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September 19, 2002

**BY HAND DELIVERY**

Blanca S. Bayó, Director  
Division of the Commission Clerk and  
Administrative Services  
Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, FL 32399-0850

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020995-E1

**In Re: Joint Petition of Florida Power & Light Company and Cedar Bay  
Generating Company, L.P., for Approval of the First Amendment  
to Their Power Purchase Agreement**

Dear Ms. Bayó:

Yesterday, I filed on behalf of Florida Power & Light Company the above-referenced Joint Petition without the two exhibits that are to be attached. My transmittal letter stated that the exhibits would be filed under separate cover today. Accordingly, I am enclosing the original and seven copies of the following two exhibits:

AUS \_\_\_\_\_  
CAF \_\_\_\_\_  
CMP \_\_\_\_\_  
COM \_\_\_\_\_  
CIR \_\_\_\_\_  
ECR \_\_\_\_\_  
GCL \_\_\_\_\_  
OPC \_\_\_\_\_  
MMS \_\_\_\_\_  
SEC \_\_\_\_\_  
OTH \_\_\_\_\_

Exhibit 1. Restated Agreement for the Purchase of Firm Capacity and Energy Between AES Cedar Bay, Inc. and Florida Power & Light Company, dated July 2, 1990.

Exhibit 2. First Amendment to the Restated Agreement for the Purchase of Firm Capacity and Energy Between AES Cedar Bay, Inc. and Florida power & Light Company, executed August 19, 2002.

Please contact me at 305-577-2939 if you have any questions regarding these exhibits.

Sincerely,

*EC Daley* FBN 0104507  
John T. Butler, P.A.

*for*

RECEIVED & FILED

*R. V. P.*

FPSC-BUREAU OF RECORDS

Enclosure

cc: Joseph A. McGlothlin, Esq. and Jack Shreve, Esq.

DOCUMENT NUMBER- DATE

10029 SEP 19 02  
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# **EXHIBIT 1**

**AMENDED AND RESTATED AGREEMENT  
FOR THE PURCHASE OF FIRM CAPACITY AND ENERGY  
BETWEEN AES CEDAR BAY, INC.  
AND FLORIDA POWER & LIGHT COMPANY**

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THIS AMENDED AND RESTATED AGREEMENT is made and entered as of this 2nd day of July, 1990, by and between AES CEDAR BAY, INC. ("AES Cedar Bay"), a corporation organized and existing under the laws of the State of Delaware, with its principal offices at Arlington, Virginia, and FLORIDA POWER & LIGHT COMPANY ("FPL"), a utility corporation organized and existing under the laws of the State of Florida, having its principal place of business in Miami, Florida. AES Cedar Bay and FPL shall collectively herein be called the "Parties" and each may be individually identified herein from time to time as a "Party".

**WITNESSETH:**

WHEREAS, AES Cedar Bay will construct and own a facility which has been or will be certified as a "qualifying facility" pursuant to the rules or regulations of the Florida Public Service Commission or the Federal Energy Regulatory Commission;

WHEREAS, AES Cedar Bay desires to sell, and FPL desires to purchase, electricity to be generated by such facility consistent with FPSC Rules 25-17.080 through 25-17.087, inclusive;

WHEREAS, the Parties entered into an agreement for the Purchase of Firm Capacity and Energy dated May 6, 1988 as amended by an amendment dated November 9, 1988;

WHEREAS, AES Cedar Bay desires modifications to such agreement to accommodate its contract with the wheeling utility including dispatch, control, operation and maintenance of the facility;

WHEREAS, the Parties desire to clarify mutual understandings of the Parties; and

WHEREAS, to effect such additional changes and for ease of reading and simplicity, the Parties have mutually agreed to enter into an amendment and restatement of their original agreement.

NOW, THEREFORE, for mutual consideration, the Parties agree as follows:

**1.0 DEFINITIONS**

When used herein with initial or complete capitalization, whether in the singular or in the plural, the following terms shall have the following

defined meanings; however, such defined terms shall not apply except as otherwise specified therein to Appendices C, F, G, H, I, K and L.

- 1.1 **Agreement** - this document and Appendices A, B, C, D, E, F, G, H, I, J, K and L.
- 1.2 **Agreement Year** - the twelve Monthly Billing Periods preceding each anniversary of the first full Monthly Billing period following the Commercial Operation Date, except that the first Agreement Year shall also include the first partial month, if any, following the Commercial Operation Date.
- 1.3 **Annual Capacity Factor** - the sum of the twelve consecutive Monthly Capacity Factors preceding the date of calculation, divided by twelve. During the first twelve consecutive full Monthly Billing Periods, plus the preceding partial month if any, commencing with the first Monthly Billing Period in which Monthly Capacity Payments are to be made, the calculation of the Annual Capacity Factor shall be performed as follows: (i) during the initial partial Monthly Billing Period for Monthly Capacity Payments, if any, the Annual Capacity Factor shall be the Monthly Capacity Factor for the partial Monthly Billing Period beginning at 12:01 a.m. on the Commercial Operation Date and ending at midnight on the last calendar day of the month; (ii) during the first full Monthly Billing Period following the Commercial Operation Date, the Annual Capacity Factor shall be equal to the Monthly Capacity Factor; and (iii) thereafter, the calculation of Annual Capacity Factor shall be computed by dividing the sum of the Monthly Capacity Factors during the first Agreement Year's full Monthly Billing Periods in which Monthly Capacity Payments are to be made by the number of such full Monthly Billing Periods which have elapsed. This calculation shall be performed at the end of each Monthly Billing Period until enough full Monthly Billing Periods have elapsed to calculate a true twelve-month average Annual Capacity Factor. In an event of Force Majeure and upon the conclusion of such event (as described in Section 19.2, FORCE MAJEURE), each Monthly Capacity Factor calculated during such event of Force Majeure shall be recalculated

for the purpose of determining the Annual Capacity Factor from the point in time when such event of Force Majeure is concluded. All recalculations of the Monthly Capacity Factor are for the purpose of calculating the current Monthly Billing Period's Annual Capacity Factor only, not for adjusting previous payments. Such recalculation shall adjust the sum of the hourly Energy during the hours of such event of Force Majeure used in the calculation of each Monthly Capacity Factor during such event of Force Majeure to the greater of (i) itself (sum of the actual hourly Energy during the hours of such event used in the original calculation of the applicable Monthly Capacity Factor) or (ii) the lesser of (a) the product of (x) the Committed Capacity, (y) (1) 57% for the first Monthly Billing Period subsequent to the conclusion of such event, (2) 72% for the second Monthly Billing Period subsequent to the conclusion of such event and (3) 87% thereafter and (z) the number of hours affected by such event used in the original calculation of the applicable Monthly Capacity Factor or (b) the product of (x) the Committed Capacity, (y) the Annual Capacity Factor that existed in the Monthly Billing Period immediately prior to the event of Force Majeure and (z) the number of hours affected by such event used in the original calculation of the applicable Monthly Capacity Factor.

- 1.4 **Annual On-peak Capacity Factor** - the sum of the twelve consecutive Monthly On-peak Capacity Factors preceding the date of calculation, divided by twelve. During the first twelve consecutive full Monthly Billing Periods, plus the preceding partial month if any, commencing with the first Monthly Billing Period in which Monthly Capacity Payments are to be made, the calculation of the Annual On-peak Capacity Factor shall be performed as follows: (i) during the initial partial Monthly Billing Period for Monthly Capacity Payments, if any, the Annual On-peak Capacity Factor shall be the Monthly On-peak Capacity Factor for the partial Monthly Billing Period beginning at 12:01 a.m. on the Commercial Operation Date and ending at midnight on the last calendar day of the month; (ii) during the first full Monthly Billing Period following the



Commercial Operation Date, the Annual On-peak Capacity Factor shall be equal to the Monthly On-peak Capacity Factor; and (iii) thereafter, the calculation of Annual On-peak Capacity Factor shall be computed by dividing the sum of the Monthly On-peak Capacity Factors during the first Agreement Year's full Monthly Billing Periods in which Monthly Capacity Payments are to be made by the number of such full Monthly Billing Periods which have elapsed. This calculation shall be performed at the end of each Monthly Billing Period until enough full Monthly Billing Periods have elapsed to calculate a true twelve-month average Annual On-peak Capacity Factor. In an event of Force Majeure and upon the conclusion of such event (as described in Section 19.2, FORCE MAJEURE), each Monthly On-peak Capacity Factor calculated during such event of Force Majeure shall be recalculated for the purpose of determining the Annual On-peak Capacity Factor from the point in time when such event of Force Majeure is concluded. All recalculations of the Monthly On-peak Capacity Factor are for the purpose of calculating the current Monthly Billing Period's Annual On-peak Capacity Factor only, not for adjusting previous payments. Such recalculation shall adjust the sum of the hourly Energy during On-peak Hours of such event of Force Majeure used in the calculation of each Monthly On-peak Capacity Factor during such event of Force Majeure to the greater of (i) itself (sum of the actual Energy for On-peak Hours of such event used in the original calculation of the applicable Monthly On-peak Capacity Factor) or (ii) the lesser of (a) the product of (x) the Committed Capacity, (y) (1) 57% for the first Monthly Billing Period subsequent to the conclusion of such event, (2) 75% for the second Monthly Billing Period subsequent to the conclusion of such event if such Monthly Billing Period occurs before January 1, 2007 or 76% if such period occurs after December 31, 2006 and (3) 93% thereafter if such Monthly Billing Period occurs before January 1, 2007 or 95% if such period occurs after December 31, 2006 and (z) the number of On-peak Hours affected by such event used in the original calculation of the applicable Monthly On-peak Capacity Factor or (b) the product of (x) the Committed Capacity, (y) the Annual On-peak Capacity Factor that existed in the Monthly Billing Period immediately prior to the event

of Force Majeure and (z) the number of On-peak Hours affected by such event used the original calculation for the applicable Monthly On-peak Capacity Factor.

- 1.5 **As-available Avoided Energy Costs** - costs computed pursuant to FPSC Rule 25-17.0825(2) as it may subsequently be amended from time to time. FPL's Northeastern (North) operating area shall be the designated avoided cost pricing area for purposes of this Agreement.
- 1.6 **Automatic Generation Control** - procedures and equipment which automatically adjust a control area's generation to maintain its net interchange schedule plus frequency bias.
- 1.7 **Available Committed Capacity** - Committed Capacity less all Unscheduled Outages and Scheduled Reductions, expressed in the nearest whole megawatt ("MW") quantities, as determined by AES Cedar Bay on an on-going basis. Available Committed Capacity shall not be affected by Section 6.8, SALE OF ENERGY AND CAPACITY BY AES CEDAR BAY.
- 1.8 **Available Run Hour** - starting with the Commercial Operation Date, any hour except those hours during which the Facility is subject to a Scheduled Maintenance Period.
- 1.9 **Available Run On-peak Hour** - starting with the Commercial Operation Date, any On-peak Hour except those hours during which the Facility is subject to a Scheduled Maintenance Period.
- 1.10 **Capacity** - electric power in MW generated by the Facility and delivered to FPL's system by the Wheeling Utility.
- 1.11 **Capacity Factor** - the Annual Capacity Factor, plus one-half the Annual On-peak Capacity Factor minus 46.5% (i.e.,  $93\% / 2$ ) through the calendar year 2006 and 47.5% (i.e.,  $95\% / 2$ ) thereafter. For purposes of determining the Capacity Factor, the Annual On-peak Capacity Factor shall not be greater than 98% through the calendar year 2006 and 100% thereafter.
- 1.12 **Commercial Operation Date** - the earlier of (i) the date determined by AES Cedar Bay which shall be at least two calendar days immediately following the successful completion of the initial capacity test as described in Section 6.0, SALE OF ENERGY AND

CAPACITY BY AES CEDAR BAY or (ii) June 1, 1994 (subject to extension due to Force Majeure or pursuant to Sections 4.2 and 4.3, COMPLETION SECURITY). The Commercial Operation Date shall not occur before January 1, 1993.

- 1.13 Committed Capacity - the maximum Capacity pursuant to Sections 5.13, PRE-OPERATION PERIOD, and 6.0, SALE OF ENERGY AND CAPACITY BY AES CEDAR BAY, which AES Cedar Bay contractually commits to sell to FPL pursuant to the terms of this Agreement. All designations of Committed Capacity shall be to the nearest whole MW unit of Capacity and, except for the initial Committed Capacity, shall be effective on the first calendar day of the Monthly Billing Period subsequent to the designation of the initial Committed Capacity. The initial Committed Capacity shall be effective on the Commercial Operation Date.
- 1.14 Dispatch - FPL's Dispatch And Control Rights with respect to committing (start-up) and decommitting (shutdown) the Facility and controlling the Capacity and Energy output of the Facility.
- 1.15 Dispatch And Control Rights - subject to Section 7.0, DISPATCH CONTROL, OPERATION AND MAINTENANCE OF THE FACILITY, the absolute and sole right of FPL (i) to commit and decommit the Facility and (ii) through supervisory equipment or otherwise to control the Capacity and Energy output of the Facility pursuant to this Agreement. These rights also extend to control of the reactive power output of the Facility, voltage, frequency and other characteristics of such Energy output, which parameters are normally controlled or reflected in a utility's economic dispatch within acceptable limits as established by the Wheeling Utility.
- 1.16 Dispatch Hour - any Available Run Hour or part of an Available Run Hour that FPL Dispatches the Facility except as provided in Section 7.4, DISPATCH, CONTROL, OPERATION AND MAINTENANCE OF THE FACILITY. Dispatch Hours include decommitted hours designated by FPL and extend for at least one hour after the Facility's actual Ready For Control time but exclude the hour(s), if any, between the scheduled Ready For Control and the actual Ready For Control as specified in

Section 7.7, DISPATCH, CONTROL, OPERATION AND MAINTENANCE OF THE FACILITY.

- 1.17 **Energy** - electrical energy in megawatt hours ("MWh") generated by the Facility and delivered to FPL's system by the Wheeling Utility as determined by the FPL-owned Metering Equipment located at the Point of Interconnection.
- 1.18 **Event of Default** - any of those occurrences specified in Section 3.6, TERM AND TERMINATION.
- 1.19 **Facility** - the electrical generating unit (nominal net output of 225 MW, with a permitted Committed Capacity range between 180 and 250 MW), equipment and related facilities located at the AES Cedar Bay plant on or adjacent to the premises of Seminole Kraft located at 9469 Eastport Road, Jacksonville, Florida.
- 1.20 **Facility Owner** - AES Cedar Bay or any successor(s) in interest to AES Cedar Bay's ownership.
- 1.21 **FERC** - Federal Energy Regulatory Commission.
- 1.22 **Force Majeure** - an event or circumstance that was not reasonably foreseeable by a Party, was beyond the reasonable control and was not caused by the negligence or lack of due diligence of the affected Party or its contractors or suppliers or the Wheeling Utility. Such events or circumstances may include, but are not limited to, acts of civil or military authority (including courts and governmental or administrative agencies), acts of God, war, riot or insurrection, blockades, embargoes, sabotage, epidemics, hurricanes, floods, strikes, lockouts or other labor disputes or difficulties. Equipment breakdown caused by its (i) design, (ii) construction or (iii) operation or maintenance not consistent with Good Engineering and Operating Practices shall not be considered a Force Majeure.
- 1.23 **FPL Entities** - FPL, its parent, subsidiaries and affiliated entities and each of their respective officers, directors, employees, agents and contractors.
- 1.24 **FPL Operating Limits** - certain operating capabilities of the Facility that shall be available to FPL pursuant to this Agreement,

including, but not limited to: (i) power factor dispatchable and controllable in the range of 90% leading to 90% lagging; (ii) Peak Capability: Committed Capacity plus 5%, provided AES Cedar Bay's obligations with respect to Peak Capability shall be only as set forth in Section 7.3, DISPATCH, CONTROL, OPERATION AND MAINTENANCE OF THE FACILITY; (iii) Maximum Sustained Rate: 2.5 MW per minute; (iv) Frequency of Cycles: 6 times per Agreement Year; (v) Turn Around Time Hot to Hot: less than 4 hours; (vi) minimum operating capability while under Automatic Generation Control: 90 MW; (vii) minimum operating capability while under manual generation control: 90 MW; and (viii) Start-up Time: (a) if the Facility has been off-line between 0 hours and 12 hours (hot start): 6 hours, (b) if the Facility has been off-line between 12 hours and 72 hours (warm start): 16 hours, or (c) if the Facility has been off-line more than 72 hours (cold start): 30 hours.

- 1.25 FPSC - Florida Public Service Commission.
- 1.26 Frequency of Cycles - the number of times the Facility is started and stopped (i.e., one cycle breaker closing to breaker opening) in an Agreement Year.
- 1.27 Good Engineering and Operating Practices - generally accepted and sound electric utility industry practices, methods and acts applicable to similarly situated U.S. facilities which at a particular time, in the exercise of reasonable judgment in light of the facts known or that reasonably should be known at the time a decision is made, would be expected to accomplish the desired result in a manner consistent with law, regulation, reliability, safety, environmental protection, economy and expedition. With respect to the Facility, Good Engineering and Operating Practices include, but are not limited to, taking reasonable steps to ensure that:
  - 1.27.1 Adequate materials, resources and supplies, including fuel, are available to meet the Facility's needs under normal conditions and reasonably anticipated abnormal conditions;

- 1.27.2 Sufficient operating, maintenance and supervisory personnel are available and adequately experienced and trained to operate, maintain and supervise the Facility properly, efficiently and within manufacturer's guidelines and specifications and are capable of responding to emergency conditions;
  - 1.27.3 Preventive, routine and non-routine maintenance and repairs are performed on a basis that ensures reliable long-term and safe operation, and are performed by knowledgeable, trained and experienced personnel utilizing proper equipment, tools and procedures;
  - 1.27.4 Appropriate monitoring and testing are done periodically to ensure equipment is functioning as designed and to provide assurance that equipment will function properly under both normal and emergency conditions; and
  - 1.27.5 Equipment is operated in a safe manner and in a manner safe to workers, the general public and the environment and with regard to defined limitations such as steam pressure, temperature and moisture content, chemical content and quality of make-up water, operating voltage range, current, frequency, rotational speed, polarity, synchronization, control system limits, etc.
- 1.28 **Initial Synchronization Date** - the first date upon which (i) Energy is generated and (ii) such Energy is metered by the FPL-owned Metering Equipment.
- 1.29 **Interchange Points** - interconnection points between FPL and the Wheeling Utility, as designated under the interchange agreement between FPL and the Wheeling Utility.
- 1.30 **Lenders** - any entity or group of entities (and any agents acting on their behalf) providing financing for the construction and development of the Facility in aggregate principal amount not to exceed Five Hundred Million Dollars (\$500,000,000), including, upon prior written notice to FPL, any and all successors pursuant to any refinancing. The written notice to FPL regarding any refinancing

shall be signed by AES Cedar Bay and the then existing Lenders and shall include the following: (i) name of successor Lenders, (ii) address, telephone number and the authorized officer of the successor Lenders, (iii) the then-current outstanding balance of indebtedness (reflecting an itemization of senior debt, subordinated debt, accrued and unpaid interest and all unpaid fees, costs and charges, if any) due to the Lenders and (iv) a statement from an authorized officer from the then-existing Lenders that AES Cedar Bay is current and in good standing in its payment obligations under the financing and that the Lenders have no actual knowledge of any event of default and have not declared an event of default which is continuing thereunder, other than as may have been waived.

- 1.31 **Maximum Sustained Rate** - the maximum load following capability of the Facility, expressed in MW per minute level, that the MW output of the Facility can be raised or lowered to meet FPL's system conditions for a sustained period.
- 1.32 **Metering Equipment** - equipment including, but not limited to, kWh and kQh meters, metering cabinets, metering panels, conduits, cabling, metering units, current transformers and potential transformers directly or indirectly providing input to meters or transducers, meter recording devices, telephone circuits, signal or pulse dividers, transducers, pulse accumulators and any other equipment necessary to implement the provisions of this Agreement.
- 1.33 **Minimum Load** - 90 MW net of internal electrical requirements of the Facility.
- 1.34 **Monthly Billing Period** - the period beginning on the first calendar day of each calendar month (except in the case of an initial partial month, if any, in which case the period for the initial partial month only will begin with the Initial Synchronization Date) and ending on the last calendar day of such month.
- 1.35 **Monthly Billing Statement** - a monthly summary prepared by FPL in accordance with Section 13.1, BILLING AND PAYMENT.
- 1.36 **Monthly Capacity Factor** - the total Energy during the Monthly Billing Period for which the calculation is made, divided by the

product of (i) the Committed Capacity during the Monthly Billing Period and (ii) the sum of the hours during the Monthly Billing Period. For purposes of calculating the Monthly Capacity Factor, the following factors shall be considered when applicable: (A) Scheduled Maintenance Periods, (B) periods that FPL did not accept Energy for delivery or receive Energy pursuant to the provisions of Sections 6.8, SALE OF ENERGY AND CAPACITY BY AES CEDAR BAY, and 7.5, DISPATCH, CONTROL, OPERATION AND MAINTENANCE OF THE FACILITY, and (C) periods of Force Majeure. The hourly Energy to be used in the calculation of factor (A) shall be the product of the Annual Capacity Factor and the Committed Capacity, of factor (B) shall be the lesser of (i) the Available Committed Capacity or (ii) the product of the Annual Capacity Factor and the Committed Capacity, and of factor (C) shall be the actual Energy during the event of Force Majeure, except during the first two Monthly Billing Periods involving such Force Majeure, when it shall be the greater of (i) the actual Energy or (ii) the lesser of (a) the product of the Committed Capacity and 87% or (b) the product of the Committed Capacity and the Annual Capacity Factor. For purposes of calculating the Monthly Capacity Factor, hourly Energy deliveries (i) shall not exceed those which could be produced by the Committed Capacity, with the exception of those hours when FPL, pursuant to Section 7.3, DISPATCH, CONTROL, OPERATION AND MAINTENANCE OF THE FACILITY, requests AES Cedar Bay to produce in excess of the Committed Capacity and (ii) shall be reduced, when applicable, pursuant to Section 7.8, DISPATCH, CONTROL, OPERATION AND MAINTENANCE OF THE FACILITY.

- 1.37 **Monthly Capacity Payment** - monthly payments for Capacity and operation and maintenance expenses calculated in accordance with Appendix A, MONTHLY CAPACITY AND O&M PAYMENT CALCULATION.
- 1.38 **Monthly Energy Payment** - monthly payments for Energy calculated in accordance with Section 12.4, BASIS OF PAYMENTS BY FPL.
- 1.39 **Monthly On-peak Capacity Factor** - the total Energy during On-peak Hours for the Monthly Billing Period for which the calculation is



made, divided by the product of (i) the Committed Capacity during the Monthly Billing Period and (ii) the sum of the On-peak Hours during the Monthly Billing Period. For purposes of calculating the Monthly On-peak Capacity Factor, the following factors shall be considered when applicable: (A) Scheduled Maintenance Periods, (B) periods that FPL did not accept Energy for delivery or receive Energy pursuant to the provisions of Sections 6.8, SALE OF ENERGY AND CAPACITY BY AES CEDAR BAY, and 7.5, DISPATCH, CONTROL, OPERATION AND MAINTENANCE OF THE FACILITY, and (C) periods of Force Majeure. The hourly Energy to be used in the calculation of factor (A) shall be the product of the Annual On-peak Capacity Factor and the Committed Capacity, of factor (B) shall be the lesser of (i) the Available Committed Capacity or (ii) the product of the Annual On-peak Capacity Factor and the Committed Capacity, and of factor (C) shall be the actual Energy during the event of Force Majeure, except during the first two Monthly Billing Periods involving such Force Majeure, when it shall be the greater of (i) the actual Energy or (ii) the lesser of (a) the product of the Committed Capacity and 93% prior to January 1, 2007 and 95% thereafter or (b) the product of the Committed Capacity and the Annual On-peak Capacity Factor. For purposes of calculating the Monthly On-peak Capacity Factor, hourly Energy deliveries (i) shall not exceed those which could be produced by the Committed Capacity plus 10% and (ii) shall be reduced, when applicable, pursuant to Section 7.8, DISPATCH, CONTROL, OPERATION AND MAINTENANCE OF THE FACILITY.

- 1.40 NERC - the North American Electric Reliability Council, including any successor thereto and subdivisions thereof.
- 1.41 On-peak Hours - those hours occurring April 1 through October 31, from noon to 9:00 p.m. and November 1 through March 31, from 6:00 a.m. to 10:00 a.m. and 6:00 p.m. to 10:00 p.m. FPL shall have the right to change such On-peak Hours by providing AES Cedar Bay a minimum of ninety calendar days written notice. The total number of On-peak Hours shall not exceed 38% of the total hours during a calendar year.

- 1.42 **Operating Representatives** - the Parties' representatives designated pursuant to Section 10.0, OPERATING REPRESENTATIVES, who act in matters pertaining to detailed operating arrangements for the delivery of Capacity and Energy provided under this Agreement.
- 1.43 **Original Agreement** - Agreement for the Purchase of Firm Capacity and Energy between AES Cedar Bay and FPL, as amended, which was effective from May 6, 1988 until the date this Agreement is approved by the FPSC.
- 1.44 **Peak Capability** - the maximum MW rating which the Facility may achieve for a period of up to four hours without exceeding the maximum design condition.
- 1.45 **Point of Interconnection** - the physical point designated by the Wheeling Utility and agreed to by FPL where the Facility and the Wheeling Utility's system are connected.
- 1.46 **Ready For Control** - the point in time when the Facility is turned over to FPL's system control center for Automatic Generation Control or manual control. At this point, the Facility shall have full load-following capability equal to the Maximum Sustained Rate.
- 1.47 **Scheduled Maintenance Period** - any period of time, not to exceed six weeks per Agreement Year during which AES Cedar Bay plans, in coordination with FPL, as provided in Sections 5.10, PRE-OPERATION PERIOD, and 7.9, DISPATCH, CONTROL, OPERATION AND MAINTENANCE OF THE FACILITY, and subjects the Facility to a Scheduled Reduction in Capacity for routine or periodic maintenance. The six weeks can be taken consecutively or in periods of at least one day in duration, provided such periods are coordinated with, and approved by, FPL. Scheduled Maintenance Periods shall normally be taken during the applicable Agreement Year. However the Scheduled Maintenance Periods may be shifted to other Agreement Years pursuant to Sections 5.10, PRE-OPERATION PERIOD, AND 7.9, DISPATCH, CONTROL, OPERATION AND MAINTENANCE OF THE FACILITY. This outage maximum shall be extended to seven weeks during the first Agreement Year and every fifth Agreement Year thereafter.

- 1.48 **Scheduled Reduction** - any reduction in generating capability of the Facility, expressed in the nearest whole MW, as a result of a Scheduled Maintenance Period.
- 1.49 **Start-up Time** - the time it takes from the moment the Facility is activated (i.e., initiate start-up sequence) until it is on-line and Ready For Control.
- 1.50 **Termination Fee** - the dollar amount calculated in accordance with the formula in Appendix B, TERMINATION FEE, which AES Cedar Bay shall pay FPL in accordance with the terms of this Agreement.
- 1.51 **Turn Around Time Hot to Hot** - the minimum down time which is measured from the moment the Facility is taken off-line (i.e., breaker open) until the Facility is again able to be Ready For Control.
- 1.52 **Unit Fuel Cost** - the weighted average cost, in dollars per million Btu, of coal, and oil if applicable, burned at St. Johns River Power Park's Units #1 and #2. The cost of coal at St. Johns River Power Park shall be calculated from the data reported on a monthly basis to the FPSC in Schedule A5 entitled "System Net Generation and Fuel Cost." Start-up oil cost for St. Johns River Power Park's Units #1 and #2 as reported in Schedule A5 will be included in the Unit Fuel Cost calculation for any Monthly Billing Period that includes one or more Facility start-ups as a result of an FPL-required shutdown. The most recently filed Schedule A5 data shall be used in calculating the Unit Fuel Cost.
- 1.53 **Unit Hourly Heat Rate Factor** - starting on the later of (i) the Commercial Operation Date or (ii) January 1, 1994, (a) for each Dispatch Hour, the rate factor, expressed in million Btu per MWh, produced by the following formula:

$$\text{UHHRF} = (A/X + B + CX) / 1,000$$

where:

UHHRF - Unit Hourly Heat Rate Factor

A - 1,520 x Committed Capacity

B - 7,025

C - 1,200 / Committed Capacity

X - hourly integrated Energy delivered to FPL by the Wheeling Utility as determined by the FPL-owned Metering Equipment located at the Point of Interconnection

and (b) for all other hours, the Unit Hourly Heat Rate Factor shall be 9.745 million Btu/MWh.

- 1.54 **Unscheduled Outage** - a whole or partial interruption of the Facility's Committed Capacity, whether the Facility is committed or decommitted by FPL, expressed in whole MW, that does not qualify as a Scheduled Maintenance Period.
- 1.55 **Wheeling** - the transmission of Energy and Capacity from the Facility for delivery to FPL's system at the Interchange Points.
- 1.56 **Wheeling Utility** - the electric utility or utilities designated by AES Cedar Bay which transmit(s) Energy and Capacity from the Facility and deliver(s) it to FPL's system.

## 2.0 FACILITY

- 2.1 AES Cedar Bay shall in its operation of the Facility maintain AES Cedar Bay's status as a "qualifying cogenerator" as that term is defined in Section 3(18)(C) of the Federal Power Act.
- 2.2 AES Cedar Bay shall, throughout the term of this Agreement, maintain the status of the Facility as a "qualifying cogeneration facility" and AES Cedar Bay's status as a "qualifying cogenerator" pursuant to FERC or FPSC regulations.

## 3.0 TERM AND TERMINATION

- 3.1 Except for obligations under Section 3.2, FPL's obligations under this Agreement, and AES Cedar Bay's obligations to comply with Section 3.4 and to deliver Energy and Capacity under this Agreement, shall not become enforceable until the following conditions precedent have occurred or been satisfied:
  - 3.1.1 The FPSC's prior approval, without change or condition, including FPSC findings that (i) this Agreement is reasonable, prudent and in the best interest of FPL's ratepayers, (ii) this Agreement contains adequate security based on AES Cedar Bay's financial stability, (iii) no

costs in excess of full avoided costs are likely to be incurred by FPL over the initial term of the Agreement, (iv) FPL may recover from its ratepayers all payments for Energy and Capacity, and (v) FPL shall not be required to resell the Energy and Capacity to another electric utility so long as the retention of Energy and Capacity is in the best interest of FPL's ratepayers.

- 3.1.2 Execution of a transmission service agreement by and between AES Cedar Bay and the Wheeling Utility for delivery of Energy and Capacity to FPL.
- 3.2 FPL shall submit this Agreement to the FPSC and seek the FPSC's approval of the obligations and duties imposed by this Agreement, and AES Cedar Bay shall use its best efforts to support FPL's request for FPSC approval.
- 3.3 The initial term of this Agreement shall extend until the later of (i) December 31, 2024 or (ii) thirty-one Agreement Years, unless terminated as provided herein. However, the term may be extended through a written instrument authorized and executed with the same formality as this Agreement.
- 3.4 Notwithstanding any other provision of this Agreement, FPL may terminate this Agreement for cause, without penalty or further obligation in the event that, except when due to a Force Majeure, AES Cedar Bay fails to: (i) achieve closing of the construction loan and execution of the ground lease for the Facility by July 1, 1991; (ii) start construction by October 1, 1991; (iii) place the order for the turbine/generator by December 1, 1991; (iv) have the complete turbine/generator delivered on-site by February 28, 1993 (unless AES Cedar Bay provides assurances reasonably satisfactory to FPL that the Facility can reasonably be expected to achieve the Initial Synchronization Date by January 1, 1994 or such later date permitted under Section 4.2, COMPLETION SECURITY); or (v) achieve the Initial Synchronization Date by January 1, 1994 or as may be extended pursuant to Section 4.2, COMPLETION SECURITY.
- 3.5 AES Cedar Bay shall promptly and diligently assist FPL in obtaining FPSC approval of this Agreement. If (i) the FPSC has not approved

the Agreement or (ii) the thirty day appeal period has not expired (without any appeal having been duly filed and then pending) by November 1, 1990, the dates in Section 3.4 shall be adjusted for any additional months, or partial month, of such delay in obtaining approval (including expiration of the thirty day appeal period) beyond November 1, 1990, up to a maximum of three months, provided AES Cedar Bay has used due diligence to mitigate the effects of such delay and return the project to its original schedule.

3.6 Notwithstanding the occurrence of any Force Majeure as described in Section 19.0, FORCE MAJEURE, each of the following shall constitute an Event of Default:

3.6.1 AES Cedar Bay fails to execute a long-term fuel contract (or contracts) between AES Cedar Bay and its fuel supplier(s), for a term of at least fifteen years which provides for at least 50% of the Facility's requirements on or before the Commercial Operation Date;

3.6.2 AES Cedar Bay fails to comply with the provisions of any of the following Sections: 21.3, 21.5, 21.6 and 21.9, SECURITY;

3.6.3 After January 1, 1994, or as such date may be extended by AES Cedar Bay's exercise of its option pursuant to Section 4.2, COMPLETION SECURITY, the Facility fails to deliver any Energy for twelve consecutive months; provided, however, such period shall be extended up to six additional consecutive months if (i) AES Cedar Bay determines that the turbine generator needs major repair (and cannot be repaired within twelve months) or replacement, (ii) AES Cedar Bay provides to FPL, in writing, proof that the turbine generator does need such major repair or replacement, (iii) (a) FPL concurs in such determination or (b) a qualified independent engineering firm hired by AES and approved by FPL determines that such major repair or replacement is needed, (iv) the turbine generator is actually repaired or replaced and (v) AES

- Cedar Bay uses its best efforts to minimize the duration of such major repair or replacement;
- 3.6.4 At any time after the Commercial Operation Date, the Annual Capacity Factor is less than 57% for twenty-four consecutive months;
- 3.6.5 Except as provided in Section 3.7.2, AES Cedar Bay becomes insolvent, executes an assignment for the benefit of its creditors, or becomes subject to bankruptcy or receivership proceedings, provided, however, in the event of an involuntary proceeding brought by creditors of AES Cedar Bay, AES Cedar Bay shall have a period not to exceed sixty calendar days to have such proceeding stayed or dismissed;
- 3.6.6 AES Cedar Bay shall default in the due and punctual performance of any other material covenants, conditions, agreements and provisions contained herein not specifically referenced in Section 3.6 (other than pursuant to Sections 21.1, 21.2 and 21.7, SECURITY), on its part to be performed, and such default shall not be cured as soon as possible, but not more than thirty calendar days after written notice from FPL specifying such default; provided, however, so long as a default of AES Cedar Bay is not a failure to pay any money due FPL pursuant to the terms of this Agreement, if it is not feasible to correct such default within thirty calendar days after FPL has delivered written notice of such default to AES Cedar Bay and to the designee of the Lenders, (such designee to be identified by AES Cedar Bay at least six months before the expected Commercial Operation Date) but it is and remains feasible to correct such default within one year after such notice, it shall not constitute an Event of Default hereunder until the earliest feasible date within such one-year period when a cure could be effected so long as (i) corrective action by AES Cedar Bay or the Lenders' designee is instituted

within ten calendar days of the date of such notice, (ii) such corrective action is diligently pursued, (iii) AES Cedar Bay or the Lenders' designee provides FPL monthly, written reports as to the nature and progress of such corrective action, and (iv) such cure is effected within one year of such notice. In this regard, corrective action by the Lenders' designee may encompass the Lenders' assumption of, or causing a new lessee or purchaser of the Facility to assume, all of the interests, rights and obligations of AES Cedar Bay under this Agreement (including effecting the cure pursuant to this Section 3.6.6, if capable of cure, including the (i) payment of any sums, (ii) execution and delivery of the agreement(s) or contract(s) described in Section 3.6.1 and (iii) compliance with Section 3.6.8), provided that such assuming party (a) is, in the reasonable opinion of FPL, reasonably qualified to perform the obligations arising hereunder upon and after the date of such assumption, and (b) enters into agreement(s) with FPL providing security equivalent to or greater than that provided by AES Cedar Bay under this Agreement. After FPL gives any written notice of an Event of Default under this Section 3.6.6, and until such Event of Default is cured, if capable of cure, including the (i) payment of any sums, (ii) execution and delivery of the agreement(s) or contract(s) described in Section 3.6.1 and (iii) compliance with Section 3.6.8, FPL may withhold Monthly Capacity Payments. Upon the cure of such Event of Default, FPL shall pay to AES Cedar Bay all Monthly Capacity Payments previously withheld, without interest;

3.6.7 AES Cedar Bay fails to give adequate assurance of due performance of the material covenants, conditions, agreements and provisions as specified under this Agreement not specifically referenced in Section 3.6 within thirty calendar days after FPL, with reasonable



- grounds for insecurity, has requested in writing such assurance;
- 3.6.8 Commencing no later than January 1, 2006, AES Cedar Bay fails to use its best efforts to negotiate and secure a firm fuel supply for the Facility for the balance of the term of this Agreement; or
- 3.6.9 AES Cedar Bay fails to make any of the payments as specified in Section 4.0, COMPLETION SECURITY.
- 3.7 Upon the occurrence of any of the foregoing Events of Default, FPL may at its option:
- 3.7.1 Terminate this Agreement by written notice to AES Cedar Bay, and apply to any payment(s), due from FPL to AES Cedar Bay, any payment(s) otherwise due from AES Cedar Bay to FPL; or
- 3.7.2 Apply to any court of competent jurisdiction for the appointment of a receiver to take charge of, manage, preserve, protect, complete construction of and operate the Facility; to make all necessary and needed repairs to the Facility; and to pay all taxes and assessments against the Facility and insurance premiums for insurance thereof, with any net cash flow remaining after payment of all amounts necessary to manage, pursue, protect, complete and operate the Facility, including payment for all repairs, taxes, assessments and insurance premiums, remaining the property of AES Cedar Bay. It is hereby agreed that, upon occurrence of an Event of Default, FPL shall be entitled to such appointment; accordingly, it is agreed that upon application by FPL, the court may forthwith appoint such receiver with the usual powers and duties thereof and that AES Cedar Bay consents to, and shall not object to, such appointment; provided, however, with respect to the appointment of a receiver, FPL agrees to recognize the prior rights, if any, of the Lenders. Appointment of a receiver under this Section 3.7.2 shall not terminate this Agreement. In the event AES Cedar Bay cures all Events of

Default under Sections 3.6.1, 3.6.2, 3.6.5, 3.6.6, 3.6.7, 3.6.8, and 3.6.9 and, with respect to Events of Default under Sections 3.6.3 or 3.6.4, the Facility resumes delivery of Energy and Capacity and otherwise demonstrates that AES Cedar Bay is capable of fulfilling all of its obligations under this Agreement, the Parties agree that they shall request the court to terminate the receivership and return the Facility and any net cash flow remaining after payment of all amounts necessary to manage, pursue, protect, complete and operate the Facility, including payment for all repairs, taxes, assessments and insurance premiums, to AES Cedar Bay.

Notwithstanding anything to the contrary herein, FPL agrees that, prior to any exercise by FPL of its remedies under Section 3.7 with respect to an Event of Default, to the extent that the Lenders have any right, title or interest in this Agreement, FPL will afford the Lenders the opportunity (but not the obligation) for sixty days (or such longer period of time as may be acceptable to FPL in its sole discretion) (the "Lender Cure Period") following the occurrence of such Event of Default:

(i) to assume or cause a new lessee or purchaser of the Facility to assume, all of the rights and obligations of AES Cedar Bay arising hereunder upon and after such assumption, provided that such assuming party (a) is, in the reasonable opinion of FPL, reasonably qualified to perform the assumed obligations (including effecting a cure of all Events of Default which are capable of cure, including the (x) payment of any sums, (y) execution and delivery of the agreement(s) or contract(s) described in Section 3.6.1 and (z) compliance with Section 3.6.8; provided, however, in no event shall an assumption by the Lenders or new lessee or purchaser toll or extend the periods of time set forth in Sections 3.6.3 or 3.6.4 beyond such Lender Cure Period, except with respect to Section 3.6.4, which shall be further extended on a month by month basis, provided that each and every Monthly Capacity Factor

subsequent to the first Monthly Billing Period after an Event of Default under Section 3.6.4 is at least 87% until such Event of Default is cured) and (b) enters into agreements with FPL providing security equivalent to or greater than that provided by AES Cedar Bay under this Agreement; and

(ii) to cure such Events of Default which are capable of cure, including the (x) the payment of any sums, (y) execution and delivery of the agreements or contracts described in Sections 3.6.1 and (z) compliance with Section 3.6.8.

However, upon the occurrence of an Event of Default under Section 3.6.5, nothing herein shall prevent or delay FPL from proceeding against AES Cedar Bay or any trustee or receiver appointed thereunder.

3.8 Termination shall not affect the liability of either Party for obligations arising prior to such termination or for damages, if any, resulting from breach of this Agreement.

3.9 Upon early termination of this Agreement by FPL pursuant to Section 3.7 following the Commercial Operation Date, AES Cedar Bay shall owe FPL and be liable for the Termination Fee calculated in accordance with Appendix B, TERMINATION FEE. The obligation of AES Cedar Bay to pay such Termination Fee shall be secured in accordance with Sections 21.1, 21.3 and 21.6, SECURITY. AES Cedar Bay's obligation to pay the Termination Fee shall survive termination of this Agreement.

3.10 AES Cedar Bay may terminate this Agreement pursuant to Section 18.4, COMPLIANCE WITH LAWS, RULES AND REGULATIONS.

#### 4.0 COMPLETION SECURITY

4.1 In order to ensure the timely development of AES Cedar Bay, Applied Energy Services, Inc., the parent corporation of AES Cedar Bay, will guarantee project cancellation payments to FPL according to the schedule provided in Appendix D, FORM OF PROJECT CANCELLATION PAYMENT GUARANTEE LETTER, payment of which shall satisfy any project cancellation liabilities to FPL of AES Cedar Bay and its parent and affiliates. Such guarantee letter shall be executed concurrently with this Agreement.

4.2 AES Cedar Bay shall have a one-time option of delaying the Initial Synchronization Date beyond January 1, 1994 (and the Commercial Operation Date beyond June 1, 1994) to no later than January 1, 1995 (and the Commercial Operation Date to no later than June 1, 1995), if AES Cedar Bay pays to FPL the amount of Twenty Million Dollars (\$20,000,000) to assist in defraying costs to be incurred by FPL (and its ratepayers) in obtaining substitute energy and/or capacity. AES Cedar Bay shall, no later than July 1, 1993, notify FPL, in writing, of AES Cedar Bay's decision to exercise this option. The exercise of such option shall be irrevocable. The Twenty Million Dollars (\$20,000,000) shall be due concurrently with the written notification of FPL as aforesaid. The Twenty Million Dollars (\$20,000,000) or portion thereof which remains refundable as specified below, shall be held by FPL. The following amounts shall be refunded to AES Cedar Bay per the following:

- 4.2.1 If the Initial Synchronization Date and the Commercial Operation Date occur on or before March 31, 1994 and August 31, 1994, respectively, FPL shall refund to AES Cedar Bay Fifteen Million Dollars (\$15,000,000);
- 4.2.2 If the Initial Synchronization Date and the Commercial Operation Date occur on or before June 30, 1994 and November 30, 1994, respectively, FPL shall refund to AES Cedar Bay Ten Million Dollars (\$10,000,000);
- 4.2.3 If the Initial Synchronization Date and the Commercial Operation Date occur on or before September 30, 1994 and February 28, 1995, respectively, FPL shall refund to AES Cedar Bay Five Million Dollars (\$5,000,000);
- 4.2.4 If the Initial Synchronization Date and the Commercial Operation Date occur on or after October 1, 1994 and March 1, 1995, respectively, FPL shall refund to AES Cedar Bay Zero Dollars (\$0);

provided, however, the aforesaid refundable amounts shall be reduced to the extent, if any, that FPL has made firm contractual commitments to purchase such substitute energy and/or capacity from third parties.

4.3 If AES Cedar Bay does not exercise its option pursuant to Section 4.2, AES Cedar Bay shall have a one-time option of delaying the Commercial Operation Date beyond June 1 1994, to no later than August 1, 1994, if AES Cedar Bay pays to FPL the amount of Five Million Dollars (\$5,000,000) to assist in defraying costs to be incurred by FPL (and its ratepayers) in obtaining substitute energy and/or capacity. AES Cedar Bay shall, no later than December 31, 1993, notify FPL, in writing, of AES Cedar Bay's decision to exercise this option. The exercise of such option shall be irrevocable. The Five Million Dollars (\$5,000,000) shall be due concurrently with the written notification of FPL as aforesaid. The Five Million Dollars (\$5,000,000) or portion thereof which remains refundable as specified below, shall be held by FPL. The following amounts shall be refunded to AES Cedar Bay per the following schedule:

<u>Commercial Operation Date</u>	<u>Amount Refundable to AES Cedar Bay</u>
On or before July 1, 1994	\$3,000,000
After July 1, 1994	\$ 0

provided, however, the aforesaid refundable amounts shall be reduced to the extent, if any, that FPL has made firm contractual commitments to purchase such substitute energy and/or capacity from third parties.

5.0 PRE-OPERATION PERIOD

5.1 AES Cedar Bay shall choose an architect/engineering firm for the design and construction of the Facility, which selection shall be subject to approval by FPL. FPL shall not unreasonably withhold such approval. If FPL fails to approve or disapprove AES Cedar Bay's selection within ninety calendar days of a presentation by the proposed architect/engineering firm to FPL concerning the project, FPL shall be deemed to have approved the selection for purposes of this Agreement. AES Cedar Bay shall instruct the architect/engineering firm to design and construct the Facility to be reasonably capable of operating reliably with a Capacity Factor of at least 87% during the initial term of this Agreement.

- 5.2 AES Cedar Bay agrees that the Facility shall be designed and constructed in accordance with the design of the architect/engineering firm selected pursuant to Section 5.1. AES Cedar Bay shall ensure that all equipment used in the Facility shall be new and unused, of good quality utility grade, suitable for the intended service, and shall meet the requirements of applicable codes and standards. During the design and construction of the Facility, AES Cedar Bay shall provide FPL with such information as FPL may request to determine whether the Facility is being so designed and constructed.
- 5.3 The contract for engineering, procurement and construction services between AES Cedar Bay and the project prime contractor shall contain provisions for guaranteeing performance and providing for performance testing when the Facility is complete. Performance testing will measure electrical output, process steam output, environmental emissions, and fuel consumption against guaranteed levels. The prime contractor will also have to meet a guaranteed completion date. The prime contractor will be liable for liquidated damages, in an aggregate amount of at least Fifty Million Dollars (\$50,000,000), if the performance levels and schedule are not met. Upon its execution, a copy of the subject contract shall be provided to FPL.
- 5.4 AES Cedar Bay shall arrange for the Lenders to choose a qualified independent engineering firm to review and evaluate the design of the Facility. AES Cedar Bay shall arrange for such firm to present to FPL the scope of the proposed design review and, prior to the closing of the construction loan financing of the Facility, a written assessment of whether the Facility can be reasonably expected to operate as specified in Section 5.1. AES Cedar Bay shall cause the architect/engineering firm selected pursuant to Section 5.1 to make all changes to the Facility's design and construction that the independent engineering firm determines are necessary to result in a Facility capable of (i) being completed on timely basis and (ii) operating as specified in Section 5.1, unless (i) AES Cedar Bay disagrees with such determination(s), (ii) AES

Cedar Bay provides FPL with a written explanation of the basis for such disagreement and the basis for AES Cedar Bay's belief that the proposed change is not needed to assure the timely completion and reliable operation of the Facility as specified in Section 5.1, and (iii) either (a) FPL concurs or (b) a second qualified independent engineering firm which shall be chosen by AES Cedar Bay and approved by FPL (which approval shall not be unreasonably withheld or delayed) concludes, and provides a reasonable explanation thereof, that the change recommended by the first qualified independent engineering firm is not needed to assure (i) the timely completion and (ii) the reliable operation of the Facility as specified in Section 5.1.

5.5 AES Cedar Bay shall submit its integrated engineering, procurement and construction schedule for FPL's review at least sixty calendar days prior to starting Facility construction, and a start-up and test schedule for the Facility at least sixty calendar days prior to scheduled start-up and testing of the Facility. AES Cedar Bay shall submit to FPL on at least a monthly basis progress reports prepared for its Lenders, or if such reports are not required by its Lenders, in a form reasonably satisfactory to FPL until the Commercial Operation Date, and shall notify FPL of any changes in such schedules in a timely manner. FPL shall have the right to monitor the construction, start-up and testing of the Facility. AES Cedar Bay shall comply with all reasonable requests of FPL for information resulting therefrom. AES Cedar Bay shall cooperate in such physical inspections of the Facility as may be reasonably required by FPL during and after completion of construction. FPL's technical review and inspections of the Facility and resulting requests, if any, shall not be construed as endorsing the design thereof or as any warranty as to the safety, durability or reliability of the Facility.

5.6 AES Cedar Bay shall provide FPL with the generator manufacturer's capability curves, protective relay types, proposed protective relay settings, main one-line diagrams, protective relay functional diagrams and alternating current and direct current elementary

diagrams for review and inspection by FPL no later than two hundred forty calendar days prior to the Initial Synchronization Date. Within sixty calendar days of receiving such material, FPL shall inform AES Cedar Bay, in writing, whether the proposed protective relay types and protective relay settings are acceptable. If these are not acceptable to FPL, AES Cedar Bay agrees to comply with any reasonable FPL requests to provide acceptable relay types and protective relay settings. AES Cedar Bay shall also provide to FPL, for its review, the Facility design heat balance, flow diagrams and a major equipment list at least two hundred forty calendar days prior to the Initial Synchronization Date. All information must be submitted in a manner reasonably acceptable to FPL, particularly the turbine generator data, which shall be used for FPL's inspections and transient stability analysis. Complete turbine generator data must be submitted at least two hundred forty calendar days prior to the Initial Synchronization Date.

- 5.7 AES Cedar Bay and FPL shall mutually develop written operating procedures no later than sixty calendar days prior to the Initial Synchronization Date. The operating procedures will be intended as a guide on how to integrate the Facility's Energy and Committed Capacity into FPL's electrical system. Topics covered shall include, but not necessarily be limited to, deliveries of Energy during start-up and testing of the Facility; the method of day-to-day communications; key personnel lists for both AES Cedar Bay and FPL operating centers; clearances and switching practices; outage scheduling; daily Capacity availability and Energy reports; Facility operations log; and reactive power output. The Operating Representatives, designated pursuant to Section 10.0, OPERATING REPRESENTATIVES, shall be responsible for modifying, from time to time, these operating procedures in writing, to reflect agreed upon changes.
- 5.8 AES Cedar Bay shall prepare an annual schedule for ongoing maintenance and spare parts inventory, including an operation and maintenance plan for less frequent major overhaul work on the Facility's generator, turbine, boilers and auxiliary equipment. AES



Cedar Bay shall, at AES Cedar Bay's expense, cause an independent engineering firm or such other party with recognized experience in the electric generation power industry as may be chosen by AES Cedar Bay and approved by FPL (which approval shall not be unreasonably withheld or delayed) to conduct a review of the proposed operation and maintenance plan to ascertain whether such plan is (i) effective and consistent with Good Engineering and Operating Practices and (ii) adequate to allow the Facility to operate with a Capacity Factor of at least 87% for the initial term of this Agreement.

5.9 The evaluation of the initial operation and maintenance plan by the independent engineering firm (or such other party, as appropriate) specified in Section 5.8 shall be provided to FPL, in writing, at least sixty days prior to the Initial Synchronization Date. AES Cedar Bay shall make all changes to the proposed operation and maintenance plan developed pursuant to Section 5.8 which the independent engineering firm or such other party, as appropriate, determines are necessary for such plan to be (i) effective and consistent with Good Engineering and Operating Practices and (ii) adequate to allow the Facility to operate as specified in Section 5.8, unless (i) AES Cedar Bay disagrees with such determination(s), (ii) AES Cedar Bay provides FPL with a written explanation of the basis for such disagreement and the basis for AES Cedar Bay's belief that the proposed change is not needed to assure the reliable operation of the Facility as specified in Section 5.8, and (iii) (a) FPL concurs or (b) a second qualified independent engineering firm which shall be chosen by AES Cedar Bay and approved by FPL (which approval shall not be unreasonably withheld or delayed) concludes, and provides a reasonable explanation thereof, that the change recommended by the first qualified independent engineering firm is not needed (i) under Good Engineering and Operating Practices or (ii) to assure the reliable operation of the Facility as specified in Section 5.8. AES Cedar Bay shall perform Facility maintenance in accordance with such plan.

5.10 AES Cedar Bay shall, at least sixty calendar days prior to the Initial Synchronization Date, submit to FPL, in writing, the

proposed Scheduled Maintenance Periods for the first five Agreement Years of the Facility's operations and a detailed plan for the remainder of the current calendar year after the Commercial Operation Date plus the following calendar year. FPL shall notify AES Cedar Bay, in writing, whether the requested Scheduled Maintenance Periods are acceptable. If FPL cannot accept any of the requested Scheduled Maintenance Periods, FPL shall advise AES Cedar Bay of the time period(s) closest to the requested period(s) when the outage(s) can be scheduled. AES Cedar Bay shall only schedule outages during periods approved by FPL, and such approval shall not be unreasonably withheld. Notwithstanding the previous sentence, AES Cedar Bay shall not, without the prior written approval of FPL, schedule a maintenance shutdown of its Facility in its initial plan during the On-peak Hours that would decrease the Capacity output of the Facility below the Committed Capacity in the calendar months of December, January or February and during the period from June 1 through October 15 of any year. Once the schedule for the first Agreement Year has been established and approved, any Party requesting a subsequent change in such schedule, except when such event is due to Force Majeure, must obtain approval for such change from the other Party. Such approval shall not be unreasonably withheld or delayed.

- 5.11 AES Cedar Bay shall provide written notice to FPL confirming the projected Initial Synchronization Date no less than six calendar months prior to such projected date, which synchronization shall not occur before February 1, 1992. FPL and AES Cedar Bay shall agree on the Initial Synchronization Date and FPL shall have the right to have representatives present at the Facility on such Initial Synchronization Date.
- 5.12 FPL reserves the right to postpone the Initial Synchronization Date due to any problem(s) with the Facility which could adversely affect FPL's operations. In such event, FPL shall give AES Cedar Bay written notice of such problem(s) and AES Cedar Bay shall remedy any such problem(s) with facilities or equipment prior to revising the Initial Synchronization Date. The proposed revised date shall be

deemed acceptable if FPL is in agreement that the remedy was successful.

- 5.13 AES Cedar Bay shall designate a pre-operation Committed Capacity and provide FPL written notice of such designation on or before February 1, 1992. The pre-operation Committed Capacity shall be at least 180 MW and not greater than 250 MW. The actual Committed Capacity of the Facility shall be determined by capacity test(s) as described in Section 6.0, except as provided in Section 6.10, SALE OF ENERGY AND CAPACITY BY AES CEDAR BAY.

6.0 SALE OF ENERGY AND CAPACITY BY AES CEDAR BAY

- 6.1 Prior to start-up and testing of the Facility, AES Cedar Bay shall secure the proper arrangements with the Wheeling Utility such that AES Cedar Bay shall be able to make available to FPL Energy and Capacity in accordance with the terms and conditions specified in this Agreement.
- 6.2 The initial Committed Capacity shall be based on the continuous capability of the Facility which shall be determined by a capacity test as described in this Section 6.0 and determined at least two calendar days prior to the Commercial Operation Date, except as provided for in Section 6.10. AES Cedar Bay shall notify FPL, in writing, of the date and the time when AES Cedar Bay will perform the first such test ("Initial Test"). AES Cedar Bay shall perform and FPL may monitor the Initial Test at a mutually agreed upon time within fourteen calendar days of FPL's receipt of such notice.
- 6.3 If the Initial Test is completed successfully to the satisfaction of AES Cedar Bay (provided the conditions in Section 6.5 are met), AES Cedar Bay may, for purposes of determining the Commercial Operation Date, set the initial Committed Capacity at any level not to exceed the continuous capability, as determined by the Initial Test, except that AES Cedar Bay shall not set the initial Committed Capacity above 250 MW or below 180 MW unless, at FPL's sole option, FPL approves such level. If the Initial Test is not completed successfully to the satisfaction of AES Cedar Bay, AES Cedar Bay shall provide written notice to FPL as to when the Facility will be ready for a rescheduled Initial Test. AES Cedar Bay shall perform

- and FPL may monitor the new Initial Test at a mutually agreed upon time within fourteen calendar days of FPL's receipt of such notice.
- 6.4 AES Cedar Bay may, during a period of one year immediately following the Commercial Operation Date, perform up to two capacity tests, to be completed successfully to the satisfaction of AES Cedar Bay in its sole discretion, provided (i) FPL is notified in writing at least seventy-two hours in advance of such capacity test(s) and (ii) that the capacity test(s) conform to the requirements in Section 6.5. Upon completion of such additional capacity tests, if any, AES Cedar Bay shall set the new Committed Capacity at a level equal to or greater than the prior Committed Capacity, except that AES Cedar Bay shall not set the Committed Capacity at any level in excess of the new continuous capability as determined by such additional capacity test or 250 MW, whichever is less unless, at FPL's sole option, FPL approves such level.
- 6.5 Testing of the continuous capability of the Facility shall be in accordance with the following capacity test:
- 6.5.1 Test results shall be based on the seventy-two consecutive hour period commencing at a time designated by AES Cedar Bay prior to, or commensurate with, such test period, provided FPL is notified in advance of the test's approximate start time.
- 6.5.2 All capacity tests conducted pursuant to Sections 6.2, 6.3 and 6.4 shall be adjusted to such ambient conditions as are defined in Appendix E, FACILITY PERFORMANCE CONDITIONS and in accordance with Good Engineering and Operating Practices. The Operating Representatives shall determine if any additional adjustments shall be required for ambient conditions.
- 6.5.3 The tested continuous capability shall be the average Capacity measured over the entire period of testing as specified in Section 6.5.1, as may be adjusted pursuant to Section 6.5.2.
- 6.5.4 Normal station service use of unit auxiliaries, including (without limitation) cooling towers and other equipment

required by regulatory and/or governmental authority, is required during the period when a capacity test is conducted. Normal deliveries of cogenerated steam to the host customer will be required during the period when a capacity test is conducted.

- 6.6 Prior to the Commercial Operation Date, AES Cedar Bay shall make available to FPL and FPL shall purchase Energy, but not Capacity, in accordance with the terms and conditions specified in this Agreement, provided deliveries of such Energy are coordinated with and agreed upon by the Operating Representatives. However, if the Operating Representatives agree, then AES Cedar Bay may, from time to time, request the Wheeling Utility to purchase energy prior to the Commercial Operation Date, rather than FPL.
- 6.7 Commencing on the Commercial Operation Date, AES Cedar Bay shall sell to FPL and FPL shall purchase from AES Cedar Bay all Energy and Capacity in excess of AES Cedar Bay's internal consumption of energy and capacity in accordance with Section 12.0, BASIS FOR PAYMENT BY FPL, except, in each case, to the extent that FPL is not obligated to purchase such Energy and Capacity under the terms of this Agreement. FPL shall have the sole right to purchase Energy and Capacity from the Facility.
- 6.8 FPL shall not be obligated to purchase, and may require interrupted or reduced deliveries of, Energy (i) to the extent FPL determines to be necessary for the safe and reliable operation and maintenance of any part of FPL's system, (ii) if FPL determines that a failure to interrupt or reduce deliveries of Energy is likely to endanger life or property, or is likely to result in significant disruption of electric service to FPL's customers, (iii) if AES Cedar Bay is able to deliver Energy to the Interchange Points but FPL is unable to receive such Energy due to Force Majeure, or (iv) at those times as determined by Dispatch, pursuant to Section 7.0, DISPATCH, CONTROL, OPERATION, AND MAINTENANCE OF THE FACILITY. FPL shall resume normal acceptance of Energy as quickly as practicable pursuant to (i), (ii), and (iii) of this Section 6.8.

6.9 AES Cedar Bay acknowledges that, throughout the term of this Agreement, FPL will have a need for the Committed Capacity and Energy, will be relying on the Facility to meet those needs, and would have no adequate remedy at law in the event AES Cedar Bay were to supply such Committed Capacity or Energy to any person or entity other than FPL in breach of this Agreement, and agrees that, in such event, FPL would be entitled to specific performance of AES Cedar Bay's obligations to supply Committed Capacity and Energy to FPL.

6.10 In the event that the Facility does not successfully complete an Initial Test on or before May 30, 1994, the initial Committed Capacity shall be 180 MW and the Commercial Operation Date shall be June 1, 1994. The dates listed in this Section 6.10 shall be subject to extension due to Force Majeure or pursuant to Sections 4.2 and 4.3, COMPLETION SECURITY.

#### 7.0 DISPATCH, CONTROL, OPERATION AND MAINTENANCE OF THE FACILITY

7.1 AES Cedar Bay shall operate the Facility with all system protective equipment in service whenever the Facility is connected to, or is operated in parallel with, FPL's system, except for normal testing and repair purposes in accordance with Good Engineering and Operating Practices. AES Cedar Bay shall have qualified personnel test and calibrate all protective equipment at regular intervals not to exceed two calendar years. A unit functional trip test shall be performed after each overhaul of the Facility's turbine, generator or boilers prior to returning the equipment to service. The specifics of the unit functional trip test will be consistent with Good Engineering and Operating Practices and as agreed by the Parties. If, at any time, FPL has reason to doubt the integrity of the Facility's protective equipment and suspects that such loss of integrity would jeopardize the reliability of FPL's supply of electric energy to its customers, AES Cedar Bay shall be required to demonstrate to FPL's satisfaction the correct calibration and operation of the equipment in question.

7.2 Except as provided in Section 8.0, DATA ACQUISITION, AES Cedar Bay shall purchase and own such telemetering equipment for the Facility as may reasonably be required in order to allow FPL to receive

telemetry and control the Energy and Capacity from the Facility as required to optimize economic and reliable operation of the FPL electric system. Such equipment shall meet FPL's reasonable specifications for transmission of metered data to locations specified by FPL. AES Cedar Bay shall install and maintain such telemetering equipment including, but not limited to, the generator control unit and the generator control panel. AES Cedar Bay shall, at no cost to and as specified by FPL, install transducers, meters, test switches for transducers and metering, alternating current and direct current sources, telephone lines, and interconnecting wiring with proper identification for supervisory and communications equipment. AES Cedar Bay shall not, without prior written approval of FPL, make or cause to make any additions, deletions or alterations to the Facility's protective equipment.

7.3 Consistent with Section 7.4, FPL shall have Dispatch And Control Rights to commit and decommit the Facility and to control the real and reactive power delivered from the Facility to FPL's system in any manner which FPL deems appropriate subject to FPL's Operating Limits. Except during any Dispatch Hour, control of the Capacity and Energy shall be AES Cedar Bay's responsibility. During Dispatch, control of the Facility will either be by AES Cedar Bay manual control under the direction of FPL or by Automatic Generation Control by FPL's system control center as determined by FPL. FPL may at times request that the real power output be equal to the Peak Capability of the Facility but shall not reduce the real power output of the Facility below the Minimum Load without decommitting the Facility. AES Cedar Bay shall meet this request or, within thirty calendar days, notify FPL in writing of the engineering or operational circumstances which prevented AES Cedar Bay from complying with FPL's request. FPL's request shall be made orally with as much prior notice to AES Cedar Bay as practicable.

7.4 For purposes of exercising certain Dispatch And Control Rights, FPL agrees to provide as much notice as practicable but in no event less than twelve hours for shutdown and eight hours for the minimum run time between start-up and shutdown. FPL may require AES Cedar Bay

to decommit the Facility; however, AES Cedar Bay may, at its sole discretion, except as provided in Sections 6.8 (i), (ii) and (iii), SALE OF ENERGY AND CAPACITY BY AES CEDAR BAY, and 7.5, operate the Facility at or below Minimum Load and deliver Energy to FPL. However, any hour, or part of an hour, that AES Cedar Bay elects to continue to operate the Facility, rather than decommit the Facility as requested by FPL, shall not be considered a Dispatch Hour. Once FPL requests the Facility to again produce generation above the Minimum Load, the first hour subsequent to such request shall be a Dispatch Hour.

- 7.5 FPL shall not be required to accept or purchase Energy during any period in which, due to operational circumstances, acceptance of such Energy, without taking into account the cost thereof, would result in FPL's incurring costs greater than those which it would incur by generating an equal additional amount of energy with its own resources. An example of such an occurrence would be a period during which the load being served is such that the generating units on line are base load units operating at their minimum continuous ratings and the purchase of additional Energy would require taking a base load unit off line and replacing the remaining load served by that unit with peaking-type generation. FPL shall give AES Cedar Bay as much prior notice as practicable of its intent not to accept Energy pursuant to this Section 7.5.
- 7.6 During the term of this Agreement, AES Cedar Bay shall provide FPL, on a weekly basis, projections of the amounts of Energy and Capacity for each calendar day of the following week. Such estimates shall be furnished by 3:00 p.m. on the Thursday prior to the week for which such schedule is required, unless otherwise agreed in writing by the Parties, and shall be updated on a daily basis by 12:00 noon of the calendar day preceding the day to which the estimates are to apply. Notwithstanding the above, AES Cedar Bay shall keep FPL informed at all times as to any change in the generation capability of the Facility, including, without limitation, Available Committed Capacity, any Unscheduled Outages and applicable Scheduled



Maintenance Periods. AES Cedar Bay shall operate the Facility consistent with FPL's Dispatch And Control Rights.

- 7.7 FPL shall, by 4:00 p.m. prevailing Eastern time each calendar day, provide AES Cedar Bay with an estimated schedule of operations pursuant to FPL Operating Limits for the following calendar day, including a Ready For Control, if applicable. If the Facility fails to meet the Ready For Control specified by FPL, AES Cedar Bay shall declare the difference between the scheduled Ready For Control and the actual Ready For Control as an Unscheduled Outage of the Facility provided the specified Ready For Control was within the FPL Operating Limits of the Facility and consistent with Section 7.4. Additionally, FPL shall have Dispatch And Control Rights to control the Facility within the Facility's FPL Operating Limits up to the Available Committed Capacity and to schedule a desired voltage for the Facility to maintain.
- 7.8 For each instance where AES Cedar Bay fails, after oral notification from FPL, or the Facility fails through automatic control while under Automatic Generation Control, to achieve the operating level at least equal to the Available Committed Capacity minus 8 MW, when requested to do so, as prescribed by FPL pursuant to Section 7.7 above, the difference between Available Committed Capacity and the actual level shall be designated as an Unscheduled Outage for the previous twenty-four hour period.
- 7.9 During the term of this Agreement, AES Cedar Bay shall submit to FPL, in writing, by April 1 of each calendar year, AES Cedar Bay's desired Scheduled Maintenance Periods for the next five calendar years and a detailed plan for the first calendar year of the five calendar year schedule. By October 31 of each calendar year, FPL shall notify AES Cedar Bay in writing whether the requested Scheduled Maintenance Periods are acceptable. If FPL cannot accept any of the requested Scheduled Maintenance Periods, FPL shall advise AES Cedar Bay of the time period(s) closest to the requested period(s) when the outage(s) can be scheduled. AES Cedar Bay shall only schedule outages during periods approved by FPL, and such approval shall not be unreasonably withheld. Notwithstanding the

previous sentence, AES Cedar Bay shall not, without the prior written approval of FPL, schedule a maintenance shutdown of the Facility during the On-peak Hours that would decrease the Capacity output of the Facility below the Committed Capacity in the calendar months of December, January or February and during the On-peak Hours during the period from June 1 through October 15 of any calendar year. Once this schedule for the detailed plan has been established and approved, any Party requesting a subsequent change in such schedule, except when such event is due to Force Majeure, must obtain approval for such change from the other Party. Such approval shall not be unreasonably withheld or delayed.

7.10 FPL shall have the right, upon twelve months prior written notice, to revise the calendar dates as specified in Sections 5.10, PRE-OPERATION PERIOD, and 7.9 above, during which AES Cedar Bay shall not, unless mutually agreed, schedule a Scheduled Maintenance Period, provided FPL's revised calendar dates adequately accommodate with reasonable flexibility for AES Cedar Bay the Scheduled Maintenance Periods.

7.11 Each Party shall keep and maintain complete and accurate records and all other data required by each of them for information purposes and for proper administration of this Agreement.

7.11.1 AES Cedar Bay shall maintain an accurate and up-to-date operating log at the Facility with records of: (i) real and reactive power production for each clock hour; (ii) changes in operating status, Scheduled Maintenance Periods and outages and deratings using the NERC operating guidelines detailed in Appendix F, NERC GUIDELINES; and (iii) any unusual conditions found during inspections.

7.11.2 Starting with the second calendar month immediately following the Initial Synchronization Date, AES Cedar Bay shall provide a report to FPL by the fifteenth business day of each calendar month utilizing the format detailed in Appendix G, FACILITY ACTUAL NET GENERATION AND PERFORMANCE DATA, as may be revised by FPL.

- 7.11.3 Either Party shall have the right from time to time, upon fourteen calendar days written notice to the other Party, to examine the records and data of the other Party relating to this Agreement at any time during the period the records are required to be maintained.
- 7.12 AES Cedar Bay shall, at its own expense, cause an independent engineering firm or such other party with recognized experience in the electric generation power industry as may be chosen by AES Cedar Bay and approved by FPL (which approval shall not be unreasonably withheld or delayed) to conduct a review of the Facility's operation and maintenance records, practices, plan and schedule after the second and before the third anniversary of the Commercial Operation Date and, unless the Parties otherwise agree, every five years thereafter. In addition, such a review shall be conducted at FPL's written request in any calendar year following a two-calendar-year period in which the Capacity Factor averages less than 75%. Such review shall include, but not be limited to, an assessment of whether the Facility can reasonably be expected to operate consistent with Good Operating and Engineering Practices and with a Capacity Factor of at least 87% for the remaining initial term of this Agreement.
- 7.13 AES Cedar Bay shall cause the independent engineering firm or such other party with recognized experience in the electrical generation power industry, as appropriate, to issue (i) a written report describing the extent to which the operations and maintenance practices, plan and schedule described in Section 7.12 are being followed, (ii) a description of, and a statement of the reasons for, any justified departure from such practices, plan or schedule, (iii) a description of any deficiencies in the Facility's operation and maintenance practices and plan, and (iv) its recommendations, if any, for improving future operation and maintenance practices and plans as they may relate to the Capacity Factor. AES Cedar Bay shall provide FPL with a copy of all written reports developed pursuant to this Section 7.13. AES Cedar Bay shall implement any recommendations made by the independent engineering firm or such

other party, as appropriate, as necessary to (i) comply with Good Engineering and Operating Practices and (ii) operate as specified in Section 7.12, unless (i) AES Cedar Bay disagrees with such determination(s), (ii) AES Cedar Bay provides FPL with a written explanation of the basis for such disagreement and the basis for AES Cedar Bay's belief that the proposed change is not needed to assure the reliable operation of the Facility as specified in Section 7.12, and (iii) either (a) FPL concurs or (b) a second qualified independent engineering firm which shall be chosen by AES Cedar Bay and approved by FPL (which approval shall not be unreasonably withheld or delayed) concludes, and provides a reasonable explanation thereof, that the change is not needed (i) under Good Engineering and Operating Practices or (ii) to assure the reliable operation of the Facility as specified in Section 7.12. AES Cedar Bay shall perform Facility maintenance in accordance with such plan. AES Cedar Bay shall keep and make available adequate maintenance records for use by the independent engineering firm or such other party, as appropriate, and/or FPL for the purpose of this review.

7.14 While any debt financing of the Facility shall exist, AES Cedar Bay will ensure that FPL receives copies of any maintenance evaluations or maintenance reports (to the extent that AES Cedar Bay has access to such evaluations or reports) to be provided to any third party with a financial security interest in, or lien on, the Facility, including evaluations or reports generated at the request of such third party or performed by an engineer employed by such third party.

7.15 During the term of this Agreement, AES Cedar Bay shall employ qualified personnel for managing, operating and maintaining the Facility and for coordinating such with FPL. AES Cedar Bay shall ensure that such personnel are on duty at all times, twenty-four hours a calendar day and seven calendar days a week. Additionally, during the term of this Agreement, AES Cedar Bay shall operate and maintain the Facility in such a manner as to ensure compliance with its obligations hereunder.

- 7.16 The Parties recognize that FPL is a member of NERC and that, to ensure continuous and reliable electric service, FPL operates its system in accordance with the operating criteria and guidelines of NERC. If an emergency is declared by FPL, FPL shall verbally notify AES Cedar Bay's personnel and, if requested by FPL, AES Cedar Bay's personnel shall place the Capacity of the Facility within exclusive control of FPL for the duration of such emergency. Without limiting the generality of the foregoing, FPL may require AES Cedar Bay's personnel to raise or lower production of Energy generated by the Facility to maintain safe and reliable load levels and voltages on the transmission and/or distribution system(s); provided, however, any changes in the level of the Energy required of the Facility hereunder shall be implemented in a manner consistent with safe operating procedures and within the FPL Operating Limits of the Facility.
- 7.17 AES Cedar Bay shall cooperate with FPL in establishing emergency plans, including, without limitation, plans for recovery from a local or widespread electrical blackout, plans for voltage reduction in order to effect load curtailment, and other plans which may be necessary. AES Cedar Bay shall make technical references available concerning start-up times, black-start capabilities and minimum load-carrying ability.
- 7.18 AES Cedar Bay shall, during an emergency, supply such Energy as the Facility is able to generate and FPL is able to receive. If the Facility has any Unscheduled Outages and/or Scheduled Maintenance Periods, and such Unscheduled Outages and/or Scheduled Maintenance Periods occur or would occur coincident with an emergency, AES Cedar Bay shall make all good faith efforts to reschedule the outage(s) or, if the outage(s) have begun, expedite the completion thereof.
- 7.19 AES Cedar Bay shall operate the Facility with all available automatic control and protection equipment, speed governors and voltage regulators in-service whenever the Facility is operated in parallel with the FPL system.
- 7.20 FPL-authorized representatives may, from time to time during regular working hours and with reasonable advance written notice, have

access to inspect the operation and maintenance records of the Facility or for other purposes necessary to determine AES Cedar Bay's performance under the terms of this Agreement, provided that FPL's inspections do not unreasonably interfere with AES Cedar Bay's operation and maintenance of the Facility.

#### 8.0 DATA ACQUISITION

- 8.1 Except as provided in Section 7.0, DISPATCH, CONTROL, OPERATION AND MAINTENANCE OF THE FACILITY, each Party shall be responsible for the design, purchase, installation, maintenance, testing and replacement of its own respective data acquisition equipment required at the Facility and at the Point of Interconnection. AES Cedar Bay shall reimburse FPL for costs incurred in the design, purchase, installation and initial testing of such data acquisition equipment in accordance with FPL's normal job order procedures. This data acquisition equipment shall include remote terminal units ("RTUs"), telephone equipment and leased telephone circuits necessary to transmit data to remote locations, and any other equipment or service necessary to provide for the telemetry requirements of FPL or AES Cedar Bay under this Agreement.
- 8.2 The data acquisition equipment shall monitor analog and digital signals deemed desirable by FPL or AES Cedar Bay to implement the provisions of this Agreement. Such data acquisition equipment shall be state-of-the-art at the time when it is purchased, be compatible at all times with the computer master equipment receiving the telemetry signals (including Automatic Generation Control), and supply status information, kWh, voltage, MW and MVAR analog information, as well as any other data required by FPL or AES Cedar Bay from time to time.
- 8.3 The "FPL RTU(s)" shall be installed exclusively to provide telemetry to the FPL system control center. The FPL RTU(s) shall be in addition to any other RTU(s) which in the future may be installed to supply data to either Party. The FPL RTU(s) shall be owned by FPL. FPL shall, at AES Cedar Bay's expense, design, purchase and install the FPL RTU(s), and, at FPL's expense, maintain, replace, relocate or remove the FPL RTU(s).

8.4 The "AES Cedar Bay RTU" or other equivalent equipment shall be installed to provide telemetry to the control center of the Facility. The AES Cedar Bay RTU shall perform the functions necessary to implement the provisions of this Agreement. The AES Cedar Bay RTU shall be owned by AES Cedar Bay. AES Cedar Bay shall, at its own expense, design, purchase, install, maintain, replace, relocate or remove the AES Cedar Bay RTU.

#### 9.0 METERING

- 9.1 The Metering Equipment necessary for determining the Energy and Capacity (real and reactive) shall be designed, purchased, installed and maintained by FPL and the Wheeling Utility, at AES Cedar Bay's expense, in accordance with this Section 9.0, and shall be a prerequisite for the commencement of interconnected operations of the Facility with FPL and the Wheeling Utility. All Metering Equipment required shall conform to FPL's standards for similar installations, which standards shall be consistent with Good Engineering and Operating Practices and will be installed at the Point of Interconnection of AES Cedar Bay and the Wheeling Utility. AES Cedar Bay shall be responsible for securing adequate space at the Point of Interconnection to accommodate the required Metering Equipment and will assure FPL reasonable access to such Metering Equipment.
- 9.2 A FPL primary meter and associated recording device shall measure and record the flow of Energy and Capacity (real and reactive) associated with the Facility. The meter will measure uni-directional watt-hour and Q hour quantities (or other quantities required by FPL) and shall be used to determine the amount of Energy and Capacity received by FPL from the Facility.
- 9.3 A complete set of FPL continuously operating redundant, back-up metering and recording equipment (e.g., meter and solid state data receiver) shall also be installed at AES Cedar Bay's expense, and used for billing purposes only if the primary meters fail or are out of service for any reason.
- 9.4 FPL shall own, maintain and test, at AES Cedar Bay's expense, all FPL meters and metering devices used to measure and record the

delivery to, and receipt by FPL of, Energy and Capacity, for payment purposes. Nothing in this Agreement shall prevent AES Cedar Bay from installing meters and metering devices for AES Cedar Bay's own purposes provided that such installations are approved by FPL and conform to FPL standards.

- 9.5 All FPL kWh and kQh meters recording flows for FPL billing purposes at the Point of Interconnection shall be sealed by FPL and shall be opened only by FPL representatives.
- 9.6 AES Cedar Bay shall be responsible for the costs incurred by FPL in maintaining and upgrading the metering facilities necessary to measure Energy and Capacity deliveries to FPL.

#### 10.0 OPERATING REPRESENTATIVES

- 10.1 At least two hundred forty calendar days prior to the Initial Synchronization date, each Party shall appoint a member and an alternate member as Operating Representatives, and provide written notice of such appointments to the other Party. Such appointments may be changed at any time by similar written notice. The respective Operating Representatives shall meet as necessary at a mutually agreed upon time upon prior written notice. The Operating Representatives shall hold other meetings at the request of either Party, at a time and place as agreed by the Operating Representatives. Each Operating Representative and alternate shall be a responsible person working with the day-to-day operations of each respective power system. The Operating Representatives shall represent the Parties in all matters arising under this Agreement which may be delegated to them by mutual agreement of the Parties.
- 10.2 The duties of the Operating Representatives shall include those specifically identified elsewhere in this Agreement, plus the following:
  - 10.2.1 Coordinate operation outage schedules;
  - 10.2.2 Establish control and operating procedures consistent with the provisions of this Agreement;
  - 10.2.3 Provide a list of Operating Representatives of each Party;and



10.2.4 Perform such other duties as may be conferred upon them by mutual agreement of the Parties.

10.3 Each Party shall cooperate in providing to the Operating Representatives all information required in the performance of their duties. If the Operating Representatives are unable to agree on any matter falling under their jurisdiction, such matter shall be referred by the Operating Representatives to their principals for decision. All decisions and agreements made by the Operating Representatives or principals shall be evidenced in writing.

#### 11.0 DELIVERY OF ENERGY AND CAPACITY

11.1 AES Cedar Bay shall be responsible for making and maintaining all necessary Wheeling arrangements.

11.2 As between the Parties, AES Cedar Bay shall be responsible for all costs associated with Wheeling of Energy and Capacity to the Interchange Point(s).

11.3 AES Cedar Bay shall keep FPL apprised of all developments regarding the Commercial Operation Date. AES Cedar Bay shall give FPL at least six months written notice before the Initial Synchronization Date, which shall not occur before February 1, 1992.

11.4 The delivery of Energy and Capacity from the Facility pursuant to this Agreement shall be on a net output basis; that is, the internal electrical requirements of the Facility shall be provided by the Facility itself and any excess will be made available for purchase by FPL.

#### 12.0 BASIS FOR PAYMENTS BY FPL

12.1 Prior to the later of (i) the Commercial Operation Date or (ii) January 1, 1994, FPL shall pay AES Cedar Bay for each MWh of Energy at a rate equal to 54% of FPL's As-available Avoided Energy Costs.

12.2 Beginning on the later of (i) the Commercial Operation Date or (ii) January 1, 1994, FPL shall pay AES Cedar Bay for each MWh of Energy delivered at a rate equal to 99% of the product of the Unit Fuel Cost times the Unit Hourly Heat Rate Factor, except when AES Cedar Bay elects to continue to operate the Facility, rather than decommit pursuant to Section 7.4, DISPATCH, CONTROL, OPERATION AND MAINTENANCE OF THE FACILITY, then the rate shall be equal to 99% of

the lesser of an hour-by-hour comparison of (i) the fuel component of FPL's As-available Avoided Energy Cost and (ii) the product of the Unit Fuel Cost and the Unit Hourly Heat Rate Factor.

12.3 The hour-by-hour rates for Energy, when AES Cedar Bay elects to continue to operate the Facility, rather than decommit pursuant to Section 7.4, DISPATCH, CONTROL, OPERATION AND MAINTENANCE OF THE FACILITY, payable by FPL pursuant to Sections 12.1 and 12.2, shall be superseded, as follows:

12.3.1 If, in any hour, because of transmission constraints attributable in whole or in part to purchases of Energy, FPL is required to deviate from the economic dispatch of its resources which would otherwise be available had such Energy not been received, the As-available Avoided Energy Costs applicable to that hour shall be reduced by the additional cost incurred by FPL attributable to the deviation from such economic dispatch, divided by the quantity of Energy delivered during such hour.

12.3.2 If, in any hour, FPL is unable to purchase a quantity of economic lower cost energy because of transmission capacity limitations attributable to Energy deliveries, the purchase rate for an equivalent quantity of Energy during such hour shall be reduced to the rate at which FPL could have purchased such lower cost energy (including transmission costs and line losses to the point of delivery to FPL). The availability and rate of such economic energy shall be determined hourly by reference to the quantities, quoted prices and applicable methodology used to determine transactions from the Florida energy broker or between FPL and any other utility. FPL shall maintain such records and data as may be reasonably necessary for AES Cedar Bay to verify that such lower cost alternatives were available to FPL under the circumstances then prevailing.

12.4 Calculation of Monthly Energy Payments to AES Cedar Bay shall be based on the sum, over all hours of the Monthly Billing Period, of

the product of each hour's applicable rate as set forth in Section 12.1 or 12.2, as those rates may be modified from time to time pursuant to Section 12.3, times the purchases of Energy by FPL for that hour.

- 12.5 Beginning on the Commercial Operation Date, FPL shall pay AES Cedar Bay the Monthly Capacity Payments at rates set forth in Appendix A, MONTHLY CAPACITY AND O&M PAYMENT CALCULATION, provided that FPL shall have no obligation to make any Monthly Capacity Payments if any Event of Default shall have occurred. However, if any Event of Default occurs under Sections 3.6.1, 3.6.2, 3.6.5, 3.6.6, 3.6.7, 3.6.8 and 3.6.9, TERM AND TERMINATION, and AES Cedar Bay completes a timely cure and, with respect to Events of Default under Sections 3.6.3 or 3.6.4, TERM AND TERMINATION, the Facility resumes delivery of Energy and Capacity and is otherwise in compliance with the terms of this Agreement, FPL shall resume Monthly Capacity Payments, provided, however, nothing in this Section 12.5 shall extend or modify any cure period which may be provided for in Sections 3.6 or 3.7, TERM AND TERMINATION. FPL shall pay AES Cedar Bay, for any partial Monthly Billing Period, pro rata adjusted Monthly Capacity Payments.
- 12.6 If, at the end of any Monthly Billing Period during the term of this Agreement, the Facility has not operated at a Capacity Factor of at least 57%, based on the Committed Capacity, FPL shall not be obligated to make a Monthly Capacity Payment during such Monthly Billing Period. AES Cedar Bay shall not be relieved of any of its obligations under this Agreement in the event FPL is not obligated to make payments pursuant to this Section 12.6.
- 12.7 If, at the end of each of the first six Monthly Billing Periods immediately following the Commercial Operation Date, the Facility operated at a Monthly Capacity Factor for such Monthly Billing Period of less than 87%, then 90% of the difference between the amount which AES Cedar Bay could have earned with a Monthly Capacity Factor of 87% for such Monthly Billing Period and the amount AES Cedar Bay actually did earn for such Monthly Billing Period shall be paid to AES Cedar Bay if (i) the Monthly On-peak Capacity Factor for

such Monthly Billing Period was at least 62.5% and (ii) each Monthly Capacity Factor during the second six Monthly Billing Periods immediately following the Commercial Operation Date is equal to or greater than 87%. The amount, if any, due to AES Cedar Bay shall be paid to AES Cedar Bay in one payment at the end of the second six months immediately following the Commercial Operation Date. In the event FPL is not obligated to make payments pursuant to this Section 12.7, AES Cedar Bay shall not be relieved of any of its obligations under this Agreement.

- 12.8 In the event that AES Cedar Bay shall be declared in default of any of its agreements (including sale/leaseback arrangements) with any Lenders or the lessor under the ground lease for the Facility, the result of which has given rise to a demand of acceleration, foreclosure or eviction proceeding, and further provided that no Event of Default has occurred and continued full payment for Energy and Capacity by FPL as provided under this Agreement would result in a net increase in the Termination Fee, then, FPL may retain the portion of the Monthly Energy Payment and Monthly Capacity Payment which would result in such net increase to the Termination Fee as additional security for FPL until AES Cedar Bay's default to its Lenders or ground lessor, as the case may be, is cured, or if the Lenders have foreclosed, until the Lenders or the operator installed by the Lenders is able to demonstrate, to the satisfaction of FPL in its reasonable judgment, that it is capable of fulfilling all of its obligations under this Agreement, in either of which events FPL will pay the withheld amount plus accrued interest to AES Cedar Bay (or, if the Lenders have foreclosed, then to the Lenders). AES Cedar Bay acknowledges that the portion of the Monthly Energy Payments and Monthly Capacity Payments which would result in a net increase in the Termination Fee is a financial accommodation for the benefit of AES Cedar Bay. Any portion of the Monthly Energy Payments and Monthly Capacity Payments which does not provide a net increase to the Termination Fee shall be due and payable as otherwise provided under this Agreement.

### 13.0 BILLING AND PAYMENT

13.1 On a monthly basis, FPL shall prepare a Monthly Billing Statement summarizing the quantities of Energy and Capacity received by FPL for the preceding Monthly Billing Period and any payments, calculated in accordance with Section 12.0, BASIS FOR PAYMENT BY FPL, due AES Cedar Bay arising from such receipts. Not later than the twentieth business day of each calendar month, FPL shall mail to AES Cedar Bay a Monthly Billing Statement, together with FPL's payment of amounts due to AES Cedar Bay. Each Monthly Billing Statement shall contain at least the following information:

- 13.1.1 For the Monthly Billing Period, the total number of hours, the total number of Available Run Hours, the total number of Available Run On-peak Hours, the total number of Dispatch Hours and a list of which hours the Facility was actually Dispatched, each separately stated;
- 13.1.2 The current Committed Capacity and the current Unit Fuel Cost for that month;
- 13.1.3 The Energy received by FPL during each hour in the Monthly Billing Period;
- 13.1.4 The total Energy received by FPL in excess of that which could be produced by the Committed Capacity and which FPL did not request;
- 13.1.5 The Energy received by FPL during all hours and the On-peak Hours;
- 13.1.6 The Capacity Factor, Annual Capacity Factor and Annual On-peak Capacity Factor for the Monthly Billing Period;
- 13.1.7 The rate paid by FPL for Energy during each hour in the Monthly Billing Period;
- 13.1.8 The calculated Monthly Energy Payment during the Monthly Billing Period;
- 13.1.9 The Monthly Capacity Payment during the Monthly Billing Period; and
- 13.1.10 Such other information, data or calculations as FPL or AES Cedar Bay deems reasonably necessary to adequately calculate payment amounts.

- 13.2 Within thirty calendar days of its receipt of a Monthly Billing Statement, AES Cedar Bay shall review its contents and advise FPL in writing of any errors or misstatements contained therein. Failure of AES Cedar Bay to discover any errors or misstatements within three years plus the then-current Monthly Billing Period shall extinguish AES Cedar Bay's right to any billing adjustment(s) for such errors or misstatements.
- 13.3 If any errors or misstatements should arise in connection with any portion of any Monthly Billing Statement, the Parties agree to proceed in good faith to settle any such items expeditiously. After any such items are settled between the Parties, adjustments in prior months' invoices shall be added to, or credited against, the next Monthly Billing Statement.
- 13.4 Supplementing the information provided pursuant to Section 13.1, FPL will provide AES Cedar Bay with such further information pertaining to rates and delivery of Energy and Capacity as AES Cedar Bay may reasonably request. FPL may comply with AES Cedar Bay's request for information by providing AES Cedar Bay access to relevant materials at FPL's business offices during normal business hours. AES Cedar Bay shall pay all expenses incurred by FPL in complying with requests for information made pursuant to this Section 13.4.
- 13.5 AES Cedar Bay shall be billed monthly an amount equal to the taxes, assessments or other impositions, if any, for which FPL is liable as a result of its purchases of Energy and Capacity from AES Cedar Bay.
- 14.0 **TERMINATION FEE STATEMENT**
- 14.1 At the end of each Monthly Billing Period, FPL shall prepare a statement ("Monthly Termination Fee Statement") summarizing the Termination Fee. The Monthly Termination Fee Statement shall include the amount of the Termination Fee as of the end of such Monthly Billing Period and such other information, data or calculations as FPL or AES Cedar Bay deems reasonably necessary to adequately advise AES Cedar Bay of the status of the Termination Fee.
- 14.2 FPL shall mail the Monthly Termination Fee Statement to AES Cedar Bay within twenty business days after the close of each Monthly Billing Period.

14.3 Within thirty calendar days of the date the Monthly Termination Fee Statement is received, each Party shall use reasonable efforts to notify, in writing, the other Party of any errors, misstatements or other problems with the Monthly Termination Fee Statement.

#### 15.0 INSURANCE

15.1 Prior to the start of, and during construction and installation of, the Facility, AES Cedar Bay shall procure and maintain, or cause and require the prime contractor on the Facility to procure and maintain, the following types and amounts of insurance:

15.1.1 Builders' risk insurance, in an amount equal to the replacement cost of the Facility components under construction, to cover property-related risks (e.g., fire, theft, materials in storage) inherent in construction projects;

15.1.2 Statutory Workers' Compensation and employers' liability insurance, in an amount of at least One Hundred Thousand Dollars (\$100,000), to compensate employees for all injuries and diseases arising out of employment at the Facility; and

15.1.3 Commercial general liability insurance, in an amount of at least Three Hundred Thousand Dollars (\$300,000), to cover all bodily injuries and property damage arising out of construction and installation of the Facility.

15.2 On and after the Commercial Operation Date, AES Cedar Bay shall procure and maintain such insurance coverages as are specified in Sections 15.3 and 15.4.

15.3 As of and following the Commercial Operation Date, the long-term availability of the Facility shall be protected and assured by a complete industrial insurance program, however, in the event that such insurance becomes unavailable or, in the mutual opinion of FPL and AES Cedar Bay, is available only at prohibitive cost, the lack of such insurance shall not constitute an Event of Default under this Agreement, but FPL and AES Cedar Bay shall enter into negotiations to develop substitute protection for FPL Entities which

FPL deems adequate. Such insurance package for the Facility shall include at least the following coverages:

- 15.3.1 All risk property and boiler and machinery insurance, in an amount of at least One Hundred Fifty Million Dollars (\$150,000,000) (such loss limit being based upon an assessment of the exposure and maximum loss probability), to provide comprehensive coverage for the Facility. Such policy(ies) shall be written on a replacement cost basis.
- 15.3.2 Statutory Workers' Compensation and employers' liability insurance, in an amount of at least One Hundred Thousand (\$100,000), to compensate employees for all injuries and diseases arising out of employment at the Facility.
- 15.4 AES Cedar Bay shall procure commercial general liability insurance which shall cover generally all liabilities which might arise under, or in the performance or nonperformance of, this Agreement. At a minimum, said policy shall contain (i) endorsements providing coverage, including, but not limited to, products liability/completed operations coverage, and (ii) a broad form contractual liability endorsement for FPL Entities. The policy shall include coverage for interruption or curtailment of power supply subject to a maximum deductible of One Million Dollars (\$1,000,000).
- 15.5 FPL Entities shall be designated as an additional named insured, and the policy shall be endorsed to be primary to any insurance which may be maintained by, or on behalf of, FPL Entities. The policy shall be in a minimum limit of Ten Million Dollars (\$10,000,000) per occurrence, combined single limit, for bodily injury (including death) or property damage. Any premium assessment or deductible shall be for the account of AES Cedar Bay and not FPL Entities.
- 15.6 In the event that the policy is on a "claims made" basis, the retroactive date of the policy shall be the effective date of this Agreement or such other date as to protect the interests of FPL Entities. Furthermore, if the policy is on a "claims made" basis, AES Cedar Bay's providing of such coverage shall survive the termination of this Agreement until the expiration of the maximum



statutory period of limitations in the State of Florida for actions based in contract or in tort (currently, five years); if coverage is on an "occurrence" basis, such insurance shall be maintained by AES Cedar Bay during the entire term of this Agreement. The policy shall not be canceled or materially altered without at least thirty calendar days written notice to FPL (or at least ten calendar days if due to the non-payment of premiums).

15.7 AES Cedar Bay shall provide to FPL evidence of such property and liability insurance coverage on FPL Form 1364-23, without modification; an example of such form is attached hereto as Appendix C, INSURANCE. A copy of the policy will be made available for inspection by FPL upon reasonable request.

#### 16.0 INDEMNIFICATION

AES Cedar Bay agrees to indemnify and save harmless FPL Entities against any and all liability, loss, damage, costs or expense which FPL Entities may hereafter incur, suffer or be required to pay by reason of negligence on the part of AES Cedar Bay in performing its obligations pursuant to this Agreement or AES Cedar Bay's failure to abide by the provisions of this Agreement. FPL agrees to indemnify and save harmless AES Cedar Bay against any and all liability, loss, damage, cost or expense which AES Cedar Bay may hereafter incur, suffer, or be required to pay by reason of negligence on the part of FPL in performing its obligations pursuant to this Agreement or FPL's failure to abide by the provisions of this Agreement.

#### 17.0 LIMITATIONS OF LIABILITY

17.1 Nothing contained in this Agreement shall be construed to create an association, trust, partnership or joint venture between AES Cedar Bay and FPL. No payment by FPL to AES Cedar Bay for Energy or Capacity shall be construed as payment by FPL for the acquisition of any ownership or property interest in the Facility. Each Party shall be individually and severally liable for its own obligations under this Agreement.

17.2 In no event shall AES Cedar Bay be liable (in contract or in tort, including negligence, or otherwise) to FPL for indirect, incidental or consequential damages resulting from AES Cedar Bay's performance,

nonperformance or delay in performance of its obligations under this Agreement. However, AES Cedar Bay's obligations under Sections 3.6.9, 3.7.1, 3.9 and 3.10, TERM AND TERMINATION; 4.0, COMPLETION SECURITY; and 21.0, SECURITY; and FPL's remedies for breach of such obligations as specified in this Agreement are not limited by this Section 17.2. Additionally, any liability of AES Cedar Bay for damages under Section 3.8, TERM AND TERMINATION, shall be determined in a manner consistent with this Section 17.2.

17.3 In no event shall FPL Entities be liable (in contract or in tort, including negligence, or otherwise) to AES Cedar Bay or its suppliers or its subcontractors for indirect, incidental or consequential damages resulting from FPL's performance, nonperformance or delay in performance of its obligations under this Agreement.

17.4 The Parties acknowledge that AES Cedar Bay has entered into this Agreement on its own behalf, and in no manner on behalf of Applied Energy Services, Inc. ("AES"), and that FPL shall have no recourse hereunder against AES, its affiliates or any of their respective successors or assigns (other than AES Cedar Bay and its successors or assigns) for any reason; provided, however, that this Section 17.4 shall in no way effect or limit FPL's recourse against AES or its successors or assigns (i) pursuant to the terms of the project cancellation payment guarantee letter and the AES guarantee letter, which are to be executed by AES concurrently with this Agreement in accordance with Sections 4.1, COMPLETION SECURITY, and 21.1, SECURITY, respectively, or (ii) for amounts received by AES or its successors or assigns in contravention of Sections 21.1, 21.3 and/or 21.9, SECURITY.

#### 18.0 COMPLIANCE WITH LAWS, RULES AND REGULATIONS

18.1 AES Cedar Bay hereby agrees to seek, obtain and maintain, at its sole expense, any and all governmental permits, certifications and other authorizations which are required by law as prerequisites to engaging in the activities envisioned by this Agreement.

18.2 AES Cedar Bay shall conform to the requirements, where applicable, of the Equal Employment Opportunity clause in Section 202,

Paragraphs 1 through 7 of Executive Order 11246, as amended, and the portions of Executive Orders 11701 and 11758 relative to Equal Employment Opportunity and the applicable implementing Rules and Regulations of the Office of Federal Contracts Compliance.

- 18.3 This Agreement and the rights and the obligations of the Parties hereunder shall be construed under, and in accordance with, the laws of the State of Florida.
- 18.4 Notwithstanding any other provision of this Agreement, if FPL, at any time during the term of this Agreement, fails to obtain or is denied the authorization of the FPSC, or the authorization of any other legislative, administrative, judicial or regulatory body which now has, or in the future may have, jurisdiction over FPL's rates and charges, to recover from its ratepayers any or all of the payments required to be made to AES Cedar Bay pursuant to Section 12.0, BASIS FOR PAYMENT BY FPL, under the terms of this Agreement or any subsequent amendment hereto, FPL may, at its sole option, adjust the payments made under this Agreement to the amount(s) which FPL is authorized to recover from its ratepayers. If such determination of disallowance is ultimately reversed and FPL recovers payments previously disallowed, FPL shall pay all withheld payments as recovered, without interest. AES Cedar Bay acknowledges that any amounts initially received by FPL from its ratepayers, but for which recovery is subsequently disallowed and charged back to FPL, may be offset or credited, without interest, against subsequent payments to be made by FPL to AES Cedar Bay under this Agreement. If, at any time, FPL receives notice that the FPSC or any other legislative, administrative, judicial or regulatory body seeks or will seek to prevent full recovery by FPL from its ratepayers of all payments required to be made under the terms of this Agreement or any subsequent amendment to this Agreement, then FPL shall, within thirty calendar days of FPL's receipt of such notice, give written notice thereof to AES Cedar Bay. FPL shall use its best efforts to defend and uphold the validity of this Agreement and its right to recover from its ratepayers all payments required to be made by FPL hereunder, and will cooperate in any effort by AES Cedar Bay and/or

the Lenders to the extent allowed by law or the rules or regulations of the FPSC, to intervene in any proceeding challenging, or to otherwise be allowed to defend, the validity of this Agreement and the right of FPL to recover from its ratepayers all payments to be made by it hereunder. In the event of any such disallowance or adjustment to payments as aforesaid which materially alters the Parties' obligations and rights under this Agreement, AES Cedar Bay may, in its sole discretion, with as much written notice to FPL as is practicable under the circumstances then prevailing, (i) reduce, curtail or suspend deliveries and sales of Energy or Capacity, or both to FPL, or (ii) terminate this Agreement. In the event that this Agreement is terminated pursuant to the foregoing, the Parties shall have no further future obligations to each other, except that such termination shall not affect the liability of either Party for obligations arising prior to such termination (including, in particular, AES Cedar Bay's obligation to pay the Termination Fee, if any, calculated in accordance with Appendix B, TERMINATION FEE), or for damages, if any, resulting from breach of this Agreement.

**19.0 FORCE MAJEURE**

- 19.1 Except as otherwise provided in this Agreement, either Party shall be excused from performance when its nonperformance was caused directly or indirectly by Force Majeure.
- 19.2 In the event of any delay or nonperformance resulting from Force Majeure, the Party suffering an occurrence of Force Majeure shall promptly notify the other, in writing, of the nature, cause, date of commencement thereof and the anticipated extent of such delay, and shall indicate whether any date(s) may be affected thereby. The suspension of performance shall be of no greater scope and of no greater duration than the cure for the Force Majeure requires.
- 19.3 The Party suffering an occurrence of Force Majeure shall, with all reasonable speed, remedy the cause(s) preventing its performance of this Agreement; provided, however, the settlement of strikes, lockouts and other labor disputes shall be entirely within the discretion of the affected Party, and it shall not be required to

settle such strikes, lockouts or other labor disputes by acceding to demands which such Party deems to be unfavorable.

- 19.4 Capacity payments will be made to AES Cedar Bay during the period(s) of Force Majeure, provided the Capacity Factor of the then current Monthly Billing Period is greater than or equal to 57%.

## 20.0 NOTICES

- 20.1 Notices required to be in writing under this Agreement shall be delivered in person or sent by certified mail, return receipt requested, as specified below:

20.1.1 To AES Cedar Bay:  
AES Cedar Bay, Inc.  
1001 North 19th Street  
Arlington, Virginia 22209  
Attention: Dennis W. Bakke  
(703) 522-1315

20.1.2 To FPL:  
Florida Power & Light Company  
Post Office Box 029100  
Miami, Florida 33102  
Attention: Director of Bulk Power Markets Department  
(305) 552-3847

- 20.2 AES Cedar Bay shall provide written notice of the appropriate person(s) and address(es) of its Lenders. FPL's obligations hereunder to provide the Lenders with the notice and opportunity of cure or assumption rights specified herein shall only be with respect to such Lenders which FPL has received written notice of pursuant to the terms of this Section 20.0.

- 20.3 Notices shall be effective upon receipt.

- 20.4 Either Party may, at any time and by written notice, designate any different person(s) or different address(es) for receipt of notices and correspondence.

## 21.0 SECURITY

- 21.1 AES Cedar Bay shall provide FPL a guarantee by its parent corporation, Applied Energy Services, Inc. ("AES"), equal to the greater of (i) Ten Million Dollars (\$10,000,000) or (ii) 50% of the

cumulative net project cash flow (after taxes and debt service) from AES Cedar Bay to AES. Such AES guarantee shall be evidenced by the guarantee letter contained in Appendix K, FORM OF AES GUARANTEE LETTER, which shall be executed concurrently with this Agreement and backed up by unconditional and irrevocable letter(s) of credit supplied by AES and issued, no later than sixty calendar days after the Monthly Capacity Payments begin, by bank(s) acceptable to FPL, in form and in substance acceptable to FPL (including, among others, provisions for automatic renewals through the term of this Agreement, and thirty days prior written notice by the issuing bank(s) to FPL of the issuing bank(s) intention not to renew the letter(s) of credit, upon receipt of which notice FPL may draw upon the letter(s) of credit in full). The amount so guaranteed and supported by letter(s) of credit shall not exceed the lesser of (i) Seventy-five Million Dollars (\$75,000,000) or (ii) the Termination Fee. The obligations to provide such guarantee and such letter(s) of credit shall continue until AES Cedar Bay's obligation to pay the Termination Fee under Sections 3.9 and 3.10, TERM AND TERMINATION, and Appendix B, TERMINATION FEE, has expired. Each year, AES shall have an independent financial organization audit AES Cedar Bay's books to confirm and report to FPL the amount of the after-tax project cash flow which is the basis of AES's guarantee. Each such report shall be provided to FPL within ninety calendar days after the end of the applicable calendar year. In the event such letter(s) of credit are not provided as specified in this Section 21.1, FPL shall have the right to withhold from the Monthly Capacity Payments, an amount equal to the greater of (i) Two Hundred Fifty Thousand Dollars (\$250,000) per month for the first three years, and Five Hundred Thousand Dollars (\$500,000) per month thereafter or (ii) the difference between (a) the sum of the Monthly Capacity Payment and Monthly Energy Payment and (b) AES Cedar Bay's actual operating costs (excluding any corporate overhead but including debt service). In addition to the foregoing, AES Cedar Bay will be restricted from paying dividends during the period in which such Monthly Capacity Payments are withheld pursuant to this Section 21.1. Upon FPL's receipt of the applicable letter(s)

of credit, FPL shall remit the amount previously withheld, without interest. The face amount of the letter(s) of credit required pursuant to this Section 21.1, shall be reduced by the amount, if any, held in an escrow account (the "Escrow") for the benefit of FPL, free and clear of all liens, including, specifically, the liens of the Lenders. The Escrow shall be established and maintained at the expense of AES (or AES Cedar Bay) and held by an escrow agent (acceptable to FPL) pursuant to an escrow agreement in form and substance acceptable to FPL. Prior to the establishment of the Escrow, AES Cedar Bay shall have obtained the express written waiver of the Lenders to any and all rights in and to the Escrow and the proceeds therefrom.

- 21.2 Under the terms of the AES Cedar Bay/Seminole Kraft steam sales contract, AES Cedar Bay shall cause Seminole Kraft to be obligated to provide on or before the Commercial Operation Date one or more unconditional and irrevocable letters of credit or promissory notes to secure Seminole Kraft's performance. Such letter(s) of credit or promissory note(s) shall be a minimum beginning balance of One Million Dollars (\$1,000,000) within sixty days of the Commercial Operation Date and shall increase by a minimum of One Million Dollars (\$1,000,000) per Agreement Year, until such balance shall be at least Ten Million Dollars (\$10,000,000). Such amounts will be available to AES Cedar Bay in the event that Seminole Kraft defaults on its obligations to buy steam from the Facility. Such amounts shall be utilized by AES Cedar Bay to maintain (or reinstate) the "qualifying" statuses of both AES Cedar Bay and the Facility throughout the term of this Agreement by taking all necessary actions on a timely basis, including, but not limited to, (i) building a new steam-using facility (e.g., a CO<sub>2</sub> or other industrial gas production plant), (ii) constructing a steam pipeline to any neighboring steam user(s), and/or (iii) modifying elements of the Seminole Kraft mill to use steam in an acceptable manner. Upon its execution, a copy of the steam sales contract shall be provided to FPL.

21.3 AES Cedar Bay shall establish and maintain a cash reserve fund, held by an agent for the benefit of FPL, of at least Forty Million Dollars (\$40,000,000). Unless a foreclosure action filed by the Lenders is pending, at FPL's option, Ten Million Dollars (\$10,000,000) of the reserve fund may be designated for utilization to maintain (or reinstate) the "qualifying" statuses of both AES Cedar Bay and the Facility throughout the term of this Agreement. Beginning no later than the Commercial Operation Date, AES Cedar Bay shall make quarterly contributions to this reserve fund based on its net cash flow after taxes and debt service ("Net Cash Flow") as follows: (i) 90% of the first Two Million Dollars (\$2,000,000) of Net Cash Flow per year, (ii) 60% of the next Two Million Dollars (\$2,000,000) of Net Cash Flow per year and (iii) 30% of Net Cash Flow thereafter per year, until the balance of such fund equals Forty Million Dollars (\$40,000,000). However, if funds are withdrawn from the reserve fund, then 100% of the Net Cash Flow shall be contributed until the withdrawn amount has been replenished. If the reserve fund does not contain a total of Forty Million Dollars (\$40,000,000) no later than ten years from the Commercial Operation Date, then 100% of the Net Cash Flow shall be contributed until the reserve fund equals Forty Million Dollars (\$40,000,000). After fifteen years from the Commercial Operation Date, the Forty Million Dollar (\$40,000,000) reserve fund may, at the election of AES Cedar Bay with at least ninety calendar days advance written notice to FPL, be reduced by up to One Million Eight Hundred Thousand Dollars (\$1,800,000) per Agreement Year. In lieu of cash deposits, AES Cedar Bay may obtain unconditional and irrevocable direct pay letter(s) of credit issued by banks acceptable to FPL, in form and substance acceptable to FPL, in amounts equal to the cash contributions set forth above.

21.3.1 If the Lenders require AES Cedar Bay to establish and maintain a reserve fund or letter(s) of credit in amounts meeting or exceeding each of the requirements set forth in Section 21.3, then those requirements will be deemed satisfied and FPL shall have a secondary lien on such



amounts. AES Cedar Bay's right to make withdrawals will be governed by the loan agreement. Such lien shall be subordinate in all respects to the lien and rights of the Lenders, and FPL shall have no right to realize its secondary interest unless and until the Lenders have either exercised their own prior rights or have waived such rights in writing. Within sixty calendar days of their execution, copies of the loan agreements, and any amendments thereto requiring the establishment of the reserve fund or letter(s) of credit, shall be provided to FPL. AES Cedar Bay shall also provide to FPL quarterly reports regarding the status of the reserve fund or letter(s) of credit, as applicable.

21.3.2 In the event that AES Cedar Bay's loan agreements do not require the establishment and maintenance of a reserve fund or letter(s) of credit meeting all requirements set forth in Section 21.3 during the entire term of this Agreement (including, among others with respect to the letter(s) of credit, provisions for automatic renewals through the term of this Agreement, and sixty days prior written notice by the issuing bank(s) to FPL of the issuing bank(s) intention not to renew the letter(s) of credit, upon receipt of which notice FPL may draw upon the letter(s) of credit in full), AES Cedar Bay shall be required by this Agreement to do so. FPL shall have a first lien on all such amounts in excess of the Lenders' reserve requirement, if any, during the time period in which the Lenders' reserve fund exists, and to all amounts if the Lenders' reserve fund is not required or ceases to exist, to secure performance of AES Cedar Bay's obligations under this Agreement, including payment of the Termination Fee. At least thirty calendar days prior to initial Energy deliveries, AES Cedar Bay shall provide to FPL, in writing, proof that such reserve fund has been

created and, thereafter, shall provide to FPL quarterly reports regarding the status of such reserve fund.

21.4 The Parties acknowledge that construction of the Facility will require financing by Lenders and that such Lenders require the financing to be secured by a first lien upon the Facility, including a collateral assignment of this Agreement; provided, however, any takeover of the Facility and the rights of AES Cedar Bay under this Agreement by any Lenders, or the foreclosure and sale of the Facility and the assignment of AES Cedar Bay's rights under this Agreement to a new operator, shall be on terms requiring compliance with all provisions of this Agreement, including Sections 3.6.6 and 3.7, TERM AND TERMINATION, as applicable; and provided further that such new operator is, in the reasonable opinion of FPL, reasonably qualified to perform the assumed obligations. FPL shall also execute a consent and agreement with respect to a collateral assignment hereof in the form attached hereto as Appendix L, CONSENT TO COLLATERAL ASSIGNMENT FORM, or in form and in substance as may be agreed to by the Parties upon request of the Lenders in connection with the project financing, provided AES Cedar Bay shall reimburse FPL for all reasonable costs incurred by FPL in connection therewith, including reasonable attorneys' fees, and further provided that FPL's duty to make factual statements or representations in such consent and agreement shall be contingent upon the truthfulness and accuracy of such statements or representations at the time the consent to assignment is delivered. AES Cedar Bay agrees that the financing agreements into which it enters with the Lenders will require the Lenders to give FPL written notice of any default by AES Cedar Bay and afford FPL sixty days following such notice and beyond any period afforded AES Cedar Bay, or longer as the Lenders may permit, to pay any sums due to such Lenders. Any amounts advanced by FPL for payment of taxes, insurance, sums due to senior lienors or other such items shall be secured by the lien of the security interest provided for in Section 21.6.

- 21.5 AES Cedar Bay agrees that the ground lease which it enters with the owner of the real property upon which the Facility is located will be in form and substance reasonably acceptable to FPL, containing provisions including, but not limited to, a requirement that the lessor give FPL written notice of any default by AES Cedar Bay and afford FPL sixty days following such notice, or longer as the lessor shall permit, to cure such default. Any amounts advanced by FPL for payment of sums due lessor or other items advanced in furtherance of this Section 21.5 shall be secured by the lien of the security interest provided for in Section 21.6.
- 21.6 On or before the Commercial Operation Date, AES Cedar Bay shall secure all of its obligations under this Agreement, including the obligation to pay the Termination Fee, by delivering a leasehold mortgage and security agreement encumbering the Facility (i) in the form attached hereto as Appendix H, FORM OF SECOND MORTGAGE AND SECURITY AGREEMENT, or (ii) in form and in substance as may be agreed by the Parties, and by delivering security agreements encumbering the promissory notes and/or reserve funds provided in Sections 21.2 and 21.3 and other personal property of AES Cedar Bay (i) in the form attached hereto as Appendix I, FORM OF SECURITY AGREEMENT, or (ii) in form and in substance as may be agreed to by the Parties. Such mortgage and security agreements shall be subordinate in all respects to the lien and rights of the Lenders. FPL will execute and deliver to the Lenders, in recordable form if so requested, such subordination agreements and instruments as the Lenders shall reasonably request to effect the subordination provided by this Section 21.6. FPL will bear the costs assessed by any governmental agencies attendant to the perfection and recording of such security agreements.
- 21.7 So long as it has any obligation to pay a Termination Fee, AES Cedar Bay will assure that the following condition is met:
- A + B - (C + D + E) shall never exceed F where
  - A = the total balance due to all Lenders under financing agreements pertaining to the Facility, including all accrued interest and costs;

- B - the levelization payment as set forth in Appendix J, LEVELIZATION PAYMENT, for the applicable Agreement Year which would be due if this Agreement were to be terminated on that date;
- C - the amount of Termination Fee security in effect pursuant to Section 21.1;
- D - the face amount of any unconditional and irrevocable letter(s) of credit, if any, maintained pursuant to Section 21.2;
- E - the balance in the reserve fund maintained pursuant to Section 21.3;
- F - the greater of (i) 100% of the fair market value of the Facility as determined in accordance with Section 21.8 or (ii) the sum of the actual Facility development, construction and start-up costs, including construction period financing costs and cost overruns, and an imputed equity contribution of Twenty-four Million Dollars (\$24,000,000).

21.8 For purposes of determining the fair market value of the Facility pursuant to Section 21.7, AES Cedar Bay shall, at AES Cedar Bay's expense, cause two qualified independent engineering firms or such other parties with recognized experience in the electric generation power industry as may be chosen by AES Cedar Bay and approved by FPL, which approval shall not be unreasonably withheld or delayed, to determine fair market value, which shall be the replacement cost of an equivalent new facility, as adjusted to reflect the Facility's age, condition and remaining useful life based on the then existing state of the Facility at the time of determination. Each firm will prepare a report setting forth the bases for its determination and submit its report to FPL and AES Cedar Bay. The fair market value shall be the average of the two determinations, neither of which shall be more than twelve months old.

21.9 So long as AES Cedar Bay has any obligation to pay a Termination Fee, it will make no distributions or payments to its shareholder(s) and will pay no dividends unless, at the time thereof, the

provisions of Section 21.7 are satisfied. Beginning with the Commercial Operation Date, AES Cedar Bay will provide FPL with a letter from a nationally recognized independent certified public accounting firm on a quarterly basis certifying that the conditions specified in Section 21.7 have been met.

21.10 The Parties agree to execute and deliver on demand any and all further instruments reasonably required by the respective Parties to carry out the security provisions of this Agreement.

## 22.0 MISCELLANEOUS

22.1 Except as provided in Section 21.4, SECURITY, AES Cedar Bay may not assign any of its obligations under this Agreement without the prior written consent of FPL, which consent shall not be unreasonably withheld; provided, however, AES Cedar Bay may, without FPL's consent, assign to other parties any or all of the benefits to be derived by it under this Agreement.

22.2 Upon FPL's request, in the event that reduction of effluents or pollutants at or emanating from the Facility, which reduction is beyond limits required by law or achievable by the Facility, could result in allowances or credits which FPL determines would be of benefit to FPL, AES Cedar Bay shall permit FPL to effect such reduction in a manner acceptable to AES Cedar Bay so long as AES Cedar Bay remains economically and operationally neutral as a result of such reduction relating to the Facility. In order to assure such neutrality, FPL shall pay all actual present and future direct and indirect costs of such reduction and all reasonable expenses, including present and future lost revenues associated with Energy, Capacity and steam sales to AES Cedar Bay's steam customer, arising therefrom. FPL shall be entitled to receive such allowances or credits resulting from such reduction, but AES Cedar Bay shall have title to any improvements or modifications to the Facility, at no cost to AES Cedar Bay, upon acceptance by AES Cedar Bay of such improvements or modifications following a reasonable demonstration test. Upon FPL's request, AES Cedar Bay shall permit FPL to effect the removal of any or all of the improvements or modifications installed pursuant to this Section 22.2, in a manner acceptable to

AES Cedar Bay, so long as AES Cedar Bay remains economically and operationally neutral as a result of such removal. The value to AES Cedar Bay, if any, of the improvements or modifications shall not be considered in determining the economic and operational neutrality of such removal. AES Cedar Bay agrees to cooperate with FPL in connection with such reduction and/or removal. For purposes of this Section 22.2, operationally neutral shall mean that any difference that may have existed prior to FPL effecting the change in such effluent or pollutant, over the relevant averaging period, between (i) the actual average emissions of a given effluent or pollutant and (ii) the permitted emissions of the same effluent or pollutant shall remain generally the same after FPL effects the change in such effluent or pollutant.

- 22.3 This Agreement, as it may be amended from time to time, shall be binding upon, and inure to the benefit of, the Parties' respective successors-in-interest (including foreclosing Lenders and lien holders after default by AES Cedar Bay) and legal representatives.
- 22.4 Any waiver by either Party of its rights with respect to a default (including Events of Default) under this Agreement, or with respect to any other matters arising in connection with this Agreement, shall not be deemed a waiver with respect to any subsequent default (including Events of Default) or other matter.
- 22.5 The failure of either Party to enforce strict performance by the other Party of any of the provisions of this Agreement or to exercise any rights under this Agreement shall not be construed as a waiver or relinquishment to any extent of such Party's right to assert or rely upon any such provisions or rights in that or any other instance.
- 22.6 Section headings appearing in this Agreement are inserted for convenience only and shall not be construed as interpretations of text.
- 22.7 The Parties acknowledge and agree that this Agreement is contingent upon approval of the FPSC of Amendment No. 2 to the Original Agreement, to which this Agreement appears as Exhibit A, and that in the event such approval is not obtained, the Original Agreement

shall remain in effect and unchanged without reference to this Agreement.

22.8 This Agreement constitutes the entire agreement and understandings between the Parties with respect to the subject matter hereof, and supersedes all prior agreements and understandings relating to this subject matter. No modification or waiver of any term of this Agreement, or any amendment of this Agreement, shall be effective unless it is in writing and signed by the Parties.

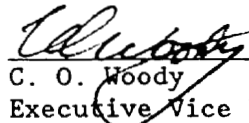
22.9 The Parties explicitly recognize that FPL's reviews, agreement, approvals, disapprovals and authorizations pursuant to this Agreement are administrative in nature and do not relieve AES Cedar Bay of its obligations for the design, construction, operation and maintenance of the Facility or impose any such obligations on FPL.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their respective duly authorized officers.

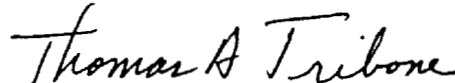
FLORIDA POWER & LIGHT COMPANY

AES CEDAR BAY, INC.

By:

 7-17-90  
C. O. Woody Date  
Executive Vice President

By:

 7-13-90  
Thomas A. Tribone Date  
Vice President

APPENDIX A

MONTHLY CAPACITY AND O&M PAYMENT CALCULATION

A.1 The Monthly Capacity Payment for each Monthly Billing Period prior to January 1, 2007 shall be computed utilizing the applicable formula detailed below. The formulas in Sections A.1.4, A.1.5, and A.1.6 shall only be applicable if the current Committed Capacity shall have been determined pursuant to either Section 6.3 or 6.4, SALE OF ENERGY AND CAPACITY BY AES CEDAR BAY.

A.1.1 In the event that the Capacity Factor is less than 57%, then no Monthly Capacity Payment shall be due. That is:

$$\text{MCP} = \$0$$

A.1.2 In the event that the Capacity Factor is at least equal to 57% but less than 87%, then the Monthly Capacity Payment shall be calculated from the following formula:

$$\text{MCP} = [(BCC + OMC) \times (.02 \times ((CF \times 100) - 37))] \times CC$$

A.1.3 In the event the Capacity Factor is at least 87% and the current Committed Capacity shall have been determined pursuant to Section 6.10, SALE OF ENERGY AND CAPACITY BY AES CEDAR BAY, then the Monthly Capacity Payment shall be calculated from the following formula:

$$\text{MCP} = (BCC + OMC) \times CC$$

A.1.4 In the event that the Capacity Factor is at least 87% but not greater than 89%, then the Monthly Capacity Payment shall be calculated from the following formula:

$$\text{MCP} = (BCC + OMC) \times CC$$

A.1.5 In the event that the Capacity Factor is greater than 89% but not greater than 96%, then the Monthly Capacity Payment shall be calculated from the following formula:

$$\text{MCP} = [(1 + (.01 \times ((CF \times 100) - 89))] \times BCC \times CC] + (OMC \times CC)$$

A.1.6 In the event that the Capacity Factor is greater than 96%, then the Monthly Capacity Payment shall be calculated from the following formula:



$$\text{MCP} = [(1.07 + (.007 \times ((\text{CF} \times 100) - 96))) \times \text{BCC} \times \text{CC}] + (\text{OMC} \times \text{CC})$$

A.2 The Monthly Capacity Payment for each Monthly Billing Period after December 31, 2006 shall be computed utilizing the applicable formula detailed below. The formulas in Sections A.2.4, A.2.5, and A.2.6 shall only be applicable if the current Committed Capacity shall have been determined pursuant to either Section 6.3 or 6.4, SALE OF ENERGY AND CAPACITY BY AES CEDAR BAY.

A.2.1 In the event that the Capacity Factor is less than 57%, then no Monthly Capacity Payment shall be due. That is:

$$\text{MCP} = \$0$$

A.2.2 In the event that the Capacity Factor is at least equal to 57% but less than 87%, then the Monthly Capacity Payment shall be calculated from the following formula:

$$\text{MCP} = [(\text{BCC} + \text{OMC}) \times (.02 \times ((\text{CF} \times 100) - 37))] \times \text{CC}$$

A.2.3 In the event the Capacity Factor is at least 87% and the current Committed Capacity shall have been determined pursuant to Section 6.10, SALE OF ENERGY AND CAPACITY BY AES CEDAR BAY, then the Monthly Capacity Payment shall be calculated from the following formula:

$$\text{MCP} = (\text{BCC} + \text{OMC}) \times \text{CC}$$

A.2.4 In the event that the Capacity Factor is at least 87% but not greater than 93%, then the Monthly Capacity Payment shall be calculated from the following formula:

$$\text{MCP} = (\text{BCC} + \text{OMC}) \times \text{CC}$$

A.2.5 In the event that the Capacity Factor is greater than 93% but not greater than 98%, then the monthly Capacity Payment shall be calculated from the following formula:

$$\text{MCP} = [(1 + (.01 \times ((\text{CF} \times 100) - 93))) \times \text{BCC} \times \text{CC}] + (\text{OMC} \times \text{CC})$$

A.2.6 In the event that the Capacity Factor is greater than 98%, then the Monthly Capacity Payment shall be calculated from the following formula:

$$\text{MCP} = [(1.05 + (.005 \times ((\text{CF} \times 100) - 98))) \times \text{BCC} \times \text{CC}] + (\text{OMC} \times \text{CC})$$

Where:

- MCP - Monthly Capacity Payment in dollars.  
BCC - Base capacity credit in \$/MW-Month pursuant to Section A.3 or A.4, as applicable.  
OMC - Operation and maintenance credit in \$/MW-Month pursuant to Section A.3 or A.4, as applicable.  
CF - Capacity Factor (expressed as a decimal).  
CC - Committed Capacity in MW.

A.3 The base capacity credit and operation and maintenance credit shall be derived from the following schedule provided the Commercial Operation Date occurs prior to January 1, 1994:

<u>Year</u>	<u>BCC + OMC</u> <u>\$/MW-MO</u>	<u>BCC</u> <u>\$/MW-MO</u>	<u>OMC</u> <u>\$/MW-MO</u>
01/1/1993 - 12/31/1993	23,360	21,530	1,830
01/1/1994 - 12/31/1994	24,220	22,310	1,910
01/1/1995 - 12/31/1995	25,120	23,130	1,990
01/1/1996 - 12/31/1996	26,050	23,980	2,070
01/1/1997 - 12/31/1997	27,010	24,860	2,150
01/1/1998 - 12/31/1998	28,010	25,770	2,240
01/1/1999 - 12/31/1999	29,050	26,720	2,330
01/1/2000 - 12/31/2000	30,120	27,690	2,430
01/1/2001 - 12/31/2001	31,230	28,700	2,530
01/1/2002 - 12/31/2002	32,390	29,760	2,630
01/1/2003 - 12/31/2003	33,590	30,850	2,740
01/1/2004 - 12/31/2004	34,830	31,980	2,850
01/1/2005 - 12/31/2005	36,120	33,150	2,970
01/1/2006 - 12/31/2006	37,460	34,370	3,090
01/1/2007 - 12/31/2007	38,850	35,630	3,220
01/1/2008 - 12/31/2008	40,290	36,940	3,350
01/1/2009 - 12/31/2009	41,780	38,290	3,490
01/1/2010 - 12/31/2010	43,330	39,700	3,630
01/1/2011 - 12/31/2011	44,930	41,150	3,780
01/1/2012 - 12/31/2012	46,590	42,660	3,930
01/1/2013 - 12/31/2013	38,650	34,560	4,090
01/1/2014 - 12/31/2014	40,080	35,820	4,260
01/1/2015 - 12/31/2015	41,560	37,130	4,430
01/1/2016 - 12/31/2016	43,100	38,490	4,610
01/1/2017 - 12/31/2017	44,690	39,890	4,800
01/1/2018 - 12/31/2018	46,340	41,340	5,000
01/1/2019 - 12/31/2019	48,050	42,840	5,210
01/1/2020 - 12/31/2020	49,830	44,410	5,420
01/1/2021 - 12/31/2021	51,670	46,030	5,640
01/1/2022 - 12/31/2022	53,580	47,710	5,870
01/1/2023 - 12/31/2023	55,560	49,450	6,110

A.4 The base capacity credit and operation and maintenance credit shall be derived from the following schedule provided the Commercial Operation Date occurs after December 31, 1993, where "Year 1" equals the first Agreement Year:

<u>Year</u>	<u>BCC + OMC</u> <u>\$/MW-MO</u>	<u>BCC</u> <u>\$/MW-MO</u>	<u>OMC</u> <u>\$/MW-MO</u>
1	24,220	22,310	1,910
2	25,120	23,130	1,990
3	26,050	23,980	2,070
4	27,010	24,860	2,150
5	28,010	25,770	2,240
6	29,050	26,720	2,330
7	30,120	27,690	2,430
8	31,230	28,700	2,530
9	32,390	29,760	2,630
10	33,590	30,850	2,740
11	34,830	31,980	2,850
12	36,120	33,150	2,970
13	37,460	34,370	3,090
14	38,850	35,630	3,220
15	40,290	36,940	3,350
16	41,780	38,290	3,490
17	43,330	39,700	3,630
18	44,930	41,150	3,780
19	46,590	42,660	3,930
20	38,650	34,560	4,090
21	40,080	35,820	4,260
22	41,560	37,130	4,430
23	43,100	38,490	4,610
24	44,690	39,890	4,800
25	46,340	41,340	5,000
26	48,050	42,840	5,210
27	49,830	44,410	5,420
28	51,670	46,030	5,640
29	53,580	47,710	5,870
30	55,560	49,450	6,110
31	57,620	51,260	6,360

APPENDIX B  
TERMINATION FEE

B.1 The Termination Fee shall be the cumulative sum of the values for each month starting with the Commercial Operation Date, through the month of termination computed according to the following formula:

$$\text{TERMINATION FEE} = \sum_{i=1}^n [(\text{MPMT}_i) - (\text{MCTF}_i + \text{MEA}_i)] 1.01024^{(n-i)}$$

with  $\text{MCTF}_i = 0$  for those months occurring in 1993. (If, for example, the first month is October 1993, then  $\text{MCTF}_i$  would only be 0 for three months.)

$i$  = Number of the Monthly Billing Period commencing with the Commercial Operation Date, through the month of termination.

$n$  = The total number of Monthly Billing Periods which have elapsed from the Commercial Operation Date, through the month of termination.

$\text{MPMT}_i$  = The sum of the Monthly Capacity Payment and the Monthly Energy Payment made to AES Cedar Bay corresponding to the Monthly Billing Period  $i$ .

$\text{MCTF}_i$  = The monthly Capacity portion of the Termination Fee corresponding to the Monthly Billing Period  $i$ , calculated in accordance with the formula and schedule set forth below.

$\text{MEA}_i$  = Monthly energy cost for the FPL avoided unit for Monthly Billing Period  $i$ . These costs shall be equal to the product of (a) the monthly Energy in MWh purchased from AES Cedar Bay, (b) the combined-cycle heat rate of 7.69 MMBTU/MWh and (c) the average FPL system gas prices from Schedule A5 filed monthly with the FPSC.

In the event the computation of the Termination Fee above yields a value less than zero, the value of the Termination Fee shall be equal to zero.

B.2 The monthly Capacity portion of the Termination Fee for each Monthly Billing Period prior to January 1, 2007 shall be computed utilizing the applicable formula detailed below. The formulas in Sections B.2.4, B.2.5, and B.2.6 shall only be applicable if the current Committed Capacity shall have been determined pursuant to either Section 6.3 or 6.4, SALE OF ENERGY AND CAPACITY BY AES CEDAR BAY.

B.2.1 In the event that the Capacity Factor is less than 57%, then the monthly Capacity portion of the Termination Fee shall be zero. That is:

$$\text{MCTF} = \$0$$

B.2.2 In the event that the Capacity Factor is at least equal to 57% but not greater than 87%, then the monthly Capacity portion of the Termination Fee shall be calculated from the following formula:

$$\text{MCTF} = [(BCC + OMC) \times (.02 \times (CF \times 100 - 37))] \times CC$$

B.2.3 In the event the Capacity Factor is at least 87% and the current Committed Capacity shall have been determined pursuant to Section 6.10, SALE OF ENERGY AND CAPACITY BY AES CEDAR BAY, then the monthly Capacity portion of the Termination Fee shall be calculated from the following formula:

$$\text{MCTF} = (BCC + OMC) \times CC$$

B.2.4 In the event that the Capacity Factor is at least 87% but not greater than 89%, then the monthly Capacity portion of the Termination Fee shall be calculated from the following formula:

$$\text{MCTF} = (BCC + OMC) \times CC$$

B.2.5 In the event that the Capacity Factor is greater than 89% but not greater than 96%, then the monthly Capacity portion of the Termination Fee shall be calculated from the following formula:

$$\text{MCTF} = [(1 + (.01 \times ((CF \times 100) - 89))) \times BCC \times CC] + (OMC \times CC)$$

B.2.6 In the event that the Capacity Factor is greater than 96%, then the monthly Capacity portion of the Termination Fee shall be calculated from the following formula:

$$\text{MCTF} = [(1.07 + (.007 \times ((CF \times 100) - 96))) \times BCC \times CC] + (OMC \times CC)$$

B.3 The monthly Capacity portion of the Termination Fee for each Monthly Billing Period after December 31, 2006 shall be computed utilizing the applicable formula detailed below. The formulas in Sections B.3.4, B.3.5, and B.3.6 shall only be applicable if the current Committed Capacity shall have been determined pursuant to either Section 6.3 or 6.4, SALE OF ENERGY AND CAPACITY BY AES CEDAR BAY.

B.3.1 In the event that the Capacity Factor is less than 57%, then the monthly Capacity portion of the Termination Fee shall be zero. That is:

$$\text{MCTF} = \$0$$

B.3.2 In the event that the Capacity Factor is at least equal to 57% but not greater than 87%, then the monthly Capacity portion of the Termination Fee shall be calculated from the following formula:

$$\text{MCTF} = [(\text{BCC} + \text{OMC}) \times (.02 \times (\text{CF} \times 100 - 37))] \times \text{CC}$$

B.3.3 In the event the Capacity Factor is at least 87% and the current Committed Capacity shall have been determined pursuant to Section 6.10, SALE OF ENERGY AND CAPACITY BY AES CEDAR BAY, then the monthly Capacity portion of the Termination Fee shall be calculated from the following formula:

$$\text{MCTF} = (\text{BCC} + \text{OMC}) \times \text{CC}$$

B.3.4 In the event that the Capacity Factor is at least 87% but not greater than 93%, then the monthly Capacity portion of the Termination Fee shall be calculated from the following formula:

$$\text{MCTF} = (\text{BCC} + \text{OMC}) \times \text{CC}$$

B.3.5 In the event that the Capacity Factor is greater than 93% but not greater than 98%, then the monthly Capacity portion of the Termination Fee shall be calculated from the following formula:

$$\text{MCTF} = [(1 + (.01 \times ((\text{CF} \times 100) - 93))) \times \text{BCC} \times \text{CC}] + (\text{OMC} \times \text{CC})$$

B.3.6 In the event that the Capacity Factor is greater than 98%, then the monthly Capacity portion of the Termination Fee shall be calculated from the following formula:

$$\text{MCTF} = [(1.05 + (.005 \times ((\text{CF} \times 100) - 98))) \times \text{BCC} \times \text{CC}] + (\text{OMC} \times \text{CC})$$

Where:

MCTF = Monthly Capacity portion of the Termination Fee in dollars.

BCC = Base capacity credit in \$/MW-Month pursuant to Section B.4 or B.5, as applicable.

OMC = Operation and maintenance credit in \$/MW-Month pursuant to Section B.4 or B.5, as applicable.

- CF - Capacity Factor (expressed as a decimal).  
 CC - Committed Capacity in MW.

B.4 The base capacity credit and operation and maintenance credit shall be derived from the following schedule provided the Commercial Operation Date occurs prior to January 1, 1994:

<u>Year</u>	<u>BCC + OMC</u> <u>\$/MW-MO</u>	<u>BCC</u> <u>\$/MW-MO</u>	<u>OMC</u> <u>\$/MW-MO</u>
01/1/1993 - 12/31/1993	0	0	0
01/1/1994 - 12/31/1994	10,240	8,330	1,910
01/1/1995 - 12/31/1995	10,610	8,620	1,990
01/1/1996 - 12/31/1996	11,000	8,930	2,070
01/1/1997 - 12/31/1997	11,410	9,260	2,150
01/1/1998 - 12/31/1998	11,840	9,600	2,240
01/1/1999 - 12/31/1999	12,280	9,950	2,330
01/1/2000 - 12/31/2000	12,730	10,300	2,430
01/1/2001 - 12/31/2001	13,200	10,670	2,530
01/1/2002 - 12/31/2002	13,690	11,060	2,630
01/1/2003 - 12/31/2003	14,190	11,450	2,740
01/1/2004 - 12/31/2004	14,710	11,860	2,850
01/1/2005 - 12/31/2005	15,250	12,280	2,970
01/1/2006 - 12/31/2006	15,810	12,720	3,090
01/1/2007 - 12/31/2007	16,400	13,180	3,220
01/1/2008 - 12/31/2008	17,000	13,650	3,350
01/1/2009 - 12/31/2009	17,640	14,150	3,490
01/1/2010 - 12/31/2010	18,290	14,660	3,630
01/1/2011 - 12/31/2011	18,980	15,200	3,780
01/1/2012 - 12/31/2012	19,680	15,750	3,930
01/1/2013 - 12/31/2013	20,390	16,300	4,090
01/1/2014 - 12/31/2014	21,140	16,880	4,260
01/1/2015 - 12/31/2015	21,930	17,500	4,430
01/1/2016 - 12/31/2016	22,740	18,130	4,610
01/1/2017 - 12/31/2017	23,590	18,790	4,800
01/1/2018 - 12/31/2018	24,450	19,450	5,000
01/1/2019 - 12/31/2019	25,360	20,150	5,210
01/1/2020 - 12/31/2020	26,300	20,880	5,420
01/1/2021 - 12/31/2021	27,280	21,640	5,640
01/1/2022 - 12/31/2022	28,290	22,420	5,870
01/1/2023 - 12/31/2023	29,330	23,230	6,110
01/1/2024 - 12/31/2024	30,430	24,070	6,360

B.5 The base capacity credit and operation and maintenance credit shall be derived from the following schedule provided the Commercial Operation Date occurs after December 31, 1993, where "Year 1" equals the first Agreement Year.

<u>Year</u>	<u>BCC + OMC</u> <u>\$/MW-MO</u>	<u>BCC</u> <u>\$/MW-MO</u>	<u>OMC</u> <u>\$/MW-MO</u>
1	10,240	8,330	1,910
2	10,610	8,620	1,990
3	11,000	8,930	2,070
4	11,410	9,260	2,150
5	11,840	9,600	2,240
6	12,280	9,950	2,330
7	12,730	10,300	2,430
8	13,200	10,670	2,530
9	13,690	11,060	2,630
10	14,190	11,450	2,740
11	14,710	11,860	2,850
12	15,250	12,280	2,970
13	15,810	12,720	3,090
14	16,400	13,180	3,220
15	17,000	13,650	3,350
16	17,640	14,150	3,490
17	18,290	14,660	3,630
18	18,980	15,200	3,780
19	19,680	15,750	3,930
20	20,390	16,300	4,090
21	21,140	16,880	4,260
22	21,930	17,500	4,430
23	22,740	18,130	4,610
24	23,590	18,790	4,800
25	24,450	19,450	5,000
26	25,360	20,150	5,210
27	26,300	20,880	5,420
28	27,280	21,640	5,640
29	28,290	22,420	5,870
30	29,330	23,230	6,110
31	30,430	24,070	6,360



APPENDIX C  
INSURANCE

**CERTIFICATE OF INSURANCE – INTERCONNECTION AGREEMENT**

Form 1364-23 (Non-Stocked) Rev. 1/85

**THIS CERTIFICATE OF INSURANCE MUST BE APPROVED BY THE RISK MANAGEMENT DEPARTMENT OF FLORIDA POWER & LIGHT COMPANY BEFORE WORK UNDER THE INTERCONNECTION AGREEMENT MAY BEGIN**

1. Insured: \_\_\_\_\_  
 (PLEASE MAKE SURE THAT NAMED INSURED AGREES WITH NAME ON INTERCONNECTION AGREEMENT)

2. Address of Insured: \_\_\_\_\_

3. \_\_\_\_\_

FORM OF COVERAGE*	INSURER	POLICIES IN FORCE		LIMITS OF LIABILITY (in thousands)	
		Policy Number	Exp. Date	Bodily Injury \$ Each Occ.	Property Damage \$ Each
4. Comprehensive General Liability					
5. Homeowners					
6.					

THIS IS TO CERTIFY that all policies of insurance as described above have been issued to the above named insured and are in full force and effect at this time. It is agreed that none of these policies will be cancelled or changed so as to affect the interest(s) of Florida Power & Light Company, it's parent, subsidiaries or affiliates until thirty days after written notice of such cancellation or changes has been delivered to the Risk Management Department of Florida Power & Light Company. It is agreed that a copy of these policies will be delivered to Florida Power & Light Company prior to interconnection.

Date Issued: \_\_\_\_\_

**PLEASE SEND ORIGINAL TO:**  
 Florida Power & Light Company  
 Risk Management Department  
 P. O. Box 029100  
 Miami, Florida 33102

Signature of Authorized Agent \_\_\_\_\_

Issuing Agency or Insurance Company \_\_\_\_\_

Street Address \_\_\_\_\_

City, State, Zip Code \_\_\_\_\_

Telephone Number \_\_\_\_\_

APPENDIX D

FORM OF PROJECT CANCELLATION PAYMENT GUARANTEE LETTER

[AES Letterhead]

Florida Power & Light Company  
Post Office Box 029100  
Miami, Florida 33102

Attention: Director, Bulk Power Markets Department

Consistent with Section 4.1, COMPLETION SECURITY, of the Agreement, Applied Energy Services, Inc. ("AES") guarantees to pay FPL a project cancellation payment according to the following schedule:

Should AES or AES Cedar Bay cancel the Facility subsequent to approval of the Agreement by the FPSC and after the following dates:	AES will submit a payment to FPL of:
<hr/>	<hr/>
March 1, 1990	\$ 600,000
January 1, 1991	\$1,000,000

This guarantee letter shall not be effective unless and until the FPSC approves the Agreement. Upon such approval, the guarantee letter dated May 6, 1988 contained in the Original Agreement shall be terminated and of no further force and effect.

[Signature]  
[Title]

APPENDIX E  
FACILITY PERFORMANCE CONDITIONS

The following conditions shall be used in the capacity test described in Section 6.0, SALE OF ENERGY AND CAPACITY BY AES CEDAR BAY:

Ambient Temperature	75°F (Dry Bulb)
Relative Humidity	65%
Ambient Pressure	14.7 psia
Generation Power Factor	90%
Boiler Blowdown	0%
Process Steam Extraction	100% (based on contract to host customer)
Circulating Water Inlet Temperature	88°F

APPENDIX F  
NERC GUIDELINES<sup>1</sup>

**F.1 Equations**

- F.1.1 Equivalent Availability Factor (EAF)  
 $((AH - (EUDH + EPDH))/PH) \times 100 (\%)$
- F.1.2 Equivalent Forced Outage Rate (EFOR)  
 $((FOH + EFDH)/(FOH + SH)) \times 100 (\%)$
- F.1.3 Forced Outage Factor (FOF)  
 $(FOH/PH) \times 100 (\%)$
- F.1.4 Net Output Factor (NOF)  
 $[NAG/(SH \times NMC)] \times 100 (\%)$
- F.1.5 Scheduled Outage Factor (SOF)  
 $(SOH/PH) \times 100(\%)$

**F.2 Operations and Outage States**

- F.2.1 Available - the state in which the Facility is capable of providing service, whether or not it is actually in service, regardless of the capacity level that can be provided.
- F.2.2 Forced Derating (D1, D2, D3) - an unplanned component failure (immediate, delayed, postponed) or other condition that requires that the load on the unit be reduced immediately or before the next weekend.
- F.2.3 Forced Outage (U1, U2, U3, SF) - an unplanned component failure (immediate, delayed, postponed, start-up failure) or other condition that requires that the unit be removed from service immediately or before the next weekend.
- F.2.4 Maintenance Derating (D4) - the removal of a component for scheduled repairs that can be deferred beyond the end of the next weekend, but requires a reduction of capacity before the next Planned Outage.

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<sup>1</sup>The NERC guidelines set forth herein are the current version as of the time of execution of this Agreement and are stated solely for the convenience of the Parties. The NERC guidelines may change from time to time and the applicable NERC guidelines will be those in effect at the time.

- F.2.5 **Maintenance Outage (MO)** - the removal of a unit from service to perform work on specific components that can be deferred beyond the end of the next weekend, but requires the unit be removed from service before the next Planned Outage. Typically, an MO may occur any time during the year, have flexible start dates, and may or may not have a predetermined duration.
  - F.2.6 **Planned Derating (PD)** - the removal of a component for repairs that is scheduled well in advance and has a predetermined duration.
  - F.2.7 **Planned Outage (PO)** - the removal of a unit from service to perform work on specific components that is scheduled well in advance and has a predetermined duration (e.g., annual overhaul, inspections, testing).
  - F.2.8 **Reserve Shutdown (RS)** - the state of the Facility when it is available, but not electrically connected for economic reasons.
  - F.2.9 **Scheduled Derating (PD, D4)** - a combination of Planned Deratings and Maintenance Deratings of the Facility.
  - F.2.10 **Scheduled Derating Extension (DE)** - the extension of a Maintenance or Planned Derating.
  - F.2.11 **Scheduled Outage (PO, MO)** - a combination of Planned Outages and Maintenance Outages of the Facility.
  - F.2.12 **Scheduled Outage Extension (SE)** - the extension of a Maintenance or Planned Outage.
- F.3 Time**
- F.3.1 **Available Hours (AH)** - Period Hours (PH) less Planned Outage Hours (POH), Forced Outage Hours (FOH), and Maintenance Outage Hours (MOH).

- F.3.2 **Equivalent Forced Derated Hours (EFDH)<sup>2</sup>** - the product of the Forced Derated Hours (FDH) and the size of reduction, divided by Net Maximum Capacity (NMC).
- F.3.3 **Equivalent Planned Derated Hours (EPDH)<sup>2</sup>** - the product of the Planned Derated Hours (PDH) and the size of reduction divided by the Net Maximum Capacity (NMC).
- F.3.4 **Equivalent Unplanned Derated Hours (EUDH)<sup>2</sup>** - the product of the Unplanned Derated Hours (UDH) and the size of reduction, divided by the Net Maximum Capacity (NMC).
- F.3.5 **Forced Derated Hours (FDH)** - sum of all hours experienced during Forced Deratings (D1, D2, D3).
- F.3.6 **Forced Outage Hours (FOH)** - sum of all hours experienced during Forced Outages (U1, U2, U3, SF).
- F.3.7 **Maintenance Derated Hours (MDH)** - sum of all hours expressed during Maintenance Deratings (D4) and Scheduled Derating Extensions (DE) for any Maintenance Deratings (D4).
- F.3.8 **Maintenance Outage Hours (MOH)** - sum of all hours experienced during Maintenance Outages (MO) and Scheduled Outage Extensions (SE) of any Maintenance Outages (MO).
- F.3.9 **Period Hours (PH)** - number of hours a unit was in active state (assume 8,760 hours).
- F.3.10 **Planned Derated Hours (PDH)** - sum of all hours experienced during Planned Deratings (PD) and Scheduled Derating Extensions (DE) of any Planned Deratings (PD).
- F.3.11 **Planned Outage Hours (POH)** - sum of all hours experienced during Planned Outages (PO) and Scheduled Outage Extensions (SE) of any Planned Outages (PO).

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<sup>2</sup>Equivalent hours are computed for each derating and then summed. Size of reduction is determined by subtracting the Net Available Capacity (NAC) from the Net Dependable Capacity (NDC). In cases of multiple deratings, the size of reduction of each derating is the difference in the Net Available Capacity of the unit prior to the initiation of the derating and the reported Net Available Capacity as a result of the derating.

- F.3.12 **Reserve Shutdown Hours (RSH)** - total number of hours the unit was available for service but not electrically connected to the transmission system for economic reasons.
- F.3.13 **Scheduled Outage Hours (SOH)** - sum of all hours experienced during Planned Outages (PO) - Maintenance Outages (MO) + Scheduled Outage Extensions (SE) of any Maintenance Outages (MO) or Planned Outages (PO).
- F.3.14 **Service Hours (SH)** - total number of hours a unit was electrically connected to the system.
- F.3.15 **Unavailable Hours (UH)** - sum of all Forced Outage Hours (FOH), Maintenance Outage Hours (MOH) and Planned Outage Hours (POH).
- F.3.16 **Unplanned Derated Hours (UDH)** - sum of all hours experienced during Forced Deratings (D1, D2, D3), Maintenance Deratings (D4), and Scheduled Derating Extensions (DE) of any Maintenance Derating (D4).
- F.4 **Electric Energy and Capacity**
  - F.4.1 **Gross Available Capacity (GAC)** - greatest capacity at which a unit can operate with a reduction imposed by a derating.
  - F.4.2 **Gross Dependable Capacity (GDC)** - GMC modified for seasonal limitations over a specified period of time.
  - F.4.3 **Gross Maximum Capacity (GMC)** - maximum capacity a unit can sustain over a specified period of time when not restricted by seasonal or other deratings.
  - F.4.4 **Net Available Capacity (NAC)** - GAC less the unit capacity utilized for that unit's station service or auxiliaries.
  - F.4.5 **Net Actual Generation (NAG)** - actual number of electrical megawatt-hours generated by the unit during the period being considered, less any generation (MWh) utilized for that unit's station service or auxiliaries.
  - F.4.6 **Net Dependable Capacity (NDC)** - GDC less the unit capacity utilized for that unit's station service or auxiliaries.
  - F.4.7 **Net Maximum Capacity (NMC)** - GMC less the unit capacity utilized for that unit's station service or auxiliaries.



**FACILITY ACTUAL NET GENERATION  
AND PERFORMANCE DATA**

MONTH OF: \_\_\_\_\_

	MONTH	YEAR TO DATE	PREVIOUS 12 MONTHS
COMMITTED CAPACITY (MW)			
NET GENERATION (MWH)			
NET OUTPUT FACTOR (%)			
AVERAGE NET HEAT RATE (BTU/KWH)			
FUEL TYPE	COAL / WOOD	COAL / WOOD	COAL / WOOD
FUEL BURNED (TONS)	/	/	/
FUEL HEAT VALUE (MMBTU/TON)	/	/	/
FUEL BURNED (MMBTU)	/	/	/

APPENDIX GFACILITY ACTUAL NET GENERATION  
AND PERFORMANCE DATA

MONTH OF: \_\_\_\_\_

		MONTH	YEAR TO DATE	PREVIOUS 12 MONTHS
1	EAF (%)			
2	PH			
3	SH			
4	RSH			
5	UH			
6	POH			
7	FOH			
8	MOH			
9	PDH			
10	EPDH			
11	FDH			
12	EFDH			
13	MDH			
14	EUDH			
15	NDC (MW)			
16	OPER BTU (MMBTU)			
17	NET GEN (MWh)			
18	ANOHR (BTU/KWH)			
19	NOF (%)			
20	NMC (MW)			

NOTE: LINE 16 IS DATA WHEN THE UNIT IS SYNCHRONIZED TO THE SYSTEM ONLY.

**APPENDIX G**

**FACILITY ACTUAL NET GENERATION AND PERFORMANCE DATA**

YEAR OF: \_\_\_\_\_

DATE	OUTAGE TYPE (1)	HOURS	(MW) AFFECTED	DESCRIPTION

(1) FO - FORCED OUTAGE  
 FD - FORCED DERATING  
 MO - MAINTENANCE OUTAGE  
 MD - MAINTENANCE DERATING  
 PO - PLANNED OUTAGE  
 PD - PLANNED DERATING

**APPENDIX H**

**FORM OF SECOND MORTGAGE AND SECURITY AGREEMENT**

SECOND LEASEHOLD MORTGAGE AND SECURITY AGREEMENT

THIS SECOND LEASEHOLD MORTGAGE AND SECURITY AGREEMENT ("Mortgage") is executed this [ ] day of [ ], 19[ ], by and between AES CEDAR BAY, INC., a corporation organized and existing under the laws of the State of Delaware having its principal place of business in [ ] ("AES Cedar Bay"), whose mailing address is [ ] and FLORIDA POWER & LIGHT COMPANY, a corporation organized and existing under the laws of the State of Florida having its principal place of business in Miami, Florida ("FPL"), whose address is Post Office Box 029100, Miami, Florida 33102.

WITNESSETH:

WHEREAS, [ ] a corporation organized and existing under the laws of the State of Florida ("Lessor"), whose mailing address is [ ], did by a certain lease (hereinafter referred to as the "Ground Lease"), dated [ ], 19[ ], demise and lease unto AES Cedar Bay, its successors and assigns, as "Lessee," all and singular, the premises therein and hereinafter mentioned and described, to have and to hold the same unto AES Cedar Bay, its successors and assigns, for and during and until the end of the term which is currently existing and shall end on [ ], together with the renewals therein provided for, yielding and paying therefore unto said Lessor, the yearly rent, additional rent and other charges therein set forth;

WHEREAS, for good and valuable consideration and to secure the performance and payment of all indebtedness, obligations and liabilities of AES Cedar Bay to FPL now or hereafter existing, incurred or created under that certain Amended and Restated Agreement for the Purchase of Firm Capacity and Energy, dated as of July 2, 1990, between AES Cedar Bay and FPL (the "Power Sale Agreement") which has a termination date the later of December 31, 2024 or thirty-one Agreement Years (as defined in the Power Sale Agreement), and any and all other sums secured by this Mortgage and any renewals, extensions, consolidations or modifications of all of the foregoing, AES Cedar Bay does grant, mortgage, convey, pledge and assign unto

FPL, its successors and assigns, all right, title and interest of AES Cedar Bay now owned or hereafter acquired, in and to the following described property, rights, privileges, interests and franchises, to wit:

All of AES Cedar Bay's right, title and interest in, to and under the Ground Lease, and the leasehold estate created thereby, in that certain tract of land situate in the County of Duval, State of Florida, which is more fully described in Exhibit A attached hereto and made a part hereof, together with any and all buildings, structures and improvements thereon erected or to be erected, constructed or situated thereon and all machinery, apparatus, fixtures and articles of personal property now or hereafter attached or appurtenant to or used in connection with any such building, structure or other improvement therein or thereon, together with any and all replacements thereof, additions thereto and enlargements, extensions, modifications or repairs thereof (all hereinafter referred to as the "Premises");

TOGETHER with the following property rights;

(a) All right, title and interest of AES Cedar Bay in and to all subleases covering the Premises or any portion thereof now or hereafter existing or entered into, and all right, title and interest of AES Cedar Bay thereunder, including, without limitation, all cash or security deposits, advance rentals, and deposits or payments of similar nature;

(b) All right, title and interest of AES Cedar Bay in and to all options to purchase or lease the Premises or any portion thereof or interest therein, and any greater estate in the Premises owned or hereafter acquired;

(c) All interests, estate or other claims, both in law and in equity, which AES Cedar Bay now has or may hereafter acquire in the Premises;

(d) All right, title and interest of AES Cedar Bay in and to (i) all easements, rights-of-way and rights used in connection with the Premises or as a means of access thereto and all tenements, hereditaments and appurtenances thereof and thereto, (ii) any streets and roads abutting said Premises to the center lines thereof and in and to any strips or gores of land therein, all water, sanitary and storm systems that are now or hereafter located on or

adjacent to the Premises and (iii) all gas and oil rights, mineral rights, timber rights and riparian and littoral rights pertaining to the Premises;

(e) All awards and proceeds to which AES Cedar Bay is entitled by virtue of any taking of all or part of the Premises by condemnation or exercise of the right of eminent domain or other taking, as hereinafter more particularly set forth;

(f) All estate, right, title and interest of every nature whatsoever of AES Cedar Bay in and to all rents, issues and profits of the Premises, as hereinafter more particularly set forth; and

(g) All right, title and interest of AES Cedar Bay, if any, in and to (i) all modifications, extensions and renewals of the Ground Lease and in and to all rights to renew or extend the term of said Ground Lease, and (ii) all credits, deposits, options, privileges and rights of AES Cedar Bay, as Lessee under said Ground Lease.

The Premises and all of the property, rights, privileges and franchises granted herein by AES Cedar Bay to FPL are collectively referred to as the "Mortgaged Property."

TO HAVE AND TO HOLD all and singular the Mortgaged Property hereby conveyed, the tenements, hereditaments and appurtenances thereunto belonging or in anyway appertaining to the Mortgaged Property and the reversion and reversions, remainder and remainders, rents, issues and profits thereof and all estate, right, title, interest, property, possession, claim and demand whatsoever as well in law, as in equity of AES Cedar Bay in and to the same and every part and parcel thereof unto FPL.

PROVIDED, HOWEVER, that these presents are upon the condition that if AES Cedar Bay shall perform all of its obligations under the Power Sale Agreement and pay all amounts secured by this Mortgage, at the times and in the manner stipulated therein and herein, all without any deduction or credit for taxes or other similar charges paid by AES Cedar Bay, and shall keep, perform and observe all and singular the covenants and promises in the Power Sale Agreement, and any renewal, extension, consolidation or modification thereof, and in this Mortgage expressed to be kept, performed and observed by and on the part of AES Cedar Bay, all without fraud or delay, then this Mortgage and all properties, interest and

rights granted, mortgaged and conveyed shall cease, terminate and be void but until same shall occur, this Mortgage shall otherwise remain in full force and effect.

#### ARTICLE 1

##### COVENANTS AND AGREEMENTS OF AES CEDAR BAY

To protect the security of this Mortgage, AES Cedar Bay further covenants, warrants and agrees with FPL as follows:

1.01 Performance of Obligations. AES Cedar Bay shall perform each and every obligation imposed upon it by the Power Sale Agreement and this Mortgage.

1.02 Title Warranties and Representations. AES Cedar Bay hereby covenants with FPL that: (a) AES Cedar Bay is seized of said Premises, (b) AES Cedar Bay has full power and lawful right to convey the same as aforesaid, (c) it shall be lawful for FPL at all times to peaceably and quietly enter upon, hold, occupy and enjoy said Premises and every part thereof, (d) AES Cedar Bay will make such further assurances to perfect its leasehold title to said Premises, as may reasonably be required, (e) the Mortgaged Property is free of all liens and encumbrances except as reflected in Exhibit B attached hereto and made a part hereof and for taxes for the current year, (f) that (i) the Ground Lease is a valid and subsisting lease of the property therein described and purported to be demised thereby for the term therein set forth and is in full force and effect in accordance with the terms thereof and has not been modified, and there are no existing defaults by the Ground Lessor or by AES Cedar Bay, as Lessee, thereunder and (ii) AES Cedar Bay is the owner and holder of said Ground Lease and of the leasehold estate created thereby, and (g) AES Cedar Bay will defend same against the lawful claims of all persons whomsoever, subject only to those matters set forth in Exhibit B.

1.03 Required Insurance. AES Cedar Bay will, at AES Cedar Bay's sole cost and expense, maintain or cause to be maintained with respect to the Mortgaged Property, and each part thereof (i) business interruption insurance and (ii) insurance against loss or damage to the building improvements on the land and the fixtures therein (hereinafter referred to as the "Improvements") by fire and any of the risks covered by insurance of the type known as "all-risk."



Coverage shall be in the form and amounts specified in Section 15.0 of the Power Sale Agreement.

1.04 Delivery of Policies, Payment of Premiums. Subject to Section 1.03 above, all policies of insurance shall be issued by companies and in amounts satisfactory to FPL. All policies of insurance shall name FPL as an additional insured, as its interest may appear, but subject to the prior claim of the First Mortgagee (as defined in Section 5.18 below), in form satisfactory to FPL. At least fifteen days prior to expiration of each such policy, AES Cedar Bay shall furnish FPL with evidence reasonably satisfactory to FPL of payment of premium and reissuance of a policy continuing insurance in force as required by this Mortgage. All such policies shall contain a provision that such policies will not be canceled or materially amended, which term shall include any amendment which shall in any way reduce the scope or limits of coverage, without at least thirty days (or at least ten days if due to the non-payment of premiums) prior written notice to FPL. In the event AES Cedar Bay fails to provide, maintain, keep in force or deliver and furnish to FPL the policies of insurance or certificates thereof, as required by this Section 1.04, FPL may procure such insurance or single interest insurance for such risks covering FPL's interest. Repayment shall be made by AES Cedar Bay to FPL for such expenditures together with interest on said sums at four (4) percent in excess of the average of the three (3) year U.S. Treasury note rate for the period of the advance computed from the date of such advance to the date of the actual receipt of payment thereof by FPL.

1.05 Insurance Proceeds. After the happening of any casualty to the Mortgaged Property or any part thereof, AES Cedar Bay shall give prompt written notice thereof to FPL. AES Cedar Bay shall apply such proceeds to repairs or restorations or reduction of debt as required by the First Mortgagee, or if such First Mortgage is satisfied:

(a) in the event of damage to or destruction of the Improvements, AES Cedar Bay shall apply the proceeds as it sees fit unless, (i) there exists an Event of Default as defined in the Power Sale Agreement (which would not be cured by such application), or (ii) such application would cause an Event of Default to exist. In either such occurrence, FPL shall have the option, in its sole

discretion (subject to Subsection 1.05(b) below), of applying or paying all or part of the insurance proceeds, (x) to any obligation secured hereby and then due and owing to FPL, in such order as FPL may determine, or (y) to the restoration of the Improvements, or (z) to AES Cedar Bay;

(b) if there exists an Event of Default (as defined under the Power Sale Agreement) which would not be cured by the application of insurance proceeds to repair or restore the Improvements, or such application would cause an Event of Default to exist, FPL agrees not to unreasonably withhold consent to the use of insurance proceeds for restoration of the Improvements following a partial casualty loss, subject to (i) AES Cedar Bay maintaining this Mortgage free from any Event of Default (as defined in Section 4.01 below) at all times and (ii) AES Cedar Bay providing evidence that adequate funds are available to restore the Improvements and advancing any additional funds required prior to the disbursement of insurance proceeds; and

(c) in the event of such loss or damage, all proceeds of insurance shall be payable to FPL and AES Cedar Bay hereby authorizes and directs any affected insurance company to make payment of such proceeds directly to FPL. If there exists an Event of Default under the Power Sale Agreement, FPL is hereby authorized and empowered by AES Cedar Bay to settle, adjust or compromise any claims for loss, damage or destruction under any policy or policies of insurance, and AES Cedar Bay hereby irrevocably appoints FPL its attorney-in-fact coupled with an interest with the power and authority in such instances to endorse any checks, drafts or other instruments representing any proceeds of such insurance, whether payable by reason of loss thereunder or otherwise.

Nothing herein shall relieve AES Cedar Bay from its obligations under the Power Sale Agreement and any other obligation of AES Cedar Bay secured hereby.

**1.06 Assignment of Policies Upon Foreclosure.** In the event of foreclosure of this Mortgage or other transfer of title or assignment of the Mortgaged Property in extinguishment, in whole or in part, of the debt secured hereby, all right, title and interest of AES Cedar Bay in and to all policies of insurance required by this Mortgage shall inure to the benefit of and pass to the successor in interest to AES Cedar Bay or the purchaser or grantee of the Mortgaged Property.

1.07 Indemnification; Waiver of Offset. (a) If FPL is made a party defendant to any litigation (including without limitation, any litigation brought by AES Cedar Bay whether initially or by counterclaim) concerning this Mortgage, then AES Cedar Bay shall indemnify, defend and hold FPL harmless from all liability by reason of said litigation, including reasonable attorneys' fees, paralegal charges and legal expenses, including those incurred during appellate proceedings, incurred by FPL in any such litigation, whether or not such litigation is prosecuted to judgment, save and except such indemnification shall not apply to an action by AES Cedar Bay against FPL, or by FPL against AES Cedar Bay if AES Cedar Bay is the prevailing party, and (b) the obligations and liabilities of AES Cedar Bay hereunder shall in no way be released or discharged (except as expressly provided herein or in the Power Sale Agreement) by reason of: (i) any damage to or destruction of or any condemnation or similar taking of the Mortgaged Property or any part thereof (except to the extent that FPL is found to be responsible therefore), (ii) any destruction, prevention of or interference with any use of the Mortgaged Property or any part thereof (except to the extent that FPL is found to be responsible therefore), (iii) any title defect, encumbrance or eviction from the Premises or the Improvements or any part thereof by title paramount or otherwise, or (iv) any bankruptcy, insolvency, reorganization, composition; adjustment, dissolution, liquidation or other like proceeding relating to AES Cedar Bay, or any action taken with respect to this Mortgage by any trustee or receiver of FPL; or by any court in any such proceeding.

1.08 Taxes, Utilities and Impositions. AES Cedar Bay will pay, or cause to be paid and discharged, on or before the last day on which they may be paid without penalty or interest (other than interest which may be payable in the ordinary course of business, as permitted by installment payments prior to the final payment date), all such duties, taxes, sewer rents, charges for water, or for setting or repairing meters, and all other utilities in the improvements or on the Premises or any part thereof, and any assessments and payments which shall be imposed upon or become due and payable or become a lien upon the Premises or any part thereof and sidewalks or streets in front thereof by virtue of any present or future law of the United States or the State, County or City wherein

the Premises are located (all of the foregoing being herein collectively called "Impositions"). In default of any such payment of any Imposition, FPL may pay the same; provided, however, AES Cedar Bay may contest in good faith the legality or amount of any Imposition by appropriate legal proceedings which do not cause a loss of the Premises. Repayment shall be made by AES Cedar Bay to FPL for such expenditures together with interest on said sums at four (4) percent in excess of the average of the three (3) year U.S. Treasury note rate for the period of the advance computed from the date of such advance to the date of the actual receipt of payment thereof by FPL.

AES Cedar Bay will make available for review by FPL in AES Cedar Bay's office during reasonable hours the original receipts or other reasonably satisfactory proof of the payment of all Impositions which may affect the Mortgaged Property or any part thereof or the lien of this Mortgage promptly following the last date on which each such Imposition is payable hereunder.

1.09 Eminent Domain. (a) Should the Mortgaged Property or any part thereof or interest therein which materially affects AES Cedar Bay's production of electricity, be taken or damaged by reason of any public use or improvement or condemnation proceeding, or in any other manner ("Condemnation") or should AES Cedar Bay receive any notice or information regarding such Condemnation, AES Cedar Bay shall give prompt written notice thereof to FPL;

(b) Subject to the prior rights of the First Mortgagee, FPL shall be entitled to all awards, compensation, and other payment or relief granted in connection with such Condemnation and shall be entitled, at its option, to appear jointly with AES Cedar Bay, or if an Event of Default shall exist, to appear in its own name or AES Cedar Bay's name, in any action or proceeding relating thereto. In the event of such an appearance, AES Cedar Bay agrees to pay reasonable attorneys' fees, paralegal charges and legal expenses, including those incurred during any appellate proceedings, incurred by FPL. All compensation, awards, damages, rights of action and proceeds awarded to AES Cedar Bay (the "Proceeds") are hereby assigned to FPL, subject to the prior rights, if any, of the First Mortgagee, and AES Cedar Bay agrees to execute such further assignments of the Proceeds as FPL may require; and

(c) In the event any portion of the Mortgaged Property is so taken or damaged, FPL shall have, subject to the prior rights, if any, of the First Mortgagee, the option in its sole and absolute discretion to apply all such Proceeds, after deducting therefrom all reasonable costs and expenses (regardless of the particular nature thereof whether incurred with or without suit), including attorneys' fees, paralegal charges and legal expenses, including those incurred during appellate proceedings, incurred by it in connection with such Proceeds, to satisfy AES Cedar Bay's obligations under the Power Sale Agreement, provided, however, unless an Event of Default shall have occurred, the Proceeds may be used for the restoration of the Mortgaged Property following a Condemnation, subject to (i) AES Cedar Bay maintaining this Mortgage free from any Event of Default at all times and (ii) AES Cedar Bay providing evidence that adequate funds are available to restore or replace the Mortgaged Property and advancing such additional funds prior to the disbursement of any of the Proceeds.

Nothing herein shall relieve AES Cedar Bay from its obligation under the Power Sale Agreement and any other obligation of AES Cedar Bay secured hereby.

1.10 Action of FPL to Preserve Security of this Mortgage. In the event FPL is called upon to pay any sums of money to protect this Mortgage and the Power Sale Agreement as aforesaid, all monies so advanced hereunder shall be immediately due and payable together with interest on said sum at four (4) percent in excess of the average of the three (3) year U.S. Treasury note rate for the period of the advance computed from the date of such advance to the date of the actual receipt of payment thereof by FPL.

1.11 Liens. AES Cedar Bay will not permit any liens, encumbrances, mechanics', laborers', statutory or other liens and charges upon the Mortgaged Property other than those matters set forth in Exhibit B, and shall pay and promptly discharge, at AES Cedar Bay's cost and expense, all such liens, encumbrances and charges upon the Mortgaged Property or any part thereof or interest therein. AES Cedar Bay shall have the right to contest in good faith the validity of any such lien, encumbrance or charge, provided AES Cedar Bay shall first deposit acceptable security with a court of competent jurisdiction sufficient to eliminate the lien as a lien upon the Premises. If AES Cedar Bay shall fail to transfer the lien to a bond or otherwise discharge any such lien,

encumbrance or charge, then in addition to any other right or remedy of FPL, FPL may but is not obligated to discharge same, either by paying the amount claimed to be due or by procuring the discharge of such lien by depositing in court a bond for the amount claimed or otherwise giving security for such claim, or in such manner as is or may be prescribed by law. Repayment shall be made by AES Cedar Bay to FPL for such expenditures together with interest on said sums at four (4) percent in excess of the average of the three (3) year U.S. Treasury note rate for the period of the advance computed from the date of such advance to the date of the actual receipt of payment thereof by FPL.

1.12 Hazardous Materials. AES Cedar Bay expressly represents to FPL that the Mortgaged Property or any part thereof (i) to the best of its knowledge, other than as may be stated in that certain environmental assessment prepared by Dames & Moore dated June 7, 1989 and that certain preliminary contamination assessment prepared by G. Warren Leve, Inc. dated November 12, 1987, has not in the past been used, (ii) is not now being used, nor (iii) will in the future be used for handling, storage, transportation, or disposal of hazardous or toxic materials, except as previously disclosed in writing to FPL. AES Cedar Bay shall not use, generate, manufacture, store or dispose of, on, under or about the Mortgaged Property or transport to or from the Mortgaged Property any flammable explosives, radioactive materials, including any substances defined as or included in the definition of "hazardous substances, hazardous waste, hazardous materials and toxic substances " under any applicable federal, state or local laws or regulations in effect during the term of this Mortgage (collectively, the "Hazardous Materials"), except as otherwise specifically provided for in Exhibit C hereto. AES Cedar Bay covenants that AES Cedar Bay is in compliance with and maintains compliance with all the provisions of the Federal Water Pollution Control Act, Comprehensive Environmental Response, Compensation and Liability ("Superfund") Act of 1980, and Solid Waste Disposal Act, Florida Statutes Chapter 376, and other similar federal, state and local statutory schemes imposing compliance responsibility or liability on AES Cedar Bay.

AES Cedar Bay hereby agrees to indemnify FPL and hold FPL harmless from and against any and all claims, losses, damages, liabilities, fines, penalties, charges, administrative and judicial proceedings and orders, judgments, remedial

action requirements, enforcement actions of any kind, and all costs and expenses incurred in connection therewith (including but not limited to attorneys' fees, paralegal charges and legal expenses, including those incurred during any appellate proceeding), arising directly or indirectly, in whole or in part, out of (a) the presence on or under the Mortgaged Property of any Hazardous Materials or releases or discharges of Hazardous Materials on, under or from the Mortgaged Property (except to the extent that FPL is found to be responsible therefore), (b) any activity carried on or undertaken on or off the Mortgaged Property, whether prior to or during the term of the Mortgage, and whether by AES Cedar Bay or any predecessor in title or any employees, agents, contractors or subcontractors of AES Cedar Bay or any predecessor in title, or third persons at any time occupying or present on the Mortgaged Property in connection with the treatment, decontamination, handling, removal, storage, clean-up, transport or disposal of any Hazardous Materials at any time located or present on or under the Mortgaged Property, and (c) any breach of the covenants contained in this Section 1.12. The foregoing indemnity shall further apply to any residual contamination on or under the Mortgaged Property or affecting any natural resources, any contamination of or damages to any property or natural resources arising in connection with the generation, use, handling, storage, transport or disposal of any such Hazardous Materials, and irrespective of whether any such activities were or will be undertaken in accordance with applicable laws, regulations, codes and ordinances. The obligation of AES Cedar Bay to indemnify and hold harmless under this Section 1.12 shall survive any foreclosure of this Mortgage or any transfer of the Mortgaged Property by deed or other instrument in lieu of foreclosure.

1.13 Other Mortgage Liens. AES Cedar Bay represents and warrants that it will perform and promptly fulfill all of the covenants contained in any superior or inferior mortgages on any and all of the Premises encumbered hereby. In the event AES Cedar Bay shall fail to do so, FPL may, in addition to the rights otherwise granted FPL hereunder, at its election, perform or fulfill such covenants of any such superior or inferior mortgages without affecting its option to foreclose any of the rights hereunder, and the cost thereof, together with interest on said sums at four (4) percent in excess of the average of the three

(3) year U.S. Treasury Note rate for the period of the advance computed from the date of such advance to the date of actual receipt of payment thereof by FPL, shall be secured hereby. Nothing in this Section 1.13 shall be construed to waive the prohibition of further encumbering the Mortgaged Property without FPL's prior written consent.

1.14 Ground Rent. AES Cedar Bay will pay or cause to be paid, when due and payable by AES Cedar Bay pursuant to the provisions of the Ground Lease, but in any event not later than ten (10) days after notice of default is given by the Ground Lessor to FPL pursuant to the applicable section of the Ground Lease, all rentals, additional rent and other payments required to be paid by the Lessee under said Ground Lease. Within twenty (20) days after the date of each such payment, AES Cedar Bay shall deliver to FPL the original or a photostatic copy of the official receipt evidencing such payment or other proof of payment satisfactory to FPL. FPL will accept as proof of payment of rent payable under the Ground Lease a certification executed by a responsible officer of AES Cedar Bay to the effect that such rent has been paid. To the extent that the Ground Lease shall grant to AES Cedar Bay, as Lessee thereunder, the privilege to postpone or defer the payment of any imposition set forth in the Ground Lease, or any additional rent or other payment, the failure of AES Cedar Bay to pay the same shall not constitute an Event of Default hereunder if and so long as AES Cedar Bay shall faithfully comply with all of the conditions and other requirements of said Ground Lease with respect to the exercise of such privilege.

1.15 Performance of Ground Lease. AES Cedar Bay covenants that, in addition to the payment of all rentals, additional rent, impositions (as defined in the Ground Lease), and other payments and charges required to be paid by AES Cedar Bay, as Lessee, under and pursuant to the provisions of the Ground Lease, AES Cedar Bay:

(a) will diligently perform and observe all of the terms, covenants, and conditions of the Ground Lease required to be performed and observed by AES Cedar Bay as such Lessee unless such performance or observance shall have been waived or not required by the Lessor, to the end that all things shall be done which are necessary to keep unimpaired AES Cedar Bay's rights as Lessee under the Ground Lease;



necessary to keep unimpaired AES Cedar Bay's rights as Lessee under the Ground Lease;

(b) will promptly notify FPL in writing of any default by the Ground Lessor in the performance or observance of any of the terms, covenants or conditions on the part of Ground Lessor to be performed or observed, or of the occurrence of any event regardless of lapse of time, of the character specified in Article 4 hereof;

(c) will promptly (i) advise FPL in writing of the giving of any notice by the Lessor to AES Cedar Bay of any default by AES Cedar Bay, as such Lessee, in the performance or observance of any of the terms, covenants or conditions of the Ground Lease on the part of AES Cedar Bay, as Lessee thereunder, to be performed or observed, and (ii) deliver to FPL a true copy of each such notice;

(d) will, at least six (6) months prior to the last day upon which AES Cedar Bay, as such Lessee, may validly exercise any option to renew or extend the term of the Ground Lease, (i) exercise such option in such manner as will cause the term of said Ground Lease to be effectively renewed or extended for the period provided by such option, and (ii) give immediate written notice thereof to FPL; it being expressly agreed that, in the event of the failure of AES Cedar Bay so to do, FPL shall have, and is hereby granted, the irrevocable right to exercise any such option either in its own name and behalf or in the name and behalf of a designee or nominee of FPL or in the name and behalf of AES Cedar Bay, as FPL shall in its sole discretion determine, provided that, unless an Event of Default shall have occurred, if FPL elects to exercise such option, it shall do so in the name of AES Cedar Bay;

(e) will, promptly after the execution and delivery of this Mortgage or of any instrument or agreement supplemental hereto, notify the Lessor in writing of the execution and delivery thereof and deliver to the Lessor a copy of each such instrument or agreement;

(f) will promptly notify FPL in writing in the event of the initiation of any arbitration proceeding under and pursuant to the provisions of the Ground Lease, it being expressly agreed that if, at the time any such arbitration proceedings shall be initiated, an Event of Default shall have occurred hereunder or AES Cedar Bay shall be in default in the performance or observance of any

term, covenant, condition or requirement of said Ground Lease, on the part of AES Cedar Bay to be performed or observed, after giving affect to any applicable grace period, FPL shall have, and is hereby granted (subject to the rights of the First Mortgagee, if any), the sole and exclusive right to designate and appoint the arbitrator to be appointed by AES Cedar Bay in such arbitration proceeding, provided FPL shall make such appointment on or before the fifth day prior to the expiration of the term permitted for AES Cedar Bay to appoint the arbitrator; and

(g) will, within thirty (30) days after written demand by FPL, obtain from the Lessor and furnish to FPL an estoppel certificate of the Lessor stating (i) that the Ground Lease has not been amended, (ii) that the Ground Lease is in full force and effect, (iii) that no notice of the existence of a default by the tenant under the Ground Lease has been sent by Lessor and (iv) the date through which the rent and other charges payable by the tenant under the Ground Lease have been paid.

1.16 No Merger. AES Cedar Bay further covenants and agrees that there shall be no merger of the Ground Lease, or of the leasehold estate created thereby, or (except as provided in the Ground Lease) of any building, building service equipment or other improvement now or hereafter constituting a portion of the Mortgaged Premises, with the fee estate of the owner or owners of the land and premises described in the Ground Lease, by reason of the fact that said Ground Lease or the leasehold interest created thereby, or any interest in any such building, equipment or other improvements, may be held by or for the account of any person or persons who shall be the owner or owners of such fee estate in said land and premises, unless and until all persons at the time having an interest in the fee estate in said land and premises and all persons, including FPL, at the time having an interest in said Ground Lease, leasehold estate, buildings, equipment and improvements shall join in a written instrument effecting such merger and shall duly record the same. All property of every kind acquired by AES Cedar Bay after the date hereof, which by the terms hereof, is required or intended to be subjected to the lien of this Mortgage shall, immediately upon the acquisition thereof by AES Cedar Bay, and without any further mortgage, conveyance, assignment or transfer, become subject to the lien of this Mortgage. Nevertheless, AES Cedar Bay will do, execute acknowledge and

If any action or proceeding shall be instituted to evict AES Cedar Bay or recover possession of the Mortgaged Premises or for the foreclosure of any subordinate mortgage or for any other purpose affecting the said Ground Lease or this Mortgage, AES Cedar Bay will immediately, upon service thereof, on or by AES Cedar Bay, deliver to FPL a true copy of each precept, petition, summons, complaint, notice of motion, order to show cause, and all other processes, pleadings and papers however designated, served in such action or proceeding and in any such action or proceeding.

1.17 Bankruptcy of Lessor. Without limiting any rights of FPL otherwise provided to FPL under this Mortgage, it is further agreed and understood that:

(a) All references made in this section and its subsections to the "Bankruptcy Code" or any section or provision thereof shall mean the Bankruptcy Code as set forth in Title 11, United States Code, Section 101 et. seq., as may be amended, supplemented or supplanted from time to time.

(b) The lien and security interest provided to FPL under this Mortgage shall extend to and include all rights, claims and remedies which may be available to AES Cedar Bay in the event that the Lessor or the Mortgaged Property becomes subject to a bankruptcy case or proceeding pursuant to the Bankruptcy Code. Such lien and security interest shall extend to and include, without limitation:

- (i) All amounts payable pursuant to any proof of claim or relating to the assumption or rejection of the Ground Lease.
- (ii) All amounts payable pursuant to any administrative claim or expense or pursuant to Section 365(d) of the Bankruptcy Code.
- (iii) All rights of AES Cedar Bay to remain in possession of the Mortgaged Property pursuant to Section 365(h)(1) of the Bankruptcy Code and all rights and amounts related to or arising from offsets pursuant to Section 365(h)(2) of the Bankruptcy Code.

(c) In any bankruptcy case or proceeding of the Lessor (or any successor) or involving the Mortgaged Property, FPL shall, subject to the prior rights, if

any, of the First Mortgagee, have the option (but not the obligation), to the exclusion of AES Cedar Bay, to assert all rights, claims and remedies available to AES Cedar Bay in such case or proceeding. Without limiting the foregoing, FPL shall have the right to file, commence, prosecute and defend all proofs of claim, adversary proceedings, contested matters, motions, applications, notices, discovery, examinations, and proceedings relating to the acceptance or rejection of the Ground Lease or otherwise concerning any matters arising under or related to Section 365 of the Bankruptcy Code. FPL, using counsel of FPL's choice, shall be permitted to proceed in its own name or in the name of AES Cedar Bay, and AES Cedar Bay agrees to execute any and all powers, authorizations, consents or other documents reasonably required by FPL in connection therewith. The rights of FPL pursuant to this subsection 1.17(c) shall be exercisable by FPL regardless of the existence of any Events of Default under the Power Sale Agreement or this Mortgage; provided, however, that AES Cedar Bay shall have the right to proceed in such bankruptcy case including, without limitation, the right to file, commence, prosecute and defend all proofs of claim, adversary proceedings, contested matters, motions, application, notices, discovery and examinations if FPL has failed to take such action before the fifth (5th) business day prior to the date such action should be taken to preserve or enforce the rights of AES Cedar Bay, provided, AES Cedar Bay provides written notice of its proposed action to FPL as soon as practicable but in no event later than three (3) business days before it takes such action. Notwithstanding the foregoing, AES Cedar Bay shall not take any such action in a bankruptcy case or proceeding of the Lessor or involving the Mortgaged Property if AES Cedar Bay receives from FPL a written objection to such proposed action prior to taking such action. AES Cedar Bay shall, upon demand, pay to FPL all reasonable costs and expenses (including attorneys' fees, paralegal charges and legal expenses, including those incurred during appellate proceedings) paid or incurred by FPL in connection with any litigation or other matters arising in or related to a bankruptcy proceeding or case of the Lessor or involving the Mortgaged Property which affects this Mortgage or the Power Sale Agreement. Any such costs or expenses not paid as aforesaid shall be secured by the lien or security interest of this Mortgage and shall accrue interest at four percent (4%) in excess of the average three (3) year U.S. Treasury note rate for the period of the advance computed from the date of any advance to the date of the actual receipt of payment by FPL.

(d) Without limiting the foregoing, AES Cedar Bay shall not, without FPL's prior written consent, elect or consent to treat the Ground Lease as terminated under Section 365(h)(1) of the Bankruptcy Code. Any such election or consent made without FPL's prior written consent shall be null and void.

(e) If, pursuant to Section 365(h)(2) of the Bankruptcy Code, AES Cedar Bay seeks to offset against the rent reserved in the Ground Lease as to any of the Mortgaged Property the amount of any damages caused by the non-performance of the Lessor or any of the Lessor's obligations under the Ground Lease, AES Cedar Bay shall, prior to effecting such offset, notify FPL in writing of its intent to do so, setting forth the amounts proposed to be offset and the basis therefor. FPL shall have the right to object to all or any part of such offset, and, in the event of such objection, AES Cedar Bay shall not effect any offset of the amount so objected to by FPL. If FPL does not object to the proposed offset within ten (10) business days after receipt of the required notice, AES Cedar Bay may proceed to effect the offset in the amount set forth in the notice. Notwithstanding any other provisions hereof, so long as no Event of Default under the Power Sale Agreement or this Mortgage has occurred and is continuing, AES Cedar Bay shall have the right to retain and use the permitted offset amounts. AES Cedar Bay shall indemnify and save FPL harmless from an against any and all claims, demands, actions, suits, proceedings, damages, losses, costs and expenses of every nature whatsoever (including, without limitation, attorneys' fees, paralegal charges and legal expenses, including those incurred in appellate proceedings) arising from or relating to any offset by AES Cedar Bay against the rent reserved by the Ground Lease.

(f) AES Cedar Bay shall promptly, after obtaining knowledge thereof, notify FPL orally of any filing of a case or proceeding under the Bankruptcy Code by the Lessor or involving the Mortgaged Property. AES Cedar Bay shall thereafter forthwith provide written notice to FPL of such case or proceeding, setting forth any information available to it as to the date of any filing, the court where the filing occurred, applicable case numbers and the relief being sought. AES Cedar Bay shall promptly deliver to FPL, upon receipt, any and all notices, summonses, pleadings, papers, applications, motions or other documents received by it in connection with any such case or proceeding.

## ARTICLE 2

### COLLECTION OF SUBLEASES,

### FRANCHISES, ISSUES AND PROFITS UPON DEFAULT

2.01 Collection Upon Default. Upon any Event of Default under this Mortgage, to the extent permitted by law, FPL may (subject to the prior rights, if any, of the First Mortgagee), at any time without notice, either in person, by agent or by a receiver appointed by the court, and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of the Mortgaged Property or any part thereof. To the extent permitted by law, upon and during the continuance of an Event of Default, FPL may (subject to the prior rights, if any, of the First Mortgagee) in its own name, sue for or otherwise collect such rents, issues, and profits, including past due and unpaid, and apply same less costs and expenses of operation and collection, including attorneys' fees, paralegal charges and legal expenses, including those incurred during appellate proceedings, to any indebtedness secured hereby in such order as FPL may determine. The collection of such rents, issues and profits or the entering upon and taking possession of the Mortgaged Property, or application thereof as aforesaid shall not cure or waive any default or notice of default hereunder or invalidate any act done in response to such default or pursuant to such notice of default. In addition (and not as an election of remedies), upon the occurrence of an Event of Default, FPL may (subject to the prior rights, if any, of the First Mortgagee) apply for a court order requiring AES Cedar Bay to deposit all rents in the court registry pursuant to Florida Statute 697.07, as amended. AES Cedar Bay hereby consents to entry of such an order upon the sworn ex parte motion of FPL upon the occurrence of an Event of Default hereunder.

## ARTICLE 3

### SECURITY AGREEMENT

3.01 Creation of Security Interest. AES Cedar Bay hereby grants to FPL a security interest in (i) the rights, claims and remedies provided for in Section 1.17 above and (ii) all rental and security deposits collected by AES Cedar Bay from sub-tenants in the Premises, if any. A security interest is also granted to FPL in any sums held by FPL pursuant to the provisions of this Mortgage, or other collateral agreements or any agreements between AES Cedar Bay,

FPL and any escrow agent holding loan proceeds pending disbursements as provided in such agreements where such sums are held for the benefit of FPL.

#### ARTICLE 4

##### EVENT OF DEFAULT AND REMEDIES UPON DEFAULT

4.01 Event of Default. The term "Event of Default" wherever used in this Mortgage, shall mean any one or more of the following events:

(a) Any Event of Default under the Power Sale Agreement shall have occurred and shall not have been cured during the period, if any, allowed for such cure in the Power Sale Agreement.

(b) If (i) foreclosure proceedings should be instituted on any mortgage inferior or superior to this Mortgage, or (ii) if any foreclosure proceeding is instituted on any lien of any kind and is not dismissed or transferred to a bond within sixty days of the service of foreclosure proceedings on AES Cedar Bay.

(c) If AES Cedar Bay, pursuant to Florida Statutes 697.04(1)(b), as amended from time to time, shall file an instrument of record limiting the maximum amount which may be secured by this Mortgage.

(d) If AES Cedar Bay is in default of any material provision of this Mortgage or the Security Agreement from AES Cedar Bay to FPL, dated the date hereof, and AES Cedar Bay fails to cure such default within sixty days after notice of such default from FPL to AES Cedar Bay, provided, however, so long as the default is not the failure to pay money, if it is not feasible to correct such default within sixty days after notice from FPL to AES Cedar Bay, but it remains feasible to correct such default within one year after such notice, it shall not constitute an Event of Default hereunder until the earliest feasible date within such one year period when cure could be effected so long as (i) corrective action by AES Cedar Bay is instituted within ten days of the date of such notice, (ii) such corrective action is diligently pursued, (iii) AES Cedar Bay provides FPL monthly written reports as to the nature and progress of such corrective action, and (iv) such cure is effected within one year of said notice.

4.02 Acceleration Upon Default, Additional Remedies. In the event one or more "Events of Default" as above provided shall occur, the remedies available to FPL shall include, but not necessarily be limited to, any one or more of the following:

(a) FPL may declare all obligations of AES Cedar Bay secured hereby, including but not limited to the Termination Fee (as defined in the Power Sale Agreement), immediately due and payable without further notice.

(b) FPL may apply, to any court of competent jurisdiction, for the appointment of a receiver as provided in Section 3.7.2 of the Power Sale Agreement. All expenses, fees and compensation incurred pursuant to a receivership approved by such court, shall be secured by the lien of this Mortgage until paid.

(c) FPL shall have the right to foreclose this Mortgage and in case of sale in an action or proceeding to foreclose this Mortgage, FPL shall have the right to sell the Mortgaged Property covered hereby in parts or as an entirety. It is intended hereby to give to FPL the widest possible discretion permitted by law with respect to all aspects of any such sale or sales.

(d) It shall also not be necessary that FPL pay any Impositions, premiums or other charges regarding which AES Cedar Bay is in default before FPL may invoke its rights hereunder.

(e) FPL may exercise all other remedies available at law or equity in such order as FPL may elect.

(f) All such other remedies available to FPL with respect to this Mortgage shall be cumulative and may be pursued concurrently or successively. No delay by FPL in exercising any such remedy shall operate as a waiver thereof or preclude the exercise thereof during the continuance of that or any subsequent default.

(g) The obtaining of a judgment or decree with respect to any obligation under the Power Sale Agreement, whether in the State of Florida or elsewhere, shall not in anyway affect the lien of this Mortgage upon the Mortgaged Property covered hereby.

(h) FPL may retain any portion of the Energy and Capacity Payments otherwise due and payable under the Power Sale Agreement which would result in a net increase in the Termination Fee, in the manner provided in Sections 3.6.6, TERM AND TERMINATION, 12.8, BASIS FOR PAYMENT BY FPL, and 21.1, SECURITY, of the Power Sale Agreement.



4.03 Expenses. AES Cedar Bay shall pay, or reimburse FPL for all costs, charges and expenses, including reasonable attorneys' fees, paralegal charges and legal expenses, including those incurred during appellate proceedings, and disbursements, and costs of abstracts of title incurred or paid by FPL in any action, proceeding or dispute in which FPL is made a party or appears as a party plaintiff or party defendant because of the failure of AES Cedar Bay to promptly and fully perform and comply with all conditions and covenants of this Mortgage, including but not limited to, the foreclosure of this Mortgage, condemnation of all or part of the Mortgaged Property, or any action to protect the security thereof, except to the extent that AES Cedar Bay is the prevailing party. All costs, charges and expenses so incurred by FPL shall become immediately due and payable whether or not there be notice, demand, an attempt to collect or suit pending, together with interest on said sums at four (4) percent in excess of the average of the three (3) year U.S. Treasury note rate for the period of the advance computed from the date of such advance to the date of the actual receipt of payment thereof by FPL. The amount so paid or incurred by FPL shall be secured by the lien of this Mortgage. This Mortgage shall also secure all fees, charges, costs, reimbursements and other sums, if any, that are provided for in the Power Sale Agreement or other agreement between AES Cedar Bay and FPL, and would be due by AES Cedar Bay to FPL upon prepayment of the obligations of AES Cedar Bay under the Power Sale Agreement, whether such prepayment is voluntary or arises from FPL's acceleration of the obligations under the Power Sale Agreement due to an Event of Default thereunder or hereunder.

## ARTICLE 5

### MISCELLANEOUS PROVISIONS

5.01 Future Advances/Securing Other Obligations. This Mortgage is given to secure not only the existing obligations of AES Cedar Bay to FPL pursuant to the Power Sale Agreement, but also such future obligations up to an additional One Billion Dollars as are incurred within twenty years from the date hereof, plus interest thereon, and any disbursements made by FPL for payment of taxes, insurance or other liens on the property encumbered by this Mortgage, with interest on such disbursements, which advances shall be secured hereby to the same extent as if such future advances were made this date. The total amount of

obligations secured hereby may increase or decrease from time to time. The provisions of this Section 5.01 shall not be construed to imply any obligation on FPL except as provided in the Power Sale Agreement.

5.02 Power Sale Agreement. This Mortgage is subject to the Power Sale Agreement, an executed copy of which is in the possession of FPL and is incorporated herein by reference and made a part hereof.

5.03 Ownership by Corporation. So long as the Mortgaged Property is owned by a corporation, such corporation shall maintain its existence and comply with all registration requirements of Florida law.

5.04 Survival of Warranties. All representations, warranties and covenants of AES Cedar Bay contained herein or incorporated by reference shall survive the termination of the Power Sale Agreement and shall remain continuing obligations, warranties and representations of AES Cedar Bay during any time when a portion of the obligations secured by this Mortgage remain outstanding.

5.05 Successors and Assigns. The provisions hereof shall be binding upon and shall inure to the benefit of AES Cedar Bay, its successors and assigns (including without limitation subsequent owners of the Premises) and shall be binding upon and shall inure to the benefit of FPL, its successors and assigns.

5.06 Notices. All notices, demands and requests given by either party hereto to the other party shall be in writing. All notices, demands and requests by one party to the other shall be deemed to have been properly given as herein required if sent in accordance with the notice provisions of the Power Sale Agreement.

5.07 Modification in Writing. This Mortgage may not be changed, terminated or modified orally or in any other manner than by an instrument in writing signed by the party against whom enforcement is sought.

5.08 Captions. The captions or headings at the beginning of each section hereof are for the convenience of the parties and are not a part of this Mortgage.

5.09 Maximum Rate of Interest. In no event shall all charges in the nature of interest charged or taken on this Mortgage or the Power Sale Agreement exceed the maximum allowed by law and in the event such charges cause the interest to exceed said maximum allowed by law, such interest shall be

recalculated and such excess shall be credited to principal, it being the intent of the parties that under no circumstances shall AES Cedar Bay be required to pay any charges in the nature of interest in excess of the maximum rate allowed by law.

5.10 Further Assurances. AES Cedar Bay will execute and deliver promptly to FPL on demand at any time or times hereafter, any and all further instruments reasonably required by FPL to carry-out the provisions of this Mortgage. AES Cedar Bay will, without limitation upon the generality of the foregoing, at any and all times at its expense, execute, acknowledge and deliver and, at FPL's expense, file and/or record, refile and/or re-record, all and every such further acts, deeds, powers of attorney, assignment of accounts, conveyances, mortgages, security instruments, documents and financing assurances in law, and will deposit with FPL any certificates of title issuable with respect to any property and a notation of the security interest hereunder, as FPL shall reasonably require for the better assuring, conveying, pledging, transferring, mortgaging, assigning, and confirming unto FPL all and singular the hereditaments and premises, estates and property hereby, or by subsequent or collateral instruments, conveyed, pledged, transferred or assigned, or intended to be, and for perfecting the security interest of Mortgaged Property and other items of security and collateral now or hereafter held by FPL pursuant to this Mortgage.

5.11 Title Insurance Policy/Survey. If requested, AES Cedar Bay will, at FPL's expense, provide FPL with a mortgagee title insurance policy in such amount as may be reasonably requested by FPL, issued by a title company acceptable to FPL and insuring this Mortgage as a valid leasehold mortgage, and subject only to such exceptions, if any, which are acceptable to FPL, together with a current survey of the Premises encumbered by this Mortgage, prepared and certified by a registered surveyor or engineer showing access to the Property and no condition which would prevent title to the Premises from being good, marketable and insurable as a leasehold estate.

5.12 Invalid Provisions to Affect No Others. In case any one or more of the covenants, agreements, terms, or provisions contained in this Mortgage or in the Power Sale Agreement shall be held or found invalid, illegal, or unenforceable in any respect, the validity of the remaining covenants,

agreements, terms, or provisions contained herein and in the Power Sale Agreement shall be in no way affected, prejudiced, or disturbed thereby.

5.13 Governing Law and Construction of Clauses. This Mortgage shall be governed and construed by the laws of the State of Florida. No act of FPL shall be construed as an election to proceed under any one provision of the Mortgage or of the applicable statutes of the State of Florida to the exclusion of any other such provision, anything herein or otherwise to the contrary notwithstanding.

5.14 Time of Essence. Time is of the essence of this Mortgage.

5.15 Waiver. No waiver of any covenant herein or in the obligation secured hereby shall at any time hereafter be held to be a waiver of any of the other terms hereof or of the Power Sale Agreement, or future waiver of the same covenant.

5.16 Gender, Etc. The use of any gender shall include all other genders. The singular shall include the plural.

5.17 Mortgage Riders. If any rider is attached to this Mortgage and recorded together with this Mortgage and signed by AES Cedar Bay, it shall be deemed to be incorporated herein and to be fully binding upon AES Cedar Bay as though it were a part of the original Mortgage.

5.18 First Mortgage. It is expressly agreed that this Mortgage and the lien hereof on the Mortgaged Property be and hereby is made subject and subordinate to that certain Mortgage(s), dated [ ], 19[ ], from AES Cedar Bay to [ ] on behalf of [senior project lenders and subordinate project lenders] (together with their respective successors and assigns, collectively, the "First Mortgagee"), recorded in Official Records Book [ ], at Page [ ] of the Public Records of Duval County, Florida (the "First Mortgage"), and any amendments, modifications, supplements, renewals, extensions, consolidations, replacements and/or participation of the First Mortgage, all advances now or from time to time hereafter made under the First Mortgage and/or pursuant to the terms of that certain Credit Agreement dated [ ], 19[ ] among AES Cedar Bay and [senior project lenders/subordinated project lenders] (together with any amendments thereto or replacements thereof, the "Credit Agreement") up to but not exceeding the sum of (i) an aggregate principal amount of Five Hundred Million Dollars

(\$500,000,000), said principal sum being intended to include loans or other extensions of credit made by the First Mortgagee or any transferee thereof to AES Cedar Bay, and (ii) all accrued interest and costs under the First Mortgage and/or the Credit Agreement.

5.19 Waiver of Jury Trial. AES CEDAR BAY HEREBY AND FPL BY ITS ACCEPTANCE OF THIS MORTGAGE, KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT EITHER MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS MORTGAGE AND ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONJUNCTION HERewith, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTION OF EITHER PARTY. THIS PROVISION IS A MATERIAL INDUCEMENT FOR FPL ACCEPTING THIS MORTGAGE.

IN WITNESS WHEREOF, AES Cedar Bay has hereunto duly executed this Mortgage as of the day and year first hereinbefore written.

Signed, sealed and delivered  
in the presence of:

AES CEDAR BAY, INC.

a \_\_\_\_\_

\_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_

Its:

\_\_\_\_\_

ATTEST: \_\_\_\_\_

\_\_\_\_\_

Its:

(CORPORATE SEAL)

STATE OF FLORIDA :  
:ss  
COUNTY OF \_\_\_\_\_:

The foregoing instrument was acknowledged before me, this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, by \_\_\_\_\_ and \_\_\_\_\_, the \_\_\_\_\_ and \_\_\_\_\_, respectively, of AES CEDAR BAY, INC., a \_\_\_\_\_ corporation, on behalf of said corporation.

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NOTARY PUBLIC, State of Florida  
My Commission Expires

**Exhibit A**  
**Legal Description**

**Exhibit B**  
**Exceptions**

1. [Description of permitted bank financing and title report exceptions which are reasonably acceptable to FPL].



**Exhibit C**  
**Hazardous Materials**

APPENDIX I  
FORM OF SECURITY AGREEMENT

## SECURITY AGREEMENT

This SECURITY AGREEMENT (the "Security Agreement"), dated as of [ ], 19[ ] is from AES CEDAR BAY, INC., a Delaware corporation ("AES Cedar Bay"), whose mailing address is [ ], to FLORIDA POWER & LIGHT COMPANY, a utility corporation organized and existing under the laws of the State of Florida having its principal place of business in Miami, Florida ("FPL"), whose address is Post Office Box 029100, Miami, Florida 33102.

In consideration of payments and other financial accommodations extended by FPL to AES Cedar Bay, and for other value received by AES Cedar Bay, AES Cedar Bay hereby grants a continuing security interest in, and assigns as security to FPL, the Collateral to secure payment and performance of all of the Obligations of AES Cedar Bay to FPL.

Section 1. Definitions. Definitions in the Code apply to words and phrases in this Security Agreement and, if Code definitions conflict, definitions in Article 9 (Chapter 679, Florida Statutes) of the Code shall apply. In addition to terms defined in the Code or elsewhere in this Security Agreement or the Power Sale Agreement, the following terms have the meanings indicated below, which meanings shall be equally applicable to both the singular and the plural forms of such terms:

1.1 "Code" means the Uniform Commercial Code as in effect from time to time in the State of Florida (Chapters 671 through 680, inclusive, Florida Statutes).

1.2 "Collateral" means and includes any and all of AES Cedar Bay's right, title and interest in and to the following owned by AES Cedar Bay or in which AES Cedar Bay has an interest, whether now owned or existing or hereafter created or acquired:

- (a) accounts;
- (b) chattel paper;
- (c) documents;
- (d) general intangibles including, but not limited to, the right, title and interest of AES Cedar Bay under that certain lease,

- dated [     ], 19[     ] between AES Cedar Bay as "lessee" and [     ] as "lessor", together with all revisions thereof;
- (e) goods, including equipment, inventory and fixtures;
  - (f) instruments;
  - (g) all cash or non-cash proceeds of any of the foregoing, including insurance proceeds and all products thereof;
  - (h) all ledger sheets, files, records, documents and instruments (including, but not limited to, computer programs, tapes and related electronic data processing software) evidencing an interest in or relating to the above; and
  - (i) any and all property of AES Cedar Bay now or hereafter delivered to or left in or coming into the possession, control or custody of FPL, whether expressly as collateral security or for any other purpose (including cash, stock and other dividends, and all rights to subscribe for securities incident to, declared, or granted in connection with such property), and property described in collateral receipts or other documents signed or furnished by AES Cedar Bay, and any and all replacements of any of the foregoing, whether or not in the possession of FPL.

1.3 "Obligations" shall include:

- (a) all indebtedness, obligations and liabilities of AES Cedar Bay to FPL now or hereafter existing, incurred or created under the Power Sale Agreement, including, but not limited to, the payment of the Termination Fee (as defined in the Power Sale Agreement), and any and all renewals, modifications, amendments and replacements thereof;
- (b) all costs incurred by FPL to (i) enforce this Security Agreement and the security interest created hereunder, provided, that such enforcement proceedings are resolved in favor of FPL, (ii) collect the Obligations and (iii) maintain and preserve the Collateral, including, without limitation, taxes, assessments, insurance premiums, repairs, reasonable attorneys' fees, paralegal charges and legal expenses, including those incurred during appellate proceedings, rent storage costs and expenses of sale; and

(c) interest on the above amounts equal to four (4) percent in excess of the average of the three (3) year U.S. Treasury note rate for the period for which interest is computed.

1.4 "Power Sale Agreement" shall mean that certain Amended and Restated Agreement for the Purchase of Firm Capacity and Energy, dated as of July 2, 1990 between AES Cedar Bay and FPL.

1.5 "Second Mortgage" shall mean that certain Second Leasehold Mortgage and Security Agreement from AES Cedar Bay in favor of FPL, dated that date hereof.

Section 2. List of Collateral. Contemporaneous with the execution hereof AES Cedar Bay has furnished to FPL a listing of the Collateral presently owned by it; provided, however, FPL shall have a security interest in any and all Collateral whether or not such Collateral is described generally or specifically on such list. AES Cedar Bay warrants and agrees that it is the owner of the Collateral free and clear of all liens and security interests except the security interest granted by this Security Agreement, by the Senior Security Agreement (as defined in Section 6.8 below) or as set forth in Exhibit A hereto (herein called "Permitted Encumbrances").

Section 3. No Other Security Interests. So long as any Obligation to FPL is outstanding, AES Cedar Bay will not without the prior written consent of FPL grant to any third party a security interest in any of the Collateral or permit any lien or encumbrance to attach to any part of the Collateral (except for (i) mechanics' or materialmen's liens that are not due and payable or remain unbonded for more than thirty days and (ii) taxes not yet due and payable or taxes being contested in good faith with adequate cash reserves or bonds therefore) or suffer or permit any levy to be made on any part of the Collateral, or permit any financing statement except that of FPL to be on file with respect thereto, except with respect to Permitted Encumbrances. AES Cedar Bay will not sell, transfer, lease or otherwise dispose of any of the Collateral or any interest therein, or offer to do so or impair the value of the Collateral or the security interest, provided, however, AES Cedar Bay may sell any of the Collateral (i) in the ordinary course of its business, if the same shall have been replaced to the extent necessary for the continued long-term operation of

the Facility, or (ii) that may become worn out, obsolete or otherwise unnecessary for the operation of the Facility.

Section 4. Representations, Warranties and Covenants Regarding the Collateral. AES Cedar Bay represents, warrants and covenants that:

4.1. The Collateral shall be kept at the address specified above or specified in Exhibit B attached hereto. If any of the Collateral consisting of equipment, inventory or fixtures is located on property which is not owned by AES Cedar Bay, AES Cedar Bay will, on demand of FPL, obtain landlord's waivers of liens in forms satisfactory to FPL as to each such location. AES Cedar Bay will not permit any of the Collateral to be moved without the prior written consent of FPL, other than Collateral which may be sold as permitted under Section 3 hereof.

4.2. If any of the Collateral consisting of equipment is attached to real property, the legal description for said real property is attached hereto as Exhibit C and AES Cedar Bay will, on demand of FPL, furnish FPL with a disclaimer or disclaimers and subordination, signed by all persons having an interest in said real estate at the time of such attachment (other than the Senior Secured Party and the Lessor under the Ground Lease (as defined in the Second Mortgage), provided, however, such parties shall execute and deliver to FPL such evidence of their consent to this Security Agreement and the security interest granted hereunder, as FPL may reasonably request), of any interest in the equipment. The name or names of the record owner of the real property where the equipment is kept is shown in Exhibit C hereto.

4.3. AES Cedar Bay will at all times keep the Collateral insured against loss, damage, theft, and such other risks as is required by Section 15.0 of the Power Sale Agreement, with such insurance companies, under such policies, in such form and for such periods as is required thereunder, and each such policy shall provide that loss thereunder and proceeds payable thereunder shall be payable to FPL under a standard mortgagee endorsement, if available, or, if not available, as an additional loss payee, as its interest may appear (subject to the prior rights, if any, of the Senior Secured Party). After the happening of any casualty to the Collateral or any part thereof, AES Cedar Bay shall give prompt written notice thereof to FPL. AES Cedar Bay shall apply such proceeds to

repairs or restorations or reduction of debt as required by the First Mortgagee (as defined in Section 5.18 in the Second Mortgage), or if such first mortgage is satisfied:

(a) in the event of damage to or destruction of the Collateral, AES Cedar Bay shall apply the proceeds as it sees fit unless there exists an Event of Default as defined in the Power Sale Agreement (which would not be cured by such application) or such application would cause an Event of Default to exist. In either such case, FPL shall have the option, in its sole discretion (but subject to Subsection 4.3(b) below), of applying or paying all or part of the insurance proceeds (i) to any obligation secured hereby and then due and owing to FPL, in such order as FPL may determine, or (ii) to the restoration or replacement of the Collateral, or (iii) to AES Cedar Bay.

(b) if there exists an Event of Default (as defined in the Power Sale Agreement) which would not be cured by the application of insurance proceeds to repair or restore the Improvements, or such application would cause an Event of Default to exist, FPL agrees not to unreasonably withhold consent to the use of insurance proceeds for restoration or replacement of the Collateral following a partial casualty loss, subject to (i) AES Cedar Bay maintaining this Security Agreement free from an Event of Default (as defined in Section 5 below) at all times, and (ii) AES Cedar Bay providing evidence that adequate funds are available to restore or replace the Collateral and advancing any additional funds required prior to the disbursement of insurance proceeds.

(c) in the event of such loss or damage, all proceeds of insurance shall be payable to FPL and AES Cedar Bay hereby authorizes and directs any affected insurance company to make payment of such proceeds directly to FPL. If there exists an Event of Default under the Power Sale Agreement, FPL is hereby authorized and empowered by AES Cedar Bay to settle, adjust or compromise any claims for loss, damage or destruction under any policy or policies of insurance, and AES Cedar Bay hereby irrevocably appoints FPL its attorney-in-fact coupled with an interest with the power and authority in such instance to endorse any checks, drafts or other instruments representing any proceeds of such insurance, whether payable by reason of loss thereunder or otherwise.

Nothing herein shall relieve AES Cedar Bay from its obligations under the Power Sale Agreement or any other obligation of AES Cedar Bay secured hereby. Each such policy shall provide for thirty days written minimum cancellation notice to FPL (or at least ten days if due to non-payment of premiums). Such policies shall provide that no act or default of AES Cedar Bay shall affect the right of FPL to recover.

4.4. AES Cedar Bay will at all times keep the Collateral in good order and repair and will not waste or destroy the Collateral or any part thereof.

4.5. AES Cedar Bay warrants that no financing statement covering any Collateral or any proceeds thereof is on file in any public office, other than financing statements naming FPL and financing statements filed with respect to Permitted Encumbrances. AES Cedar Bay will promptly, if requested by FPL, mark its records evidencing its accounts and chattel paper in a manner satisfactory to FPL so as to show the same having been assigned to FPL hereunder. AES Cedar Bay authorizes FPL to file financing statements with respect to FPL's interests hereunder in the Collateral signed only by FPL. AES Cedar Bay will join with FPL in executing financing statements, notices, affidavits or similar instruments in forms satisfactory to FPL and such other documents as FPL may from time to time request, and filing the same in any public office deemed advisable by FPL. FPL will pay any filing charges. AES Cedar Bay will do such other acts and things, all as FPL may reasonably request, to maintain a valid, perfected security interest in the Collateral (free of all other liens and claims whatsoever other than Permitted Encumbrances) to secure the payment of the Obligations secured hereby. FPL is hereby appointed AES Cedar Bay's attorney-in-fact to do all acts and things which FPL may deem necessary to perfect and to continue the perfection of the security interest created hereby and to protect the Collateral.

4.6. AES Cedar Bay will not use the Collateral or permit the same to be used in violation of any statute or ordinance, which violation would have a material adverse effect on the value of the Collateral, the security interest granted hereunder, or upon the operation of the Facility. FPL may examine and inspect the Collateral at any time, wherever located. AES Cedar Bay will pay promptly when due all taxes and assessments upon the Collateral or for its use



or operation, and FPL shall pay all taxes and assessments upon this Security Agreement or other writing evidencing the Obligations.

Section 5. Defaults and Remedies. The term "Event of Default" shall mean a default in any material provision hereof which remains uncured for a period of sixty days after notice from FPL to AES Cedar Bay, or any Event of Default as defined in the Second Mortgage, provided, however, so long as the default is not the failure to pay money, if it is not feasible to correct such default within sixty days after notice from FPL to AES Cedar Bay, but it remains feasible to correct such default within one year after such notice, it shall not constitute an Event of Default hereunder until the earliest feasible date within such one year period when cure could be effected so long as (i) corrective action by AES Cedar Bay is instituted within ten days of the date of such notice, (ii) such corrective action is diligently pursued, (iii) AES Cedar Bay provides FPL monthly written reports as to the nature and progress of such corrective action, and (iv) such cure is effected within one year of said notice. If an Event of Default, shall have occurred and shall not be remedied, then (subject to the prior rights, if any of the Senior Secured Party) FPL, may in addition to any other rights and remedies which it may have, immediately and without demand exercise any and all of the rights and remedies granted to a secured party upon default under the Code, and upon request or demand of FPL, AES Cedar Bay shall at its expense assemble all or any part of the Collateral and make it available to FPL at a convenient place designated by FPL. FPL and its agents are authorized to enter into or onto any premises where the Collateral may be located for the purpose of taking possession of such Collateral. Any notice of sale, disposition or other intended action by FPL, sent to AES Cedar Bay at the address specified at the beginning of this Security Agreement or at such other address of AES Cedar Bay as FPL may be notified of in accordance with the terms hereof from time to time, at least ten days prior to such action, shall constitute reasonable notice to AES Cedar Bay. Any proceeds of any disposition of any of the Collateral may be applied by FPL (subject to the prior rights, if any, of the Senior Secured Party) toward payment of such of the Obligations and in such order of application as FPL may from time to time elect. Upon the occurrence of such Event of Default, FPL may retain any portion of the Monthly Energy Payments and

Monthly Capacity Payments otherwise due and payable under the Power Sale Agreement which would result in a net increase in the Termination Fee thereunder, in the manner provided in Sections 3.6.6, TERM AND TERMINATION, 12.8, BASIS FOR PAYMENT BY FPL, and 21.1, SECURITY thereof.

Section 6. Miscellaneous.

6.1. No waiver by FPL of any Event of Default shall operate as a waiver of any other Event of Default or of the same type of Event of Default on a future occasion. No delay or omission on the part of FPL in exercising any right or remedy shall operate as a waiver thereof, and no single or partial exercise by FPL of any right or remedy shall preclude any other or further exercise thereof or the exercise of any other right or remedy. Time is of the essence of this Security Agreement. The provisions of this Security Agreement are cumulative and in addition to the provisions of any liability of AES Cedar Bay under the Power Sale Agreement and the Second Mortgage, and FPL shall have all the benefits, rights and remedies of a secured party under this Security Agreement.

6.2. All rights of FPL hereunder shall inure to the benefit of its successors and assigns, and all Obligations of AES Cedar Bay shall bind the successors and assigns of AES Cedar Bay.

6.3. This Security Agreement has been delivered in the State of Florida and shall be construed in accordance with the laws of Florida.

6.4. AES Cedar Bay shall pay, within thirty days of receipt of a bill, all expenses and expenditures of FPL, including reasonable attorneys' fees, paralegal charges and legal expenses, including those incurred during appellate proceedings, incurred or paid by FPL in enforcing or exercising its security interest, rights or remedies created by, connected with or provided in this Security Agreement.

6.5. At its option, FPL may discharge taxes, liens or security interests or other encumbrances at any time levied or placed on the Collateral other than liens, security interests or other encumbrance which may be expressly permitted hereby, may pay for insurance on the Collateral required by Section 15.0 of the Power Sale Agreement, and may pay for the maintenance and preservation of the Collateral. AES Cedar Bay agrees to reimburse FPL, within thirty days of receipt of a bill, for any payment made, or any expense reasonably

incurred, by FPL, pursuant to the foregoing authorization. Except upon the occurrence and during the continuation of an Event of Default, AES Cedar Bay may have possession of the Collateral and use it in any lawful manner not inconsistent with this Security Agreement and not inconsistent with any policy of insurance thereon.

6.6. If any of the provisions of this Security Agreement shall contravene or be held invalid under the laws of any jurisdiction, the Security Agreement shall be construed as if not containing such provision and the remainder of this Security Agreement shall be construed and enforced accordingly.

6.7. FPL's rights under the Power Sale Agreement and all documents delivered in connection therewith are cumulative. Without limiting the generality of the foregoing, FPL may enforce its rights hereunder in all or part of the Collateral or in any other security in the order selected by FPL.

6.8. It is expressly agreed that this Security Agreement and the lien on and security interest in the Collateral and the proceeds thereof created by this Security Agreement is in all respects subject and subordinate to the liens on and security interests in the Collateral and the proceeds thereof created by that certain Security Agreement, dated [ ], 19[ ] (the "Senior Security Agreement"), made by AES Cedar Bay in favor of [ ] on behalf of [senior project lenders and subordinate project lenders] (together with their respective successors and assigns, collectively, the "Senior Secured Party"), and any amendments, modifications, supplements, renewals, extensions, consolidations, replacements and/or participation of the Senior Security Agreement, all advances made under the Senior Security Agreement and/or pursuant to the terms of that certain Credit Agreement dated [ ], 19[ ] among AES Cedar Bay and [senior project lenders/subordinated project lenders] (together with any amendments thereto or replacements thereof, the "Credit Agreement") up to but not exceeding the sum of (i) an aggregate principal amount of Five Hundred Million Dollars (\$500,000,000), said principal sum being intended to include loans or other extensions of credit made by the Senior Secured Party or any transferee thereof to AES Cedar Bay, and (ii) all accrued interest and costs under the Senior Security Agreement and/or the Credit Agreement.

6.9. All notices, demands and requests given by either party hereto to the other party shall be in writing. All notices, demands and requests by one party to the other shall be deemed to have been properly given as herein required if sent in accordance with the notice provisions of the Power Sale Agreement.

6.10. AES CEDAR BAY HEREBY, AND FPL BY ITS ACCEPTANCE OF THIS SECURITY AGREEMENT, KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT EITHER MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS SECURITY AGREEMENT AND ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONJUNCTION HERewith OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF EITHER PARTY. THIS PROVISION IS A MATERIAL INDUCEMENT FOR FPL ACCEPTING THIS SECURITY AGREEMENT.

IN WITNESS WHEREOF this Security Agreement has been duly executed as of the date hereinabove first written.

Signed, sealed and delivered  
in the presence of:

AES CEDAR BAY, INC.

a \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_

Its:

\_\_\_\_\_  
\_\_\_\_\_

ATTEST: \_\_\_\_\_

Its:

(CORPORATE SEAL)

EXHIBIT A

Permitted Encumbrances

1. [Description of permitted bank financing and title report exceptions reasonably acceptable to FPL].
  
2. FPL hereby agrees to subordinate the lien of the Security Agreement to the lien of a seller, lender or lessor under any security agreement, lease or similar arrangement by which such seller, lender or lessor provides financing or the like to enable AES Cedar Bay to acquire title to, or the use of, any personalty used in the ordinary course of the construction, development or operation of the Facility, provided, however, the full amount of such extensions of credit to which FPL is subordinate shall not exceed the limitations set forth in Section 21.7 of the Power Sale Agreement.

EXHIBIT B  
Locations at which  
Collateral of AES Cedar Bay is Located

EXHIBIT C  
Legal Description of  
Real Property to which Fixtures are Attached

APPENDIX J

LEVELIZATION PAYMENT

The levelization payments identified in Section 21.7, SECURITY, shall be fixed according to the following schedule where "Year 1" equals the first Agreement Year:

<u>Year</u>	<u>Levelization Payment Balance at end of Year (\$000)</u>
1	30,000
2	41,000
3	48,000
4	51,000
5	50,000
6	46,000
7	38,000
8	27,000
9	13,000
10 - 31 +	0



APPENDIX K

FORM OF AES GUARANTEE LETTER

Florida Power & Light Company  
Post Office Box 029100  
Miami, Florida 33102

Attention: Director, Bulk Power Markets Department

In accordance with the terms of Section 21.1, SECURITY, of that certain Amended and Restated Agreement for the Purchase of Firm Capacity and Energy, dated as of July 2, 1990 (the "Power Sale Agreement"), between AES Cedar Bay, Inc. ("AES Cedar Bay") and Florida Power & Light Company ("FPL"), Applied Energy Services, Inc. ("AES") hereby absolutely and unconditionally guarantees to pay FPL any unpaid Termination Fee (as defined in the Power Sale Agreement) due and owing to FPL under the Power Sale Agreement up to a maximum aggregate amount equal to the greater of (i) Ten Million Dollars (\$10,000,000) or (ii) 50% of the cumulative net project cash flow (after taxes and debt service) from AES Cedar Bay to AES, but in no event in excess of the lesser of (i) Seventy-Five Million Dollars (\$75,000,000.00) or (ii) the Termination Fee (as defined in the Power Sale Agreement) (the "Guaranteed Amount"). Each year, AES shall have an independent financial organization audit AES Cedar Bay's financial reports to confirm and report to FPL the amount of the after-tax project cash flow which is the basis of the Guaranteed Amount hereunder. Each such report shall be provided to FPL within ninety calendar days after the end of the applicable calendar year.

In the event that AES Cedar Bay shall fail to pay any portion of the Termination Fee when due and owing to FPL under the Power Sale Agreement, AES hereby agrees to pay to FPL, within ten (10) days of demand for payment hereunder, (i) the amount of the unpaid Termination Fee, not to exceed the Guaranteed Amount, plus, (ii) any costs reasonably incurred in connection with the enforcement of this guarantee letter and the security granted in connection herewith (provided, that FPL's right to recover such costs incurred in connection with enforcement shall be available only if any such enforcement proceedings are resolved in favor of FPL). This guarantee shall continue until the obligation of AES Cedar Bay to pay the Termination Fee under the Power Sale Agreement has terminated.

This guarantee letter shall be backed up by an unconditional and irrevocable letter(s) of credit supplied by AES and issued by bank(s) acceptable to FPL, in form and in substance acceptable to FPL, in accordance with the terms of Section 21.1 of the Power Sale Agreement. However, the face amount of the letter(s) of credit may be reduced by the amount, if any, held in the Escrow (as defined in the Power Sale Agreement) for the benefit of FPL in accordance with the terms of Section 21.1 of the Power Sale Agreement. Any payments recovered by FPL from the letter(s) of credit and/or the Escrow shall be deemed to have been payments by AES hereunder and shall be credited toward AES's maximum aggregate liability hereunder.

AES hereby agrees that the performance and payment obligations of AES Cedar Bay under the Power Sale Agreement may be changed or extended, renewed or accelerated, that AES Cedar Bay may be granted indulgences, and that any provision of the Power Sale Agreement or any of the documents delivered in connection therewith (the "Related Documents") may be modified, amended or waived, all without notice to or consent of AES. AES expressly waives (i) notice of acceptance of this letter by FPL and (ii) presentation, demand, protest, notice of protest and of dishonor, and notice of all events described in this paragraph. AES also waives all legal requirements that FPL institute any action or proceeding against AES Cedar Bay or exhaust any remedy against AES Cedar Bay or any other person or entity as a condition precedent to bringing an action against AES under this guarantee letter. AES agrees that nothing contained herein shall prevent FPL from suing on or exercising any right under the Power Sale Agreement or the Related Documents and the exercise of any such right and completion of any proceeding shall not constitute a discharge of any of AES's obligations hereunder.

All remedies afforded FPL hereunder are separate and cumulative and are in addition to all rights and remedies under the Power Sale Agreement and the Related Documents and may be exercised in any order, either separately or otherwise, and neither the exercise nor failure to exercise any right or remedy shall be deemed a waiver of any right.

AES represents to FPL that (i) AES Cedar Bay is a wholly-owned subsidiary of AES, (ii) AES has knowledge of AES Cedar Bay's financial condition and affairs and agrees that it will keep informed of AES Cedar Bay's financial condition and affairs while this guarantee letter is in force, and (iii) the execution and performance of this guarantee letter are in furtherance of the business purpose of AES.

This guarantee letter shall be deemed to be a contract made under the laws of the State of Florida without regard to principals of conflicts of laws.

This guarantee letter shall bind AES and its respective successors and assigns and shall inure to the benefit of FPL and its successors and assigns.

This guarantee letter shall not be effective unless and until the Florida Public Service Commission approves the Power Sale Agreement.

APPLIED ENERGY SERVICES, INC.,

By:  
Its:

(Corporate Seal)

APPENDIX L

CONSENT TO COLLATERAL ASSIGNMENT FORM

CONSENT AND AGREEMENT OF FLORIDA POWER & LIGHT COMPANY  
TO  
ASSIGNMENT OF THE AMENDED AND RESTATED AGREEMENT FOR THE  
PURCHASE OF FIRM CAPACITY AND ENERGY  
BETWEEN AES CEDAR BAY, INC.  
AND FLORIDA POWER & LIGHT COMPANY  
("Consent and Agreement")

Florida Power & Light Company, a Florida corporation ("FPL"), hereby acknowledges notice of and consents to the Assignment of the Amended and Restated Agreement for the Purchase of Firm Capacity and Energy ("Power Sale Agreement"), dated as of July 2, 1990, between AES Cedar Bay, Inc. ("AES Cedar Bay"), a Delaware corporation, and \_\_\_\_\_ ("Assignee") (herein called the "Assignment" the defined terms therein being used herein with the same meaning except as otherwise indicated herein), and hereby confirms to AES Cedar Bay and the Assignee that with respect to the Power Sale Agreement:

- (i) subject to the terms of this Consent and Agreement, all obligations of FPL under the Power Sale Agreement shall inure to the benefit of the Assignee to the same extent as if the Assignee were originally a party thereto in the place of AES Cedar Bay;
- (ii) the Assignee shall not be liable for any of the obligations or duties of AES Cedar Bay under the Power Sale Agreement, nor shall the Assignment give rise to any duties or obligations whatsoever on the part of the Assignee owing to FPL; provided, however, any takeover of the Facility and the rights of AES Cedar Bay under the Power Sale Agreement by the Assignee, or the foreclosure and sale of the Facility and the assignment of AES Cedar Bay's rights under the Power Sale Agreement to a new operator, shall be on terms requiring (A) a remedy of all existing Events of Default under the Power Sale Agreement to the extent required and/or permitted pursuant to Sections 3.6.6 and 3.7 thereof, (B) a written undertaking by the new operator to perform in compliance with all provisions of the Power Sale Agreement and (C) entry into an agreement(s) with FPL providing security equivalent to or greater than that provided by AES Cedar Bay under the Power Sale

Agreement; and provided further that such new operator is in the reasonable opinion of FPL reasonably qualified to perform the assumed obligations;

(iii) FPL agrees that:

(A) prior to any exercise by FPL of its remedies under the Power Sale Agreement with respect to any event of default by AES Cedar Bay thereunder FPL will afford the Assignee (until such time as all obligations of AES Cedar Bay under that certain loan agreement(s) dated [ ] between AES Cedar Bay and Assignee have been performed in full or until such time that the Assignee has notified FPL of the termination of the Assignment) the opportunity (but not the obligation) for sixty days (or such longer period of time as may be acceptable to FPL in its sole discretion) (the "Lender Cure Period") following the occurrence of such event of default:

(i) to assume or cause a new lessee or purchaser of the Facility (as defined in the Power Sale Agreement) to assume, all of the rights and obligations of AES Cedar Bay arising under the Power Sale Agreement upon and after such assumption, provided that such assuming party (a) is, in the reasonable opinion of FPL, reasonably qualified to perform the assumed obligations (including effecting a cure of all events of default under the Power Sale Agreement which are capable of cure, including the (x) payment of any sums, (y) execution and delivery of the agreement(s) or contract(s) described in Section 3.6.1 of the Power Sale Agreement and (z) compliance with Section 3.6.8 of the Power Sale Agreement; provided, however, in no event shall an assumption by the Assignee or new lessee or purchaser toll or extend the periods of time set forth in Sections 3.6.3 or 3.6.4 of the Power Sale Agreement beyond such Lender Cure Period, except with respect to Section 3.6.4 thereof, which shall be further extended on a month by month basis, provided that each and every Monthly

Capacity Factor (as defined in the Power Sale Agreement) subsequent to the first Monthly Billing Period (as defined in the Power Sale Agreement) after an event of default under Section 3.6.4 of the Power Sale Agreement is at least 87% until such event of default is cured) and (b) enters into an agreement with FPL providing security equivalent to or greater than that provided by AES Cedar Bay under the Power Sale Agreement; and

(ii) to cure such events of default which are capable of cure, including the (a) payment of any sums, (b) execution and delivery of the agreement(s) or contract(s) described in Section 3.6.1 of the Power Sale Agreement and (c) compliance with Section 3.6.8 of the Power Sale Agreement.

However, upon the occurrence of an event of default under Section 3.6.5 of the Power Sale Agreement, nothing herein shall prevent or delay FPL from proceeding against AES Cedar Bay or any trustee or receiver appointed thereunder; and

(B) it will not, without at least ten days prior written notice to the Assignee, materially amend, supplement or otherwise modify the Power Sale Agreement in any manner which would have a material adverse effect upon the rights of the Assignee thereunder;

(iv) FPL will continue to pay to AES Cedar Bay all payments which FPL may be required to make under or pursuant to the Power Sale Agreement, the right to receive which has been assigned under the Assignment, unless and until FPL shall have received written notice from the Assignee, addressed to it at Post Office Box 029100, Miami, Florida, Attention: Director, Bulk Power Markets Department, of a Default or Event of Default, whereupon FPL will make any and all payments which it may be required thereafter to make under or pursuant to the Power Sale Agreement, subject to Sections 12.8 and 21.1 of the Power Sale Agreement, the right to receive which has been assigned under the Assignment, directly to the Assignee at its address at \_\_\_\_\_, unless and until FPL

shall have received notice in writing from the Assignee that all Defaults and all Events of Default have been cured or waived pursuant thereto, whereupon FPL will make all payments which FPL may be required thereafter to make under or pursuant to the Power Sale Agreement to AES Cedar Bay. Any party may, at any time, by written notice designate any different person(s) or address(es) for receipt of notices and correspondence; and

- (v) in the event that the Power Sale Agreement is rejected by a trustee or debtor-in-possession in any bankruptcy or insolvency proceeding regarding AES Cedar Bay, and if within sixty days after such rejection the Assignee or its designee(s) shall so request and undertake in writing to FPL that it intends and is legally authorized to perform the obligations of AES Cedar Bay in accordance with the terms of Sections 3.6.6 and 3.7 of the Power Sale Agreement, FPL will execute and, subject to the approval of the Florida Public Service Commission, deliver to the Assignee or such designee(s) a new agreement for the purchase of firm capacity and energy ("New Agreement") pursuant to which the Assignee or designee(s) shall agree to sell and deliver to FPL and FPL shall agree to pay for, to the extent required under the Power Sale Agreement, the electrical output of the Facility. Such New Agreement shall be for the balance of the then remaining term under the Power Sale Agreement before giving effect to such rejection and shall contain the same conditions, agreements, terms, provisions and limitations as the Power Sale Agreement (except for any requirements that have been fulfilled by AES Cedar Bay prior to such rejection). The billing determinates (i.e., those factors used in determining the Capacity Factor as defined in the Power Sale Agreement) and data under the New Agreement shall take into account the billing determinates and associated data existing under the Power Sale Agreement before giving effect to such rejection. References in this Consent and Agreement to the "Power Sale Agreement" shall be deemed also to refer to the New Agreement.

Pursuant to Section 21.4 of the Power Sale Agreement, FPL will send copies of notices required to be sent to AES Cedar Bay under the Power Sale Agreement to the Assignee at \_\_\_\_\_.

FPL hereby represents and warrants to the Assignee that [subject to the accuracy of such representations and warranties at the time of execution]:

- (i) FPL is a corporation duly organized and existing in good standing under the laws of the State of Florida;
- (ii) the making and performance of the Power Sale Agreement and this Consent and Agreement have been duly authorized by all necessary corporate action on the part of FPL, do not require any stockholder approval and do not contravene any law binding on FPL or contravene FPL's charter documents or by-laws or any material term of any indenture, credit agreement or other contractual agreement to which FPL is a party or by which it is bound;
- (iii) each of the Power Sale Agreement and this Consent and Agreement is the legal, valid and binding obligation of FPL, enforceable against FPL in accordance with its respective terms, except as limited by bankruptcy, insolvency and other laws pertaining to creditors' rights generally and equitable limitations on the enforceability of specific remedies; and
- (iv) (a) FPL has duly performed and complied with all covenants, agreements and conditions contained in the Power Sale Agreement and this Assignment required to be performed or complied with by it on or before the date hereof; (b) the Power Sale Agreement, as of the date hereof, is in full force and effect and has not been further amended; and (c) to FPL's knowledge without investigation, no event has occurred and is continuing or would result from the consummation of any transaction contemplated by the Power Sale Agreement and this Assignment to take place on the date hereof that constitutes, or with the giving of notice or the passage of time or both would constitute, an Event of Default as defined in the Power Sale Agreement and this Assignment or a breach thereof or would give any party thereto the right to terminate either thereof; and



(v) FPL has not been given notice of any other assignment of the Power Sale Agreement; provided, however, that FPL makes no representation or warranty that there have been no other assignments of the Power Sale Agreement of which FPL has not received written notice;

Notwithstanding any of the provisions of this Consent and Agreement, nothing contained herein shall alter the terms of the Power Sale Agreement or relieve AES Cedar Bay of any of its obligations thereunder.

Dated as of \_\_\_\_\_, 199[ ]

FLORIDA POWER & LIGHT COMPANY

By: \_\_\_\_\_

Title

Attached to this agreement are a copy of the project cancellation payment guarantee letter as well as a copy of the AES guarantee letter which were both executed pursuant to the agreement. These letters are not actually part of the agreement, however, they are related documents, and because of their nature, should remain attached thereto.

**The AES  
Corporation**

Florida Power & Light Company  
Post Office Box 029100  
Miami, Florida 33102

Attention: Director, Bulk Power Markets Department

Consistent with Section 4.1, COMPLETION SECURITY, of the Agreement, Applied Energy Services, Inc. ("AES") guarantees to pay FPL a project cancellation payment according to the following schedule:

Should AES or AES Cedar Bay cancel the Facility subsequent to approval of the Agreement by the FPSC and after the following dates:	AES will submit a payment to FPL of:
--	---

_____	_____
March 1, 1990	\$ 600,000
January 1, 1991	\$1,000,000

This guarantee letter shall not be effective unless and until the FPSC approves the Agreement. Upon such approval, the guarantee letter dated May 6, 1988 contained in the Original Agreement shall be terminated and of no further force and effect.

Thomas A. Tubone      7-16-90  
Vice President                      Date

**The AES  
Corporation**

Florida Power & Light Company  
Post Office Box 029100  
Miami, Florida 33102

Attention: Director, Bulk Power Markets Department

In accordance with the terms of Section 21.1, SECURITY, of that certain Amended and Restated Agreement for the Purchase of Firm Capacity and Energy, dated as of July 2, 1990 (the "Power Sale Agreement"), between AES Cedar Bay, Inc. ("AES Cedar Bay") and Florida Power & Light Company ("FPL"), Applied Energy Services, Inc. ("AES") hereby absolutely and unconditionally guarantees to pay FPL any unpaid Termination Fee (as defined in the Power Sale Agreement) due and owing to FPL under the Power Sale Agreement up to a maximum aggregate amount equal to the greater of (i) Ten Million Dollars (\$10,000,000) or (ii) 50% of the cumulative net project cash flow (after taxes and debt service) from AES Cedar Bay to AES, but in no event in excess of the lesser of (i) Seventy-Five Million Dollars (\$75,000,000) or (ii) the Termination Fee (as defined in the Power Sale Agreement) (the "Guaranteed Amount"). Each year, AES shall have an independent financial organization audit AES Cedar Bay's financial reports to confirm and report to FPL the amount of the after-tax project cash flow which is the basis of the Guaranteed Amount hereunder. Each such report shall be provided to FPL within ninety calendar days after the end of the applicable calendar year.

In the event that AES Cedar Bay shall fail to pay any portion of the Termination Fee when due and owing to FPL under the Power Sale Agreement, AES hereby agrees to pay to FPL, within ten (10) days of demand for payment hereunder, (i) the amount of the unpaid Termination Fee, not to exceed the Guaranteed Amount, plus, (ii) any costs reasonably incurred in connection with the enforcement of this guarantee letter and the security granted in connection herewith (provided, that FPL's right to recover such costs incurred in connection with enforcement shall be available only if any such enforcement proceedings are resolved in favor of FPL). This guarantee shall continue until the obligation of AES Cedar Bay to pay the Termination Fee under the Power Sale Agreement has terminated.

This guarantee letter shall be backed up by an unconditional and irrevocable letter(s) of credit supplied by AES and issued by bank(s) acceptable to FPL, in form and in substance acceptable to FPL, in accordance with the terms of Section 21.1 of the Power Sale Agreement. However, the face amount of the letter(s) of credit may be reduced by the amount, if any, held in the Escrow (as defined in the Power Sale Agreement) for the benefit of FPL in accordance with the terms of Section 21.1 of the Power Sale Agreement. Any payments recovered by FPL from the letter(s) of credit and/or the Escrow shall be deemed to have been payments by AES hereunder and shall be credited toward AES' maximum aggregate liability hereunder.

1001 North 19th Street  
Arlington, Virginia 22209  
(703) 522-1315  
Telecopier (703) 528-4510

Applied Energy Services, Inc.



AES hereby agrees that the performance and payment obligations of AES Cedar Bay under the Power Sale Agreement may be changed or extended, renewed or accelerated, that AES Cedar Bay may be granted indulgences, and that any provision of the Power Sale Agreement or any of the documents delivered in connection therewith (the "Related Documents") may be modified, amended or waived, all without notice to or consent of AES. AES expressly waives (i) notice of acceptance of this letter by FPL, and (ii) presentation, demand, protest, notice of protest and of dishonor, and notice of all events described in this paragraph. AES also waives all legal requirements that FPL institute any action or proceeding against AES Cedar Bay or exhaust any remedy against AES Cedar Bay or any other person or entity as a condition precedent to bringing an action against AES under this guarantee letter. AES agrees that nothing contained herein shall prevent FPL from suing on or exercising any right under the Power Sale Agreement or the Related Documents and the exercise of any such right and completion of any proceeding shall not constitute a discharge of any of AES' obligations hereunder.

All remedies afforded FPL hereunder are separate and cumulative and are in addition to all rights and remedies under the Power Sale Agreement and the Related Documents and may be exercised in any order, either separately or otherwise, and neither the exercise nor failure to exercise any right or remedy shall be deemed a waiver of any right.

AES represents to FPL that (i) AES Cedar Bay is a wholly-owned subsidiary of AES, (ii) AES has knowledge of AES Cedar Bay's financial condition and affairs and agrees that it will keep informed of AES Cedar Bay's financial condition and affairs while this guarantee letter is in force, and (iii) the execution and performance of this guarantee letter are in furtherance of the business purpose of AES.

This guarantee letter shall be deemed to be a contract made under the laws of the State of Florida without regard to principals of conflicts of laws.

This guarantee letter shall bind AES and its respective successors and assigns and shall inure to the benefit of FPL and its successors and assigns.

This guarantee letter shall not be effective unless and until the Florida Public Service Commission approves the Power Sale Agreement

APPLIED ENERGY SERVICES, INC.

By: Thomas A. Tribone  
Its: Vice President 7-17-90

# **EXHIBIT 2**

**FIRST AMENDMENT TO THE AMENDED  
AND RESTATED AGREEMENT FOR THE PURCHASE OF  
FIRM CAPACITY AND ENERGY BETWEEN  
AES CEDAR BAY, INC. AND FLORIDA POWER & LIGHT COMPANY**

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This First Amendment to the Amended and Restated Agreement for the Purchase of Firm Capacity and Energy Between AES Cedar Bay, Inc. and Florida Power & Light Company, dated as of July 2, 1990 (the "PPA"), by and between Florida Power & Light Company ("FPL") and Cedar Bay Generating Company, Limited Partnership ("Cedar Bay" or "AES Cedar Bay"), the successor in interest to AES Cedar Bay, Inc., (the "Amendment") is made and entered into as of the 19<sup>th</sup> day of AUGUST, 2002. FPL and Cedar Bay are referred to individually as a "Party" and collectively as the "Parties." The Amendment and the PPA are collectively referred to herein as the "Amended PPA." Unless otherwise defined herein, all capitalized terms shall have the meaning set forth in the PPA.

**WITNESSETH:**

WHEREAS, Cedar Bay owns a coal-fired electric cogeneration plant located in Jacksonville, Florida (the "Facility");

WHEREAS, Cedar Bay and FPL are parties to the PPA;

WHEREAS, Cedar Bay filed a complaint against FPL in the Circuit Court, Fourth Judicial Circuit, in and for Duval County, Florida, Case No. 97-07037-CA, *Cedar Bay Generating Company, Limited Partnership v. Florida Power & Light Company*, concerning the PPA for breach of contract with respect to the PPA (the "Litigation");

WHEREAS, FPL has paid in full with statutory interest the Final Judgment, entered in this Litigation on August 12, 1999 ("Final Judgment"), and the Final Costs Judgment, entered in this Litigation on June 21, 2000 ("Final Costs Judgment"), and the Parties have agreed to enter into this Amendment according to the terms and in consideration of the promises set forth below to, among other things, settle all outstanding matters covered in the Litigation, including paragraphs 1 and 2 of the Declaratory Judgment dated September 7, 1999 (the "Declaratory Judgment"); and

NOW, THEREFORE, in consideration of the mutual covenants, representations, warranties and agreements hereinafter set forth, and intending to be legally bound hereby, the Parties agree as follows:

1. (a) This Amendment shall become effective on the Effective Date, which shall be the later of: (1) the date on which the Florida Public Service Commission ("FPSC") issues a final determination approving this Amendment, in form and substance acceptable to each Party in its sole discretion, as to which no appeal is pending and which

is no longer appealable ("Final Order"); (2) the date on which the Lenders (as defined in Section 1.30 of the PPA) deliver to FPL and FPL delivers to the Lenders a release of claims in form and substance substantially similar to that contained in Attachment B hereto ("Lender Release") in accordance with paragraph 20 below, (3) the date of execution of the First Amendment to Consent and Agreement by and among FPL, Cedar Bay, and Paribas ("Amended Consent"), on behalf of the Secured Parties; provided, however, that this Amendment shall not become effective unless the Lenders, within sixty (60) days of the execution of this Amendment by both Parties (unless such period is extended in writing by the Parties) confirm in a writing to the Parties that (x) the Amendment is acceptable in form and substance to the Lenders, and (y) the Lenders have executed the Lender Release and Paribas, as agent, has executed the Amended Consent and both the executed Lender Release and executed Amended Consent are being held in escrow; and provided further, that this Amendment shall not become effective and it shall be null and void if, on or before the Effective Date, either Party has notified the other Party that any order approving this Amendment (the "Order") is not acceptable in form and substance. FPL acknowledges that AES Cedar Bay shall notify FPL that it does not wish the Amendment to become effective if AES Cedar Bay is requested to do so by the Lenders. Such written notice shall be sent via hand delivery, facsimile, or electronic mail such that it is received by the other party on or before the Effective Date. Notices shall be sent to FPL at:

Florida Power & Light Company  
9250 W. Flagler Street  
Miami, Florida 33174  
Attn: Director of Resource Planning  
Fax: 305-552-2905  
E-mail: rsilva@fpl.com

and to Cedar Bay at:

Cedar Bay Generating Company, Limited Partnership  
c/o PG&E National Energy Group  
7500 Old Georgetown Road  
Bethesda, MD 20814  
Attn: Stephen A. Herman  
Fax: (301) 280-6913  
E-mail: steve.herman@neg.pge.com

Each Party has the right to provide such notice, in its sole discretion for any reason or for no reason, without the incurrence of any liability to the other Party.

(b) The acceptance of the Lender Release is not an admission by FPL of any liability to the Lenders, any and all liability to the Lenders being expressly denied by FPL. FPL and AES Cedar Bay acknowledge that, as a precondition to a determination by AES Cedar Bay that the Order, in form and substance, is acceptable to AES Cedar



Bay, AES Cedar Bay must receive a determination from the Lenders that the Order, in form and substance, is acceptable to the Lenders.

2. (a) Within 30 days of the execution of this Amendment by both Parties, the Parties will jointly submit a petition to the FPSC for approval of this Amendment ("Petition"). Each Party will use diligent good faith efforts to obtain approval of the Amendment by the FPSC; provided, however, that this obligation does not give rise to any liability by either Party to the other Party. Either Party shall have the right to withdraw the Petition in its sole discretion for any reason or for no reason at any time prior to the date of the Final Order.

(b) Within three (3) business days after execution of the Amendment by the last signatory thereto, the Parties shall file with the Circuit Court in Duval County, Florida a Joint Motion to Stay the Litigation Pending Effectiveness of the Amendment. Within 3 business days after the Effective Date of the Amendment, the Parties shall file a Joint Motion (i) to Dismiss the Litigation With Prejudice, and (ii) to Vacate Paragraphs Numbered 1 and 2 of the Declaratory Judgment. Further, the Parties hereby agree that, as of the Effective Date of this Amendment, to the extent the Declaratory Judgment, including but not limited to all or any portion thereof which is not vacated, is inconsistent with the terms of this Amendment and/or the Parties' rights and obligations set forth herein, the Amendment shall govern, and in the case of any conflict or inconsistency between this Amendment and the Declaratory Judgment, this Amendment shall govern.

(c) The Parties shall execute the Amended Consent on the same date that they execute the Amendment. Within three (3) business days after execution of the Amended Consent by the Parties, Cedar Bay shall forward the executed Amended Consent to the Lenders.

3. The following subsection 1.3a shall be added following the end of Section 1.3 of the PPA:

Notwithstanding anything in Section 1.3 or in Section 1.36 to the contrary, during the first twelve consecutive Monthly Billing Periods commencing on April 1, 2001, and ending on March 31, 2002 (such twelve consecutive Monthly Billing Periods comprising the "First Period"), the calculation of the Annual Capacity Factor shall be computed by adding the sum of the Monthly Capacity Factor(s) for each Monthly Billing Period during the First Period (i.e., the Monthly Capacity Factor actually achieved by the Facility) which has elapsed since April 1, 2001 to the sum of the Deemed Monthly Capacity Factor(s) for each Monthly Billing Period during the First Period which has not elapsed since April 1, 2001, and dividing that result by twelve. This calculation shall be performed at the end of each Monthly Billing Period until twelve Monthly Billing Periods have elapsed since April 1, 2001. For the avoidance of doubt, the hourly Energy to be used in the calculation of the

Monthly Capacity Factor for April 2001 for each hour during any Scheduled Maintenance Period that occurs during April 2001 shall be 240.375 MWH. For any hour during any other Scheduled Maintenance Period that occurs during the First Period, the hourly Energy to be used in the calculation of the Monthly Capacity Factor for the Monthly Billing Period in which such Scheduled Maintenance Period hour occurs shall be the product of the Committed Capacity and the Annual Capacity Factor at the end of the previous Monthly Billing Period, calculated in accordance with the first two sentences of this Subsection 1.3a.

4. The following subsection 1.4a shall be added following the end of Section 1.4 of the PPA:

Notwithstanding anything in Section 1.4 or in Section 1.39 to the contrary, during the first twelve consecutive Monthly Billing Periods commencing on April 1, 2001, and ending on March 31, 2002 (such twelve consecutive Monthly Billing Periods comprising the "First Period"), the calculation of the Annual On-peak Capacity Factor shall be computed by adding the sum of the Monthly On-peak Capacity Factor(s) for each Monthly Billing Period during the First Period (i.e., the Monthly On-peak Capacity Factor actually achieved by the Facility) which has elapsed since April 1, 2001 to the sum of the Deemed Monthly On-peak Capacity Factor(s) for each Monthly Billing Period during the First Period which has not elapsed since April 1, 2001 and dividing that result by twelve. This calculation shall be performed at the end of each Monthly Billing Period until twelve Monthly Billing Periods have elapsed since April 1, 2001. For the avoidance of doubt, the hourly Energy to be used in the calculation of the Monthly On-peak Capacity Factor for April 2001 for each hour during any Scheduled Maintenance Period that occurs in April 2001 shall be 234.250 MWH. For any hour during any other Scheduled Maintenance Period that occurs during the First Period, the hourly Energy to be used in the calculation of the Monthly On-peak Capacity Factor for the Monthly Billing Period in which such Scheduled Maintenance Period hour occurs shall be the product of the Committed Capacity and the Annual On-peak Capacity Factor at the end of the previous Monthly Billing Period, calculated in accordance with the first two sentences of this Subsection 1.4a.

5. Section 1.11 of the PPA (definition of Capacity Factor) is deleted and the following substituted in lieu thereof:

Capacity Factor - the Annual Capacity Factor, plus one-half the Annual On-peak Capacity Factor minus 47% (*i.e.*, 94% / 2)

through the end of the calendar year 2006 and 47.5% (*i.e.*, 95% / 2) thereafter. For purposes of determining the Capacity Factor, the Annual On-peak Capacity Factor shall not be greater than 100%.

6. (a) A new Section 1.13a (definition of “Deemed Monthly Capacity Factor”) shall be added to the PPA as follows:

Deemed Monthly Capacity Factor - 96.15%

(b) A new Section 1.13b (definition of “Deemed Monthly On-peak Capacity Factor”) shall be added to the PPA as follows:

Deemed Monthly On-peak Capacity Factor - 93.7%

7. Section 1.7 of the PPA (definition of Available Committed Capacity) shall be amended by adding the following at the end thereof:

However, notwithstanding anything to the contrary herein, if Indicated Capability is (i) equal to or less than Committed Capacity, the Available Committed Capacity shall not exceed the Indicated Capability or (ii) greater than Committed Capacity, the Available Committed Capacity shall not exceed the Committed Capacity.

8. Section 1.24 of the PPA (definition of FPL Operating Limits) shall be amended by inserting after “(iii) Maximum Sustained Rate: 2.5 MW per minute” the following: “up to and including Committed Capacity and 1.5 MW per minute above Committed Capacity.”

9. Section 1.36 of the PPA (definition of Monthly Capacity Factor) is deleted and the following substituted in lieu thereof:

Monthly Capacity Factor – the total Energy (not to exceed 250 MWH during any hour) during the Monthly Billing Period for which the calculation is made, divided by the product of (i) the Committed Capacity during the Monthly Billing Period and (ii) the sum of the hours during the Monthly Billing Period. For purposes of calculating the Monthly Capacity Factor, the following factors shall be considered when applicable: (A) Scheduled Maintenance Periods, (B) any Dispatch Hour and/or any hour, or part of an hour, that AES Cedar Bay elects under Section 7.4 to continue to operate the Facility, rather than decommit the Facility as requested by FPL, and (C) periods of Force Majeure. The hourly Energy to be used in the calculation of factor (A) shall be the product of the Annual Capacity Factor and the Committed Capacity, of factor (B) shall be

the Available Committed Capacity, and of factor (C) shall be the actual Energy during the event of Force Majeure, except during the first two Monthly Billing Periods involving such Force Majeure, when it shall be the greater of (i) the actual Energy or (ii) the lesser of (a) the product of the Committed Capacity and 87% or (b) the product of the Committed Capacity and the Annual Capacity Factor. For purposes of calculating the Monthly Capacity Factor, hourly Energy deliveries (i) shall not exceed those which could be produced by the Committed Capacity, with the exception of those hours when FPL, pursuant to Section 7.3(b), DISPATCH, CONTROL, OPERATION AND MAINTENANCE OF THE FACILITY, requests that the real power output be equal to the Peak Capability of the Facility and (ii) shall be reduced, when applicable, pursuant to Section 7.8, DISPATCH, CONTROL, OPERATION AND MAINTENANCE OF THE FACILITY.

10. Section 1.39 of the PPA (definition of Monthly On-peak Capacity Factor) is deleted and the following substituted in lieu thereof:

Monthly On-peak Capacity Factor – the total Energy (not to exceed 258 MWH during any On-peak Hour) during On-peak Hours for the Monthly Billing Period for which the calculation is made, divided by the product of (i) the Committed Capacity during the Monthly Billing Period and (ii) the sum of the On-peak Hours during the Monthly Billing Period. For purposes of calculating the Monthly On-peak Capacity Factor, the following factors shall be considered when applicable: (A) Scheduled Maintenance Periods; (B) any Dispatch Hour and/or any hour, or part of an hour, that AES Cedar Bay elects under Section 7.4 to continue to operate the Facility, rather than decommit the Facility as requested by FPL, and (C) periods of Force Majeure. The hourly Energy to be used in the calculation of factor (A) shall be the product of the Annual On-peak Capacity Factor and the Committed Capacity, of factor (B) shall be (i) the Available Committed Capacity for each On-peak Hour in which FPL (a) Dispatches the Facility's Energy output to not more than 175 MWH or (b) decommits the Facility, (ii) the Indicated Capability, not to exceed 258 MWH, for each On-peak Hour in which FPL Dispatches the Facility's Energy output above 175 MWH on Automatic Generation Control ("AGC") unless the Energy output of the Facility in such hour is 3.0 MWH or more below the Energy output required by FPL pursuant to FPL's Dispatch and Control Rights for such hour, in which case it shall be the Energy output of the Facility, not to exceed 258 MWH during such hour, or (iii) the Indicated Capability, not to exceed 258 MWH, for each On-peak Hour in which FPL manually dispatches the Facility's Energy output above 175 MWH unless the Energy output of the Facility in such

hour is less than the Energy output required by FPL pursuant to FPL's Dispatch and Control Rights for such hour, in which case it shall be the Energy output of the Facility, not to exceed 258 MWH, during such hour, and of factor (C) shall be the actual Energy during the event of Force Majeure, except during the first two Monthly Billing Periods involving such Force Majeure, when it shall be the greater of (i) the actual Energy or (ii) the lesser of (a) the product of the Committed Capacity and 94% prior to January 1, 2007 and 95% thereafter or (b) the product of the Committed Capacity and the Annual On-peak Capacity Factor. For purposes of calculating the Monthly On-peak Capacity Factor, (i) hourly Energy deliveries shall not exceed 258 MW for any hour, with the exception of those On-peak Hours when FPL, pursuant to Section 7.3(b), DISPATCH, CONTROL, OPERATION AND MAINTENANCE OF THE FACILITY, requests that the real power output be equal to the Peak Capability of the Facility and (ii) shall be reduced, when applicable, pursuant to Section 7.8, DISPATCH, CONTROL, OPERATION AND MAINTENANCE OF THE FACILITY.

11. A new Section 1.40a definition of "Indicated Capability" shall be added to the PPA as follows:

1.40a Indicated Capability - the capability of the Facility specified by AES Cedar Bay not to exceed the lower of the Facility's current actual MW capability or 110% of AES Cedar Bay's Committed Capacity. AES Cedar Bay shall provide data specifying the Facility's Indicated Capability at all times in accordance with written procedures to be mutually agreed upon by AES Cedar Bay and FPL. Such data shall be communicated from the Facility to FPL's system control center via a remote terminal unit (RTU) or other mutually agreeable form of communication. For billing and payment purposes, the term "Indicated Capability" shall refer to the integrated value of the Facility's Indicated Capability during each clock hour. Unless otherwise agreed to by FPL and AES Cedar Bay in writing, such capability will be utilized by FPL as the upper limit capability of the Facility in FPL's AGC algorithm whenever FPL (a) exercises its Dispatch and Control Rights and (b) controls the Facility through AGC.

12. Section 7.3 of the PPA shall be deleted and the following substituted in lieu thereof:

(a) Consistent with Section 7.4, FPL shall have Dispatch and Control Rights to commit and decommit the Facility and to control the real and reactive power delivered from the Facility to FPL's system in any manner which FPL deems appropriate subject to

FPL's Operating Limits. Separate and distinct from FPL's right to request pursuant to its Dispatch and Control Rights that the real power output be equal to the Peak Capability of the Facility under Section 7.3(b), FPL shall have the right, but not the obligation, subject to FPL's Operating Limits, to Dispatch the real power output of the Facility up to, but not in excess of, the Indicated Capability of the Facility on an integrated hourly basis; provided, however, that if the Indicated Capability is greater than 252 MW, FPL shall not have the right (except pursuant to its right to request that the real power output be equal to the Peak Capability of the Facility) to request that the real power output of the Facility exceed the Indicated Capability during any hour or part of any hour. FPL shall not have the right to request that AES Cedar Bay deliver Energy in excess of Committed Capacity except to the extent FPL has requested AES Cedar Bay to deliver Energy at Peak Capability in accordance with Section 7.3(b) or AES Cedar Bay has specified an Indicated Capability equal to or in excess of Committed Capacity.

(b) Except during any Dispatch Hour, control of the Capacity and Energy shall be AES Cedar Bay's responsibility ("Cedar Bay Control"). During Dispatch, control of the Facility will either be by AES Cedar Bay manual control under the direction of FPL or Automatic Generation Control by FPL's system control center as determined by FPL. Notwithstanding anything in this Section 7.3 to the contrary, FPL may at times request that the real power output be equal to the Peak Capability of the Facility, but shall not reduce the real power output of the Facility below the Minimum Load without decommitting the Facility. AES Cedar Bay shall meet this request or, within thirty calendar days, notify FPL in writing of the engineering or operational circumstances which prevented AES Cedar Bay from complying with FPL's request. FPL's request shall be made orally with as much prior notice to AES Cedar Bay as practicable and FPL shall specify that it is requesting the Facility to deliver Energy at "Peak Capability". Any request by FPL to AES Cedar Bay to deliver Energy in excess of Committed Capacity shall not be considered a request to deliver Energy at Peak Capability unless (i) expressly so specified by FPL and (ii) unless within 24 hours after receipt by AES Cedar Bay of any such request by FPL, AES Cedar Bay provides written confirmation via telecopier to FPL of (a) FPL's request for Peak Capability and (b) AES Cedar Bay's compliance therewith. FPL shall not under any circumstance have the obligation to request the real power output be equal to the Peak Capability of the Facility. Notwithstanding anything to the contrary in Section 7.3(d), whether, when and the extent to which FPL (i) requests Cedar Bay to deliver Energy at Peak Capability, (ii) elects

not to request the real power output be equal to the Peak Capability of the Facility, including, but not limited to, FPL's request for Energy in excess of Committed Capacity without requesting the Peak Capability of the Facility under this Section 7.3(b), or (iii) takes into account Monthly Capacity Payments to be paid to AES Cedar Bay in exercising its rights under subsections (i) or (ii) of this sentence shall not give rise to any liability on the part of FPL, including, but not limited to, any claim for breach of contract and/or for breach of any covenant of good faith and fair dealing.

(c) As part of its Dispatch and Control Rights, FPL has the right to decide solely in its discretion whether and when to, as determined by FPL, (i) place or continue to maintain the Facility on AES Cedar Bay manual control under the direction of FPL, (ii) place or continue to maintain the Facility on Automatic Generation Control by FPL's system control center, (iii) take the Facility off Dispatch by placing the Facility under Cedar Bay Control, (iv) allow the Facility to continue to operate under Cedar Bay Control, or (v) in order to confirm the Facility's ability to operate at Indicated Capability, seek to increase the output of the Facility to Indicated Capability and/or commit the Facility. FPL's exercise of its sole discretion pursuant to this subsection 7.3(c) shall not give rise to any liability on the part of FPL, including, but not limited to, any claim for breach of contract and/or for breach of any covenant of good faith and fair dealing.

(d) Notwithstanding anything to the contrary in the Amended PPA (except as otherwise provided in Section 7.3(c) and the last two sentences of Section 7.3(b)), FPL shall not consider or take into account Monthly Capacity Payments to be paid to AES Cedar Bay hereunder in (i) determining whether and when to commit or decommit the Facility, or (ii) determining the level of output FPL requires from the Facility when the Facility is not under Cedar Bay Control if such consideration would have the effect of decreasing, in any Monthly Billing Period, AES Cedar Bay's Monthly Capacity Payments; and provided, however, that nothing in the Amended PPA shall limit FPL's right to interrupt or reduce deliveries from the Facility pursuant to Section 6.8(i) and (ii).

13. Section 7.5 is amended by adding "Notwithstanding Section 7.3," before the words "FPL shall not be required to accept".

14. Section 12.4 of the PPA shall be amended by adding "(a) Except as provided in subsection (b)," before "Calculation" and adding at the end thereof:

(b) Other than when FPL requests the Facility to deliver Energy at Peak Capability in accordance with Section 7.3(b), for (i) any On-peak Hour in which the Facility delivers Energy in excess of 258 MWH and (ii) any hour other than an On-peak Hour in which the Facility delivers Energy in excess of 250 MWH, FPL shall pay AES Cedar Bay the amount specified in Section 12.4(a) plus an amount equal to one-half of any positive difference between (x) FPL's actual As-available Avoided Energy Costs for that hour and (y) the rate as determined pursuant to Section 12.4(a) above times the Energy deliveries in excess of (a) 258 MWH during any On-peak hour or (b) 250 MWH during any hour other than an On-peak hour.

15. A new Section 22.10 shall be added to the PPA as follows:

22.10 Prior to 4:00 p.m. the day before, FPL will notify the AES Cedar Bay control room by facsimile of FPL's projected hourly As-available Avoided Energy Costs for each hour of the following day(s) using the most recent projected rate available. FPL offers no guarantees with regard to the accuracy of the projected hourly As-available Avoided Energy Costs, which are prepared and provided for planning purposes only and should not be relied upon. In addition, any failure by FPL to send projected hourly As-Available Avoided Energy Costs to AES Cedar Bay will not give rise to liability on the part of FPL. Further, AES Cedar Bay hereby agrees to treat as proprietary to FPL and confidential any and all projected hourly As-available Avoided Energy Costs information provided to AES Cedar Bay by FPL, to use such information solely for the purpose of operating the Facility as set forth in the Agreement, and not to disclose this information to any other person or entity, including but not limited to, any affiliate, parent, subsidiary, or related company, other than a person or entity that is employed in the operation or management of the Facility, for 90 days after the day for which such projected hourly As-available Avoided Energy Costs apply. For each month that FPL makes any payments to Cedar Bay in accordance with Section 12.4(b) above, FPL shall include in the Monthly Billing Statement its actual hourly As-available Avoided Energy Costs for the preceding Monthly Billing Period.

16. (a) Section A.1 of Appendix A to the PPA shall be amended by deleting A.1.4 through A.1.6 and substituting the following in lieu thereof:

A.1.4 In the event that the Capacity Factor is at least 87% but not greater than 95%, then the Monthly Capacity Payment shall be calculated from the following formula:



$$\text{MCP}=\text{CC}*(\text{BCC}+\text{OMC})$$

A.1.5. In the event that the Capacity Factor is greater than 95% but not greater than 98%, then the Monthly Capacity Payment shall be calculated from the following formula:

$$\text{MCP}=[(1+(0.02667*((\text{CF}*100)-95)))*\text{CC}*\text{BCC}]+\text{OMC}*\text{CC}$$

A.1.6 In the event that the Capacity Factor is greater than 98%, then the Monthly Capacity Payment shall be calculated from the following formula:

$$\text{MCP}=[(1.08+(.006*((\text{CF}*100)-98)))*\text{CC}*\text{BCC}]+\text{OMC}*\text{CC}$$

(b) Section A.2 of Appendix A shall be amended by deleting A.2.4 through A.2.6 and substituting the following in lieu thereof:

A.2.4 In the event that the Capacity Factor is at least 87% but not greater than 95%, then the Monthly Capacity Payment shall be calculated from the following formula:

$$\text{MCP}=\text{CC}*(\text{BCC}+\text{OMC})$$

A.2.5. In the event that the Capacity Factor is greater than 95% but not greater than 98%, then the Monthly Capacity Payment shall be calculated from the following formula:

$$\text{MCP}=[(1+(0.01667*((\text{CF}*100)-95)))*\text{CC}*\text{BCC}]+\text{OMC}*\text{CC}$$

A.2.6 In the event that the Capacity Factor is greater than 98%, then the Monthly Capacity Payment shall be calculated from the following formula:

$$\text{MCP}=[(1.05+(.004*((\text{CF}*100)-98)))*\text{CC}*\text{BCC}]+\text{OMC}*\text{CC}$$

17. Notwithstanding anything in Appendix A or in this Amendment to the contrary, (a) with respect to Monthly Capacity Payments for Monthly Billing Periods beginning April 1, 2001, such Monthly Capacity Payments shall be recalculated within 30 days after the Effective Date in accordance with the terms and conditions of this Amendment, (b) with respect to the Monthly Payment for Energy delivered pursuant to Section 12.4(b) such Monthly Energy Payments shall be recalculated within 30 days after the Effective Date for Monthly Billing Periods beginning May 1, 2001 in accordance with the terms and conditions of this Amendment. Amounts which have already been paid by FPL to Cedar Bay for deliveries beginning April 1, 2001 (with respect to Monthly Capacity Payments) or May 1, 2001 (with respect to Energy Payments) shall be

adjusted to reflect the recalculation, and (i) any positive difference between the amount already paid by FPL and the amount which results from the recalculation shall be paid by FPL to Cedar Bay within 30 days of the Effective Date or (ii) any negative difference between the amount already paid by FPL and the amount which results from the recalculation shall be paid by Cedar Bay to FPL within 30 days after the Effective Date.

18. FPL agrees to pay no later than 20 business days after the Effective Date, \$100,000 to Cedar Bay by wire transfer to the bank account as designated by letter dated \_\_\_\_\_, 2002 from the Collateral Agent no later than 10 business days after the Effective Date.

19. Cedar Bay and FPL shall provide a mutual release of all claims related to the Litigation substantially in the form of Attachment A (Form of Release) simultaneously with the signing of this Amendment.

20. Within three business (3) days after the date of the Final Order the Lenders shall deliver to FPL, and FPL shall deliver to the Lenders, executed originals of the Lender Release, in counterpart. Each counterpart Lender Release shall be dated as of the date of delivery and each counterpart Lender Release shall be delivered on the same date. Within three business (3) days after the date of the Final Order the Lenders shall deliver to the Parties originals of the Amended Consent executed by Paribas, as agent, in counterpart. Each counterpart Amended Consent shall be dated as of the date of delivery of the Amended Consent by the Lenders to the Parties.

21. This Amendment is binding upon and shall inure to the benefit of the Parties and the licensees, representatives, transferees, affiliates, subsidiaries, direct and indirect owners, successors, heirs and/or assigns of the Parties hereto. This Amendment, together with the PPA, contains the entire agreement between the Parties hereto with respect to the subject matter hereof, supersedes any and all prior oral and written agreements relating thereto, including, but not limited to, the letter dated May 2, 1991, from AES Cedar Bay to FPL and countersigned by Jim Scalf of FPL, and may not be modified, amended, or amplified except by a written document executed by the Parties hereto.

22. This Amendment shall be governed by the laws of the State of Florida applicable to contracts made or to be performed in Florida, without regard to the conflicts of law principles thereof. The Parties hereto consent to the personal jurisdiction and venue of the federal and state courts in the State of Florida, and agree that all disputes or litigation regarding this Amendment shall be submitted to and determined by said courts.

23. Each Party hereto expressly warrants and represents that it has any requisite corporate or partnership approval, as the case may be, to execute and deliver this Amendment and that each of the persons executing this Amendment has the necessary and appropriate authority to do so; that there are no pending agreements, transactions, or negotiations to which it is a party that would render this Amendment or any part thereof void, voidable, or unenforceable; that no authorization, consent or approval of any

governmental entity other than the FPSC, as set forth in paragraph 1 above, is required to make this Amendment valid and binding upon it; and that this Amendment constitutes its legal, valid and binding obligation.

24. This Amendment may be executed by the Parties in two or more counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same agreement and a facsimile signature shall be deemed to have the same effect as an original signature. One fully executed original shall be distributed to each Party.

**IN WITNESS WHEREOF**, the Parties have executed this Amendment as of the date first above written.

FLORIDA POWER & LIGHT COMPANY

CEDAR BAY GENERATING  
COMPANY, LIMITED  
PARTNERSHIP

By: Paul J. Evanson

By: P. Chrisman Iribe

Title: President, Florida Power  
& Light Company

Title: P. Chrisman Iribe  
President

RELEASE

This release (this "Release") dated as of this 19<sup>th</sup> day of AUGUST, 2002, is entered into by Florida Power & Light Company (hereinafter "FPL") and Cedar Bay Generating Company, Limited Partnership (hereinafter "Cedar Bay"). Unless otherwise defined herein, all capitalized terms shall have the meaning set forth in the AMENDED AND RESTATED AGREEMENT FOR THE PURCHASE OF FIRM CAPACITY AND ENERGY BETWEEN AES CEDAR BAY, INC. AND FLORIDA POWER & LIGHT COMPANY dated as of July 2, 1990 (the "PPA").

**WHEREAS**, Cedar Bay filed a complaint against FPL in the Circuit Court of the Fourth Judicial Circuit, in and for Duval County, Florida, captioned *Cedar Bay v. FPL*, No. 97-07037-CA for breach of the PPA (hereinafter the "Litigation");

**WHEREAS**, the Litigation was tried to a jury, and the Court entered a declaratory judgment dated September 7, 1999 (the "September 7 Order");

**WHEREAS**, there have been disagreements between Cedar Bay and FPL regarding the proper interpretation of the September 7 Order;

**WHEREAS**, Cedar Bay and FPL have entered into the First Amendment to the Amended and Restated Agreement for the Purchase of Firm Capacity and Energy Between AES Cedar Bay, Inc. and Florida Power & Light Company, dated as of AUGUST 19, 2002 in order to, among other things, settle such disputes (the "PPA Amendment");

**WHEREAS**, FPL and Cedar Bay (individually hereinafter "Party," and collectively hereinafter the "Parties") have agreed to enter into this Release according to the terms and in

consideration of the promises set forth below, nothing herein being construed as an admission of any kind by either Party, all such liability being expressly denied.

**NOW, THEREFORE**, in consideration of the promises herein made and other good and valuable consideration, it is hereby agreed as follows:

1. This Release shall become effective on the Effective Date, as defined in Paragraph 1(a) of the PPA Amendment.

2. Each Party, and its direct or indirect owners, subsidiaries, affiliates, assigns, successors, officers, directors, agents, representatives and employees, both past and present, hereby releases and discharges the other Party, and its direct and indirect owners, subsidiaries, affiliates, assigns, successors, officers, directors, agents, representatives, and employees, both past and present, from any and all claims, demands, or causes of action of any kind arising on or before the Effective Date, as defined in Paragraph 1(a) of the PPA Amendment, that each Party asserted or could have asserted against the other Party, known or unknown, contingent or vested, relating to the Litigation, the PPA, the May 2, 1991 "Side Letter" from AES Cedar Bay, Inc. to FPL and countersigned by Jim Scalf of FPL, the Facility (as defined in Section 1.19 of the PPA), or the Consent and Agreement dated as of April 29, 1991 (the "Original Consent"); provided, however, this Release shall not affect the validity or enforceability of the PPA, as amended by the PPA Amendment (the "Power Sale Agreement"), or the Original Consent, as amended by that certain First Amendment to Consent and Agreement to be entered into as referenced in paragraph 1 of the PPA Amendment, by FPL, Cedar Bay and BNP Paribas, New York Branch as the Collateral Agent for the Secured Parties (the "Consent and Agreement"), and shall not release any claim, demand, or cause of action arising (i) from conduct, action or inaction occurring after the Effective Date; (ii) in connection with Energy and Capacity received by FPL

as to which, as of the Effective Date, any Monthly Energy Payment or Monthly Capacity Payment, as those terms are defined in Section 1.37 and 1.38 of the PPA, is not yet due from FPL and as to which no such payment has been made by FPL; (iii) relating in any way to the issue of whether any synthetic fuel which has been or is being burned at St. Johns River Power Park's Units #1 and #2 constitutes "coal" as that term is used in the Power Sale Agreement and, if so, whether such synthetic fuel burned at St. Johns River Power Park's Units #1 and #2 may be used for purposes of determining the Unit Fuel Cost under Section 1.52 of the PPA; or (iv) relating in any way to the issue of whether any buy out or buy down by any supplier of any contract or agreement which such supplier may have to supply coal to Jacksonville Electric Authority ("JEA") may be taken into account in determining the Unit Fuel Cost under Section 1.52 of the PPA. Nothing in this Release is intended to require the return of any monies paid by FPL to Cedar Bay in full satisfaction, with statutory interest, of the judgment in the Litigation, dated August 12, 1999, or the Final Cost Judgment dated June 21, 2000. Notwithstanding anything herein or in the Lender Release to the contrary, nothing in either this Release or the Lender Release is intended to alter FPL's or Cedar Bay's rights under Section 18.4 of the PPA. Nothing herein shall be deemed as an admission or acknowledgement by FPL or Cedar Bay that any claim, demand or cause of action not released herein is in any way valid. In determining for purposes of provision (i) of this Paragraph 2 whether any claim, demand or cause of action arises from conduct, action or inaction occurring after the Effective Date, FPL and Cedar Bay agree that they shall not be entitled to assert by way of defense, objection or otherwise that any such claim, demand or cause of action is barred by this Release on the basis that the identical or substantially similar conduct, action, or inaction which gives rise to such claim, demand or cause of action also occurred, in whole or in part, on or before the Effective Date.

3. This Release is binding upon and shall inure to the benefit of the Parties and the representatives, transferees, affiliates, subsidiaries, direct and indirect owners, successors, and/or assigns of the Parties hereto. This Release, together with the Power Sale Agreement, contains the entire agreement between the Parties hereto with respect to the subject matter hereof, supersedes any and all prior oral and written agreements relating thereto, and may not be modified, amended, or amplified except by a written document executed by the Parties hereto. This Release in no way supersedes, modifies, or amends the Power Sale Agreement.

4. This Release shall be governed by, and construed in accordance with, the laws of the State of Florida applicable to contracts made or to be performed in Florida, without regard to the conflicts of law principles thereof. The Parties hereto consent to the personal jurisdiction and venue of the federal and state courts in the State of Florida, and agree that all disputes or litigation regarding this Release shall be submitted to and determined by said courts.

5. Each Party hereto expressly warrants and represents that it has the requisite corporate or partnership approval, as the case may be, to execute and deliver this Release and that each of the persons executing this Release has the necessary and appropriate authority to do so; that there are no pending agreements, transactions, or negotiations to which it is a party that would render this Release or any part thereof void, voidable, or unenforceable; that no authorization, consent or approval of any governmental entity is required to make this Release valid and binding upon it; and that this Release constitutes its legal, valid and binding obligation.

6. This Release may be executed by the Parties in two or more counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same agreement and a facsimile signature shall be deemed to have the same effect as an original signature. One fully executed original shall be distributed to each Party.

IN WITNESS WHEREOF, the Parties have executed this Release as of the date first above written.

FLORIDA POWER & LIGHT COMPANY

CEDAR BAY GENERATING COMPANY  
LIMITED PARTNERSHIP

By: Paul J. Ewason

By: P. Chrisman Iribre

Title: President, Florida Power  
& Light Company

Title: P. Chrisman Iribre  
President



RELEASE

This release (this "Release") dated as of this \_\_\_ day of \_\_\_\_\_, 2002, is entered into by Florida Power & Light Company (hereinafter "FPL") and the Lenders (as that term is defined in Section 1.30 of the AMENDED AND RESTATED AGREEMENT FOR THE PURCHASE OF FIRM CAPACITY AND ENERGY BETWEEN AES CEDAR BAY, INC. AND FLORIDA POWER & LIGHT COMPANY dated as of July 2, 1990 (the "PPA")). Unless otherwise defined herein, all capitalized terms shall have the meaning set forth in the PPA.

WHEREAS, BNP Paribas, New York Branch, individually and in its capacity as collateral agent for the Secured Parties, commenced an action against FPL in the Circuit Court of the Fourth Judicial Circuit, in and for Duval County, Florida, captioned *BNP Paribas, New York Branch, individually, as collateral agent and for the benefit of certain bank and institutional lenders v. FPL*, No. 99-06416-CA (1999) (hereinafter the "Lender Litigation");

WHEREAS, the Lender Litigation was dismissed without prejudice by stipulation dated March 1, 2001;

WHEREAS, Cedar Bay Generating Company, Limited Partnership, the successor in interest to AES Cedar Bay, Inc. ("Cedar Bay") and FPL have entered into the First Amendment to the Amended and Restated Agreement for the Purchase of Firm Capacity and Energy Between AES Cedar Bay, Inc. and Florida Power & Light Company, dated as of \_\_\_\_\_, 2002 (the "PPA Amendment");

WHEREAS, FPL and the Lenders (individually hereinafter "Party," and collectively hereinafter the "Parties") have agreed to enter into this Release according to the terms and in

consideration of the promises set forth below, nothing herein being construed as an admission of any kind by either Party, all such liability being expressly denied.

**NOW, THEREFORE**, in consideration of the promises herein made and other good and valuable consideration, it is hereby agreed as follows:

1. This Release shall become effective on the Effective Date, as defined in paragraph 1 of the PPA Amendment.
2. Each Party (FPL and each Lender) releases and discharges the other Party, and its direct or indirect owners, subsidiaries, affiliates, assigns and successors, officers, directors, agents, representatives and employees, both past and present, from any and all claims, demands, or causes of action arising on or before the Effective Date, as defined in Paragraph 1(a) of the PPA Amendment, that each Party asserted or could have asserted against the other Party which relate in any way to the Lender Litigation, the litigation initiated by Cedar Bay against FPL in the Circuit Court of the Fourth Judicial Circuit, in and for Duval County, Florida, captioned Cedar Bay v. FPL, No. 97-07037-CV, Cedar Bay, the PPA, the May 2, 1991 "Side Letter" from AES Cedar Bay, Inc. to FPL and countersigned by Jim Scalf of FPL, the Facility (as defined in Section 1.19 of the PPA), the Consent and Agreement dated as of April 29, 1991 (the "Original Consent"), or the Amended and Restated Master Agreement dated as of March 31, 1993; provided, however, this Release shall not affect the validity or enforceability of the PPA, as amended by the PPA Amendment (the "Power Sale Agreement"), or the Original Consent, as amended by that certain First Amendment to Consent and Agreement to be entered into as referenced in paragraph 1 of the PPA Amendment, by FPL, Cedar Bay and BNP Paribas, New York Branch as the Collateral Agent for the Secured Parties (the "Consent and Agreement"), and shall not release any claim, demand, or cause of action arising (i) from conduct, action or

inaction occurring after the Effective Date (ii) in connection with Energy and Capacity received by FPL as to which, as of the Effective Date, any Monthly Energy Payment or Monthly Capacity Payment, as those terms are defined in Section 1.37 and 1.38 of the PPA, is not yet due from FPL and as to which no such payment has been made by FPL; (iii) relating in any way to the issue of whether any synthetic fuel which has been or is being burned at St. Johns River Power Park's Units #1 and #2 constitutes "coal" as that term is used in the Power Sale Agreement and, if so, whether such synthetic fuel burned at St. Johns River Power Park's Units #1 and #2 may be used for purposes of determining the Unit Fuel Cost under Section 1.52 of the PPA; or (iv) relating in any way to the issue of whether any buy out or buy down by any supplier of any contract or agreement which such supplier may have to supply coal to Jacksonville Electric Authority ("JEA") may be taken into account in determining the Unit Fuel Cost under Section 1.52 of the PPA. Nothing herein shall be deemed as an admission or acknowledgement by FPL or the Lenders that any claim, demand or cause of action not released herein is in any way valid. In determining for purposes of provision (i) of this Paragraph 2 whether any claim, demand or cause of action arises from conduct, action or inaction occurring after the Effective Date, FPL and the Lenders agree that they shall not be entitled to assert by way of defense, objection or otherwise that any such claim, demand or cause of action is barred by this Release on the basis that the identical or substantially similar conduct, action, or inaction which gives rise to such claim, demand or cause of action also occurred, in whole or in part, on or before the Effective Date.

3. This Release is binding upon and shall inure to the benefit of the Parties and their successors and assigns. This Release in no way supersedes, modifies, or amends the Power Sale Agreement or the Consent and Agreement.

4. This Release shall be governed by, and construed in accordance with, the laws of the State of Florida applicable to contracts made or to be performed in Florida, without regard to the conflicts of law principles thereof.

5. Each Party hereto expressly warrants and represents that it has the requisite corporate approval to execute and deliver this Release and that each of the persons executing this Release has the necessary and appropriate authority to do so; that there are no pending agreements, transactions, or negotiations to which it is a party that would render this Release or any part thereof void, voidable, or unenforceable; that no authorization, consent or approval of any governmental entity is required to make this Release valid and binding upon it; and that this Release constitutes its legal, valid and binding obligation.

6. This Release may be executed by the Parties in two or more counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same agreement and a facsimile signature shall be deemed to have the same effect as an original signature. One fully executed original shall be distributed to each Party.

IN WITNESS WHEREOF, the Parties have executed this Release as of the date first above written.

FLORIDA POWER & LIGHT COMPANY

[INSERT BLOCKS FOR EACH LENDER]

By: Paul J. Swanson

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_