, Evergreen will use commercially reasonable efforts to notify PowerLight in writing at least 180 days in advance prior to implementing such changes. PowerLight shall be entitled, in its discretion, to reduce or eliminate the Parties' minimum quantity of MWp obligations as required on Schedule 1 in the event it does not accept Evergreen's changes to the form, fit or function of the PV Modules.

(b) Purchase Orders. Buyers (as defined below) shall place purchase orders ("Purchase Orders") for and buy from Evergreen PV Modules in accordance with the terms and conditions of this Agreement. All supply of the PV Modules to Buyer by Evergreen during the term of this Agreement shall be governed only by this Agreement notwithstanding any preprinted terms and conditions on Evergreen's acknowledgment or Buyer's Purchase Order. In the event of any conflict between this Agreement and any Purchase Order, this Agreement shall prevail unless the Parties execute a side letter attached to such Purchase Order expressly overriding the terms of this Agreement. Purchase Orders shall specify product type, quantity, destination, and requested shipment date. Provided a Purchase Order is for PV Modules within the required commitments of this Agreement and does not conflict with the limitations or provisions of this Agreement, Evergreen shall acknowledge such Purchase Order by written notice or e-mail transmission delivered to PowerLight within five (5) business days following Evergreen's receipt of such Purchase Order. Any additional or different terms in Evergreen's acknowledgements, Buyer's purchase orders, or other such documents of either Party in connection with orders or acknowledgements are hereby deemed to be material alterations and notice of objection to and rejection of them is hereby given. Each of PowerLight Corporation and PowerLight Systems AG and their respective wholly-owned Subsidiaries shall have the right to issue Purchase Orders hereunder (such entity, which may include PowerLight Corporation, PowerLight Systems AG, or any of their respective Subsidiaries, a "Buyer"). Notwithstanding the foregoing, each such Buyer, PowerLight Corporation and PowerLight Systems AG shall be jointly and severally liable for all obligations incurred by any of them and any Buyer hereunder including as a result of issuing such Purchase Order. Quantities of sales hereunder are the aggregate of such sales made by all the Buyers, and aggregate Sales to Buyers hereunder shall satisfy Evergreen's obligation to sell, and PowerLight's obligation to purchase and place Purchase Orders hereunder. As used in this Agreement, "Subsidiary" means, with respect to a Party, another entity directly or indirectly controlled by such Party.

(c) Firm Annual Commitments. Evergreen agrees to sell to PowerLight and/or other Buyers and PowerLight and/or other Buyers agree to buy PV Modules on an annual, firm commitment basis in at least the aggregate quantities for the specified years set forth on Schedule 1 (as may be adjusted from time to time pursuant to Sections 1(a) (Products), 1(g) (Change Orders) 3(b) (Late Delivery) and 6 (Invoicing)). Subject to Section 15(a) (Termination Without Cause), the sole and exclusive penalties for failure of Evergreen or PowerLight to fulfill its annual firm commitment obligations set forth in this Section 1 are described on Schedule 1; provided, however, that Evergreen shall be subject to additional penalties for late shipment of PV Modules to the extent applicable under Section 3(b) (Late Delivery).

(d) Firm Quarterly Commitments. "Quarter" and "Quarterly" refer to the calendar quarter. In the event of a change of Evergreen's fiscal Quarter, upon Evergreen's request, the Parties shall promptly discuss and mutually agree to corresponding adjustments, if any, to Quarterly obligations under this Agreement to the extent necessary or appropriate. PowerLight shall place Purchase Orders for and buy Quarterly quantity allocations at a level ranging from a minimum of 15% to a maximum of 35% of PowerLight's annual quantity allocation for that respective year (including any exercised Option), as set forth on Schedule 1 (as adjusted from time to time pursuant to Sections 1(a) (Products), 1(g) (Change Orders), 3(b) (Late Delivery), and 6 (Invoicing)). Evergreen agrees to sell to PowerLight and/or other Buyers such quantity allocations for the applicable Quarter. The foregoing does not preclude Buyers from requesting higher or lower percentage or quantity allocations for shipment subject to Evergreen's consent. Nothing in this Section 1(d) (Firm Quarterly Commitments) shall require Evergreen to ship to Buyers, or Buyers to order from Evergreen, more than the firm annual quantity commitment set forth on Schedule 1 (as adjusted from time to time pursuant to Sections 1(a), 1(g), 3(b) and 6.). Notwithstanding anything in this Section 1(d) (Firm Quarterly Commitments), the sole and exclusive penalties for failure of Evergreen or PowerLight to fulfill its firm commitment obligations set forth in this Section 1(d) are described on Schedule 1; provided, however, that Evergreen shall be subject to additional penalties for late shipment of PV Modules to the extent applicable under Section 3(b) (Late Delivery).

(e) Rolling Forecast Report. Each month PowerLight will deliver to Evergreen its updated anticipated PV Module requirements, including specific product type, for each month for the subsequent twelve (12) month period ("Rolling Forecast Report"). The aggregate quantities forecasted for the first twelve (12) weeks in each Rolling Forecast Report shall be deemed fixed and may not be varied in a subsequent Rolling Forecast Report; provided, however, that the quantities may be adjusted within such twelve (12) week period pursuant to Section 1(g) (Change Orders). Subject to such adjustment, PowerLight shall purchase PV Modules and issue Purchase Orders in the aggregate amount of the fixed quantities stated in the Rolling Forecast Report for such twelve (12) week period. The quantities of PV Modules forecasted in a Rolling Forecast Report shall be within the applicable minimum and maximum quantities set forth in Sections 1(c) (Firm Annual Commitments), 1(d) (Firm Quarterly Commitments), and 1(f) (Optional Quantity Increase). If requested by Buyer, Evergreen may, but, subject to Section 1(f), shall have no obligation to, supply

PV Modules in amounts that exceed either the forecasted amounts for the first three months of a Rolling Forecast Report or that are in excess of the amounts determined in accordance with Sections 1(c) and 1(d) regardless of the amounts set forth in any Rolling Forecast Report.

(f) Optional Quantity Increase. To the extent provided on Schedule 1, PowerLight shall have the option to increase the quantity of PV Modules Evergreen agrees to sell hereunder on an annual, firm commitment basis (the "Option"). For any year subject to the Option, PowerLight must deliver to Evergreen written notice of its intention to exercise the Option for such year no later than July 1st of the preceding year.

(g) Change Orders. Subject to the firm commitment obligations of Sections 1(c) (Firm Annual Commitments) and 1(d) (Firm Quarterly Commitments), Buyer may, at any time up until eight (8) weeks prior to the shipment date, by change order, suspend performance of a Purchase Order in whole or in part, make changes in the quantities, method of shipment or place of shipment of the PV Modules in a Purchase Order. Any Change Order increasing the quantity of requested PV Modules will become binding upon Evergreen only if such Change Order increases the quantity of PV Modules by no more than ten percent (10%), unless Evergreen otherwise consents in writing to a greater quantity change. In addition, subject to the firm commitment obligations of Sections 1(c) and 1(d), Buyer may at any time change the shipment date to any subsequent date within the same calendar Quarter as the original shipment date. Buyer shall not change shipment date of a Purchase Order so as to cause the Purchase Order to be shipped in a subsequent Quarter without Evergreen's written consent. Buyer may request change orders outside the restrictions described in this Section 1(g), which Evergreen may accept in its discretion. Buyer shall use good faith efforts to issue Change Orders only for good business reasons.

2. Price; Taxes. The prices for PV Modules sold under Purchase Orders issued by Buyers shall be on a per-Watt basis and are set forth on Schedule 1. Such prices shall be determined by the year of the shipment date stated in the Purchase Order, as more fully described on Schedule 1. The price for PV Modules shall be the price applicable to the destination, which shall be determined prior to the time of shipment of the PV Modules to Buyer. Buyers shall not manipulate their orders in order to defeat the intent that it pay the price applicable to the destination of the PV Modules. Evergreen and Buyer will reasonably cooperate to help minimize taxes applicable to the transactions hereunder. Evergreen shall promptly remit to Buyer in full any taxes paid by Buyer which are refunded to Evergreen in whole or in part. Notwithstanding anything herein, Buyer shall be solely responsible for any taxes applicable to the sale of PV Modules hereunder (excluding Evergreen's income taxes, which shall be borne solely by Evergreen).

3. Shipment.

(a) General. Except as otherwise provided on Schedule 1 with respect to frameless PV Modules, Evergreen agrees to ship PV Modules to Buyer on the following shipment terms: Ex-works (EXW) (Incoterms 2000) Evergreen manufacturing facilities in North America for delivery locations in North America, and Ex-works (EXW) Evergreen manufacturing facilities in Europe for delivery locations in Europe. Except as otherwise provided on Schedule 1 with respect to frameless PV Modules, for shipment locations outside of North America and Europe, the shipment terms will be Ex-works (EXW) Evergreen manufacturing facilities in either North America or Europe, as reasonably requested by Buyer and subject to availability of the respective product at the facilities. Evergreen shall effect shipment of the PV Modules on or prior to the estimated shipment date provided in Evergreen's acknowledgement ("Shipment Deadline"). The Shipment Deadline shall not be later than four (4) months following Buyer's issuance of the Purchase Order acknowledged by Evergreen unless Buyer requests a shipment date later than four (4) months following Buyer's issuance of the Purchase Order, in which case the Shipment Deadline shall be such later date requested by Buyer. In addition, Evergreen shall use good faith efforts to deliver PV Modules earlier than the Shipment Deadline if Buyer's Purchase Order requests an earlier shipment date. Buyer may store at Evergreen's expense any PV Modules shipped to Buyer more than five (5) days in advance of its requested shipment date acknowledged by Evergreen. Time is of the essence in this Agreement. Performance by Subsidiaries of Evergreen's shipment and other obligations hereunder shall be deemed to satisfy the respective obligation as if performed by Evergreen, and upon reasonable request from Evergreen, Buyer shall place Purchase Orders with such Subsidiaries. The sale of PV Modules does not convey any license under any patent claims covering combinations of such PV Modules with any other devices or elements or to the process of making the PV Modules.

(b) Late Delivery . Any Purchase Orders issued by Buyer and duly acknowledged by Evergreen shall, subject to the change order provisions of Section 1(g) (Change Orders), give rise to a full take or pay obligation on Buyer. In the event PV Modules are shipped more than fourteen (14) days following the Shipment Deadline, Evergreen will pay Buyer late delivery penalties of *** of the gross purchase price stated in the applicable Purchase Order for the units shipped late, plus additional penalties of *** of such price per week thereafter for such units shipped late, up to a maximum of *** of such price for such units shipped late, and Evergreen's liability for late delivery shall be limited to such penalties and any applicable quarterly and/or annual liquidated damages pursuant to Schedule 1. Such penalties shall be credited against the gross purchase price otherwise payable by Buyer. Buyer may cancel by written notice any Purchase Order for PV Modules not delivered within *** of the Delivery Deadline and Buyer shall have no further liability under such Purchase Order to Evergreen. PowerLight shall have the right to reduce PowerLight's minimum quantity of MWp to be purchased in the applicable year of delivery by the MWp quantity represented by such canceled units of PV Modules by providing a specific notice of the reduction of the minimum quantity along with PowerLight's notice of cancellation of the Purchase Order.

4. Packaging; Shipping; Testing. Evergreen shall bear all costs associated with packaging in Evergreen's standard packing or storing the PV Modules until shipment to Buyer pursuant to the shipment terms specified in Section 3(a). All PV Modules shall be reasonably packaged, marked, and otherwise prepared in accordance with good commercial practices to reduce the risk of damage and to reasonably minimize shipping rates, in accordance with all applicable federal, state and local packaging and transportation laws and regulations. An itemized packing list shall accompany each shipment. Prior to shipping, Evergreen shall deliver to PowerLight via e-mail a packing list showing PV Module serial numbers, their corresponding flash test data (including Pmp, Vmp, Imp, Voc, Isc and fill factor) and quality assurance test indications. All shipped PV Modules shall satisfy the foregoing criteria, including the applicable module power tolerance standards set forth on Schedule 1. PV Module electrical characteristics shall be determined based on the results of production line tests performed at the connectors in accordance with IEC 904-1 at 'Standard Test Conditions' (1000 W/m2 with IEC904-3 or equivalent IEEE reference solar spectral irradiance distribution, AM1.5 and 25C). Evergreen shall mark on containers handling and loading instructions, shipping information, the order number, the PowerLight pan number and account, the shipment date and the names and addresses of Evergreen and PowerLight.

5. Title and Risk of Loss. Pursuant to Section 3(a) (General) above, title and risk of loss shall pass to Buyer upon shipment of the PV Modules.

6. Invoicing. After each delivery completed under this Agreement, Evergreen shall send a separate invoice, including item numbers, in duplicate, accompanied by a bill of lading or express receipt. Invoices may be provided in hard copy or electronic form. Subject to the foregoing, Buyer shall pay Evergreen all properly invoiced amounts within *** of the date of product transfer from Evergreen to Buyer's designated freight carrier ("Payment Due Date"). Subject to a mutually agreed credit limit, which the Parties agree shall be reviewed annually and shall be based on 120 day payment terms and reflect PowerLight's firm commitment quantity obligations under this Agreement, Buyer will pay Evergreen daily interest at the rate of prime plus *** per annum for any late payment made after their respective Payment Due Date until ninety (90) days after its Payment Due Date, after which Buyer will pay Evergreen daily interest at the rate of *** per annum until payment is made; provided that the foregoing provisions shall not apply to Purchase Orders involving assignment of rebate incentives to Evergreen. All accrued interest payment obligations shall be paid by PowerLight quarterly ("Quarterly Payment Obligations"). Notwithstanding anything to the contrary, the interest hereunder shall not exceed the highest rate permitted by applicable law. Evergreen shall have the right to modify PowerLight's credit limit, but only on an objective, reasonable, non-discriminatory basis consistent with ordinary business practices, with notice to PowerLight; provided, however, that in the absence of Buyer's bankruptcy or PowerLight's failure to meet its Quarterly Payment Obligations, any decision by Evergreen to modify PowerLight's credit limit shall, in the event PowerLight notifies Evergreen of its willingness to

continue to place Purchase Orders and receive shipments hereunder, relieve PowerLight of any further firm commitment purchase obligations and liquidated damages for failure to meet such purchase obligations if Evergreen refuses to fulfill such Purchase Orders under the terms of the original credit limits. Subject to mutual agreement, Evergreen may accept assignment of rebate incentives for up to 180 days as form of secured payment for particular Purchase Orders. In connection with any such accepted rebate assignments, Buyer will pay Evergreen daily interest at the rate of prime plus *** per annum for any payments made after the applicable Payment Due Date. Buyer will bear all risk for securing rebate payments.

7. Inspection

(a) All PV Modules destined to Buyer may be inspected and tested by PowerLight, its Subsidiaries, higher tier contractors (excluding in all cases any direct competitors of Evergreen), and the U.S. Government, at PowerLight's discretion (but with at least fourteen (14) days' advance notice provided to Evergreen). PowerLight may conduct such inspection on Evergreen's premises during normal business hours, in which case Evergreen will provide without additional charge, all reasonable facilities and assistance for such inspections and tests. The specific categories subject to inspection and testing pursuant to this Section 7(a) shall be limited to Evergreen's manufacturing process from solar cell testing through final PV Module testing and packaging. The Parties expect that the inspection will emphasize PV Module flash test results, ensuring that the test equipment is calibrated at appropriate frequencies, and ensuring the durability and integrity of the PV Module solder bonds. The frequency of such inspections shall be limited to minimize interruption of Evergreen's operations and in any event are not contemplated to occur more often than annually. Evergreen shall have the right to prohibit access to confidential portions of its non-PV Module production facilities and to require personnel participating in the inspection to be bound by appropriate confidentiality agreements approved by Evergreen. Any PowerLight Affiliates or higher tier contractors participating in such inspection or testing shall be accompanied by PowerLight. Any PowerLight employees visiting Evergreen facilities for purposes of such inspection or testing shall be qualified to conduct the applicable inspections and tests and shall agree to abide by Evergreen's policies and rules. As used in this Agreement, "Affiliate" means, with respect to either PowerLight or Evergreen, another Party directly or indirectly controlling, controlled by or under common control with, PowerLight Corporation or Evergreen, respectively. Evergreen shall make PV Module inspection records maintained and retained by Evergreen available to PowerLight during the performance of this Agreement; provided, however, that Evergreen shall in any event retain all flash test data records for the applicable Evergreen warranty period.

(b) No inspection, test, approval, or acceptance of the PV Modules shall relieve Evergreen from responsibility for any defects in the PV Modules or other failures to meet the requirements of this Agreement or the Purchase Order. In any such event, the sole remedies

available to PowerLight will be those contained in Evergreen's warranty conditions for the applicable PV Modules set forth on Schedule 3.

8. Warranty. All PV Modules covered by this Agreement will be warranted per the conditions of the standard Evergreen warranty statements, set forth on Schedule 3; provided, however, that as between Evergreen and Buyer, the additional warranty provisions set forth in this Section 8 shall also apply to PV Modules and, to the extent Section 8 conflicts with Schedule 3, Section 8 shall prevail. The additional warranty provisions set forth in this Section 8 shall not be transferable or assignable to the consumer purchaser or any other third party; provided, however that PowerLight shall be entitled to bring claims for such additional warranty provisions on behalf of its customers. The remedies set forth in either these limited warranties or Schedule 3 shall be the sole and exclusive remedies provided under the extended term warranty. The limited warranties set forth herein are expressly in lieu of and exclude all other express or implied warranties, including but not limited to warranties of merchantability and of fitness for particular purpose, use, or application and all other obligations or liabilities on the part of Evergreen, unless such other warranties, obligations, or liabilities are expressly agreed to in writing signed and approved by Evergreen.

(a) Power Output. Evergreen warrants that for a period of ten (10) years commencing on the date ninety (90) days following its shipment of PV Modules to the original consumer purchaser that the power rating at Standard Test Conditions will remain at 90% or greater of Evergreen's Minimum Specified Power Rating. Evergreen further warrants that for a period of twenty-five (25) years commencing on the date ninety (90) days following its shipment of PV Modules to the original consumer purchaser that the power rating at Standard Test Conditions will remain at 80% or greater of Evergreen's Minimum Specified Power Rating. Power output performance shall be tested by Evergreen (with PowerLight's prior written consent) or by PowerLight (with Evergreen's prior written consent). In the event that PowerLight and Evergreen disagree on power output performance, a third-party independent testing agency such as Sandia National Labs or the National Renewable Energy Lab (or a mutually agreed equivalent) will be used to determine actual module performance. PowerLight and Evergreen will collaborate to ensure that this third party determination is agreeable to both PowerLight and Evergreen.

(b) Reasonableness Standard. The reference to Evergreen's "sole and absolute judgment" in Schedule 3 shall be replaced with Evergreen's "reasonable judgment".

(c) Pervasive and Systemic Failure. The last sentence of the first paragraph under the heading "Limitations and Conditions" on Schedule 3 shall be deleted and replaced with the following: "Except as provided below with respect to a Pervasive and Systemic Failure, the limited

warranties do not cover any transportation costs for return of modules or costs associated with the installation, removal, or reinstallation of PV Modules. Notwithstanding the foregoing, in the event of a Pervasive and Systemic Failure in the PV Module(s), this following shall apply:

(i) Upon PowerLight's knowledge of the occurrence of a Pervasive and Systemic Failure, PowerLight shall promptly notify Evergreen, and shall provide, if known and as may then exist, a description of the failure, and the suspected lot numbers, serial numbers or other identifiers, and delivery dates, of the failed PV Modules. PowerLight shall provide access to Evergreen to the failed PV Modules for testing and analysis. The Parties shall cooperate and work together to determine the root cause. PowerLight and Evergreen shall consider, evaluate and determine a corrective action program, which shall not be effective until approved in writing by authorized officers of PowerLight and Evergreen; provided that (1) the foregoing shall not reduce Evergreen's obligations under its express warranty statements in this Section 8 or Schedule 3, (2) such corrective action shall be consistent with the provisions of Section 8(e)(ii), and (3) approval of such corrective action program shall not be unreasonably withheld by either party. The parties shall reasonably cooperate to establish remedies to address the Pervasive and Systemic Failure commensurate with the severity of the respective failure (subject to the maximum liability for certain costs set forth in Section 8(e)(ii)).

(ii) Upon occurrence of a Pervasive and Systemic Failure, and except as otherwise reasonably agreed under Section 8(e)(i), Evergreen shall reimburse reasonable costs of transportation, installation, removal, reinstallation, field repair, testing, packaging and shipping, and decommissioning and recommissioning the solar electric system (the "Collateral Costs"), in addition to the other remedies provided under Evergreen's express warranty statements in this Section 8 and/or Schedule 3 (e.g. module replacement); provided that Evergreen's maximum liability for Collateral Costs per occurrence shall not exceed *** of the original price of the affected PV Modules (provided that if actual Collateral Costs significantly exceed this *** threshold, the Parties shall make good faith efforts to determine an appropriate cost allocation); and provided, further, that Collateral Costs shall not include unrelated routine maintenance costs. Evergreen and PowerLight shall use reasonable efforts to identify and agree upon less costly and disruptive remedies instead of those set forth in Section 8(e)(ii), where less costly and disruptive remedies are adequate for customers in view of the defects involved.

"Pervasive and Systemic Failure" means confirmed failures in the PV Modules (i) mutually verified by Evergreen and PowerLight (either itself or by an independent third party on behalf of PowerLight), (ii) occurring during the applicable warranty period, (iii) resulting from defects in materials, workmanship, manufacturing process or design, in each case that cause a failure that would result in a claim under the express warranty provided to the customer, and (iv) occurring on more than the greater of ten (10) modules per project or 0.5% of the PV Modules per project. It is

understood that a project may include multiple buildings and arrays that are provided as part of a single project.

(d) Force Majeure. The language in Schedule 3 "…and any unforeseen event beyond its control, including, without limitations, any technological or physical event or condition which is not reasonably known or understood at the time of sale." shall be deleted and replaced with the following: "…and any unforeseen similar event beyond its control."

(e) Warranty Claimants. Evergreen provides the warranty set forth in Schedule 3 to Buyer and its Customers. Buyer and its service providers shall receive, document, and notify Evergreen of claims, questions or concerns under Evergreen's warranty with respect to PV Modules sold to Buyer hereunder. Buyer shall obtain information from the customer as requested by Evergreen to enable the parties to determine whether the respective claim arises under the Evergreen warranty or arises from materials or services not provided by Evergreen. In the event of a claim by Buyer or its customer under Evergreen's warranty, Evergreen's satisfaction of the claim with respect to the customer purchaser shall be deemed to also satisfy the same claim with respect to Buyer.

(f) Indemnity. Evergreen shall defend, indemnify and hold harmless PowerLight and its Affiliates from any third party claim covered by the express warranty statements set forth on Schedule 3, subject to the terms and limitations set forth therein. PowerLight shall defend, indemnify and hold harmless Evergreen and its Affiliates from any third party claim covered by the express warranty statements PowerLight has made to such third party, subject to the terms and limitations agreed to by the third party. In the event that a party has a direct claim under an express warranty, such party's rights shall be directly under such warranty and not under the foregoing indemnity.

9. Material. If PowerLight and/or other Buyers furnishes any material (such as framing materials, extrusions, mounting materials, fasteners, etc.) for fabrication hereunder, and if Evergreen agrees to use of the material and the custom work, Evergreen agrees (a) not to substitute any other material in such fabrication without PowerLight's prior written consent, (b) title to such materials shall not be affected by incorporation in or attachment to any other property, (c) all such material (except that which becomes normal industrial waste) will be returned in the form of products or unused material to PowerLight (at PowerLight's expense in the case of unused material) and (d) no such material itself will be used by Evergreen for any purpose other than meeting PowerLight's request.

10. Intellectual Property. Evergreen shall retain all patents and other proprietary rights embodied in the PV Modules. PowerLight may disclose to Evergreen modifications, enhancements, or improvements to the PV Modules ("Developments"). Except to the extent PowerLight identifies any Developments at the time of disclosure to Evergreen as proprietary to PowerLight and Evergreen agrees in writing to receive such Developments under such conditions, Evergreen shall have a non-exclusive, world-wide, royalty-free, sublicensable, perpetual, irrevocable, non-terminable, license to make, use, sell, offer for sale, import, disclose, and otherwise exploit the Developments in connection with the PV Modules and any other product or service of Evergreen. Nothing in the foregoing shall impair, alter or otherwise affect PowerLight's proprietary rights in its patents, products or other intellectual property.

11. Confidential or Proprietary Information and Property.

(a) "Confidential Information" means the terms of this Agreement, any Rolling Forecast Report, any Purchase Order, and any other information disclosed by one Party (the "Disclosing Party") to any other Party (the "Receiving Party"), which the Disclosing Party considers trade secret or otherwise confidential or proprietary (as defined by the Uniform Trade Secrets Act), whether in written, oral, graphic, machine-readable or other form, including, but not limited to, that which relates to patents, patent applications, research, product plans, products, developments, inventions, processes, designs, drawings, engineering, formulae, markets, software, hardware configuration, computer programs, algorithms, pricing**,** business plans, agreements with third parties, or the services, customers, marketing or finances of the Disclosing Party, which: (i) is designated in writing to be confidential or proprietary; (ii) is identified at the time of disclosure as being of a confidential or proprietary nature; or (iii) by the nature of the circumstances surrounding the disclosure, ought to in good faith be treated as trade secret, confidential or proprietary. Notwithstanding the foregoing, Confidential Information shall exclude information that: (i) was independently developed by the Receiving Party without using any of the Disclosing Party's Confidential Information; (ii) becomes known to the Receiving Party, without restriction, from a source other than the Disclosing Party that had a right to disclose it; (iii) was in the public domain at the time it was disclosed or becomes in the public domain through no act or omission of the Receiving Party; or (iv) was rightfully known to the Receiving Party, without restriction, at the time of disclosure.

(b) The Receiving Party shall keep confidential and otherwise protect from disclosure the Disclosing Party's Confidential Information otherwise expressly authorized herein or by the Disclosing Party in writing. The Receiving Party shall use Disclosing Party's Confidential Information only in its performance under this Agreement. In all lower tier subcontracts and purchase orders issued by a Receiving Party and involving subcontractor receipt of such information or property, the Receiving Party shall provide the Disclosing Party hereto the same rights and protections as contained in this Section 11.

(c) Notwithstanding anything herein to the contrary, a Receiving Party has the right to disclose Confidential Information without the prior written consent of the Disclosing Party: (i) as required by any court or other Governmental Authority, or by any stock exchange the shares of any Party are listed on, (ii) as otherwise required by law, (iii) as advisable or required in connection with any government or regulatory filings, including without limitation, filings with any regulating authorities covering the relevant financial markets, (iii) to its attorneys, accountants, financial advisors or other agents in each case bound by confidentiality obligations, (iv) to banks, investors and other financing sources and their advisors, in each case bound by confidentiality obligations; or (v) in connection with an actual or prospective merger or acquisition or similar transaction where the party receiving the Confidential Information is bound by confidentiality obligations. If a Receiving Party believes that it will be compelled by a court or other authority to disclose Confidential Information of the Disclosing Party, it shall give the Disclosing Party prompt written notice so that the Disclosing Party may determine whether to take steps to oppose such disclosure.

(d) Upon the Disclosing Party's request, the Receiving Party shall return the Disclosing Party's Confidential Information to the Disclosing Party or make such other disposition thereof as is directed by the Disclosing Party.

12. Evergreen Literature. Upon request Evergreen shall permit PowerLight and/or other Buyers, at no additional charge, to use and/or reproduce Evergreen's applicable literature without modification, such as operating and maintenance manuals, technical publications, prints, drawings, training manuals, and other similar supporting documentation and sales literature in connection with PowerLight's and/or other Buyers' use and sale of the PV Modules sold hereunder; provided, however, that PowerLight and/or its Buyers shall discontinue use of such items reasonably requested by Evergreen. Evergreen shall advise PowerLight and/or other Buyers of any updated information relative to the foregoing literature and documentation with timely notifications in writing.

13. Lien Waivers. Evergreen shall furnish upon PowerLight's request, waivers by Evergreen and all other persons entitled to assert any lien rights in connection with the performance of this Agreement.

14. Intellectual Property Indemnity.

(a) By Evergreen. Evergreen shall defend at its cost and expense, or at its option settle at its cost and expense any third party claim, suit or proceeding brought against PowerLight or its Affiliates on the issue that the PV Modules shipped hereunder infringe any copyright, patent, trade secret, trademark or service mark of any third party, and shall pay all damages awarded by a court of competent jurisdiction and amounts of approved, written settlements entered into in connection therewith, subject to the limitations set forth herein; but only if PowerLight or its Affiliates notifies Evergreen promptly in writing of such claim, suit or proceeding and gives Evergreen sole control of any defense or settlement negotiations or compromise, by counsel of its own reasonable choice, and, at Evergreen's request and expense, gives Evergreen proper and reasonable information and assistance. Evergreen will not be liable for any settlement or negotiations made without its written consent and opportunity for Evergreen to participate therein. Evergreen shall not be liable to PowerLight under any provision of this Section 14(a) if any infringement proceeding or claim is based solely upon: (i) a use by PowerLight (or its customers) for which the PV Module was not designed, (ii) an alteration of the PV Module or combination of the PV Module with another item by PowerLight or a third party under PowerLight's (or its customers') direction, which alteration or combination has solely caused the infringement action, (iii) any materials or designs provided by PowerLight, or (iv) actions by PowerLight in violation of this Agreement. The foregoing states the sole and exclusive remedy of PowerLight and the entire liability of Evergreen for infringement of intellectual property rights by Evergreen or the PV Modules.

(b) By PowerLight. PowerLight shall defend at its cost and expense, or at its option settle at its cost and expense any third party claim, suit or proceeding brought against Evergreen or its Affiliates on the issue arising from any of infringement any copyright, patent, trade secret, trademark or service mark of any third party arising from any of items 14(a)(i)-(v), and shall pay all damages awarded by a court of competent jurisdiction and amounts of approved, written settlements entered into in connection therewith, subject to the limitations set forth herein; but only if Evergreen or its Affiliates notifies PowerLight promptly in writing of such claim, suit or proceeding and gives PowerLight sole control of any defense or settlement negotiations or compromise, by counsel of its own reasonable choice, and, at PowerLight's request and expense, gives PowerLight proper and reasonable information and assistance. PowerLight will not be liable for any settlement or negotiations made without its written consent and opportunity for PowerLight to participate therein. PowerLight shall not be liable to Evergreen under any provision of this Section 14(b) if any infringement proceeding or claim is based solely upon (i) the PV Modules, (ii) an alteration of the PV Module or combination of the PV Module with another item by Evergreen or a third party under Evergreen's direction, which alteration or combination has solely caused the infringement action, or (iii) any materials or designs provided by Evergreen, or (iv) actions by Evergreen in violation of this Agreement. The foregoing states the sole and exclusive remedy of Evergreen and the entire liability of PowerLight for infringement of intellectual property rights by PowerLight.

15. Termination.

(a) Termination Without Cause. Either Party may terminate this Agreement without cause for its convenience, at any time by written notice to the other Party delivered at least six (6) months prior to the effective termination date. In such event the terminating Party shall, within ten (10) days of delivering such termination notice, pay the non-terminating Party an early termination fee of ***. In addition, the Parties will make good faith efforts to mutually agree upon an order and delivery schedule for PV Modules during the six (6) month period preceding the effective termination date. Notwithstanding the foregoing, the Parties agree that the *** termination fee shall be the sole and exclusive remedy available to the non-terminating Party resulting from such early termination; provided that any applicable liquidated damages for failure of the terminating Party to fulfill its firm commitment quantity obligations under this Agreement through the effective termination date shall continue in full force and effect.

(b) Termination For Cause. Subject to the provisions of this clause (b), either Party may terminate this Agreement for cause upon the other Party's material breach of this Agreement, which breach remains uncured after thirty (30) days' written notice to the breaching Party. Notwithstanding the foregoing, in the event a Party breaches this Agreement as a result of its failure to fulfill its Quarterly and/or annual firm commitment obligations described in Section 3(b) (Late Delivery) or on Schedule 1, respectively, (as adjusted from time to time pursuant to Sections 1(a) (Products), 1(g) (Change Orders), 3(b) (Late Delivery) and 6 (Invoicing)), the non-breaching Party shall not be entitled to terminate this Agreement solely as a result of such breach. Instead, the sole and exclusive remedies for the non-breaching Party for such breach shall be limited to its collection of the Quarterly and/or liquidated damages set forth on Schedule 1 for the applicable Quarter and/or year in which the breach occurred.

(c) Survival. The last sentence of Section 7(a) and Sections 8, 9, 10, 11, 15, 17, 18, 19, 20, 21, 22, 23, 25 and 26 shall survive any termination of this Agreement.

(d) Term and Extensions. This Agreement shall commence upon the Effective Date and unless terminated earlier shall continue until December 31, 2009. Commencing December 1, 2006 and continuing each year thereafter, the Parties will make good faith efforts to mutually agree upon quantity, pricing and other terms applicable to the sale of photovoltaic modules for the next calendar year subsequent to the then latest year set forth on Schedule 1, as amended from time to time. The term of this Agreement shall be extended for additional one (1) year terms to the extent that the Parties agree to minimum quantities and prices applicable to such years and the Parties execute a

signed, written amendment of Schedule 1, which includes the quantities and prices applicable to such extended term. A copy of any such amended schedule shall be attached to this Agreement.

16. Audit. Evergreen agrees that only those portions of the factories and records/documentation that are material to confirming fulfillment of Evergreen's obligations under this Agreement shall, upon at least fourteen (14) days' advance notice, be subject to inspection and audit by an independent third party representative of PowerLight reasonably approved by Evergreen, where such representative is engaged in the business of performing such audits. The subject of such audit shall not include any financial information of Evergreen. Any fees and costs associated with such audit shall be borne by PowerLight. The frequency of such audits shall be limited to minimize interruption of Evergreen's operations and in any event are not contemplated to, but may to the extent necessary, occur more often than annually. Evergreen shall have the right to prohibit access to confidential portions of its non-PV Module production facilities and to require the representative to be bound by an appropriate confidentiality agreement approved by Evergreen. The representative visiting Evergreen facilities for purposes of such inspection shall be qualified to conduct the audit and shall agree to abide by Evergreen's policies and rules.

17. Waiver. The failure of any Party to insist upon the performance of any provision of this Agreement or to exercise any right or privilege granted to such Party under this Agreement shall not be construed as waiving such provision or any other provision of this Agreement, and the same shall continue in full force and effect. If any provision of this Agreement is found to be illegal or otherwise unenforceable by any court or other judicial or administrative body, the other provisions of this Agreement shall not be affected thereby, and shall remain in full force and effect.

18. Applicable Law. The validity, performance, and construction of this Agreement shall be governed by the laws of the State of New York without regard to its conflicts of laws principles.

19. Disputes; Jurisdiction & Venue. PowerLight and Evergreen shall use their reasonable efforts to resolve any and all disputes, controversies, claims, or differences between PowerLight and Evergreen, arising out of or relating in any way so this Agreement including, but not limited to, any questions regarding the existence, validity or termination hereof ("Disputes"), through negotiation. Only upon failure by PowerLight and Evergreen to resolve the Dispute through such negotiation may either Party institute legal action. Any Dispute arising under this Agreement shall be submitted to the federal courts in New York, New York and each Party submits to the jurisdiction of such courts for such purpose.

20. Assignment. No Party shall assign this Agreement without the prior written consent of the other Parties hereto; provided, however, that each Party may assign this Agreement to its Subsidiaries, and Evergreen or PowerLight Corporation may assign this Agreement in connection with a merger, acquisition, change of control or sale of substantially all assets of such Party upon notice to the non-assigning Party but without any such consent.

21. Publicity. No Party shall make or authorize any news release, advertisement, or other disclosure which shall confirm the existence or convey any aspect of this Agreement without the prior written consent of the other Parties except as may be required to perform this Agreement or a Purchase Order, or as required by law or regulation.

22. Complete Agreement; Modifications. This Agreement, including all exhibits, schedules, purchase orders, and annexes hereto, contains the complete and entire agreement among the Parties as to the subject matter hereof and replaces and supersedes any prior or contemporaneous communications, representations or agreements, whether oral or written, with respect to the subject matter of this Agreement. No modification of the Agreement shall be binding unless it is written and signed by all Parties.

23. Right of Offset. Notwithstanding anything herein, either Party shall be entitled to offset any amounts it otherwise owes the other Party under this Agreement by such amounts, including but not limited to any penalties or liquidated damages owed hereunder.

24. Force Majeure. No Party shall be considered in default of performance under this Agreement or a Purchase Order to the extent that performance of such obligations is delayed or prevented by act of God, fire, flood, hurricanes, earthquake or similar natural disasters, or riot, war, terrorism, labor strikes, civil strife.

25. Notices. All notices shall be delivered by facsimile, nationally recognized overnight courier (such as federal express), or hand delivered to the person below. Notice shall be effective upon the day received, or within twenty-four hours after submission of any of the above methods.

To Evergreen:	To PowerLight Corporation:	To PowerLight Systems AG:
138 Bartlett Street	2954 San Pablo Avenue	14, rue du Rhône
Marlborough, MA 01752 USA	Berkeley, CA 94702 USA	1204 Geneva, Switzerland
Facsimile: (508) 229-0747	Facsimile: (510) 540-0552	Facsimile: +41 (0) 22 819 1990
Attn: Senior Vice President, Marketing and Sales	Attn: President	Attn: General Manager

1. 26. LIMITATION OF LIABILITY. EXCEPT AS OTHERWISE EXPRESSLY STATED HEREIN, IN NO EVENT SHALL ANY PARTY HERETO BE LIABLE TO ANY OTHER PARTY HERETO OR ANY THIRD PARTY FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, PUNITIVE OR SPECIAL DAMAGES WHATSOEVER, WITHOUT REGARD TO CAUSE OR THEORY OF LIABILITY (INCLUDING, WITHOUT LIMITATION, DAMAGES INCURRED BY SUCH OTHER PARTY OR SUCH THIRD PARTY FOR LOSS OF BUSINESS PROFITS OR REVENUE, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION OR OTHER PECUNIARY LOSS) ARISING OUT OF THIS ORDER, EVEN IF THE APPLICABLE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL THE ENTIRE LIABILITIES OF ANY PARTY OR ITS RESPECTIVE SUBSIDIARIES UNDER THIS AGREEMENT EXCEED THE PURCHASE PRICE UNDER THIS AGREEMENT FOR THE PV MODULES GIVING RISE TO THE CLAIM; PROVIDED THAT THE FOREGOING LIMITATION SHALL NOT APPLY TO CLAIMS FOR ANNUAL OR QUARTERLY LIQUIDATED DAMAGES, FOR LATE PENALTIES UNDER SECTION 3(b), FOR EXPRESS PAYMENT OBLIGATIONS UNDER SECTION 6, OR FOR CLAIMS ARISING UNDER SECTIONS 2, 11 AND 20. THE FOREGOING LIMITATION IS CUMULATIVE AND NOT PER INCIDENT.

27. Authority. Each entity signing this Agreement warrants that it has full authority and consent to enter in to this Agreement and that this Agreement shall be binding on it in accordance with its terms.

IN WITNESS WHEREOF, the Parties hereto have signed this Agreement as of the date and year first above written.

Evergreen:

Evergreen Solar, Inc.

By: /s/ Richard Feldt
Name: Richard Feldt
Title: President and CEO

PowerLight:

PowerLight Corporation

By: /s/ Daniel Shugar
Name: Daniel Shugar
Title: President

*** CONFIDENTIAL MATERIAL REDACTED AND
SEPARATELY FILED WITH THE COMMISSION***

PowerLight Systems AG

By: /s/ Eric Hafter
Name: Eric Hafter
Title: General Manager

List of Schedules:

Schedule	Description
1	Basic Terms of Sale
2	Form of Purchase Order
3	Form of Evergreen Warranty

*** CONFIDENTIAL MATERIAL REDACTED AND
SEPARATELY FILED WITH THE COMMISSION***

Schedule 1

Basic Terms of Sale

Firm Commitment Quantities:

Product 1 PV Modules (identified below): 1 megawatt (MWp) through August 15 of 2006.

Product 2 PV Modules (identified below): Firm commitment and Option quantities are stated in the table below. To the extent new products generally become available to Evergreen customers ("New PV Modules"), PowerLight may in its discretion elect to order Product 2 or such New PV Modules to fulfill the following commitments:

Delivery Period	Q3+Q4 2006	2007	2008	2009
Firm Quantity (MWp)	***	***	***	***
Option Quantity* (MWp)		***	***	***

* In accordance with Section 1(c) of the Agreement, with respect to each year of delivery stated in the table above, PowerLight retains an Option to order additional quantities up to the MWp specified for such year. Notwithstanding Section 1(c) or the Option Quantity set forth in the table above, with respect to 2008 and 2009 PowerLight may only exercise its Option to the

extent that the total quantity of PV Modules available to PowerLight for any given year after giving effect to such Option exercise does not exceed twenty percent (20%) of the aggregate solar module production capacity of Evergreen and EverQ for such year; provided however, that PowerLight shall in any event be entitled to exercise an Option for up to *** in 2009 without regard to such twenty percent (20%) limitation.

Firm Commitment Pricing:

The pricing applicable to all PV Modules through 2009 is stated in the table below:

Pricing	Q2 2006	Q3-Q4 2006	2007***	2008***	2009***
USD $/Wp** (North America)	***	***	***	***	***
Euro €/Wp (Europe)	***	***	***	***	***
USD $/Wp** (Asia)	***	***	***	***	***

All quarters stated on this Schedule 1 (Q1-Q4) are calendar quarters.

** Frameless PV Modules and Pricing: The Parties will make reasonable good faith efforts to facilitate Evergreen's manufacture of frameless PV Modules to be compatible with PowerGuard® and available for shipment by January 1, 2007 (or earlier if Evergreen can, using commercially reasonable efforts, accelerate the date of such availability). For 2007, the price of the frameless PV Module will be the same as the framed PV Module. For 2008 and subsequent years,

frameless (including junction box and quick connects) pricing for Product 2 or New PV Modules is equal to the framed price *** as applicable. The shipping terms applicable to frameless PV Modules shall be Ex-works (EXW) (Incoterms 2000) Evergreen manufacturing facilities in Malboro, Massachusetts, regardless of the actual factory production location. PowerLight may request new, customized PV Modules for a price mutually agreed; provided that the prices stated above are valid for PowerLight's current product applications for roof systems, ground systems and parking systems, excluding SunTile™.

*** 2007/2008/2009 Price Adjustment Mechanism: Pricing for 2007, 2008 and 2009 shall be subject to adjustment as follows: by October 1st of the year (the "Baseline Year") preceding the year subject to pricing adjustment (such year being 2007, 2008 or 2009 and referred to as the "Adjusted Year"), PowerLight shall submit to a mutually agreed third party consultant data evidencing PowerLight's (i) actual costs for photovoltaic modules delivered in the Baseline Year from suppliers other than Evergreen and (ii) costs for photovoltaic modules which PowerLight is, as of such October 1st date, under a firm contractual commitment (through confirmed purchase orders or written firm commitment agreements) to purchase in the Adjusted Year from suppliers other than Evergreen. The foregoing data shall be provided to such third party consultant under a nondisclosure agreement satisfactory to PowerLight, and shall not be disclosed to Evergreen. PowerLight and Evergreen shall equally bear the fees and expenses of such consultant.

Based on such data, the third party consultant shall calculate the average price paid or payable by PowerLight per watt in each of North America, Europe and Asia, excluding Evergreen orders for the Baseline Year and the Adjusted Year. Such average prices shall be calculated by multiplying the total amount paid or payable by PowerLight in each geographic market divided by the total watts received or receivable for such monetary amounts in such market. Based on these average prices of dollars or euros per watt (as applicable) for the Baseline Year and the Adjusted Year, prior to October 31st of the Baseline Year the third party consultant shall calculate, for each of North America, Europe and Asia, the percentage increase (the "Percentage Increase") or decrease (the Percentage Decrease") in the average price from the Baseline Year to the Adjusted Year.

The price adjustment for PV Modules for the Adjustment Year shall be calculated as follows: to the extent there is a Percentage Increase, the PV Module pricing shall be increased by a percentage calculated as follows:

Adjustment Year PV Module pricing percentage change = *** + Percentage Increase

To the extent there is a Percentage Decrease of ***or less, there shall be no adjustment to the Adjustment Year PV Module pricing. To the extent there is a Percentage Decrease of more than ***, the Adjustment Year PV Module pricing shall be decreased by a percentage calculated as follows:

Adjustment Year PV Module pricing percentage change = *** - Percentage Decrease

With respect to the 2008 pricing adjustments, if any, the 2007 PV Module pricing used for the Baseline Year shall reflect any pricing adjustments made to 2007 PV Module pricing in the previous year pursuant to the foregoing provisions. With respect to the 2009 pricing adjustments, if any, the 2008 PV Module pricing used for the Baseline Year shall reflect any pricing adjustments made to 2008 PV Module pricing in the previous year pursuant to the foregoing provisions.

Notwithstanding the foregoing price adjustments described in this Schedule 1, the price adjustments shall only apply to Purchase Orders that are not acknowledged by Evergreen (acting in accordance with its acknowledgment deadline required under Section 3(a) of the Agreement) as of October 1st of the Baseline Year.

Penalties/Liquidated Damages: The parties recognize and agree that, in the event of breach by either party of the promises contained herein regarding quantity and price commitments, the damages suffered by the non-breaching party would be difficult to assess, and the liquidated damages set forth herein represent a reasonable assessment of the potential damage to the non-breaching party.

Evergreen's Failure to Meet Quantity Commitments: In any calendar year in which Evergreen fails to deliver the aggregate quantities required for such year as set forth in this Schedule 1 above (as adjusted from time to time pursuant to Section 3(c) of the Agreement), Evergreen shall, no later than sixty (60) days following Evergreen's receipt of PowerLight's written demand for such payment, pay liquidated damages to PowerLight in the amount of *** per kilowatt of shortfall. In addition to the foregoing liquidated damages, if any, in any quarter in which Evergreen fails to deliver the aggregate quantities required for such quarter under Section 3(b) of the Agreement, Evergreen shall, no later than sixty (60) days following Evergreen's receipt of PowerLight's written demand for such

payment, pay liquidated damages to PowerLight in the amount of *** per kilowatt of shortfall; provided that the maximum number of kilowatts included in such shortfall calculation shall be no more than *** of the aggregate kilowatt quantity required for the applicable year.

PowerLight's Failure to Meet Quantity Commitments: In any calendar year for which PowerLight fails to take delivery of the quantities required for such year as set forth in this Schedule 1 above (as adjusted from time to time pursuant to Section 3(c) of the Agreement), PowerLight shall, no later than sixty (60) days following PowerLight's receipt of Evergreen's written demand for such payment, pay liquidated damages to Evergreen in the amount of *** per kilowatt of shortfall. In addition to the foregoing liquidated damages, if any, in any quarter in which PowerLight fails to take delivery of the aggregate quantities required for such quarter under Section 3(b) of the Agreement, PowerLight shall, no later than sixty (60) days following PowerLight's receipt of Evergreen's written demand for such payment, pay liquidated damages to Evergreen in the amount of *** per kilowatt of shortfall; provided that the maximum number of kilowatts included in such shortfall calculation shall be no more than *** of the aggregate kilowatt quantity required for the applicable year.

Product 1 (currently Cedar/EC-100 Series) PV Module Description/Specifications:

- Configuration: 150.5mm x 81mm cell; 4 x 18 configuration; 110 Wp or higher Wp class module. PV Modules shall be constructed with cells that represent nominally the center of the then current distribution, which is expected to increase over the Agreement's delivery period.
- Module Rated Minimum Power, Tolerance and Efficiency: Evergreen will ensure that products supplied to Powerlight are products within the range of all EC-100 technology family products sold in the United States, Europe and Asia; provided, however, that in no event shall any PV Module efficiency be below 10.25%.
- Safety and quality certifications shall be as follows: North America: UL 1703, 600 V maximum system voltage, minimum Class C fire rating; Europe and Asia: IEC 1215, TUV Safety Class II, CE, 800 VDC maximum system voltage. Evidence of certification of the foregoing shall be provided to PowerLight prior to its issuance of the first Purchase Order.
- PV Module Lot Average Power: All PV Modules shall be - 2 %/+10% of nominal rated power on individual units. Average power over four (4) container quantities shall meet or exceed nameplate power rating. Evergreen and PowerLight shall make good faith efforts to collaborate on methodology to address potential shortfalls in average PV Module Lot power.
- Additional Descriptions/Specifications/QA: Additional specifications and quality control documents applicable to PV Modules shall be mutually agreed by the Parties as soon as practicable following the Effective Date.

Product 2 (currently Spruce/EC-170 Series) PV Module Description/Specifications:

- Configuration: 150.5mm x 81mm cell; 6 x 18 configuration; currently 170 Wp or 180 Wp class module. PV Modules shall be constructed with cells that represent nominally the center of the then current distribution, which is expected to increase over the Agreement's delivery period.
- Compatibility: All framed PV Modules will be compatible with PowerLight's product applications for current roof systems, ground systems and parking systems, excluding PowerGuard® and SunTile™. Product 2 frame to specifically accommodate center mounting on PowerLight applications such as PowerTracker. The Parties will make reasonable good faith efforts to facilitate Evergreen's manufacture of frameless PV Modules to be compatible with PowerGuard® and available for shipment by January 1, 2007 (or earlier if Evergreen can, using commercially reasonable efforts, accelerate the date of such availability).
- Module Rated Minimum Power, Tolerance and Efficiency: Evergreen will ensure that products supplied to Powerlight are products within the range of all EC-170 technology family products sold in the United States, Europe and Asia; provided, however, that in no event shall any PV Module efficiency be below 10.25%.
- Safety and quality certifications shall be as follows: North America: UL 1703, 600 V maximum system voltage, minimum Class C fire rating; Europe and Asia: IEC 1215, TUV Safety Class II, CE, 1000 VDC maximum system voltage. Evidence of certification of the foregoing shall be provided to PowerLight prior to its issuance of the first Purchase Order.
- PV Module Lot Average Power: All PV Modules shall be - 2 %/+10% of nominal rated power on individual units. Average power over four (4) container quantities shall meet or exceed nameplate power rating. Evergreen and PowerLight shall make good faith efforts to collaborate on methodology to address potential shortfalls in average PV Module Lot power.
- Additional Descriptions/Specifications/QA: Additional specifications and quality control documents applicable to PV Modules shall be mutually agreed by the Parties as soon as practicable following the Effective Date.

Custom PV Modules for New Home Developer Market: Evergreen and PowerLight may by mutual agreement develop a frameless photovoltaic module that is intended for PowerLight's SunTile™ application for the new home developer market. In the event the parties agree upon the terms governing sales of such modules from Evergreen to PowerLight, including but not limited specifications, pricing, module power and other terms, orders of such modules shall be credited against the firm commitment quantity obligations of the parties set forth above on this Schedule 1.

*****CONFIDENTIAL TREATMENT REQUESTED – CONFIDENTIAL PORTIONS OF THIS DOCUMENT HAVE BEEN REDACTED AND HAVE BEEN SEPARATELY FILED WITH THE COMMISSION*****

AMENDMENT ONE TO PHOTOVOLTAIC MODULE MASTER SUPPLY AGREEMENT

THIS AMENDMENT ONE TO PHOTOVOLTAIC MODULE MASTER SUPPLY AGREEMENT (the "Amendment") is entered into as of the __ day of June, 2006 (the "Effective Date") by and between Evergreen Solar, Inc. ("Evergreen") and PowerLight Corporation and PowerLight Systems AG (collectively, "PowerLight"), collectively (the "Parties").

WHEREAS, the Parties entered into the Photovoltaic Module Master Supply Agreement on November 3, 2005 (the "Original Supply Agreement");

WHEREAS, the Parties desire to amend the Original Supply Agreement as set forth below;

THEREFORE, in consideration of the mutual promises contained in this Amendment, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. In Section 8:

a. Section 8(b) is hereby deleted and replaced by the following:

(b) Reasonableness Standard. The reference to Evergreen's "sole judgment" in Schedule 3 shall be replaced with Evergreen's "reasonable judgment".

b. The first two sentences of Section 8(c) are hereby deleted and replaced by the following:

"The limitations in Schedule 3 regarding transportation costs for return of modules and costs associated with the installation, removal, or reinstallation of PV Modules shall remain in effect except in the event of a Pervasive and Systemic Failure. In the event of a Pervasive and Systemic Failure in the PV Module(s), the following shall apply:"

c. All references in Section 8(c) of the Original Supply Agreement to "Section 8(e)" shall be replaced with "Section 8(c)."

d. Section 8 of the Original Supply Agreement shall remain unaffected except as set forth in Section 1 of this Amendment.

2. In Section 15(a) of the Original Supply Agreement

Replace "an early termination fee of *" with:**

"an early termination fee of *"**

Replace "the * termination fee" with:**

"the * termination fee"**

3. In Schedule 1 to the Original Supply Agreement:

Replace the entire Schedule 1 with the following:

Firm Commitment Quantities:

Product 1 PV Modules (identified below): Firm commitment quantities are stated in the table below. To the extent new products generally become available to Evergreen customers ("New PV Modules"), PowerLight may in its discretion elect to order Product 1 or such New PV Modules to fulfill the following commitments:

Delivery Period	Q3+Q4 2006	2007	2008
Firm Quantity (MWp)	***	***	***

Firm Commitment Pricing:

The pricing applicable to all PV Modules through 2008 is stated in the table below:

Pricing	Q2 2006	Q3-Q4 2006	Q1 2007	Q2-Q4 2007	2008
USD $/Wp** (North America)	***	***	***	***	***
Euro €/Wp (Europe)	***	***	***	***	***
USD $/Wp** (Asia)	***	***	***	***	***

PV Modules are not available for purchase, distribution or sale by Purchaser in the respective territory and periods designated with "N/A" in the above table.

All quarters stated on this Schedule 1 (Q1-Q4) are calendar quarters.

** Frameless PV Modules and Pricing: The Parties will make reasonable good faith efforts to facilitate Evergreen's manufacture of frameless PV Modules ("Product 2" below) to be compatible with PowerGuard® and available for shipment by January 1, 2007 (or earlier if Evergreen can, using commercially reasonable efforts, accelerate the date of such availability). For 2007, the price of the frameless PV Module will be the same as the framed PV Module. For 2008 and subsequent years, frameless (including junction box and quick connects) pricing for Product 2 or New PV Modules is equal to the framed price ***, as applicable. The shipping terms applicable to frameless PV Modules shall be Ex-works (EXW) (Incoterms 2000) Evergreen manufacturing facilities in Malboro, Massachusetts, regardless of the actual factory production location. PowerLight may request new, customized PV Modules for a price mutually agreed; provided that the prices stated above are valid for PowerLight's current product applications for roof systems, ground systems and parking systems, excluding SunTile™. Notwithstanding the above-stated obligation to make good faith efforts, Evergreen shall have no obligation to supply Product 2 under this Agreement.

Penalties/Liquidated Damages: The parties recognize and agree that, in the event of breach by either party of the promises contained herein regarding quantity and price commitments, the damages suffered by the non-breaching party would be difficult to assess, and the liquidated damages set forth herein represent a reasonable assessment of the potential damage to the non-breaching party.

Evergreen's Failure to Meet Quantity Commitments: In any calendar year in which Evergreen fails to deliver the aggregate quantities required for such year as set forth in this Schedule 1 above (as adjusted from time to time pursuant to Section 3(c) of the Agreement), Evergreen shall, no later than sixty (60) days following Evergreen's receipt of PowerLight's written demand for such payment, pay liquidated damages to PowerLight in the amount of *** per kilowatt of shortfall. In addition to the foregoing liquidated damages, if any, in any quarter in which Evergreen fails to deliver the aggregate quantities required for such quarter under Section 3(b) of the Agreement, Evergreen shall, no later than sixty (60) days following Evergreen's receipt of PowerLight's written demand for such payment, pay liquidated damages to PowerLight in the amount of *** per kilowatt of shortfall; provided that the maximum number of kilowatts included in such shortfall calculation shall be no more than *** of the aggregate kilowatt quantity required for the applicable year.

PowerLight's Failure to Meet Quantity Commitments: In any calendar year for which PowerLight fails to take delivery of the quantities required for such year as set forth in this Schedule 1 above (as adjusted from tune to time pursuant to Section 3(c) of the Agreement), PowerLight shall, no later than sixty (60) days following PowerLight's receipt of Evergreen's written demand for such payment, pay liquidated damages to Evergreen in the amount of *** per kilowatt of shortfall. In addition to the foregoing liquidated damages, if any, in any quarter in which PowerLight fails to take delivery of the aggregate quantities required for such quarter under Section 3(b) of the Agreement, PowerLight shall, no later than sixty (60) days following PowerLight's receipt of Evergreen's written demand for such payment, pay liquidated damages to Evergreen in the amount of *** per kilowatt of shortfall; provided that the maximum number of kilowatts included in such shortfall calculation shall be no more than *** of the aggregate kilowatt quantity required for the applicable year.

Product 1 (currently Spruce Series) PV Module Description/Specifications:

- Configuration: 150.5mm x 81mm cell; 6 x 18 configuration; currently 170 Wp to 200 Wp class module. PV Modules shall be constructed with cells that represent nominally the center of the then current distribution, which is expected to increase over the Agreement's delivery period.
- Compatibility: All framed PV Modules will be compatible with PowerLight's product applications for current roof systems, ground systems and parking systems, excluding PowerGuard® and SunTile™. Product 1 frame to specifically accommodate center mounting on PowerLight applications such as PowerTracker.
- Module Rated Minimum Power, Tolerance and Efficiency: Module efficiency for Spruce Series or equivalent Products will be greater than 12% in 2006, 2007 and 2008, and reasonable commercial efforts will be made to result in efficiency greater than 13% in 2009.
- Safety and quality certifications: Safety and quality certifications shall be as follows: North America: UL 1703, 600 V maximum system voltage, minimum Class C fire rating; Europe and Asia: IEC 1215, TUV Safety Class II, CE, 1000 VDC maximum system voltage. Evidence of certification of the foregoing shall be provided to PowerLight prior to its issuance of the first Purchase Order.
- PV Module Lot Average Power: All PV Modules shall be - 2 % to +4% of nominal rated power on individual units. Average power over four (4) container quantities shall meet or exceed nameplate power rating. Evergreen and PowerLight shall make good faith efforts to collaborate on methodology to address potential shortfalls in average PV Module Lot power.
- Cables, Frame Grounding, Glass: Cables will be standard MC or accepted equivalent, and frame grounding holes will be located on the side of the module frame. Glass will be non-glare, rolled type.
- Additional Descriptions/Specifications/QA: Additional specifications and quality control documents applicable to PV Modules shall be mutually agreed by the Parties as soon as practicable following the Effective Date.

Product 2 Frameless PV Module (currently Spruce) Description/Specifications:

- Terminology: Evergreen may also refer to a Frameless PV Modules as a "Laminate" in any relevant accompanying documentation.
- Configuration: 150.5mm x 81mm cell: 6x18 configuration; currently 180Wp or 190 Wp class module. Frameless PV Modules shall be constructed with cells that

represent nominally the center of the then current distribution, which is expected to increase over the agreement's delivery period.

- Compatibility: Frameless PV Modules will be compatible with PowerGuard®.
- Frameless Module Rated Minimum Power, Tolerance and Efficiency: Evergreen will ensure that products supplied to PowerLight are products within the range of all Spruce technology family products sold in the United States, Europe and Asia; provided, however, that in no event shall any Frameless PV Module Efficiency be below 12.0%.
- Safety and quality certifications shall be as follows: Evergreen will deliver the product to PowerLight as a UL Recognized component. Evidence of certification of the foregoing shall be provided to PowerLight prior to its issuance of the first Purchase Order.
- PV Module Lot Average Power: All Frameless PV Modules shall be -2% to +4% of nominal rated power on individual units. Average power over four (4) container quantities shall meet or exceed nameplate power rating. Evergreen and PowerLight shall make good faith efforts to collaborate on methodology to address potential shortfalls in average PV Module lot power.
- Additional Descriptions/Specifications/QA: Additional specifications and quality control documents applicable to Frameless PV Modules shall be mutually agreed by the Parties as soon as practicable following the Effective Date.

Custom PV Modules for New Home Developer Market: Evergreen and PowerLight may by mutual agreement develop a frameless photovoltaic module that is intended for PowerLight's SunTile™ application for the new home developer market. In the event the parties agree upon the terms governing sales of such modules from Evergreen to PowerLight, including but not limited specifications, pricing, module power and other terms, orders of such modules shall be credited against the firm commitment quantity obligations of the parties set forth above on this Schedule 1.

4. In Schedule 3 to the Original Supply Agreement:

Replace the entire Schedule 3 with the following:

The current form of Evergreen's standard warranty, attached hereto as Exhibit A.

5. Except as otherwise specified, all terms used in this Amendment have the same meaning as such terms have in the Original Supply Agreement. Except as specifically set forth in this Amendment, the relationship between the Parties with respect to the subject matter of the Original Supply Agreement continues to be governed by the terms of the Original Supply Agreement, the

provisions of which remain in full force and effect. In the event of a conflict between the terms of the Original Supply Agreement and the terms of this Amendment, the terms of this Amendment control.

[The remainder of this page is intentionally left blank.]

*** CONFIDENTIAL MATERIAL REDACTED AND
SEPARATELY FILED WITH THE COMMISSION***

IN WITNESS WHEREOF, the Parties hereto have duly executed this Amendment to the Photovoltaic Module Master Supply Agreement by their respective duly authorized officers.

EVERGREEN SOLAR, INC.

By: /s/ Richard Feldt
Title: President & CEO
Date: 6/29/06

POWERLIGHT SYSTEMS AG

By: /s/ Marco Northland
Title: General Manager
Date: 6/29/06

POWERLIGHT CORPORATION

By: /s/ Thomas Dinwoodie
Title: CEO
Date: 6/29/06

EVERGREEN SOLAR
CEDAR LINE™ AND SPRUCE LINE™
PHOTOVOLTAIC MODULES LIMITED
WARRANTY

Limited Warranty:

Materials or Workmanship

Evergreen Solar warrants the modules to be free from defects in materials or workmanship under normal application, installation, use, and service conditions. If the product fails to conform to this warranty, then, for a period ending twenty-four (24) months from date of sale to the original consumer purchaser, Evergreen Solar will, at its option, either repair or replace the product or refund the purchase price. The repair, replacement, or refund remedy shall be the sole and exclusive remedy provided under this warranty.

Limited Warranty:

Power Output

Evergreen Solar warrants for a period of ten (10) years from the date of sale to the original consumer purchaser that the power rating at Standard Test Conditions will remain at 90% or greater of Evergreen Solar's Minimum Specified Power Rating. Evergreen Solar further warrants for a period of twenty-five (25) years from the date of sale to the original consumer purchaser that the power rating at Standard Test Conditions will remain at 80% or greater of Evergreen Solar's Minimum Specified Power Rating. Evergreen Solar will, at its option, repair or replace the product, refund the purchase price, or provide the purchaser with additional modules to make up lost power, provided that such degradation is determined to be due to defects in materials or workmanship under normal installation, application, and use. The relevant Minimum Specified Power Rating is defined in Evergreen Solar's product data sheet at the time of shipment. Standard Test Conditions are irradiance of 1000 W/m2, 25° C cell temperature, and AM 1.5 light spectrum.

Limitations and Conditions

The remedy set forth in these limited warranties shall be the sole and exclusive remedy provided under the extended term warranty, unless otherwise agreed by Evergreen Solar in writing. In Germany, these limited warranties are neither a “guarantee of the quality” of the module pursuant to §443 BGB (German Civil Code) nor are they an “acceptance of a guarantee” pursuant to §276 BGB.

The limited warranties set forth herein do not apply to any module which in Evergreen Solar’s sole judgment has been subjected to misuse, neglect, or accident; has been damaged through abuse, alteration, improper installation or application, or negligence in use, storage, transportation, or handling; or has in any way been tampered with or repaired by anyone other than Evergreen Solar or its agent. The limited warranties do not cover costs associated with module installation, removal, testing, packaging, transportation, or reinstallation; other costs associated with obtaining warranty service; or costs, lost revenues, or lost profits associated with the performance or nonperformance of defective modules.

Any modules repaired or replaced by Evergreen Solar under a warranty claim shall be covered by the same warranties and original term as the first product purchased under said claim. The term shall not be prolonged or reset from the date of sale to the original consumer purchaser. Any replaced parts or products become the property of Evergreen Solar.

These limited warranties apply only to the first end-user purchaser of the modules or to any subsequent owners of the original building or site where the modules were first installed.

The limited warranties set forth herein are expressly in lieu of and exclude all other express or implied warranties, including but not limited to warranties of merchantability and of fitness for particular purpose, use, or application and all other obligations or liabilities on the part of Evergreen Solar, unless such other warranties, obligations, or liabilities are expressly agreed to in writing signed and approved by Evergreen Solar.

Evergreen Solar shall have no responsibility or liability whatsoever for damage or injury to persons or property, or for other loss or injury resulting from any cause whatsoever arising out of or related to the product, including, without limitation, any defects in the module, or from use or installation. Under no circumstances shall Evergreen Solar be liable for incidental, consequential, or special damages, howsoever caused.

Evergreen Solar’s aggregate liability, if any, in damages or otherwise, shall not exceed the payment, if any, received by seller for the unit of product or service furnished or to be furnished, as the case may be, which is the subject of claim or dispute.

Some jurisdictions do not allow limitations on implied warranties or the exclusion or limitation of damages, so the above limitations or exclusions may not apply to you. If a part, provision, or clause of terms and conditions of sale, or the application thereof to any person or circumstance is held invalid, void, or unenforceable, such holding shall not affect and leave all other parts, provisions, clauses, or applications of terms and conditions remaining, and to this end the terms and conditions shall be treated as severable.

This warranty gives you specific legal rights; and you may also have other rights that vary from state to state and country to country. Neither party shall be in any way responsible or liable to the other party, or to any third party, arising out of nonperformance or delay in performance of the terms and conditions of sale due to acts of God, war, riot, strikes, unavailability of suitable and sufficient labor, and any unforeseen event beyond its control, including, without limitations, any technological or physical event or condition which is not reasonably known or understood at the time of sale.

Any claim or dispute regarding these warranties shall be governed by and construed in accordance with the laws of the State of New York (US).

Obtaining Warranty Performance

If you feel you have a claim covered by warranty, you must promptly notify the dealer who sold you the module of the claim. The dealer will give advice handling the claim. If further assistance is required, write Evergreen Solar for instructions.

The customer must submit a written claim, including adequate documentation of module purchase, serial number, and product failure. Evergreen Solar will determine in its sole judgment the adequacy of such claim. Evergreen Solar may require that product subject to a claim be returned to the factory, at the customer’s expense. If product is determined to be defective and is replaced but is not returned to Evergreen Solar, then the customer must submit adequate evidence that such product has been destroyed or recycled.

Note: This document may be provided in multiple languages. If there is a conflict among versions, the English language version dominates

Exhibit 10.10

Contract Amendment Number 001

This Contract Amendment Number 001 (“Amendment”) is entered into by and between Powerlight Corporation and any subsidiaries, 2954 San Pablo Avenue, Berkeley, CA 94702, USA

—hereafter referred to as “Powerlight”—

and

aleo solar AG, Gewerbegebiet Nord, 17291 Prenzlau, Germany

—hereafter referred to as “aleo solar”—

In consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **Effective Date of this Agreement**. The effective date of this amendment is upon approval of Powerlight or aleo solar, whichever is later.
2. **Identification of Original Agreement**. Powerlight and aleo solar entered into a written agreement dated December 6th, 2006 (the “Agreement”) entitled “OEM Contract Powerlight 2007 – 2008”, concerning the OEM production of photovoltaic modules for Powerlight. A true and correct copy of the Agreement, together with any and all amendments made subsequent to such Agreement, is attached hereto as “Exhibit 1” and incorporated herein by reference.
3. **Amendments**. Powerlight and aleo solar now desire to amend the Agreement by changing the classification and name designations of the modules produced for Powerlight. Specifics of these changes are attached to this Amendment as “Exhibit 2” and replace “Attachment 5” in the original Agreement and are hereby incorporated by reference.
4. **Effect**. In the event of any conflict, inconsistency, variance, or contradiction between the provisions of this amendment and any of the provisions of the original contract, the provisions of this amendment shall in all respects supersede, govern, and control.
5. **Approval**. This amendment shall not be deemed valid until it has been approved by Powerlight and aleo solar.

THE PARTIES HERETO HAVE EXECUTED THIS AGREEMENT

Company:	aleo solar AG	Powerlight Corporation
Date:	16.03.2007	3.21.07
Signature:	/s/ Heiner Willers	/s/ Alejandro Abalos
Signed by:	Heiner Willers	Alejandro Abalos
Title:	Member of the Board	VP Manufacturing Operations
Signature:	/s/ Jacobus Smit	
Signed by:	Jacobus Smit	
Title:	Member of the Board	

OEM Contract Powerlight 2007 – 2008

between

Powerlight Corporation and any subsidiaries, 2954 San Pablo Avenue, Berkeley, CA 94702, USA

- hereafter referred to as „Powerlight" -

and

aleo solar AG, Gewerbegebiet Nord, 17291 Prenzlau, Germany

- hereafter referred to as „aleo solar" -

Preamble

(1) Both parties are active in the photovoltaic industry, but in different areas of business activity.

(2) aleo is active in the manufacture of photovoltaic modules (hereafter also referred to as "modules").

(3) Powerlight is active in design, integration and implementation of large scale commercial applications.

(4) aleo and Powerlight are hereby entering into a contractual agreement for the manufacture of modules. aleo will manufacture modules from the photovoltaic solar cells (hereafter also referred to as "cells") supplied by Powerlight.

*** CONFIDENTIAL MATERIAL REDACTED AND
SEPARATELY FILED WITH THE COMMISSION***

Contractual Agreement

§ 1. Subject Matter

(1) aleo agrees to manufacture modules with cells provided by Powerlight. All other materials (glass, cabling, frames etc.) needed for the manufacture of modules will be provided by aleo.

(2) Technical specifications of solar cells are as illustrated in **Attachment 1**. The terms and conditions of this contract apply to the specifications of solar cells as illustrated in **Attachment 1** and are subject to renegotiation if the solar cell specifications change.

(3) Technical specifications of modules are as illustrated in **Attachment 2**. The terms and conditions of this contract apply to the specifications of modules as illustrated in **Attachment 2** and are subject to renegotiation if the module specifications change.

§ 2. Start, Duration, Termination

(1) This contract becomes active immediately after signing by both parties.

(2) The duration of the contract shall be for the years 2007 and 2008, beginning on January 1st, 2007, and ending on December 31st, 2008, unless terminated earlier for convenience or cause.

(3) Either party may terminate this agreement without cause, provided however that either party shall give no less than six months' notice of the effective date of termination. Both parties shall honor all orders in the six month notice period.

§ 3. Supply Quantity

(1) The solar cells supplied to aleo will be cells manufactured by ***.

(2) For the duration of the 2007 calendar year, 10 Megawatts (MW) +-20% of cells will be supplied to aleo by Powerlight. At least 70% of supplied solar cells will be from ***.

(3) For the duration of the 2008 calendar year, 10 Megawatts (MW) +-20% of cells will be supplied to aleo by Powerlight. At least 50% of supplied solar cells will be from ***.

(4) Any extension of the duration of the contract will require additional cell supply quantities.

§ 4. Cell Supply and Module Production

(1) Powerlight will supply the cells to aleo on a monthly 6-month rolling schedule (the initial intended forecast is attached as **Attachment 7**). Each delivery of a certain quantity of cells will constitute the beginning of a "production run" for that delivery of cells. "Completion of module production" means the completion of such a production run.

(2) aleo shall manufacture the modules latest within 3 weeks after delivery of the cells.

(3) Immediately after completion of module production, aleo will notify Powerlight with a completion notice. The completion notice will include the following:

a. quantity of produced modules

b. quantities of modules with respective power output classifications

c. cell breakage report of production run

d. flash test data for produced modules

(4) Flash test date will be provided in electronic table format as as part of the completion notice. As such data is of great importance to Powerlight, for the avoidance of doubt, the parties state that Powerlight shall have the option to withhold any payment until this data is furnished or until Powerlight has received written notification by aleo that the data is lost and not recoverable. In the case of lost data, aleo shall make every possible effort within reason to recover the data and will notify Powerlight in writing only if every reasonably possible effort has been exhausted to recover the data.

(5) The cells provided by Powerlight remain the property of Powerlight during the manufacturing process and the modules are manufactured by aleo for Powerlight as manufacturer. Both parties agree that the cells will be exclusively used in the production of modules for Powerlight. As aleo utilizes the cells and other materials to produce modules, the thereby produced modules become the property of Powerlight.

(6) aleo is bound to store the cells supplied by Powerlight in a manner which is representative of the safe mechanisms and procedures followed by aleo regarding its own cell supply before beginning of production.

(7) aleo is bound to insure the cells at its own cost against loss, fire, theft, damage due to storm, water and other exposure to the elements, which typically are covered by liability insurance and shall enter into and carry out a sufficient third party liability insurance.

(8) aleo will utilize the supplied cells by output classification to produce modules.

(9) Powerlight will supply the cells sorted by manufacturer and per output classification.

(10) The modules shall be classified according to the criteria listed in **Attachment 5**.

(11) Each module will receive a unique laminated serial number and will be tested before shipment. The test data will be provided to Powerlight in form of a table in electronic format via email.

(12) Powerlight will carry the costs for OEM certification. After certification, modules will have IEC 61215 and SK2 certifications and will carry the CE mark. If an OEM certification is possible for UL 1703 certified modules in the future, the OEM certification will be extended to include UL 1703, if both parties agree to the terms of such OEM certification.

§ 5. Delivery Specifications, Packaging, Costs, Location

(1) aleo and Powerlight will coordinate supply and delivery scheduling in order to optimize aleo's manufacturing schedule and delivery of modules.

(2) aleo will package and carry the costs of packaging according to aleo's European packaging standards (Attachment 3); if Powerlight requires different packaging or other changes which deviate from aleo's standards, then any additional costs are carried by Powerlight. In addition, modules will be prepared by aleo in shipment/delivery units of a whole production run, or full container loads, depending on specifications given by Powerlight. aleo and Powerlight agree to cooperate regarding shipment units in order to keep transport costs to a minimum.

(3) Module Deliveries are EX WORKS Prenzlau.

(4) Cell deliveries are CIP Prenzlau, i.e. Powerlight carries transport and transport insurance costs.

(5) Powerlight will arrange for modules to be picked up within 2 weeks of receiving the completion notice by aleo and during these 2 weeks aleo will store the modules at no cost to Powerlight. In addition, even if this 2 week period is exceeded, aleo, at its sole discretion, may or may not choose to store up to 1500 modules that have not been picked up free of charge to Powerlight until pick up can be arranged at the earliest convenient time. aleo agrees to label and insure these modules.

(6) Powerlight agrees to provide long term forecasts for each year and locked-in rolling 6 month forecasts with monthly breakdowns on a monthly basis, with flexibility regarding defined quantities of +-10% for the first 3 months and +-20% for the last 3 months, respectively. The initial delivery forecast is attached as **Attachment 7**.

(7) aleo will produce the modules in its manufacturing plant in Prenzlau, Germany.

§ 6. Pricing

(1) If a termination notice has not been given by July 1st, 2007, then Powerlight agrees, that aleo will grant a *** per module produced in the initial contract for the calendar year 2006 and deduct it from the first invoice generated on or after October 15th, 2007. If no termination notice has been given to this contract, then Powerlight agrees, that aleo will grant an additional *** per module produced in the initial contract for the calendar year 2006 and deduct it from the first invoice generated on or after July 1st, 2008. If a termination notice has been given during the duration of this contract, the respective discount or discounts will not be granted.

(2) Pricing is shown as price per module and reflects quantity of *** for 2007 and *** for 2008 +- 20% for each year.

(3) Pricing shown without taxes.

§ 7. Payment Terms

(1) At the end of a production run, aleo will provide Powerlight with an invoice along with the completion notice, both in electronic format sent via email.

(2) The payment terms are *** from receipt of invoice.

(3) aleo and Powerlight agree to cooperate regarding document submittal in order to minimize payment of VAT taxes.

§ 8. Breakage

(1) Both parties are aware that breakage of cells will occur during the manufacture of modules. aleo will minimize breakage rates to the lowest possible level.

(2) After shipping breakage is separated from the cell pool, the cell breakage during the manufacturing process is handled as follows:

a. Powerlight is responsible for the first *** of breakage. Breakage responsibility for Powerlight does not include the replacement of broken cells or any liability.

b. aleo is responsible for the second *** of breakage. Breakage responsibility for aleo is defined in § 8, point d.

c. aleo and Powerlight will share breakage responsibility above *** breakage at *** each.

d. aleo's breakage responsibility is defined as a breakage credit at a value determined before the beginning of each year. For 2007, the value for breakage credit is ***. The credit will be applied to the invoice amount.

e. If Powerlight's solar cell pricing drops to or beneath the determined value for breakage credit, aleo and Powerlight agree to re-determine this value, in order to place the breakage credit value below Powerlight's solar cell prices.

(3) If breakage significantly increases above normal rates, aleo will stop production and consult with Powerlight.

(4) Powerlight will supply aleo with any and all available information from the cell manufacturer which could be useful to help decrease breakage rates.

(5) For the purpose of calculating the quantity of cells supplied by Powerlight any breakage of cells shall not be deducted.

§ 9. Complaints

(1) Powerlight will inspect the modules immediately after delivery and report any obvious defects or damages in writing within 7 days. However the legal consequences of §§ 377, 378 German Commercial Code are herewith excluded.

(2) If any hidden damages or defects become visible later, Powerlight will within 7 days after having detected such damage and defects file a report in writing. However the legal consequences of §§ 377, 378 German Commercial Code are herewith excluded.

(3) In the event of a Pervasive Failure in the PV module(s), except if the Pervasive Failure is caused by any defect(s) or reduced power output of the cells, the parties agree to work cooperatively to a mutually acceptable resolution to address costs of remedy and other matters within 30 days of discovery of said Pervasive and Systemic Failure.

§ 10. Warranties

(1) aleo warrants (in German “gewährleistet”) that the modules are free of defects and fulfill the specifications as in **Attachments 2, 5 and 6** and that the modules are free of any defects of title (i.e. third party rights).

(2) The modules are subject to warranties as specified in **Attachment 6**. The rights of Powerlight in case of a violation against such warranty (in German: “Gewährleistung”) are specified in **Attachment 6**. Any further claims, especially claims including compensation, are not applicable, except in cases where gross negligence or intent by aleo is proven.

(3) Criteria for proof of the factors in **Attachment 6**, for example outside influences, insufficient surrounding conditions, glass breakage, snow damage etc. are the test criteria defined in IEC 61215 standard, which the modules have fulfilled as part of the certification process.

(4) Powerlight shall not have the right to make a claim against aleo under subsection (1) if and to the extent the defect of the module(s) or other cause shows a causal link to the defect of the cell(s) supplied by Powerlight. Furthermore, Powerlight shall not have the right to make a claim against aleo under subsection (2) if and to the extent the reduced output of the module(s) shows a causal link to a reduced output of the cell(s). In the case that the modules show a reduced output, which in certain cases originates from the lower output of the cells, and which is below the allowable range, the two parties shall investigate the reason of such lower output in close co-operation.

(5) In certain cases and only when Powerlight’s customer requires a transferability of the warranty to aleo, aleo agrees to honor and service the warranty directly to the customer with the exception of any warranty regarding the cells or warranty claim in which the reduced

output or defect was caused by the cell(s), but only in the event that Powerlight is unable to honor and service the warranty due to insolvency or prior termination of business activities.

§ 11. Acts of God

Neither of the two parties may be held responsible in case of any acts of God, especially natural catastrophies, war, political unrest, etc., because of extreme factors which are not under the control of either party and which may hinder either company in fulfilling its contractual obligations. In any such case, the two parties agree to communicate immediately and to work together to define any next steps. The two parties agree that all possible efforts regarding technical and economical methods and mechanism will be made to restore the fulfillment of the contract.

§ 12. Confidentiality

Both parties agree to treat the details of this agreement as confidential.

§ 13. Final Provisions

(1) No set-off or retention right may be claimed by aleo unless using counterclaims which have been recognized by binding judgment or which are undisputed or acknowledged by Powerlight.

(2) The heading of this contract are inserted for reference only and shall not affect the interpretation of the terms hereof.

(3) aleo may not partly or in whole sub-contract the services owed by it without Powerlight's written consent. aleo shall be fully responsible for any act or omission of its representative, employee, staff, agent, and servant as well as for its subcontractor and its representative, employee, staff, agent, and subcontractor.

(4) Neither party may assign this contract without the other party's prior written consent, which consent will not be unreasonably withheld. Consent shall not be required of aleo for PowerLight to assign this contract to an acquirer of PowerLight's assets, or PowerLight's successor by merger.

(5) This contract is construed and governed by German law. The application of the UN Convention on International Sales of Goods (CISG) is excluded.

(6) Location of any legal dispute is Germany.

(7) Other agreements outside of this contract are not made or are not valid. Any changes and amendments, including changes to this clause, are required to be made in writing and will be made part of this contract.

(8) Should any provision of this contract be or become invalid or not enforceable, then the other provisions remain untouched. The parties agree to replace the invalid or unenforceable provision with another, which in its economic effects is as close as possible to the intent of the initial provision. The same is valid for any unintentional gaps in the contract.

Company:	aleo solar AG	Powerlight Corporation
Date:	16.03.2007	3.21.07
Signature:	/s/ Heiner Willers	/s/ Alejandro Abalos
Signed by:	Heiner Willers	Alejandro Abalos
Title:	Member of the Board	VP Manufacturing Operations
Signature:	/s/ Jakobus Smit	
Signed by:	Jakobus Smit	
Title:	Member of the Board	

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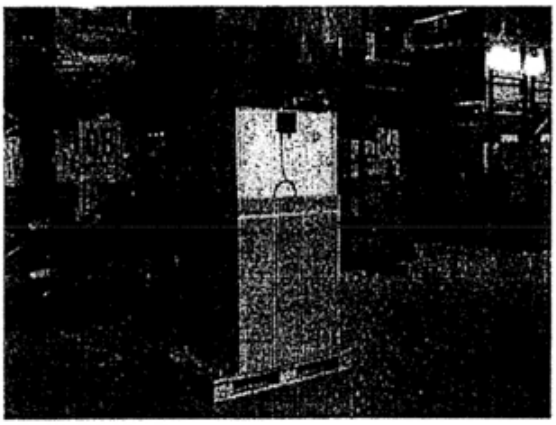
Attachment 3: Packaging

1. The packaging specifications are as follow:
    a. Europallet
    b. 15 modules per pallet
    c. Standard aleo packaging materials (cardboard and stretch film)
2. see pictures below



Attachment 4: Pricing

Module Type	Destination	Cell Manufacturer /Bushers	Price
PL - XXX	Within Europe	***	***
PL - XXX	Within Europe	***	***
PL - XXX	Within Europe	***	***
PL - XXX	North America	***	***
PL - XXX	North America	***	***
PL - XXX	North America	***	***

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*** CONFIDENTIAL MATERIAL REDACTED AND
SEPARATELY FILED WITH THE COMMISSION***

Limited Product Warranty and Limited Peak Power Warranty for OEM Modules for Powerlight

Limited Product Warranty—Two Year Repair, Replacement or Refund Warranty

1. aleo solar AG, with offices at Gewerbegebiet Nord, 17291 Prenzlau, Germany, warrants that the modules supplied to Powerlight are free from defects in materials and workmanship under normal application, installation use and service conditions for a period of twenty-four (24) months from invoice date.
2. Modules must be inspected immediately after delivery. Any obvious defects or damages must be reported to aleo in writing within 7 days after having detected such damage and defects. Any hidden damages or defects that become visible later must be reported to aleo in writing within 7 days after having detected such damage and defects.
3. aleo will, at its option, either replace or repair the product, or refund the purchase price as paid by Powerlight.
4. In case of breach of warranties (in German: "Gewaehrietstung"), Powerlight, has the statutory rights under the German Civil Code. However, liability for consequential damage or indirect loss is herewith excluded.

Limited Peak Power Warranty

1. aleo warrants that if within *** years from invoice date to Powerlight, any modules exhibit a power output loss than *** of the minimum peak power at STC as specified at the date of invoice in the flash data report, provided that such loss in power is determined by aleo (at its reasonable discretion) to be due solely to defects in material or workmanship, ***.
2. aleo warrants that if within *** years from invoice date to Powerlight, any modules exhibit a power output less than *** at the minimum peak power at STC as specified at the date of invoice in the flash data report, provided that such loss in power is determined by aleo (at its reasonable discretion) to be due solely to defects in material or workmanship, ***.
3. In special cases and only when Powerlight's customer requires a *** year warranty, aleo warrants that if within *** years from invoice date to Powerlight any modules exhibit a power output less than *** of the minimum peak power at STC as specified at the date of invoice in the flash data report, provided that such loss in power is determined by aleo (at its reasonable discretion) to be due solely to defects in material or workmanship. ***.
4. The output warranty of any replacement modules is limited to the remaining term of the original modules.
5. In case that the original modules type or model is no longer mass produced by aleo, then in case of any replacement modules, the current standard module type(s) will be provided as replacement(s).
6. The module output is measured under STC (Standard Test Conditions) at 25°C cell temperature, irradiation of 1,000W/m^2 and air mass of 1.5).

Exclusions and Limitations

1. The Limited Product Warranty and Limited Peak Power Warranty apply only in so far as the defects of the module(s) are not caused by or related to the defects of the cell(s).

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2. The Limited Product Warranty and Limited Peak Power Warranty apply only in so far as the reduction in power output of the module(s) is not caused by or related to defects or the reduced power output of the cell(s).
3. The Limited Product Warranty and Limited Peak Power Warranty applies only between the parties to the OEM contract.
4. Warranty claims must be filed within the applicable and above stated warranty period.
5. The Limited Product Warranty and Limited Peak Power Warranty do not apply to any modules which in aleo's reasonable judgment have been subjected to accidents, abuse, misuse, inappropriate (negligent or not in accordance with aleo's safety-, installation-, users- and maintenance instructions) installation, application, storage, transport, usage, or handling, or which have been subjected to interference by third parties.
6. The Limited Product Warranty and Limited Peak Power Warranty do not include the cost of installation, reinstallation or removal of the modules or other expenditures like testing, appraisals, shipment or reshipment of modules.
7. Any claim regarding the Limited Product Warranty and Limited Peak Power Warranty can only be made in conjunction with the submittal of the original delivery bill and sales invoice which includes the purchase date.
8. Any and all warranties become void in cases in which the serial number or type label have been subjected to manipulation or cannot be clearly identified for any reason.
9. aleo solar shall have no responsibility or liability whatsoever for damage or injury to persons or property, or for other loss or injury resulting from any cause whatsoever arising out of or related to the product, including without limitation, any defects in the module, or from use or installation. Under no circumstances shall aleo solar be liable for incidental, consequential, punitive, exemplary or special damages, howsoever caused. Loss of use, loss of profits, loss of production, loss of revenues are therefore specifically but without limitation excluded.

Severability and Force Majeure

1. If any part, provision or clause of this Limited Warranty or the application thereof to any person or circumstance, is held invalid, void or unenforceable, all other parts, provisions or clauses of this Limited Warranty shall remain untouched and in effect.
2. aleo shall not in any way be responsible or liable to Powerlight or any third party arising out of any non-performance or delay in performance of any terms and conditions of sale, including this Limited Warranty, due to acts of God, war, civil disturbances, acts of terrorism, riots, strikes, lockouts, walkouts, or other labor disturbances, acts of government, unavailability of suitable and sufficient labor, material, and any unforeseen event beyond its reasonable control.

Attachment 7: Locked-In Rolling Cell Supply Forecast

The following forecast of cells in valid for the first 6 months of calendar year 2007. Quantities can vary by 10% in the first 3 months and by 20% in the second three months.

Mfr.	Product	Jan-07	Feb-07	Mar-07	Apr-07	May-07	Jun-07
***	***	***	***	***	***	***	***
***	***	***	***	***	***	***	***
	TOTAL	840	785	1017	992	792	792

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SEPARATELY FILED WITH THE COMMISSION***

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Exhibit 10.11

*****CONFIDENTIAL TREATMENT REQUESTED – CONFIDENTIAL PORTIONS OF THIS DOCUMENT HAVE BEEN REDACTED AND HAVE BEEN SEPARATELY FILED WITH THE COMMISSION*****

MASTER SUPPLY CONTRACT FOR SOLAR CELLS

effective 18 May 2006, between

1. Q-Cells Aktiengesellschaft
   Guardianstraße 16
   06766 Thalheim — - referred to hereafter as "**Q-Cells**" -

   and

2. PowerLight Corporation
   2954 San Pablo Avenue
   Berkeley, California 94705
   USA — - collectively with its subsidiaries, referred to hereafter as "**PowerLight**" -

Preamble

Both parties operate in the photovoltaics sector, however in different fields of activity. PowerLight produces, sells and installs solar modules. Q-Cells operates in the photovoltaic cell manufacturing sector. Both parties seek to collaborate on a long-term and mutually beneficial basis. It is the express aim of both parties to achieve joint innovations through cooperation, including the exchange of know-how, in order to introduce cost reductions and/or use increases.

With these aims in mind, the parties complete and hereby agree to the following:

Supply Contract (the "Contract"):

§1. Object of the Contract

(1) Q-Cells agrees to supply PowerLight with cells on a firm commitment basis. The technical specifications of the cells to be supplied are contained in **Schedule 1** (the "**Cells**"). The minimum quantities guaranteed to be supplied by Q-Cells over specified periods are set forth in Section 3 and **Schedule 2** (Tables 2.1. & 2.2.). Q-Cells reserves the right to improve the products and introduce changes as a result of these improvements; provided it informs PowerLight at least three (3) months in advance of implementing such changes. As the Cell classes improve, Q-Cells will continue to make available to PowerLight Cells from three adjacent cell classes. Unless otherwise agreed to by PowerLight, the average efficiency of the Cells (or the efficiency of the middle Cell class) will always exceed the Gaussian mean of Q-Cell's production. It is the expectation of the parties that the average efficiency of the Cells will increase over time.

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(2) Q-Cells agrees to sell to PowerLight at least the quantity of Cells required under Sections 3, 4 and **Schedule 2**. Subject to the provisions of this Contract, PowerLight undertakes to pay the agreed purchase price and take delivery of the Cells on a firm commitment basis, guaranteed to be purchased in at least the quantities for the specified periods set forth in Sections 3, 4 and **Schedule 2**.

(3) The sole and exclusive penalties for failure of Q-Cells or PowerLight to fulfill its firm commitment obligations set forth in Sections 3 and 4 are described in Section 10 (and the other Sections expressly cross referenced therein); provided, however, that payment of such penalties shall not eliminate a party's obligation to fulfill its annual firm commitment obligations (such that this Contract shall, for purposes of the annual firm commitment obligations, remain a full "take or pay" obligation).

(4) The parties agree that commencing 2008 Q-Cells may propose to PowerLight that up to thirty percent (30%) of the Cells delivered under this Contract be provided in module format. PowerLight and Q-Cells retain sole and absolute discretion whether and on what terms to accept such a modification. In the absence of any written agreement implementing this arrangement, the Contract shall continue unaffected.

§2. Effective Date, Term, Termination,

(1) This Contract comes into effect on signing by both parties.

(2) The Contract has a fixed term until 31.12.2011. During this term, except to the extent provided in the next sentence, neither of the contractual parties may terminate the Contract without good cause. Notwithstanding the foregoing, PowerLight may terminate this Contract early without good cause with a 9 month's notice prior to 31.12.2010 with termination effective as of 01.01.2011. In the event PowerLight does not exercise such early termination right, this Contract may be terminated without good cause by either party with a 9 months' written notice prior to 31.12.2011 with termination effective as of 01.01.2012. Should this Contract not be terminated, it shall be automatically extended for one year renewal periods. In all subsequent years, the required notice period in order for either party to cancel automatic renewal shall be 9 months prior to 31.12 of the current year. Unless otherwise agreed by the parties, the annual firm commitment quantities for any renewal year shall be the same as the prior year's actual quantities.

(3) Subject to the provisions of this clause (3), either party may terminate this Contract for good cause upon the other party's material breach of this Contract, which breach remains uncured after thirty (30) days' written notice to the breaching party. In the event one party breaches this Contract as a result of its failure to fulfill its firm commitment obligations described in Sections 3, 4 and **Schedule 2**, the non-breaching party shall not be entitled to terminate this Contract solely as a result of such breach. Instead, subject to Section 1(3), the sole and exclusive remedies for the non-breaching party for such breach shall be limited to its collection of the penalties described in Section 10 (including the other Sections expressly cross-referenced therein); provided, however, that payment of such penalties shall not eliminate a party's obligation to fulfill its annual firm commitment obligations (such that this Contract shall, for purposes of the annual firm commitment obligations, remain a full "take or pay" obligation). In addition, the parties acknowledge that, to the extent permitted by Sections 5 and 6, Q-Cells may postpone or reduce, respectively, its delivery commitments without giving rise to a breach claim (such events being governed by the terms of such Sections 5 and 6).

(4) Any termination or other declaration according to this § 2 shall be made in writing.

§3. Annual Supply Quantities

(1) The minimum annual supply quantities in accordance with **Schedule 2** Table 2.1 apply for the calendar years 2006-2011.

(2) Subject to adjustments permitted under Section 4(2)(b), 7(4), and Schedule 2, the annual firm commitment quantities shall only be increased or decreased if both parties agree in writing to establish such deviation as a firm commitment obligation for such year. Any party wishing to propose such a deviation shall inform the other party in writing at least nine (9) months prior to the start of the year in which the deviation is requested.

§4. Distribution of Monthly Supply Quantities Throughout the Year

(1) The monthly minimum supply quantities throughout the year 2006 is stipulated in **Schedule 2** Table 2.2.

(2) From 2007 on, the minimum monthly supply quantities shall be distributed throughout the calendar year as follows:

a) PowerLight shall provide Q-Cells with a written monthly supply schedule (including identifying product class/bin as defined in Schedule 2 Table 2.1) and delivery dates for the subsequent calendar year at least 3 months before the end of each calendar year ("Annual Forecast"). Q-Cells shall confirm this Annual Forecast within two weeks or suggest a different monthly distribution of the annual minimum supply quantity. Should PowerLight not agree to the suggestion, and should no agreement be reached within a further 2 weeks, an equal monthly distribution of the supply quantities shall be bindingly agreed as the Annual Forecast. PowerLight shall issue purchase orders at least forty-five (45) days prior to the start of a calendar quarter reflecting the monthly supply schedule (including identifying product class/bin as defined in Schedule 2 Table 2.1) and delivery dates for the applicable calendar quarter. Q-Cells shall acknowledge the purchase order within two weeks of receipt. In the event PowerLight fails to timely issue a purchase order for a quarter, the parties agree that PowerLight will be deemed to have ordered the quantity for such quarter based on the previously agreed Annual Forecast. The delivery dates set forth in acknowledged purchase orders are referred to herein as "**Delivery Deadlines**".

b) Either party may request increases or decreases of a month's firm commitment quantity established under Section 4(2)(a) by up to eight percent (8%) of the previously agreed quantity for such month, subject to the written consent of the other party. Should one or both of the parties request such an alteration of the monthly supply schedule for any calendar quarter, PowerLight and Q-Cells shall coordinate the supply schedule by a mutually agreed purchase order, using commercially reasonable efforts to do so at least sixty (60) days before the beginning of such quarter. Unless otherwise agreed by the parties, the annual minimum supply quantity described in Section 3 para. 1 shall be increased or decreased by the amount of any monthly quantity changes implemented under this Section 4(2)(b).

c) Unless otherwise agreed, Q-Cells is only obliged to fulfil orders if PowerLight follows the procedures described above.

§5. Cell Classes, Initial Production Phase

(1) Unless otherwise mutually agreed, all cells delivered to PowerLight will be of Optical Sorting Criteria A as defined in Schedule 1. For individual shipments, Q-Cells reserves the right to replace one ordered Cell class listed on **Schedule 2** with delivery of other Cells listed in column A of **Schedule 1**; so long as the minimum average efficiency for all Cells received by PowerLight over a rolling three month period remains at or above the average nominal efficiency described in **Schedule 2**. Q-Cells will notify PowerLight of any such replacement as part of its acknowledgment of the applicable purchase order. The price of such other new class of Cells shall be determined in accordance with **Schedule 4**.

(2) During the initial production phase of a new production line and in the event that unexpected technical problems should occur during the initial production phase, Q-Cells' further reserves the right, upon three (3) months' written notice to PowerLight, to postpone the agreed supply quantities by no more than (a) three (3) months after the valid scheduled delivery date and (b) ten percent (10%) of Q-Cells' minimum supply commitment for the affected period. The quantity postponed shall be identified by Q-Cells and shall be based on the proportional ratio of the scheduled delivery to the scheduled total production per month. In such event, unavailable supply quantities shall be postponed and delivered subsequently (subject to the limitations above) until the technical problems have been solved. Q-Cells aims to observe the agreed supply quantities. PowerLight may request information showing that all Q-Cells customers are treated equally in the event of postponement under this Section 5(2). In addition, PowerLight may require an audit of the Q-Cells' supporting documentation verifying this fact. Any such audit shall be performed by an independent arbitrator of the Berlin Chamber of Commerce who shall be granted access, under a confidentiality agreement, to all relevant documentation it reasonably requests for such verification.

§6. Wafer Shortages

(1) Should, despite all reasonable efforts, a shortage of wafers occur due to Q-Cells' situation with its own suppliers and should Q-Cells no longer be capable of delivering the full agreed supply quantities to all customers, provided they do not provide wafers or silicon for Q-Cells' production of cells, Q-Cells has the right to reduce the supply quantities agreed with PowerLight. The reduction shall thereby only be made in proportion to the decrease in the production quantity of cells for which the customers have not provided wafers or silicon. PowerLight may request information showing that the same percentage reduction is applied to all Q-Cells customers that have not provided wafers or silicon. In addition, PowerLight may require an audit of the Q-Cells' supporting documentation verifying this fact. Any such audit shall be performed by an independent arbitrator of the Berlin Chamber of Commerce who shall be granted access, under a confidentiality agreement, to all relevant documentation it reasonably requests for such verification.

(2) Should the shortage of wafers mean that Q-Cells is forced to reduce the agreed supply quantities, Q-Cells shall inform PowerLight of this fact at least one month before the agreed delivery date. PowerLight shall be entitled, in its discretion, to reduce PowerLight's minimum quantity of Cells to be purchased in the applicable year of delivery under **Schedule 2** by the quantity of Cells reduced under this Section 6 (without incurring any liquidated damages or other penalty). In this event, PowerLight has the right to provide an appropriate number of wafers up to 2 weeks before the agreed delivery date.

(3) Q-Cells informs the PowerLight that wafer supply situation in the year 2007 could probably be dominated by stronger uncertainties than in the years before and after.

§7. Delivery Units, Packaging, Costs, Place of Delivery

(1) Q-Cells agrees to ship Cells to PowerLight (or PowerLight's ModCo designee) on the following shipment terms: Ex-works (**EXW**) (Incoterms 2000) Q-Cells manufacturing facilities in Thalheim.

(2) Delivery units and stipulations on packaging are regulated in **Schedule 3**.

(3) Place of delivery is Thalheim. Should Q-Cells dispatch the delivery item to another location at PowerLight's request, then (consistent with EXW) the risk of loss shall be transferred to the relevant PowerLight entity taking delivery of the Cells as soon as Q-Cells has delivered the delivery item to the transport company, the carrier or any other individual or institution selected to carry out the transport.

(4) Q-Cells shall deliver the monthly quantity of Cells no later than the Delivery Deadlines (as defined in Section 4).

§8. Prices

(1) The prices for Cells to be supplied in 2006 is stipulated in **Schedule 4**. The agreed mechanism for establishing prices for the Cells to be supplied for all years following 2006 is stipulated in **Schedule 4**.

(2) All such prices are eligible for a two percent (2%) sconto in accordance with Section 9(2). In addition, any time during this Contract term that Q-Cells is able to reduce the thickness of its solar cells, it shall promptly notify PowerLight of the same in writing and all subsequent deliveries of Cells to PowerLight shall be subject to a price reduction as follows: for each ten (10) micron reduction in Cell thickness over the current Cell thickness as of the date of this Contract, all affected Cell prices otherwise applicable shall be reduced by *** based on the 200µm cells.

§9. Conditions of Payment

(1) Prices in this Contract and all schedules hereto are stated in U.S. Dollar currency and are valid ex factory, plus statutory value-added tax, if applicable. If there are unforeseen import or export tax increases, the parties will use good faith efforts to mutually agree on a reasonable solution.

(2) After each delivery completed under this Contract, Q-Cells shall send a separate invoice, including item numbers, in duplicate, accompanied by a bill of lading or express receipt. Subject to the foregoing, PowerLight shall pay Q-Cells all properly invoiced amounts for Cells accepted by PowerLight within *** following issuance of the Q-Cells invoice ("**Payment Due Date**"); provided that the payment otherwise due shall be reduced by *** if PowerLight makes payment within *** following issuance of Q-Cells' invoice. The parties shall make good faith efforts to periodically consider increasing the payment terms. PowerLight may elect to pay Q-Cells up to *** following the applicable Payment Due Date, incurring interest at the rate of zero point six seven percent (0.67%) per month after such Payment Due Date; provided that PowerLight provides a letter of credit

or a bank guarantee supporting its payment obligation. Notwithstanding anything to the contrary, the interest hereunder shall not exceed the highest rate permitted by applicable law. PowerLight's credit limit shall be adequate to support the payment terms in this Section 9(2) in light of the delivery schedule established under Section 4.

(3) PowerLight is only entitled to offsetting or recoupment rights if its counterclaims are legally established, uncontested or acknowledged by Q-Cells.

§10. Default

(1) Any defaults on the part of PowerLight in ordering or accepting the Cells in accordance with the delivery type agreed in § 7 para. 1 (i.e. Ex-Works Thalheim) shall not alter the Payment Due Date of the purchase price for the respective delivery in accordance with § 9.

(2) In the event PowerLight does not take delivery of its monthly order commitments set forth in the supply schedule described in Section 4, it shall pay Q-Cells late delivery penalties at a rate of *** of the gross purchase price of the Cells not taken by PowerLight *** following the Delivery Deadline, up to a maximum of *** of such purchase price; provided that such penalties shall cease accruing upon any election by Q-Cells to cancel its delivery obligation as permitted by this paragraph further below. Such penalties shall be paid by PowerLight within *** after they become applicable and PowerLight receives Q-Cells' written demand for payment. Notwithstanding anything in this Contract to the contrary, Q-Cells shall be entitled in its discretion, commencing forty-five (45) days following the Delivery Deadline, to cancel its delivery obligation to PowerLight and reduce Q-Cells' minimum quantity of Cells to be purchased in the applicable year of delivery under **Schedule 2** by the quantity of Cells for which PowerLight does not take delivery under this Section 10(2) (without incurring any liquidated damages or other penalty).

(3) In the event that Q-Cells falls into default with the delivery of the minimum monthly quantity commitments, Q-Cells will pay PowerLight late delivery penalties at a rate of one percent (1%) of the gross purchase price of the undelivered Cells *** following the Delivery Deadline, up to a maximum of ***; provided that such penalties shall cease accruing upon any election by PowerLight to cancel its order as permitted by this paragraph further below. Such penalties shall be paid by Q-Cells within thirty (30) days after they become applicable and Q-Cells receives PowerLight's written demand for payment. Notwithstanding anything in this Contract to the contrary, PowerLight shall be entitled in its discretion, commencing forty-five (45) days following the Delivery Deadline, to cancel its order and reduce PowerLight's minimum quantity of Cells to be purchased in the applicable year of delivery under **Schedule 2** by the quantity of Cells set forth in any order cancelled under this Section 10(3) (without incurring any liquidated damages or other penalty).

(4) If PowerLight is in payment default, prior to Q-Cells asserting its Eigentumsvorbehalt rights under Section 16, it shall provide PowerLight two written notices of its intention to exercise such rights, each of which shall provide at least seven (7) days' prior notice.

(5) Subject to Section 1(3), the sole and exclusive penalties for failure of Q-Cells or PowerLight to fulfill its annual or monthly firm commitment obligations set forth in Sections 3, 4 and Schedule 2 are described in Sections 7, 9 and 10.

(6) Neither party may make any claims for damages due to indirect or consequential costs beyond the stipulations on damages agreed in this Contract.

§11. Agreed Quality of the Cells

(1) The Cells supplied shall have such a quality that they achieve at least 90% of the performance specified for each Cell type in the data sheets and technical specifications in accordance with **Schedule 1** for the length of 10 years following delivery. The specified values stipulated in **Schedule 1** represent 100% of the minimum performance agreed by Q-Cells, assuming correct transport, storage, further processing and handling.

(2) Q-Cells shall regularly have the minimum performance of the Cells specified in the data sheets reviewed by independent, worldwide recognized institutions (the "Testing Agency"). PowerLight may periodically send Cells it receives to the Testing Agency for verification testing. If there is a discrepancy between Q-Cells and the Testing Agency measurement data in excess of the tolerance limits of the Testing Agency, Q-Cells will set up a project together with the Testing Agency in order to evaluate how the calibration difference occurred. If Q-Cells cell calibration is not aligned with the Testing Agency's measurement results, Q-Cells shall demonstrate the reasons for the calibration difference to PowerLight and take any corrective measures, if necessary. Cell electrical characteristics shall be determined based on the results of production line tests performed in accordance with IEC 904-1 at 'Standard Test Conditions' (1000 W/m2 with IEC904-3 or equivalent IEEE reference solar spectral irradiance distribution, AM1.5 and 25C).

(3) The quality of the Cells enables their further processing into modules, in line with best practice/state of the technology and the standard tolerances in general industrial practice.

(4) Should deviations occur in the module in regards to the breakage and performance behaviour during further processing beyond the standard tolerances in general industrial practice for comparable Cells, Q-Cells has the right to prove to PowerLight that results within the tolerance can be achieved. PowerLight shall accept a best practice benchmark for the further processing of Cells as a reference (see § 12 para. 2 and 3). In the event that a benchmark in line with the general industry standards is proved, PowerLight shall make no complaints against Q-Cells for defects. In the event that no benchmark in line with the general industry standards is proved, Q-Cells may select either to re-supply those Cells outside the tolerance level or to provide financial compensation for the Cells in question. Q-Cells has no further obligations towards PowerLight in this respect.

(5) After expiry of the warranty period stipulated in § 14 para. 2, liability is limited to re-supplying non-defective Cells. In particular, PowerLight has no right to claim for damages under this Section 11 or 14 following this period.

(6) The parties agree that in this Section is neither stipulated a "guarantee for the quality" of the Cells in the sense of § 443 BGB nor the "acceptance of a guarantee" in the sense of § 276 BGB.

§12. Transport Breakage / Quality Assurance

(1) PowerLight is aware that breakage may occur during transport due to the fragile nature of the Cells. Up to *** cell breakage in the packaging, based on monthly deliveries, is permissible. Q-Cells shall replace any further broken Cells in the packaging, assuming

correct transport and handling, on re-delivery of the broken Cells, in accordance with the stipulations of this Contract. Q-Cells shall bear the costs, as far as they are necessary.

(2) Both parties shall strive to further reduce cell breakage and to improve the Cells' quality. For this purpose, both parties shall strive to carry out an intensive technological dialogue and cooperation. Both parties undertake to introduce a breakage reduction programme.

(3) Both parties undertake to introduce a quality assurance system in accordance with **Schedule 5**. A key element of this system is a complete, systematic information feedback on the processing results of the Cells. Q-Cells shall make resources available to provide advice and support for PowerLight for technical issues and for optimising processing of the Cells.

(4) Q-Cells agrees that Cell construction and thickness shall be of sufficient durability to handle hand assembly and hand soldering by qualified personnel at breakage levels reasonably acceptable using then prevailing industry standard construction techniques in effect from time to time.

§13. Notice of Defects

(1) PowerLight is obliged to immediately examine delivered goods for obvious defects. Should a defect be detected thereby, PowerLight shall report this in writing to Q-Cells without delay. A notice of defect may only be observed if it is sent without delay, at the latest within 7 days of delivery.

(2) Should a concealed defect be detected, a notice of defect shall be sent in writing directly on its discovery. A notice of defect may only be observed if it is sent without delay on discovery of the defect, at the latest within one year of delivery.

(3) The provisions of this Section 13 shall only apply to the one year defects warranty, and not the performance output warranty.

§14. Warranty, Warranty Period

(1) In the event of a defective delivery, PowerLight may choose between subsequent fulfilment (repair of the defect or delivery of non-defective Cells) and withdrawal from the defective delivery. Should PowerLight opt for subsequent fulfilment, Q-Cells is obliged to either repair the defect or deliver non-defective Cells at its own choice. In the event of a failed subsequent delivery or defect repair, PowerLight is obliged to accept a further attempt at subsequent delivery or defect repair before claiming its further statutory warranty rights (reduction of the purchase price or withdrawal). PowerLight is obliged to deliver the defective Cells back to Q-Cells. Q-Cells shall bear the necessary costs for this delivery.

(2) The defects warranty period is valid for one year, beginning on delivery of the Cells. A performance output warranty period of 10 years applies to the agreed quality of the Cells in accordance with § 11 para. 1.

(3) Further claims on the part of PowerLight are ruled out, particularly due to consequential damage caused by defects, provided this does not result from the lack of assured specifications.

(4) Should PowerLight sell the supplied goods in an altered form or after combining them with other goods (other than a conventional laminate framing process), PowerLight shall exempt Q-Cells internally from third-party product claims, provided it is responsible for the defects causing the liability.

(5) Any warranty claims properly notified during the warranty period become time-barred upon expiration of the applicable statutory limitation period.

§15. Limitation of Liability

(1) The exclusions and limitations of liability agreed in this Contract do not apply to damages arising from injuries to life, body or health caused by a negligent breach of obligations by Q-Cells or a deliberate or a negligent breach of obligations by a statutory representative or vicarious agent of Q-Cells. Neither do the exclusions and limitations of liability agreed in this Contract apply to other damages caused by a grossly negligent breach of obligations by Q-Cells or a deliberate or a grossly negligent breach of obligations by a statutory representative or vicarious agent of Q-Cells.

(2) Compensation for the breach of significant contractual obligations is limited to predictable damages typical for the contract, provided the breach is not deliberate or grossly negligent. The above stipulations do not entail a change in the onus of proof to the disadvantage of either party.

§16. Eigentumsvorbehalt (Lien Rights)

(1) Q-Cells shall be granted the following securities until satisfaction of all claims with respect to the applicable Cells (including all balance claims from open accounts) to which Q-Cells is entitled for every legal justification from PowerLight now or in the future. Q-Cells shall release securities of its choice on demand, should the value of the securities exceed the claims to be secured in the long term by more than 20%.

(2) The goods supplied remain the property of Q-Cells. Processing or treatment of the goods always takes place for Q-Cells as the manufacturer, but without obligations for Q-Cells. Should Q-Cells' (co)ownership of property be extinguished through combining the goods with other goods, the parties agree at this present time that PowerLight's (co)ownership of property of the new item shall pass over to Q-Cells proportionate to Q-Cells' share of value (as per invoice). PowerLight shall keep the (co) property of Q-Cells free of charge. Goods for which Q-Cells is entitled to (co)ownership of property are referred to hereafter as reserved goods.

(3) PowerLight is entitled to process, sell and transfer ownership of the reserved goods in the ordinary course of business. PowerLight transfers all claims to their full extent arising from further sale of or other legal justifications in regards to the reserved goods (including all balance claims from open accounts) to Q-Cells at this present time for securing reasons. Q-Cells hereby revocably authorises PowerLight to recover the claims transferred to Q-Cells for its account in its own name. This recovery authorisation may only be revoked in the event that PowerLight does not fulfil its payment obligations in due form.

(4) In the event of seizure of the reserved goods by third parties, PowerLight shall inform the third party of Q-Cells' property ownership and inform Q-Cells without delay. PowerLight shall bear the costs and damages.

§17. Force Majeure

Neither of the parties shall be liable for prevention from fulfilling the Contract as a result of force majeure resulting from natural disasters, war, unrest, labour disputes, suspension or interruption of operations due to such factors, or similar natural disasters. In such events, the parties shall contact each other without delay and discuss the measures to be taken. The parties undertake to use commercially reasonable efforts re-enable the Contract's fulfilment by all technical and economically reasonable means. In addition, wafer shortages shall also relieve Q-Cells of its obligations under this Contract to the extent provided in Section 6.

§18. Confidentiality

Both parties agree to maintain confidentiality concerning all information and property obtained from the other party in connection with this Contract, as well as the details of the Contract, in each case unless otherwise expressly authorized herein or by the non-disclosing party in writing, or as required by law or regulation. Each party shall use such information and property, and the features thereof, only in its performance under this Contract. Upon a party's request, the other party shall return all such information and property to the requesting party or make such other disposition thereof as is directed by the requesting party. The parties shall make provisions that employees and third parties entrusted with implementing the Contract are bound to this obligation of secrecy. This also applies to the presentation of this Contract for legal examinations or audits by legal consultants and tax advisors, investors, banks and other advisors. No party shall make or authorize any news release, advertisement, or other disclosure which shall confirm the existence or convey any aspect of this Contract without the prior written consent of the other party except as may be required to perform this Contract, or as required by law or regulation.

§19. Intellectual Property

(1) Q-Cells shall retain all patents and other proprietary rights embodied in the Cells. Nothing in the foregoing shall impair, alter or otherwise affect PowerLight's proprietary rights in its patents, products or other intellectual property.

§20. Strategic Cooperation

(1) The parties would like to discuss establishing a strategic co-operation relationship in which PowerLight and Q-cells will assist each other and co-ordinate their respective marketing activities and branding efforts in development of the North American market for photovoltaic cells and modules. In connection with such marketing activities, Q-Cells commits to contributing up to $50,000 per year (up to a maximum of $100,000 over the entire term of this contract) for covering costs related to such marketing activities. In addition, Q-Cells will contribute up to an aggregate of $50,000 for product certifications of photovoltaic modules created by PowerLight using the Cells. Q-Cells will also supply at no charge to PowerLight up to five hundred (500) Cells for each product certification, up to a maximum of five (5) certifications. Within the spirit of this objective, the parties will explore granting each other 'preferred partner' status. Preferred partner status would not provide for any kind of mutual and/or unilateral exclusivity in the relationship between the parties. However, the parties could use this reciprocal preferred relationship to support each other in the development of the North American market. As preferred partners the parties could co-ordinate their respective marketing efforts in selected markets, jointly working on the product development and support each other in such other ways as may be mutually agreed on.

(2) QUEBEC Cells. To the extent permitted by applicable law, PowerLight shall have a right of first refusal to purchase, on an exclusive basis within North America cells produced by Q-Cells based on the high efficiency back contacted monocrystalline-based cell ("QUEBEC") currently under development ("QUEBEC Cells"). Q-Cells shall notify PowerLight no later than three (3) months prior to the available test deliveries of any QUEBEC Cells in North America, and PowerLight shall notify Q-Cells within six (6) weeks following such notice whether PowerLight wishes to perform field tests to determine whether it wishes to exercise, in its sole and absolute discretion, its right to exclusively purchase the QUEBEC Cells for the North American market Any field test that PowerLight conducts shall have a maximum duration time of three months. Following completion of such tests PowerLight shall notify Q-Cells whether it exercises its rights to exclusivity for the relevant QUEBEC Cells. The parties will at that time mutually determine whether any quantity ultimately ordered will be credited against the minimum firm commitment obligations set forth in **Schedule 2**. Such period of exclusivity shall expire twelve (12) months following the first field test completed by PowerLight of the relevant QUEBEC Cells; provided, however that for the U.S. new home builder market (defined as builders who average more than ten new homes per project) PowerLight will receive an additional six (6) months of exclusivity following this twelve (12) month period. The exclusivity during such six (6) month period shall not extend to redistribution by Q-Cells' customers. All other terms of this Contract, including but not limited to the 92% discount and the price adjustment mechanisms stated in Section 8(2) and **Schedule 4**, shall apply to the purchase and sale of QUEBEC Cells.

(3) Special Technologies. To the extent permitted by applicable law, PowerLight shall have a right of first refusal to purchase, on an exclusive basis within North America any technologies developed by Q-Cells or 100% affiliates of Q-Cells other than standard mono and multicrystalline cells (the "Special Technologies"). Q-Cells shall notify PowerLight no later than three (3) months prior to the available test deliveries of any Special Technologies in North America, and PowerLight shall notify Q-Cells within six (6) weeks following such notice whether PowerLight wishes to perform field tests to determine whether it wishes to exercise, in its sole and absolute discretion, its right to exclusively purchase the Special Technologies for the North American market. Any field test that PowerLight conducts shall have a maximum duration time of three months. Following completion of such tests PowerLight shall notify Q-Cells whether it exercises its rights to exclusivity for the relevant Special Technologies. Any quantity ultimately ordered will not be credited against the minimum firm commitment obligations set forth in **Schedule 2**. Such period of exclusivity shall expire twelve (12) months following the first field test completed by PowerLight of the relevant Special Technologies; provided, however that for the U.S. new home builder market (defined as builders who average more than ten new homes per project) PowerLight will receive an additional six (6) months of exclusivity following this twelve (12) month period. The exclusivity during such six (6) month period shall not extend to redistribution by Q-Cells' customers The sales and purchase of this special technologies shall be at conditions in line with the spirit of this contract.

§21. Final Provisions

(1) This Contract is subject to the laws of the State of Germany, without regard to its conflicts of laws principles. UN purchase law is not applicable.

(2) The parties shall attempt to solve all possible differences occurring during the implementation of this Contract by mutual agreement. All disputes that may arise

between the parties under or in connection with this Contract, shall, unless otherwise agreed by the parties, be submitted (together with any counterclaims) to final and binding arbitration heard by a three arbitrators in accordance with the standard rules of the international court of arbitration (the "ICC") and to be conducted in English in London, England. Each party may select one arbitrator, and the third arbitrator shall be chief arbitrator and shall be selected by the two arbitrators chosen by the parties. Unless agreed by both parties, the nationality of the chief arbitrator shall be neither American nor German. The prevailing party of any arbitration, action or legal proceeding shall be entitled to receive from the other party, in addition to any other relief that may be granted, its reasonable attorneys' fees (of German legal counsel), costs, and expenses incurred.

(3) No agreements shall be made outside of this Contract. Alterations and additions shall be made in writing. This also applies to eliminating this stipulation on written form.

(4) Should any stipulation of this Contract be or become invalid, this shall not affect the validity of the remaining stipulations. The parties undertake to replace the invalid stipulation with another, which is as close as possible in its economic effects to the stipulation to be replaced. This also applies to filling gaps in the Contract.

(5) The failure of any party to insist upon the performance of any provision of this Contract or to exercise any right or privilege granted to such party under this Contract shall not be construed as waiving such provision or any other provision of this Contract, and the same shall continue in full force and effect. If any provision of this Contract is found to be illegal or otherwise unenforceable by any court or other judicial or administrative body, the other provisions of this Contract shall not be affected thereby, and shall remain in full force and effect.

(6) No party shall assign this Contract without the prior written consent of the other parties hereto; provided, however, that each party may assign this Contract to its subsidiaries, or in connection with a merger, acquisition, change of control or sale of substantially all assets of such party upon notice to the non-assigning party but without any such consent.

(7) This Contract, including all exhibits, schedules, and annexes hereto, contains the complete and entire agreement among the parties as to the subject matter hereof and replaces and supersedes any prior or contemporaneous communications, representations or agreements, whether oral or written, with respect to the subject matter of this Contract. No modification of the Contract shall be binding unless it is written and signed by both parties.

(8) Notwithstanding anything herein, either party shall be entitled to offset any amounts it otherwise owes the other party under this Contract by such amounts, including but not limited to any penalties or liquidated damages owed hereunder.

(9) All official notifications made under this Contract shall be delivered by facsimile, e-mail transmission, nationally recognized overnight courier (such as federal express), or hand delivered to the person below. Notice shall be effective upon the day received, or within twenty-four hours after submission of any of the above methods.

To Q-Cells:	To PowerLight Corporation:
Q-Cells AG Guardianstrasse 16 060766 Thalheim Germany Facsimile +49(0)349466 8-610 Attn: CEO	2954 San Pablo Avenue Berkeley, CA 94702 USA Facsimile: 001-(510)540-0552 Attn: President

(10) Each entity signing this Contract warrants that it has full authority and consent to enter in to this Contract and that this Contract shall be binding on it in accordance with its terms.

(11) All references to the “Contract” hereunder shall include all schedules, annexes and other attachments hereto.

IN WITNESS WHEREOF, the parties hereto have signed this Contract as of the date and year first above written.

Thalheim, Germany	Berkeley, California USA
/s/ [Illegible]	/s/ Daniel Shugar
- Q-Cells -	- PowerLight -
Name:	Name:
Title:	Title:

*** CONFIDENTIAL MATERIAL REDACTED AND
SEPARATELY FILED WITH THE COMMISSION***

LIST OF SCHEDULEES:

Schedule 1: Data Sheets and Technical Specifications

Schedule 2: Delivery Schedule and Delivery Dates

Schedule 3: Provisions Concerning Delivery Units and Packaging

Schedule 4: Prices

Schedule 5: Quality Assurance System

*** CONFIDENTIAL MATERIAL REDACTED AND
SEPARATELY FILED WITH THE COMMISSION***

Schedule 1: Data Sheets and Technical Specifications

The technical specifications of the Cells to be supplied are defined in the attached product data sheet for each cell type and the parameter sheet “Optical Sorting Criteria” and serve to characterise the products manufactured by Q-Cells. These two documents in the respective valid version form part of the Contract. The valid versions of the data sheets can be called up via Internet (www.q-Cells.com).

The valid version of the parameter sheet “Optical Sorting Criteria” at the time of completion of the Contract is set forth below under the Parameter Sheet under the class A column. In the event of changes, Q-Cells AG, Product Management Department, shall provide the new parameter sheets.

***

Schedule 2: Delivery Schedule and Delivery Dates

Supply Quantities and Dates

Minimum Supply Quantities in MWp

Table 2.1: Minimum Supply Quantities 2006 – 2011

Year	Minimum Supply Quantity in MWp	Cell Type*
2006	2MWp	80% Quantity Q6LTT-1520 (1500, 1540 also allowed), 20% Quantity Q6LM - 1640 (1620 and 1660 also allowed)**
2007	8MWp***	As above, subject to Sections 1 and 5,
2008	15MWp	As above, subject to Sections 1 and 5
2009	15MWp	As above, subject to Sections 1 and 5
2010	10MWp****	As above, subject to Sections 1 and 5
2011	10MWp****	As above, subject to Sections 1 and 5

* Subject to change from time to time in accordance with Section 1 para 1.

** **Re-Allocation of 80/20 Distribution**.

The 80/20 distribution indicated is subject to change on mutual written consent of the parties. Notwithstanding the foregoing, Q-Cells shall make commercially reasonable efforts, consistent with increases in purchase volumes of the monocrystalline wafers, to preferentially allocate more monocrystalline cells to Powerlight to increase the "mix" from 20/80, and PowerLight shall retain discretion whether to accept any such proposed change in allocation.

*** **2007 Additional Volumes**.

Q-Cells will offer to PowerLight additional quantities to market conditions in 2007 in the case of customer cancellations or additional production beyond the quantities already under contract or still in negotiation with other Q-Cells customers. All other terms of this Contract excluding pricing shall apply to the purchase and sale of such additional cells.

**** **2010 and 2011 Quantity Increase Option**.

PowerLight shall have the option, exercisable in its sole and absolute discretion, to purchase up to an additional 5MWp for each of 2010 and 2011 (i.e. up to 15MWp in each year). In the event PowerLight wishes to exercises such option, it shall notify Q-Cells in writing no later than 18 months prior to the start of the year of increase unless Q-Cells subsequently agrees in writing to a shorter notification period. All other terms of this Contract, including but not limited to pricing, shall apply to the purchase and sale of such additional Cells.

Table 2.2: Monthly Quantity Schedule for 2006

Month	Monthly Quantity in MWp
January	
February	
March	
April	
May	
June	
July	0.2 MW
August	0.3 MW
September	0.4 MW
October	0.4 MW
November	0.4 MW
December	0.3 MW

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Schedule 3: Delivery Units and Packaging

The specification of delivery units and packaging of the Cells to be supplied according to the delivery schedule (Schedule 2) is defined in the respective valid version of the parameter sheet “Delivery Units and Packaging” and forms part of the Contract. The currently valid version of the parameter sheet “Delivery Units and Packaging” may be requested at any time from Q-Cells AG, Product Management Department.

The following delivery and packaging terms apply, (i) Q-Cells shall bear all costs associated with packaging or storing the Cells (ii) all Cells shall be packaged, marked, and otherwise prepared in accordance with good commercial practices to obtain the lowest shipping rates possible and in accordance with all applicable federal, state and local packaging and transportation laws and regulations, (iii) Q-Cells shall mark on containers handling and loading instructions, shipping information, PowerLight order number, shipment date and names and address of Q-Cells and PowerLight (or its ModCo designee), and (iv) an itemized packing list shall accompany each shipment. In addition, prior to shipping Q-Cells shall deliver to PowerLight via e-mail a packing list showing Cell packaging serial numbers. Parameter Sheet “Delivery Units and Packaging” in the valid version dated May 20, 2005 04-4.3-003-A:

Q-Cells AG Packaging units and dimensions	Q.CELLS
File:Y:\QM\400_QM\460_Parameterblätter\PB 04-4 3-003-B Packaging units and Dimensions.doc	Revision: B PB-Nr.: 04-4.3-003

Seite 1 von 1

Packaging units and Dimensions:

celltype	packaging unit	cellamount [piece]	amount box / carton	weight [kg]	length [mm]	width [mm]	height [mm]
Q6L/Q6LTT [156 mm]	box	100	-	ca. 1,7	193	193	88
	carton	400	4 boxes	ca. 7,3	366	195	205
	palett	12.000	30 cartons	ca. 285	800	1.200	800
Q8TT [210 mm]	box	200	-	ca. 3,5	260	260	100
	carton	400	3 boxes	ca. 11	305	265	265
	palett				800	1.200	800

	Erstellt	Geprüft	Genehmigt
Name	Angelika Kiunke	Daniela Sauter	Angelika Kiunke
Datum	23.05.2005	23.05.2005	23.05.2005
Unterschrift			

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Schedule 4: Prices

The prices for Cells to be supplied in 2006 is 92% of the prices stipulated in the following:

PowerLight/Q-Cells Initial Price List:

Product: MULTIcrystalline Solar Cell Q6LTT; 156 x 156 mm²; 200 µm					
Cell type	***	***	***	***	***
Power Wp	3.60	3.65	3.70	3.75	3.80
List price $/Wp	***	***	***	***	***
Unit price $	***	***	***	***	***

Product: MONOcrystalline Solar Cell Q6LM; 156 x 156 mm²; 200µm				
Cell type	***	***	***	***
Power Wp	3.83	3.88	3.92	3.97
List price $/Wp	***	***	***	***
Unit price $	***	***	***	***

Q-Cells reference price *** with a net back price of ***.

Price Adjustment Mechanism – All Years Subsequent to 2006

As an independent basis for ***, the parties agree to the following annual price adjustment mechanism: *** no later than *** Q-Cells will issue its Q-Cells Export price list generally applicable to all Q-Cells' customers, which shall contain the same pricing as the generally applicable semi-annual price list simultaneously published by Q-Cells (the "Q-Cells Export Price List"). ***

(1) *** of its then current price, (b) *** of its then current price, and (c) *** of its then current price; provided in each case that the Reference Pricing is lower than PowerLight's then current price; and

(2) ***

Attached to this Schedule are four price adjustment scenarios illustrating this price adjustment mechanism. *** was used in these scenarios.

Annual Price Adjustment Mechanism Examples

Q-Cells Annual Price List Changes – Scenarios

Scenario	2006	2007	2008	2009	2010	2011
1. Rising-falling		***	***	***	***	***
2. Gradual Decrease		***	***	***	***	***
3. Rapid Decrease		***	***	***	***	***
4. Mixed		***	***	***	***	***

***.

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Schedule 5: Quality Assurance System

The implementation of §12 paragraph (3) is guaranteed by the quality assurance system. The quality assurance system forms a significant part of the supply Contract for Cells. It serves to register the processing results on the PowerLight side in the form of systematic information feedback.

The first version of the quality assurance system consists of the respective valid monthly “quality assurance report”, which shall be completed by the 15th calendar day of each following month by the customer and sent to Q-Cells, Product Management Department, by e-mail.

The quality assurance system shall be continuously extended in further steps on the basis of the collaboration with PowerLight.

Quality safety report FB 04-4.3-002 Revision A

Supplier:	Q.CELLS	Customer:	
	Guardianstr. 16		
	06776 Thalheim		
Department:	Product Management	Operator:	
E-Mail:	K.Ulbricht@q-cells.com	E-Mail:	
Fon:	03494-668-867	Fon:	
Fax:	03494-668-799	Fax:	
Month:	mm.yyyy		

Quality

Celltype	A Class	B Class	Process breakage				measured module values		Notes regarding deviation of module values/ process breakage
			< 1,5 %	1,5 - 3%	3 - 5 %	> 5 %	o.k.	not o.k	

*** CONFIDENTIAL MATERIAL REDACTED AND SEPARATELY FILED WITH THE COMMISSION***

Exhibit 10.12

*****CONFIDENTIAL TREATMENT REQUESTED – CONFIDENTIAL PORTIONS OF THIS DOCUMENT HAVE BEEN REDACTED AND HAVE BEEN SEPARATELY FILED WITH THE COMMISSION*****

PowerLight Corporation

A Wholly owned Subsidiary of **SunPower Corporation**
Commercial Terms and Conditions
with

Contract for the Delivery of Solar Cells

Contract No. 011207

between

JingAo Solar Company, Ltd,

Jinglong Industrial Park,

Jinglong Street Ningjin County,

Hebei Province 055550

- hereinafter referred to as the Seller -

and

PowerLight Corporation,

A Wholly Owned Subsidiary of SunPower Corporation

2954 San Pablo Avenue,

*** CONFIDENTIAL MATERIAL REDACTED AND
SEPARATELY FILED WITH THE COMMISSION***

Berkeley CA 94702, USA

- hereinafter referred to as the Customer -

Whereas, JingAo is engaged in the business of manufacturing, exporting and selling photovoltaic solar cells;

Whereas, PowerLight is in the business of designing, constructing and installing solar electric systems utilizing photovoltaic cells and modules; and

Whereas, JingAo desires to sell to PowerLight, and PowerLight desires to purchase from JingAo, photovoltaic solar cells on the terms and conditions set forth below.

Now Therefore, for good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties agree as follows:

1. Subject Matter of the Contract

a) The Seller shall deliver to the Customer monocrystalline solar cells of the quality and technical specifications stated in **Exhibit 1**. The Seller reserves the right to improve the products and by reason of this to introduce changes.

b) The Seller accepts no responsibility for the fact that the solar cells delivered are suitable for a particular purpose other than processing into solar modules.

c) The sale and delivery of the solar cells shall be made successively over the period between 2007 and 2009. Subject to clause (d) below, in total, the Seller shall sell to the Customer, and the Customer shall purchase from the Seller, 30 MWp in 2007, 40MWp in 2008 and 50MWp in 2009. Pricing for the first six months (Jan – June 2007) is established in Exhibit 1. Pricing will be negotiated every six months (April and October) for the subsequent six months of the contract. Should the Seller and Customer fail to agree upon price for the subsequent period, Seller will not obligated to provide additional deliveries and Customer will not be obligated to take additional deliveries. . The Customer is aware that the classes of cells to be delivered (see **Exhibit 1**) are dependent upon the wafers available for the cell production.

d) Customer reserves the right to increase the volumes up to 30% year on year, upon mutual agreement by both parties, with ninety (90) days written notice from the Customer.

e) Seller shall ship the monthly amount of cells to Customer by *** shipments per month and shipments shall be evenly distributed throughout the month to the Customer, per quarterly delivery schedule (rolling forecast). The annual monthly delivery schedule will be finalized in *** of the following year. The Seller shall provide the Customer with quarterly forecasts indicating the most likely dates and quantities of shipments, and shall in addition notify the Customer at

least 14 days in advance of a specific delivery date and quantity. The monthly delivery schedule will be notified *** in advance in a rolling *** month forecast.

2. Duration of the Contract

a) The Contract enters into effect on the date it is signed by each party and has a fixed term ending on February 28th 2010.

b) This contract may be extended for addition terms upon mutual agreement by both parties.

3. Prices and Terms of Payment

a) The prices for the solar cells to be delivered are agreed in accordance with the following table. The prices refer to solar cells of average efficiency within each respective class (**Exhibit 1**), relative in each case to the specifications in force upon the date the contract was concluded (**Exhibit 1**): All the prices are quoted FCA (Inco terms 2000) Hong Kong, including commercially known packaging.

b) The agreed prices are fixed for six months and shall be renegotiated *** prior to end of six (6) month duration.

c) The purchase price for the relevant solar cells delivered is to be paid net within *** from the date of invoice for the delivery.

d) Should the Customer fail to fully settle a default payment amount even after a reminder from the Seller giving a reasonable period for payment, the Seller is entitled to withdraw from the next partial deliveries until full settlement of the default payment.

4. Terms of Delivery

a) The costs of packaging are to be borne by the Seller.

b) The solar cells are delivered FCA Hong Kong (Incoterms 2000). The Title and the risk of damage or loss of the goods passes to the Customer at the point at which the Seller informs the Customer that the goods are ready for collection at delivery point.

c) The Customer shall bear the costs for transport and insurance in the case of delivery to a place other than the place of performance.

5. Assignment

No Party shall assign this Contract without the prior written consent of the other Party except that each Party may assign this Contract in connection with a merger, acquisition, change of control of such Party or sale of substantially all assets of such Party without any such consent; provided, however, that to the extent permitted by applicable law no such assignment shall relieve the assigning Party of its obligations under this Contract. Neither party shall withhold any consent required by this Clause 8 unreasonably.

6. Publicity

No party shall make or authorize any news release, advertisement, or other disclosure which shall confirm the existence or convey any aspect of this Agreement without the prior written consent of the other parties except as may be required to perform this Agreement or a Purchase Order, or as required by law.

7. Force Majeure

Neither of the Parties will be liable if, as a result of force majeure – in particular natural catastrophes, war, unrest, industrial action, business shut down or interruption – by reason of extreme factors, administrative measures or other events outside the Parties' control, it is prevented from fulfilling this Contract. Both Parties will be released from performance under this Contract until the obstacle no longer exists. In such circumstances the Parties will immediately contact each other and discuss the measures that are to be taken. The Parties agree that the fulfilment of this Contract is to be re-established by all reasonable technical and economic means. The Parties will agree between themselves as to whether deliveries defaulted upon should be made up.

8. Confidentiality

Both Parties are herewith obliged to keep strictly confidential from third parties the content of this Contract, unless the Parties are obliged by law or administrative order to reveal information. The other Party must then be informed of such an obligation in advance of information being revealed.

The confidentiality duty remains in force for the duration of the contractual term and beyond this for a further 4 years after completion of the Contract.

9. Applicable Law, Jurisdiction

a) The law of the State of California shall apply in relation to the content of this Contract, its implementation as well as to rights arising out of or in connection with this Contract.

10. Intellectual Property Infringement.

a) The Seller shall defend, at its own expense, any suit or claim that may be instituted against the Customer or any customer of the Customer for alleged infringement of patents, trade secrets, copyrights or other intellectual property rights relating to the cells, and the Seller shall indemnify the Customers and its customers for all costs and damages arising out of such alleged infringement.

11. Liability Limitation.

Termination Without Cause. Either party may terminate without cause for its convenience by giving the other ninety (90) days notice.

12. Liability Limitation. EXCEPT AS OTHERWISE EXPRESSLY STATED HEREIN, IN NO EVENT SHALL ANY PARTY HERETO BE LIABLE TO ANY OTHER PARTY OR ANY THIRD PARTY FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, PUNITIVE OR SPECIAL DAMAGES WHATSOEVER, WITHOUT REGARD TO CAUSE OR THEORY OF LIABILITY

(INCLUDING, WITHOUT LIMITATION, DAMAGES INCURRED BY SUCH OTHER PARTY OR SUCH THIRD PARTY FOR LOSS OF BUSINESS PROFITS OR REVENUE, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION OR OTHER PECUNIARY LOSS) ARISING OUT OF THIS ORDER, EVEN IF THE APPLICABLE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL THE ENTIRE LIABILITIES OF ANY PARTY UNDER THIS AGREEMENT EXCEED THE PURCHASE PRICE UNDER THIS AGREEMENT FOR THE CELLS GIVING RISE TO THE CLAIM.

13. Notices

All notices shall be delivered by facsimile, nationally recognized overnight courier (such as federal express), or hand delivered to the person below. Notice shall be effective upon the day received, or within twenty-four hours after submission of any of the above methods.

To JingAo Solar Company, Ltd:

Jinglong Industrial Park,
Jinglong Street
Ningjin County,
Hebei Province 055550
Attn: Chief Executive Officer

To PowerLight Corporation:

2954 San Pablo Avenue
Berkeley, CA 94702 USA
Facsimile: (510) 540-0552
Attn: President

14. Concluding Provisions

a) No further agreements have been made outside this Contract. Changes or supplements must be made in written form, this also applies to the suspension of the requirement for written form.

b) Should a provision of this Contract be or become invalid, this will not affect the effectiveness of the remaining provisions. The Parties agree to replace the invalid provision with another one that will in its economic effect accord most closely to the provision that is to be replaced. The same will apply if there is a gap in this Contract that must be filled.

JingAo Solar Company, Ltd	**PowerLight Corporation**
/s/ Yang Huaijin	/s/ Jon Whiteman
CEO	VP Strategic Supply
January 12, 2007	January 12, 2007

Exhibits to the Delivery Contract for Solar Cells, Contract No. 011207

Exhibit 1: Pricing and Technical specifications for the solar cells

*** CONFIDENTIAL MATERIAL REDACTED AND
SEPARATELY FILED WITH THE COMMISSION***

Exhibit 1: Pricing and Technical specifications for the solar cells

Pricing:

1. Pricing will be negotiated every six months (June and December) for the duration of the contract. Initial pricing for the first six (6) months has been set at:

1) Type A *** 2). Type B ***

2. If Seller and Customer cannot agree on pricing for any subsequent six month period, Seller will not be obligated to ship cells and Customer will not be obligated to take cells until such time that both parties agree on pricing.

Solar cell physical specification: 125 mm X 125 mm Mono-crystalline Solar Cells.

Cell Dimensions: 125mm×125mm
Area: 146.57cm2
Base Material: p-type mono-crystalline silicon doped with boron
Junction: phosphorous diffused N on P
Front Electrode: Screen-printed, silver paste
Anti-reflecting Coating: Si3N4
Back Surface Filed: Screen-printed aluminum paste
Rear Electrode: Screen-printed, silver paste
Thickness: about 220±20μm

During the first *** supply period, *** Type A and *** Type B cells will be supplied. For ***, a target of *** Type B and *** Type A will be established. Subsequent periods will have a target of *** Type B and *** Type A. This exact split between Type A and B will be reviewed and confirmed during the pricing discussions prior to each new period beginning.

Type “A” (Any changes to the cell must have a ninety (90) day test period by Customer before new change can be shipped).

Type A

17.5-17.6%	2.60	0.6232	5.3769	0.0065	77.703	0.1755
17.4-17.5%	2.59	0.6228	5.3643	0.0066	77.549	0.1745
17.3-17.4%	2.58	0.6226	5.339	0.0066	77.51	0.1735
17.2-17.3%	2.56	0.6221	5.320	0.0066	77.43	0.1725
17.1-17.2%	2.55	0.6214	5.311	0.0068	77.22	0.1715
17-17.1%	2.53	0.6207	5.302	0.0069	76.97	0.1705
16.75-17%	2.50	0.6195	5.283	0.0072	76.65	0.1689
16.5-16.75%	2.47	0.6178	5.238	0.0073	76.37	0.1663
16.25-16.5%	2.43	0.6156	5.1809	0.0072	76.321	0.1638
16-16.25%	2.40	0.6131	5.1287	0.0071	76.26	0.1614

Type B

15.75-16%	2.36	0.611	5.0904	0.0072	75.94	0.1589
15.5-15.75%	2.32	0.6094	5.04	0.0073	75.65	0.1563
15.25-15.5%	2.29	0.6075	4.993	0.0074	75.388	0.1539
15-15.25%	2.25	0.6058	4.945	0.0076	75.12	0.1513
14.5-15%	2.20	0.6028	4.902	0.0081	74.45	0.1479
14-14.5%	2.13	0.5969	4.8275	0.0082	73.849	0.1429

Exhibit 10.13

Execution Version

SOLAR STAR NAFB, LLC UNIT TRANSFER AGREEMENT

This UNIT TRANSFER AGREEMENT (this "**Agreement**") is entered into as of March 21, 2007, by and among Solar Star NAFB, LLC, a Delaware limited liability company (the "**Company**"), PowerLight Corporation, a Delaware corporation (the "**Transferor**"), and MMA NAFB Power, LLC, a Delaware limited liability company (the "**Transferee**") (the Company, the Transferor and the Transferee are sometimes referred to herein each as a "**Party**" and collectively as the "**Parties**").

WHEREAS, the Company was formed for the development, construction and operation of a proposed photovoltaic solar power system (approximately 15 MWp) at Nellis Air Force Base, Las Vegas, Nevada (the "**Project**"), described in an Information Memorandum ("**IM**") prepared by Transferor, dated December 20, 2006;

WHEREAS, the Company and Transferor have entered into or will enter into certain agreements whereby the Project will be designed, engineered, constructed, operated, and maintained, such agreements listed on Schedule 1 hereto (the "**Project Documents**"), which constitute the principal assets of the Company;

WHEREAS, the Transferor owns 100% of the equity interests in the Company; and

WHEREAS, the Transferor desires to transfer to the Transferee, and the Transferee desires to acquire, on the terms and conditions set forth herein, 100% of the Units (as defined below);

NOW, THEREFORE, in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

1. Transfer of Units. For $100.00 and other good and valuable consideration, the Transferor shall transfer on the Closing Date the entire right, title and interest in the Company, including the Company's assets (including but not limited to its interests in the Project Documents), income, business, profits, losses and other attributes, and all economic interests and all membership interests in the Company (such membership interests, the "**Units**") to the Transferee, and the Transferee shall on the Closing Date accept such assets in accordance with the terms hereof. The transfer of the Units includes, without limitation, the transfer of any and all rights of the Transferor in the Units.

2. Amended and Restated LLC Agreement. Simultaneously with the transfers on the Closing Date, the Transferee agrees to become a party to the Limited Liability Company Agreement of the Company (the "**LLC Agreement**") by executing the Amended and Restated Limited Liability Company Agreement of Solar Star NAFB, LLC in form attached hereto as Exhibit A.

3. REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE TRANSFEROR

As of Closing Date, the Transferor represents and warrants to the Transferee as follows:

3.1 Organization. The Company is a limited liability company formed on September 20, 2006. The Company has been duly organized and is validly existing and in good standing under the laws of the State of Delaware. The Company is duly qualified to transact business in the State of Nevada, the only jurisdiction in which the ownership or leasing of its properties or the character of its operations makes such qualification necessary. A true and correct copy of the Certificate of Formation of the Company, as amended to date, has been delivered to the Transferee. The Transferor is a Delaware corporation, duly organized, validly existing and in good standing under the laws of the State of Delaware.

3.2 No Prior Business, No Real Property. Since the date of its formation, the Company has not conducted any business or acquired any property or asset, except in each case in connection with the development of the Project. The Company owns no interest in any real property (other than pursuant to the Project Documents) and owns no interest in any other corporation or person. The Company has good and indefeasible ownership of and title to its material assets and properties, including the Units, except those disposed of in the ordinary course of business consistent with past practices or otherwise disposed of in accordance with this Agreement. The Transferor has good and indefeasible ownership of and title to the Units. Except as contained in the Project Documents, neither the Company's assets or properties nor the Units are subject to any lien, charge, encumbrance, right of first refusal, option or other claim. To the knowledge of Transferor, the Company owns or possesses all necessary easements, rights of way, licenses and other ways of necessity required to develop, maintain and operate the Project without any known conflict with the rights of others. To the knowledge of Transferor, the Company enjoys peaceful and undisturbed possession under all real property leases included in the Project Documents and, to the knowledge of the Transferor, all such leases are valid and existing, in full force and effect, and free from default and no event has occurred which with notice or lapse of time, or both, would constitute a default thereunder. To the knowledge of Transferor, neither the whole nor any part of the real estate or any other real property or rights leased, used or occupied by the Company is subject to any pending suit for condemnation or other taking by any Person and no such condemnation or other taking has been threatened.

3.3 No Employees, Officers, Directors, or Plans. The Company has had no employees, officers, and directors since the date of its formation nor has the Company established, sponsored or incurred any obligation under any Employee Benefit Plan.

3.4 Existing Contracts. Except for the Project Documents, copies of which have been delivered to the Transferee, and this Agreement, the Company is not a party to or bound by any material contract or agreement, including any promissory note or other evidence of indebtedness. Neither the Company nor, to the knowledge of the Transferor, any other party is, or has received notice that it is, in default under any material provision of any Project Document and each Project Document remains in full force and effect. The Company has not received notice that any event has occurred which with notice or lapse of time, or both, would constitute a default thereunder by either the Company or, to the knowledge of the Transferor, any other party.

3.5 Capitalization; Title to Units. The Units held by the Transferor represent the entire right, title and interest in and to the ownership interests in the Company, and there is outstanding no option, warrant, contract, agreement or other obligation (whether by law or contract) on the part of the Transferor or the Company to issue or sell any Units to any other Person. The Transferor has owned the Units continuously since the date of the Company's formation. The Transferor owns the Units free and clear of any lien, charge, encumbrance, right of first refusal, option or other claim (collectively, "**Liens**"). This Agreement and the other instruments to be executed and delivered by the Transferor at the closing are sufficient to transfer to the Transferee complete ownership of and title to the Units, free and clear of any Lien.

3.6 Authority. The Transferor has all requisite corporate power and authority to execute, deliver and perform its obligations under this Agreement. The execution and delivery of this Agreement and Project Documents has been duly authorized by Transferor and no other corporate proceedings on the part of Transferor are necessary to authorize this Agreement and Project Documents.

3.7 Due Authorization, Execution, etc. This Agreement has been duly authorized, and when executed and delivered by the Transferee, will constitute the legal, valid and binding obligation of the Transferor, enforceable against the Transferor in accordance with its terms.

3.8 No Violation. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby will not violate, conflict with or constitute a default under (a) the charter, bylaws, or other governing documents of the Transferor or the Company, (b) any loan or credit agreement or any other agreement or instrument to which the Transferor or the Company is a party or by which either of them or any of their respective properties is bound, or (c) any law, regulation or order of any Governmental Authority binding on the Transferor or the Company.

3.9 Litigation, Proceedings, etc. To the knowledge of Transferor, there is no lawsuit, proceeding, investigation or complaint before any Governmental Authority, mediator or arbitrator ("**Action**") pending or, to the knowledge of the Transferor, contemplated or threatened against the Company or its properties or assets. To the knowledge of Transferor, there is no Action pending or contemplated or threatened against or affecting the Transferor, which relates to or challenges the legality, validity or enforceability of this Agreement or the Project Documents or which (individually or in the aggregate) reasonably could be expected to impair the ability or obligation of the Transferor to perform fully on a timely basis any obligation which it has or will have under this Agreement.

3.10 Consents and Waivers. No authorization, consent, approval, waiver, license, qualification or written exemption from, nor any filing, declaration, qualification or registration with, any Governmental Authority or any other Person is required to be obtained by the Transferor or its Affiliates in connection with the execution and delivery of this Agreement and the sale of the Units.

3.11 Taxes. All Tax Returns, if any, required to be filed by or on behalf of the Company with any Governmental Authority in any jurisdiction have been duly filed on a timely basis when required and such Tax Returns are true, complete and correct in all material respects.

All material Taxes shown to be payable on the Tax Returns or on subsequent assessments with respect thereto have been paid in full on a timely basis when due and no other Taxes are payable by the Company with respect to items or periods covered by such Tax Returns. All Taxes which are due and payable by the Company have been paid as required. The Company is not and has not been a party to any tax sharing agreement and has not assumed the Tax liability of any other Person under contract. The Transferor is not a "foreign person" as that term is defined in Section 1445 of the Internal Revenue Code of 1986, as amended (the "**Code**"). The Company has not entered into any compensatory agreements with respect to the performance of services that could require a payment that would be an "excess parachute payment" within the meaning of Code Section 280G and corresponding Treasury Regulations. For federal and State income tax purposes, the Company has been disregarded as an entity separate from the Transferor and the Transferor has treated the Company as a division of the Transferor for all Tax Returns. Neither the Transferor nor the Company has made an election pursuant to Treasury Regulations Section 301.7701-3(c), or any similar provision of State law, which would cause the Company to be classified as an association taxable as a corporation for Tax purposes.

3.12 Compliance with Legal Requirements. To the knowledge of Transferor, the Transferor and the Company have at all times complied with and are not in material violation of any legal requirements or orders of any Governmental Authority applicable to either of them, to the development of the Project, or to the Units that would materially affect the value of the Project or Units.

3.13 Environmental. To the knowledge of the Transferor or except as disclosed in writing in the environmental studies provided by Transferee to Transferor or known to Transferee in its environmental reports received as of Closing Date: (a) Hazardous Materials have not been generated, used, treated or stored on, or transported to or from any of the Units by the Transferor or the Company except as used or stored in compliance with all Environmental Laws; (b) Hazardous Materials have not been released or disposed of by the Transferor or the Company, or their authorized agents, at the project site for the Project or any property adjoining the project site for the Project, except such releases which do not violate any Environmental Laws; (c) the Transferor and the Company hold, and are in substantial compliance with, all Permits currently required by Environmental Laws, and the Transferor and the Company have not received any written notice of any violation of any Environmental Law that has not heretofore been resolved; (d) neither the Transferor nor the Company has received any written request for information, nor been notified that it is a potentially responsible party, under any Environmental Law with respect to any on-site location relating to the ownership, operation or maintenance of the Project or the Units; and (e) there are no pending or threatened Actions relating to Hazardous Materials or arising under any Environmental Laws ("**Environmental Claims**") against the Company or, in relation to the Project or the Site, the Transferor. Except as disclosed to the Transferee in writing, to the knowledge of Transferor or known to Transferee in its environmental reports received as of Closing Date there are no facts or circumstances, conditions, pre-existing conditions or occurrences affecting the Project or the Units or any other assets or properties of the Company known to the Transferor that could reasonably be anticipated (a) to form the basis of an Environmental Claim against the Transferor, the Company, its assets or properties, the Project or the Units, or (b) to cause the Company, its assets or properties, the Project or the Units to be subject to any restrictions on the ownership, occupancy, use or transferability of the Company, its assets or properties, the Project or the Units under any Environmental Law.

3.14 Securities Act. The Units are being transferred by the Transferor to the Transferee in a transaction exempt from registration under the Securities Act of 1933 (the "Securities Act"), as amended, and the rules and regulations promulgated thereunder.

3.15 Brokers or Finders. Neither the Transferor nor any of its Affiliates or any Person acting in its or their behalf has entered into any agreement entitling any agent, broker, investment banker, financial advisor or other Person to any brokers' or finder's fee or any other commission or similar fee in connection with the sale of the Units or any of the transactions contemplated hereby.

4. REPRESENTATIONS AND WARRANTIES OF THE TRANSFEREE

As of Closing Date, the Transferee represents and warrants to the Transferor as follows:

4.1 Organization. The Transferee is a limited liability company, duly formed, validly existing and in good standing under the laws of the State of Delaware.

4.2 Authority. The Transferee has all requisite limited liability company power and authority to execute, deliver and perform its obligations under this Agreement. The execution and delivery of this Agreement and Project Documents has been duly authorized by Transferor and no other corporate proceedings on the part of Transferor are necessary to authorize this Agreement and Project Documents.

4.3 Due Authorization, Execution, etc. This Agreement has been duly authorized, and when executed and delivered by the Transferor, will constitute a legal, valid and binding obligation, enforceable against the Transferee in accordance with its terms.

4.4 Financing. The Transferee has arranged for sufficient funds to be available at the Closing to allow the Transferee to perform its obligations under this Agreement.

4.5 No Violation. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby will not violate, conflict with or constitute a default under (a) the charter, bylaws or other governing documents of the Transferee, (b) any loan or credit agreement or any other agreement or instrument to which the Transferee is a party or by which it or any of its properties is bound or (c) any law, regulation or order of any Governmental Authority binding on the Transferee.

4.6 Litigation, Proceedings, etc. There is no Action pending or, to the knowledge of the Transferee, contemplated or threatened against or affecting the Transferee or its properties or assets, which relates to or challenges the legality, validity or enforceability of this Agreement or which (individually or in the aggregate) reasonably could be expected to impair the ability or obligation of the Transferee to perform fully on a timely basis any obligation which it has or will have under this Agreement.

4.7 Consents and Waivers. No authorization, consent, approval, waiver, license, qualification or written exemption from, nor any filing, declaration, qualification or registration with, any Governmental Authority or any other Person is required to be obtained by the Transferee in connection with the execution or delivery of this Agreement and the purchase of the Units.

4.8 Investment. The Transferee understands that the Units have not been registered under the Securities Act and, therefore, cannot be resold unless they are registered under the Securities Act or unless an exemption from such registration is available. The Transferee represents and warrants to the Transferor that the Units are being acquired for investment purposes, for its own account and with no intention of distributing or reselling the Units in violation of federal or State securities laws. If the Transferee should in the future decide to dispose of any of the Units, the Transferee understands and agrees that it may do so only in compliance with the Securities Act and applicable State securities laws, as then in effect.

4.9 Nature of the Transferee. The Transferee represents and warrants to the Transferor that (a) it is an "accredited investor" within the meaning of Rule 501 under the Securities Act and (b) by reason of its business and financial experience it has such knowledge, sophistication and experience in business and financial matters, including the construction, development, ownership and operation of electricity generating facilities, so as to be capable of evaluating the merits and risks of the prospective investment in the Units, and is able to bear the economic risk of such investment.

4.10 Securities Act. The Units are being transferred by the Transferor to the Transferee in a transaction exempt from registration under the Securities Act of 1933 (the "**Securities Act**"), as amended, and the rules and regulations promulgated thereunder.

4.11 Brokers or Finders. Neither the Transferee nor any of its Affiliates or any Person acting in its or their behalf has entered into any agreement entitling any agent, broker, investment banker, financial advisor or other Person to any brokers' or finder's fee or any other commission or similar fee in connection with the sale of the Units or any of the transactions contemplated hereby.

5. CONDITIONS PRECEDENT TO CLOSING

5.1 Conditions Precedent to Obligations of the Transferee. The obligation of the Transferee to purchase the Units is subject to the satisfaction or waiver of the following conditions prior to or concurrently with the Closing:

5.1.1 The representations and warranties made by the Transferor herein shall be true and correct in all material respects (except for representations and warranties that contain a qualification as to materiality, which shall be true and correct in all respects) as of the Time of Purchase with the same effect as though such representations and warranties had been made as of the Time of Purchase; the Transferor shall have performed and complied in all material respects with all agreements and conditions required by this Agreement to be performed or complied with by it at or prior to the Time of Purchase, and the Transferee shall have received a certificate certifying as to the foregoing executed by a duly authorized representative of the Transferor and dated as of the Closing Date.

5.1.2 The purchase of and payment for the Units (i) shall not be prohibited or enjoined (temporarily or permanently) by any applicable law or governmental regulation nor shall any Action seeking such prohibition or injunction be pending or threatened and (ii) shall not subject the Transferee or the Company to any material penalty or, in its reasonable judgment, any other condition or limitation that has a material adverse affect on the operation, financial condition or projected results of operations of the Project.

5.1.3 The Site Lease shall have been conveyed to the Company, as contemplated by the Project Documents, and the consent of The Secretary of the Air Force on behalf of The United States of America related to such conveyance shall have been received.

5.1.4 All other Project Documents listed in Exhibit 1 shall be in full force and effect and those Project Documents not already executed as of this date, shall have been executed in a form satisfactory to Transferee, except for the EPC, O&M Agreement, and Performance Guarantee which shall be executed on the Closing Date as described in Section 5.1.5.

5.1.5 The Company (by its new officers appointed by Transferee) and PowerLight Corporation shall have executed the EPC Contract, O&M Agreement, and the Performance Guarantee in the forms attached hereto as Exhibits B through D, respectively.

5.1.6 The default provision in Section 22.1.9 of the PC Agreement shall have been resolved in a written agreement with Nevada Power Company ("**NPC**") substantially in the form attached as Exhibit E.

5.1.7 Transferor shall have arranged for, and held, a meeting between Transferee and NPC.

5.1.8 The Public Utilities Commission of Nevada shall have issued a written order approving both the PC Agreement and the Stipulation signed by Solar Star and NPC as attached hereto as Exhibit E without material changes, terms or conditions.

5.1.9 The Transferee shall have received the Transferor's "Certificate of Non-Foreign Status" within the meaning of Treasury Regulations Section 1.1445-3.

5.1.10 NPC shall have approved the form of replacement letter of credit required as Development Security pursuant to Section 15.1 of the PC Agreement to become effective as of Closing Date.

5.1.11 Since the date of execution of this Agreement, no event, condition or limitation shall have occurred and be continuing that has or will have a material adverse effect on the financial condition or projected results of operation of the Project and no material portion of the Company's assets and properties shall have been destroyed or damaged by casualty or condemnation; nor shall the Units or material portion of the Company's assets or property become subject to threat of eminent domain.

5.2 Conditions Precedent to Obligations of the Transferor. The obligations of the Transferor to sell the Units hereunder is subject to the satisfaction or waiver of the following conditions at the Time of Purchase:

5.2.1 The representations and warranties made by the Transferee herein shall be true and correct in all material respects as of the Time of Purchase with the same effect as though such representations and warranties had been made at and as of the Time of Purchase; the Transferee shall have performed and complied in all material respects with all agreements and conditions required by this Agreement to be performed or complied with by it at or prior to the Time of Purchase, and the Transferor shall have received a certificate certifying as to the foregoing executed by a duly authorized representative of the Transferee and dated as of the Closing Date.

5.2.2 The sale of the Units (i) shall not be prohibited or enjoined (temporarily or permanently) by any applicable law or governmental regulation, nor shall any Action seeking such prohibition or injunction be pending and (ii) shall not subject the Transferor to any material penalty or, in its reasonable judgment, other onerous condition under or pursuant to any applicable law or governmental regulation.

5.2.3 The Transferee shall have made the payment specified in Section 1.

5.2.4 Transferee shall have provided for a replacement letter of credit required as Development Security pursuant to Section 15.1 of the PC Agreement to become effective as of Closing Date, in a form satisfactory to NPC, and NPC shall have returned to the Transferor the guaranty issued by the Transferor in respect which such replacement letter of credit is being delivered.

5.2.5 The Transferee shall have arranged for the Company to make, and Transferor has received, Company's initial payment of $12,456,200 to PowerLight Corporation under the EPC Contract as part of the Closing pursuant to Section 7 of this Agreement.

5.2.6 The Transferee shall have delivered a guaranty letter by MMA Renewable Ventures, LLC of Solar Star's obligations under the EPC Contract in substantially the form attached hereto as Exhibit F (the "**Funding Guaranty**"), which shall become effective contemporaneously with the EPC and other Project Documents.

6. COVENANTS

6.1 Cooperation. Subject to the terms and conditions of this Agreement and applicable law, the Parties shall consult and cooperate with each other prior to Closing in: (a) obtaining all consents, approvals, waivers, permits, authorizations and approvals of Governmental Authorities and other Persons; (b) making any required filings or submissions with Governmental Authorities under applicable law (copies of which shall be promptly provided to the other Party); (c) providing all such information concerning such party and its

Affiliates as may be necessary or reasonably requested in connection with any of the foregoing, all as may be necessary for the consummation, as promptly as practicable, of the transactions contemplated hereby. Notwithstanding the foregoing, no party shall have any liability whatsoever for the failure of any Governmental Authority or other Person to grant any required consent, authorization or approval or to agree to take or refrain from taking any action necessary or desirable to consummate the transactions contemplated by this Agreement or to develop the Project.

6.2 Actions by the Company Prior to Closing. Prior to the closing, except as otherwise contemplated by this Agreement, the Transferor will not permit the Company, without the consent of the Transferee, which consent may be granted or withheld in the Transferee's sole and absolute discretion, to:

6.2.1 issue any Units or any option, warrant or other right to acquire Units;

6.2.2 merge, consolidate or sell all or substantially all of its assets;

6.2.3 create, incur, assume, guarantee or otherwise become liable or obligated with respect to any indebtedness or make any loan or advance to or any investment in any Person or entity;

6.2.4 execute or become subject to any material contract or material agreement, other than the Project Documents, any amendments thereto or any amendments to this Agreement (the form of which the Transferee has previously approved);

6.2.5 hire any employee; or

6.2.6 take any actions to be classified as an association taxable as a corporation for federal or State Tax purposes.

6.3 Actions by the Transferor Prior to Closing. The Transferor will afford, and use commercially reasonable efforts to cause the Air Force to afford, the Transferee and its representatives full and free access to the sites of the Project and to the Transferor's and the Company's personnel, properties, contracts, books, material records and other documents, information and data relating to the transactions contemplated by this Agreement, other than internal analyses and approval processes and related records and documents and attorney correspondence and work product.

6.4 Exclusivity. From the effective Date of this Agreement though the date of Closing, or unless this Agreement is terminated earlier, Transferor (i) will, and will cause its officers, directors, employees, agents and representatives (collectively, "**Representatives**") to, deal exclusively with Transferee with respect to Project; (ii) will not, and will cause its Representatives not to, directly or indirectly, initiate, solicit, encourage or otherwise facilitate any inquiries or the making of any proposal or offer with respect to any transaction related to Project other than with Transferee, the Air Force or NPC; and (iii) will not, and will cause its Representatives not to, directly or indirectly, engage in any negotiations concerning, or provide any confidential information or data to, or respond to any unsolicited offer by, or have any discussions with, any person or entity other than Transferees relating to any proposal or offer with respect to Project. Transferor agrees that it will be liable for any failure by any of its Representatives to comply with the foregoing restrictions.

6.5 Termination. The covenants of the Parties shall terminate in full upon giving effect to the transactions contemplated hereby on the Closing Date.

7. CLOSING

7.1 The Closing. The purchase and sale of the Units will take place at a closing (the "**Closing**") to be held at the offices of the Transferee's counsel, Heller Ehrman, LLP, located at 333 Bush Street, San Francisco, California at 9:00 A.M. Pacific Time, on the second Business Day following the date on which each of the conditions set forth in Sections 5.1 and 5.2 of this Agreement is satisfied or waived, or on such other date to which the Seller and the Purchaser shall agree (such date, the "**Closing Date**"). The time at which the Closing is to be concluded is the "Time of Purchase."

7.2 Order of Closing. Notwithstanding any other provision of this Agreement, on the Closing Date, the following actions and events shall be deemed to occur in the following order, the end effect of which shall be a contemporaneous closing:

7.2.1 At Closing, Transferor, Transferee, and Company shall each execute and tender the following documents to which they are a party:

(a) the LLC Agreement to the Company;

(b) Project Documents; and

(c) the EPC, O&M Agreement and Performance Guarantee in the forms of Exhibits B-D, respectively.

7.2.2 At Closing, Transferor shall tender:

(a) all material books and records of the Company (other than attorney correspondence and work product); and

(b) all originals of Project Documents.

7.2.3 At Closing, Transferee shall:

(a) pay to Transferor the funds described in Section 1 of this Agreement;

(b) cause the Company to make the payment required in Section 5.2.7 of this Agreement;

(c) deliver the Funding Guaranty;

(d) issue a guarantee to NPC to serve as a replacement of that certain Letter of Credit to NPC pursuant to Schedule 15.1 of the PC Agreement;

7.2.4 At Closing, Company shall:

(a) admit Transferee as the Sole Member of the Company pursuant to the LLC Agreement

7.2.5 Upon execution of all documents necessary to complete this transaction, Transferee shall wire transfer funds into the designated account of Transferor. Upon confirmation of receipt of such funds, all interests in Company shall vest immediately vest in Transferee and all books and records of Company shall be delivered to Transferee. All Parties will receive three (3) original copies of this Agreement, the EPC, O&M Agreement, and Performance Guarantee, and all referenced exhibits and schedules.

7.3 Failure to Close; Termination. If the conditions set forth in Sections 6.1 and 6.2 are not satisfied or waived by April 6, 2007, this Agreement shall be terminated and be of no further force and effect; provided, however, that either Party shall have the right to terminate this Agreement immediately upon notice to the other Party if the condition precedent set forth in Section 5.1.6 shall have not been satisfied by March 29, 2007.

8. MISCELLANEOUS

8.1 Indemnification.

8.1.1 The Transferor shall indemnify and hold the Transferee harmless from and against any damages, losses, costs, expenses, expenditures, claims and liabilities, including reasonable counsel fees and reasonable expenses of investigation, defending and prosecuting litigation or arbitration (collectively, the “Damages”), suffered by the Transferee as a result of, caused by, arising out of, or in any way relating to any breach of any representation or warranty or nonfulfillment of any agreement or covenant on the part of the Transferor under this Agreement or any instrument furnished to the Transferee by the Transferor pursuant to this Agreement.

8.1.2 The Transferee shall indemnify and hold the Transferor harmless from and against any and all Damages suffered by the Transferor as a result of, caused by, arising out of, or in any way relating to any breach of any representation or warranty, or nonfulfillment of any agreement or covenant on the part of the Transferee under this Agreement or any instrument furnished to the Transferor by the Transferee pursuant to this Agreement.

8.1.3 Without affecting the rights of a party to recovery of actual, direct Damages, under no circumstances shall any party be liable for consequential, incidental, indirect, punitive, exemplary or special damages (collectively, “Consequential Damages”) resulting from any cause whatsoever, whether arising in contract, warranty, tort (including negligence), strict liability, indemnity or otherwise. It is expressly agreed that no failure by a party to fulfill any condition hereof shall constitute a failure of essential purpose entitling the other party to Consequential Damages.

8.1.4 Notwithstanding any other provision hereof to the contrary, (a) no indemnifying party shall be liable for any breach of any representation, warranty or

covenant herein unless the Damages for all breaches exceeds $300,000 and provided that such indemnifying party shall be liable only for the amount by which all such Damages exceed $300,000; (b) the aggregated amount required to be paid by the indemnifying party pursuant to its indemnification obligations shall not exceed $2,000,000; and (c) the indemnification obligations set forth in this Section 8.1 shall expire on the second anniversary of the Closing Date. Following the Closing Date, the right of indemnification contained in this Section 8 shall be the sole and exclusive remedy of any Party with a third party claim relating to this Agreement and facts or circumstances relating hereto (whether such claim shall be made in contract, breach of warranty, tort or otherwise).

8.1.5 Nothing in this Section 8.1 shall in any way restrict or affect the obligations and liabilities of the Transferor, and the rights of the Transferee, with respect to (i) intentional or reckless misrepresentation or omission or fraud by the Transferor, nor (ii) any breach of the representations and warranties in Section 3.5 (“Capitalization; Title to Assets”).

8.1.6 Nothing in this Section 8.1 shall limit or supersede in any way the indemnification obligations, liabilities, damages set forth in the Project Documents.

8.2 Post-Closing Site Lease Liability. The Transferee agrees to use commercially reasonable efforts after the Closing Date to assist the Transferor in obtaining a consent and acknowledgment from the Secretary of the Air Force reasonably satisfactory to the Transferor pursuant to which the Secretary of the Air Force agrees that the Transferor shall have no obligations or liabilities under the Site Lease effective from and after the Closing Date; provided, however, that Solar Star shall, whether or not such consent and acknowledgment is obtained, indemnify and hold the Transferor harmless from and against any damages, losses, costs, expenses, expenditures, claims and liabilities, including reasonable counsel fees and reasonable expenses of investigation, defending and prosecuting litigation or arbitration suffered by the Transferor as a result of, caused by, arising out of, or in any way relating to any breach by Solar Star of any provision of the Site Lease after the Closing Date. The provisions of this Section 8.2 shall survive the termination of this Agreement and shall continue to be effective so long as Solar Star has any liabilities or obligations under the Site Lease.

8.3 Notices. Any notice required or permitted hereunder shall be given in writing and shall be deemed effectively given upon personal delivery or upon deposit in the United States mail by certified mail, with postage and fees prepaid, addressed to each of the other Parties at its address as shown below beneath its signature, or to such other address as such Party may designate in writing from time to time to the other Parties.

8.4 Further Instruments. The Parties agree to execute such further instruments, documents, or conveyances and to take such further actions as may be reasonably necessary to carry out the purposes and intent of this Agreement.

8.5 Entire Agreement. This Agreement, its exhibits and schedules, the Project Documents and the LLC Agreement constitute the entire agreement of the Parties and supersede in their entirety all prior undertakings and agreements of the Parties with respect to the subject matter hereof.

8.6 Governing Law. This Agreement shall be governed by and interpreted in accordance with the laws of the State of California, without regard to its conflict of law provisions. Each Party irrevocably and unconditionally submits, for itself and its property, to the nonexclusive jurisdiction of the courts of the State of California, and any appellate court from any thereof, in any action or proceeding arising out of or relating to this Agreement or for recognition or enforcement of any judgment, and each of the Parties irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such court. Each of the Parties agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement shall affect any right that any Party may otherwise have to bring any action or proceeding relating to this Agreement in the courts of any jurisdiction.

8.7 Venue. Each Party irrevocably and unconditionally waives, to the fullest extent permitted by applicable law, any objection that it may now or hereafter have to the laying of venue of any action or proceeding arising out of or relating to this Agreement in any court referred to above. Each of the Parties hereby irrevocably waives, to the fullest extent permitted by applicable law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

8.8 WAIVER OF JURY TRIAL. EACH PARTY HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS HEREIN.

8.9 Acknowledgment by Transferee. Transferee acknowledges that, except as set forth in this Agreement, the Project Documents, the exhibits and the certificates and any ancillary agreements to be delivered on the Closing Date, none of the Transferor, the Company or any other Person has made any representation or warranty, expressed or implied, at law or in equity or otherwise with respect to the sale of the Units or the assets of the Company, including with respect to (i) the business, financial condition and prospects, results of operation and risks of the Company; or (ii) the physical condition, quality or value of the properties of the Company.

8.10 Defined Terms; Incorporation by Reference. Capitalized terms not defined herein shall have the meanings assigned such terms in the Project Documents. The Project Documents listed on Schedule 1 hereto are incorporated herein by this reference.

8.11 Severability. Should any provision of this Agreement be determined by a court of law to be illegal or unenforceable, the other provisions shall nevertheless remain effective and shall remain enforceable.

8.12 Binding Effect; Assignment. The provisions of this Agreement shall be binding upon and accrue to the benefit of the Parties hereto and their respective heirs, legal representatives, successors and permitted assigns. Neither Party may assign any or all of its rights, privileges and obligations hereunder without the prior written consent of the other Party.

8.13 Public Announcements; Confidentiality. The Parties shall consult with each other regarding any public announcement or statement with respect to this Agreement or the transactions contemplated hereby and no Party shall issue any public announcement or other statement with respect to the existence of this Agreement or the transactions contemplated hereby without the prior consent of the other Party, which shall not be unreasonably withheld, unless required by applicable law or regulation or order of a court of competent jurisdiction. After the closing, the Transferor (a) shall maintain the confidentiality of all proprietary information relating to the Company and the Project, (b) shall not, directly or indirectly, disclose or permit the disclosure of any such information (except as may be required by applicable law, rule or regulation), and (c) shall not make any use of or permit the use of such information for the benefit of the Transferor or others. Effective as of the Time of Purchase, the Transferor shall, to the extent not prohibited by law or agreement, assign to the Transferee all of the Transferor's rights under any confidentiality or nondisclosure agreement affecting the Company or the Project.

8.14 Amendment. This Agreement may be amended only by a written instrument signed by the Parties hereto.

8.15 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which, taken together, shall constitute one and the same instrument.

[signature page follows]

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

THE COMPANY:

SOLAR STAR NAFB, LLC

By: PowerLight Corporation, its Member

By: _____
Name:
Title:

Address: 2954 San Pablo Avenue
Berkeley, CA 94702

TRANSFEROR:

POWERLIGHT CORPORATION

By: _____
Name: Howard Wenger
Title:

Address: 2954 San Pablo Avenue
Berkeley, CA 94702

TRANSFEREE:

MMA NAFB POWER, LLC

by MMA Solar Fund IV, GP, Inc., its general partner

By: _____
Name: Matthew Cheney
Title: CEO

Address: 44 Montgomery, Suite 2400
San Francisco, CA 94104

Exhibit A

Amended and Restated Limited Liability Company Agreement

[See attached]

Exhibit B

Form of EPC Contract

[See attached.]

Exhibit C

Form of O&M Agreement

[See attached.]

Exhibit D

Form of Performance Guarantee

[See attached.]

Exhibit F

Form of MMA Renewable Ventures Guarantee

[See attached.]

Exhibit E

Form of PC Agreement Section 22.1.9 Resolution

[See attached.]

Schedule 1

Project Documents

1. "Contract No. FA4861-06-D-B500", which is the power purchase agreement between the Department of the Air Force and PowerLight Corporation, a Delaware corporation, dated July 27, 2006 (the "**PPA**").
2. Memorandum from Solar Star NAFB, LLC to Nellis Air Force Base re Clarifications re Power Purchase Agreement and Site Lease and executed by Nellis Air Force Base, dated March 7, 2007 ("**NAFB Clarification Memorandum**").
3. Assignment and Assumption Agreement dated as of February [__], 2007 between PowerLight Corporation, and Solar Star NAFB, LLC ("**PPA Assignment and Assumption Agreement**").
4. Novation Agreement by and among PowerLight Corporation, Solar Star NAFB, LLC and The United States of America dated February 7, 2007 (the "**Novation**").
5. Department of the Air Force Site Lease of Property on Nellis Air Force Base, Nevada between the Secretary of the Air Force on behalf of the United States of America and PowerLight Corporation, dated December 14, 2006 (the "**Site Lease**").
6. Amendment to Assignment and Assumption Agreement by and between PowerLight Corporation, and Solar Star NAFB, LLC, effective as of February 7, 2007 and consented to by The Secretary of the Air Force on behalf of The United States of America (the "**Amendment to Assignment Agreement**")
7. Notice of Site Lease and Assignment made and entered into as of March 1, 2007 by and among PowerLight Corporation, and Solar Star NAFB, LLC, and consented to by The Secretary of the Air Force on behalf of The United States of America (the "**Notice**").
8. Operating Agreement between PowerLight Corporation and United States Department of the Air Force, dated December 14, 2006 ("**Operating Agreement**").
9. Assignment of Operating Agreement between PowerLight Corporation and Solar Star NAFB, LLC, with consent from United States Department of the Air Force, dated March __, 2007 ("**Assignment of Operating Agreement**").
10. [*Electric Price Procedure*].
11. Portfolio Energy Credit Purchase Agreement between Nevada Power Company, a Nevada corporation, and Solar Star NAFB, LLC, a Delaware limited liability company, dated November 8, 2006 (the "**PC Agreement**")
12. Stipulation Seeking Approval of Nevada Power Company's Contract with Solar Star NAFB, LLC, dated March 12, 2007.

13. [*Clarification Letter Between Company and NPC re Section 22.1.9*].

14. Engineering, Procurement and Construction Agreement, dated March __, 2007, between Solar Star NAFB, LLC and PowerLight Corporation (the "**EPC Agreement**").

15. Operations and Maintenance Agreement, dated March __, 2007, between Solar Star NAFB, LLC and PowerLight Corporation (the "**O&M Agreement**").

16. Performance Guarantee Agreement, dated March __, 2007, between Solar Star NAFB, LLC and PowerLight Corporation (the "**Performance Guarantee**").

17. Interconnection and Operating Agreement between Nellis AFB and Solar Star NAFB, LLC, dated March __, 2007 (the "**Interconnection Agreement**")

18. [*Interconnection Agreement between NAFB and NPC*].

19. Letter Agreement Regarding Sharing of the Leasehold Tax Risk between PowerLight Corporation, Solar Star NAFB, LLC, and MMA NAFB Power, LLC, dated March __, 2007.

EXHIBIT 31.1

CERTIFICATION

I, Thomas H. Werner, certify that:

1. I have reviewed this Annual Report on Form 10-K 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.

Dated: May 11, 2007

/S/ THOMAS H. WERNER

Thomas H. Werner
Chief Executive Officer
(Principal Executive Officer)

EXHIBIT 31.2

CERTIFICATION

I, Emmanuel T. Hernandez, certify that:

1. I have reviewed this Annual Report on Form 10-K 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.

Dated: May 11, 2007

/S/ EMMANUEL T. HERNANDEZ

Emmanuel T. Hernandez
Chief Financial Officer
(Principal Financial and Accounting Officer)

EXHIBIT 32.1

CERTIFICATION OF CHIEF EXECUTIVE OFFICER AND CHIEF FINANCIAL OFFICER PURSUANT TO 18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the quarterly report of SunPower Corporation (the "Company") on Form 10-Q for the period ending October 1, 2006 as filed with the Securities and Exchange Commission on the date hereof (the "Report"). We, Thomas H. Werner and Emmanuel T. Hernandez, certify, 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 our knowledge and belief:

(1) the Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

(2) the information contained in the Report fairly presents, in all material respects, the financial condition and result of operations of the Company.

Dated: May 11, 2007

/S/ THOMAS H. WERNER

Thomas H. Werner
Chief Executive Officer
(Principal Executive Officer)

/S/ EMMANUEL T. HERNANDEZ

Emmanuel T. Hernandez
Chief Financial Officer
(Principal Financial and Accounting Officer)