

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

FORM 10-Q

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

For the quarterly period ended June 28, 2009

OR

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

For the transition period from _____ to _____

Commission file number 001-34166

SunPower Corporation

(Exact Name of Registrant as Specified in Its Charter)

Delaware

94-3008969

(State or Other Jurisdiction of Incorporation or Organization)

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

3939 North First Street, San Jose, California 95134

(Address of Principal Executive Offices and Zip Code)

(408) 240-5500

(Registrant's Telephone Number, Including Area Code)

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

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

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

Large Accelerated Filer **T**

Accelerated Filer **o**

Non-accelerated filer **o**

Smaller reporting company **o**

(Do not check if a smaller reporting company)

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

The total number of outstanding shares of the registrant's class A common stock as of July 29, 2009 was 54,703,331.

The total number of outstanding shares of the registrant's class B common stock as of July 29, 2009 was 42,033,287.

SunPower Corporation

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PART I. FINANCIAL INFORMATION
Item 1. Financial Statements
SunPower Corporation
Condensed Consolidated Balance Sheets
(In thousands, except share data)
(unaudited)

| | June 28, 2009 | December 28, 2008(1) |
|---|--------------------------|---------------------------------|
| Assets | | |
| Current assets: | | |
| Cash and cash equivalents | \$ 456,835 | \$ 202,331 |
| Restricted cash and cash equivalents, current portion | 28,303 | 13,240 |
| Short-term investments | 796 | 17,179 |
| Accounts receivable, net | 219,644 | 194,222 |
| Costs and estimated earnings in excess of billings | 11,133 | 30,326 |
| Inventories | 262,893 | 251,542 |
| Advances to suppliers, current portion | 27,951 | 43,190 |
| Prepaid expenses and other current assets | 122,260 | 98,254 |
| Total current assets | 1,129,815 | 850,284 |
| Restricted cash and cash equivalents, net of current portion | 189,235 | 162,037 |
| Long-term investments | 18,482 | 23,577 |
| Property, plant and equipment, net | 683,011 | 629,247 |
| Goodwill | 197,693 | 196,720 |
| Other intangible assets, net | 33,089 | 39,490 |
| Advances to suppliers, net of current portion | 113,197 | 119,420 |
| Other long-term assets | 85,826 | 76,751 |
| Total assets | \$ 2,450,348 | \$ 2,097,526 |
| Liabilities and Stockholders' Equity | | |
| Current liabilities: | | |
| Accounts payable | \$ 151,987 | \$ 263,241 |
| Accrued liabilities | 130,024 | 157,049 |
| Billings in excess of costs and estimated earnings | 50,710 | 11,806 |
| Customer advances, current portion | 19,005 | 19,035 |
| Total current liabilities | 351,726 | 451,131 |
| Long-term debt | 136,338 | 54,598 |
| Convertible debt | 532,840 | 357,173 |
| Long-term deferred tax liability | 9,279 | 8,141 |
| Customer advances, net of current portion | 83,211 | 91,359 |
| Other long-term liabilities | 24,569 | 25,950 |
| Total liabilities | 1,137,963 | 988,352 |
| Commitments and contingencies (Note 9) | | |
| Stockholders' equity: | | |
| Preferred stock, \$0.001 par value, 10,042,490 shares authorized; none issued and outstanding | — | — |
| Common stock, \$0.001 par value, 150,000,000 shares of class B common stock authorized; 42,033,287 shares of class B common stock issued and outstanding; \$0.001 par value, 217,500,000 shares of class A common stock authorized; 54,867,940 and 44,055,644 shares of class A common stock issued; 54,566,166 and 43,849,566 shares of class A common stock outstanding, at June 28, 2009 and December 28, 2008, respectively | 97 | 86 |
| Additional paid-in capital | 1,263,166 | 1,065,745 |
| Accumulated other comprehensive loss | (36,095) | (25,611) |
| Retained earnings | 96,996 | 77,611 |
| | 1,324,164 | 1,117,831 |
| Less: shares of class A common stock held in treasury, at cost; 301,774 and 206,078 shares at June 28, 2009 and December 28, 2008, respectively | (11,779) | (8,657) |
| Total stockholders' equity | 1,312,385 | 1,109,174 |
| Total liabilities and stockholders' equity | \$ 2,450,348 | \$ 2,097,526 |

(1) As adjusted to reflect the adoption of FSP APB 14-1 (see Note 1).

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

SunPower Corporation

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

| | Three Months Ended | | Six Months Ended | |
|---|---------------------------|-----------------------------|--------------------------|-----------------------------|
| | June 28, 2009 | June 29, 2008(1) | June 28, 2009 | June 29, 2008(1) |
| Revenue: | | | | |
| Systems | \$ 108,724 | \$ 270,593 | \$ 214,821 | \$ 449,444 |
| Components | 188,920 | 112,158 | 296,610 | 207,008 |
| Total revenue | <u>297,644</u> | <u>382,751</u> | <u>511,431</u> | <u>656,452</u> |
| Operating costs and expenses: | | | | |
| Cost of systems revenue | 91,793 | 209,223 | 180,144 | 352,487 |
| Cost of components revenue | 147,388 | 80,688 | 225,076 | 157,930 |
| Research and development | 6,853 | 4,813 | 14,817 | 9,455 |
| Sales, general and administrative | 41,755 | 43,208 | 84,038 | 77,066 |
| Total operating costs and expenses | <u>287,789</u> | <u>337,932</u> | <u>504,075</u> | <u>596,938</u> |
| Operating income | 9,855 | 44,819 | 7,356 | 59,514 |
| Other income (expense): | | | | |
| Interest income | 765 | 2,289 | 1,949 | 6,436 |
| Interest expense | (9,528) | (6,097) | (15,649) | (12,394) |
| Gain on purchased options | 21,193 | — | 21,193 | — |
| Other, net | 2,807 | (3,570) | (4,350) | (2,855) |
| Other income (expense), net | <u>15,237</u> | <u>(7,378)</u> | <u>3,143</u> | <u>(8,813)</u> |
| Income before income taxes and equity in earnings of unconsolidated investees | 25,092 | 37,441 | | |
| Income tax provision (benefit) | 4,054 | 7,614 | (4,508) | 9,419 |
| Income before equity in earnings of unconsolidated investees | <u>21,038</u> | <u>29,827</u> | <u>15,007</u> | <u>41,282</u> |
| Equity in earnings of unconsolidated investees | 3,133 | 1,330 | 4,378 | 1,874 |
| Net income | <u>\$ 24,171</u> | <u>\$ 31,157</u> | <u>\$ 19,385</u> | <u>\$ 43,156</u> |
| Net income per share of class A and class B common stock: | | | | |
| Basic | \$ 0.27 | \$ 0.39 | \$ 0.22 | \$ 0.54 |
| Diluted | \$ 0.26 | \$ 0.37 | \$ 0.22 | \$ 0.51 |
| Weighted-average shares: | | | | |
| Basic | 90,873 | 79,412 | 87,311 | 79,188 |
| Diluted | 98,412 | 83,365 | 89,110 | 83,182 |

(1) As adjusted to reflect the adoption of FSP APB 14-1 and FSP EITF 03-6-1 (see Note 1).

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

SunPower Corporation

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

| | Six Months Ended | |
|---|--------------------------|-----------------------------|
| | June 28, 2009 | June 29, 2008(1) |
| Cash flows from operating activities: | | |
| Net income | \$ 19,385 | \$ 43,156 |
| Adjustments to reconcile net income to net cash used in operating activities: | | |
| Stock-based compensation | 21,130 | 33,115 |
| Depreciation | 38,934 | 22,053 |
| Amortization of other intangible assets | 8,150 | 8,351 |
| Impairment of long-lived assets | 1,807 | 5,489 |
| Non-cash interest expense | 10,936 | 8,679 |
| Amortization of debt issuance costs | 1,721 | 1,074 |
| Gain on purchased options | (21,193) | — |
| Equity in earnings of unconsolidated investees | (4,378) | (1,874) |
| Excess tax benefits from stock-based award activity | (2,610) | (14,639) |
| Deferred income taxes and other tax liabilities | (9,874) | 10,080 |
| Changes in operating assets and liabilities, net of effect of acquisitions: | | |
| Accounts receivable | (24,491) | (103,132) |
| Costs and estimated earnings in excess of billings | 19,371 | (10,144) |
| Inventories | (8,063) | (67,799) |
| Prepaid expenses and other assets | (23,378) | (25,032) |
| Advances to suppliers | 21,442 | 3,641 |
| Accounts payable and other accrued liabilities | (129,458) | 82,366 |
| Billings in excess of costs and estimated earnings | 38,356 | (38,886) |
| Customer advances | (8,086) | 4,130 |
| Net cash used in operating activities | <u>(50,299)</u> | <u>(39,372)</u> |
| Cash flows from investing activities: | | |
| Increase in restricted cash and cash equivalents | (42,336) | (15,951) |
| Purchases of property, plant and equipment | (103,765) | (95,078) |
| Purchases of available-for-sale securities | — | (50,970) |
| Proceeds from sales or maturities of available-for-sale securities | 19,678 | 121,921 |
| Cash paid for acquisitions, net of cash acquired | — | (13,484) |
| Cash paid for investments in joint ventures and other non-public companies | — | (22,625) |
| Net cash used in investing activities | <u>(126,423)</u> | <u>(76,187)</u> |
| Cash flows from financing activities: | | |
| Proceeds from issuance of long-term debt, net of issuance costs | 82,150 | — |
| Proceeds from issuance of convertible debt, net of issuance costs | 225,018 | — |
| Proceeds from offering of class A common stock, net of offering expenses | 218,895 | — |
| Cash paid for repurchased convertible debt | (67,949) | — |
| Cash paid for purchased options | (97,336) | — |
| Proceeds from warrant transactions | 71,001 | — |
| Proceeds from exercises of stock options | 838 | 2,335 |
| Excess tax benefits from stock-based award activity | 2,610 | 14,639 |
| Purchases of stock for tax withholding obligations on vested restricted stock | (3,122) | (4,194) |
| Net cash provided by financing activities | <u>432,105</u> | <u>12,780</u> |
| Effect of exchange rate changes on cash and cash equivalents | <u>(879)</u> | <u>7,107</u> |
| Net increase (decrease) in cash and cash equivalents | 254,504 | (95,672) |
| Cash and cash equivalents at beginning of period | 202,331 | 285,214 |
| Cash and cash equivalents at end of period | <u>\$ 456,835</u> | <u>\$ 189,542</u> |
| Non-cash transactions: | | |
| Additions to property, plant and equipment included in accounts payable and other accrued liabilities | \$ — | \$ 3,838 |
| Non-cash interest expense capitalized and added to the cost of qualified assets | 3,583 | 3,820 |
| Change in goodwill relating to adjustments to acquired net assets | — | 231 |

(1) As adjusted to reflect the adoption of FSP APB 14-1 (see Note 1).

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

SunPower Corporation

Notes to Condensed Consolidated Financial Statements (unaudited)

Note 1. THE COMPANY AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

The Company

SunPower Corporation (together with its subsidiaries, the “Company” or “SunPower”) designs, manufactures and markets high-performance solar electric power technologies. The Company’s solar cells and solar panels are manufactured using proprietary processes, and its technologies are based on more than 15 years of research and development. The Company operates in two business segments: systems and components. The Systems Segment generally represents sales directly to system owners of engineering, procurement, construction and other services relating to solar electric power systems that integrate the Company’s solar panels and balance of systems components, as well as materials sourced from other manufacturers. The Components Segment primarily represents sales of the Company’s solar cells, solar panels and inverters to solar systems installers and other resellers, including the Company’s third-party global dealer network.

The Company was a majority-owned subsidiary of Cypress Semiconductor Corporation (“Cypress”) through September 29, 2008. After the close of trading on September 29, 2008, Cypress completed a spin-off of all of its shares of the Company’s class B common stock in the form of a pro rata dividend to the holders of Cypress common stock of record as of September 17, 2008. As a result, the Company’s class B common stock trades publicly and is listed on the Nasdaq Global Select Market, along with the Company’s class A common stock.

On May 4, 2009, the Company completed a public offering of 10.35 million shares of its class A common stock, at a per share price of \$22.00, and received net proceeds of \$218.9 million. Also on May 4, 2009, the Company issued \$230.0 million in principal amount of its 4.75% senior convertible debentures (“4.75% debentures”) and received net proceeds, before payment of the cost of the convertible debenture hedge transactions, of \$225.0 million. Concurrently with the issuance of the 4.75% debentures, the Company paid a net cost of \$26.3 million for certain convertible debenture hedge transactions with respect to the Company’s class A common stock which are intended to effectively increase the conversion price of the 4.75% debentures (see Note 11).

Recently Adopted Accounting Pronouncements

Convertible Debt

On December 29, 2008, the Company adopted Financial Accounting Standards Board (“FASB”) Staff Position (“FSP”) Accounting Principles Board (“APB”) 14-1, “Accounting for Convertible Debt Instruments That May Be Settled in Cash upon Conversion (Including Partial Cash Settlement)” (“FSP APB 14-1”), which requires recognition of both the liability and equity components of convertible debt instruments with cash settlement features. The debt component is required to be recognized at the fair value of a similar instrument that does not have an associated equity component. The equity component is recognized as the difference between the proceeds from the issuance of the convertible debt and the fair value of the liability, after adjusting for the deferred tax impact. FSP APB 14-1 also requires an accretion of the resulting debt discount over the expected life of the convertible debt. FSP APB 14-1 is required to be applied retrospectively to prior periods, and accordingly, financial statements for prior periods have been adjusted to reflect its adoption.

In February 2007, the Company issued \$200.0 million in principal amount of its 1.25% senior convertible debentures (“1.25% debentures”). In July 2007, the Company issued \$225.0 million in principal amount of its 0.75% senior convertible debentures (“0.75% debentures”). The 1.25% debentures and the 0.75% debentures contain partial cash settlement features and are therefore subject to FSP APB 14-1. As a result, the equity and debt components were retrospectively adjusted in accordance with FSP APB 14-1. As of December 28, 2008, the carrying value of the equity component was \$61.8 million and the principal amount of the outstanding debentures, the unamortized discount and the net carrying value was \$423.6 million, \$66.4 million and \$357.2 million, respectively (see Note 11). On a cumulative basis from the respective issuance dates of the 1.25% debentures and the 0.75% debentures through December 28, 2008, the Company has recognized \$22.6 million in non-cash interest expense related to the adoption of FSP APB 14-1, excluding the related tax effects.

As a result of the Company's adoption of FSP APB 14-1, the Company's Condensed Consolidated Balance Sheet as of December 28, 2008 has been adjusted as follows:

| (In thousands) | As Adjusted in this Quarterly Report on Form 10-Q | As Previously Reported in Annual Report on Form 10-K |
|--|---|--|
| Assets | | |
| Inventories | \$ 251,542 | \$ 251,388 |
| Prepaid expenses and other current assets | 98,254 | 96,104 |
| Property, plant and equipment, net | 629,247 | 612,687 |
| Other long-term assets | 76,751 | 74,224 |
| Total assets | 2,097,526 | 2,076,135 |
| Liabilities | | |
| Convertible debt | 357,173 | 423,608 |
| Deferred tax liability, net of current portion | 8,141 | 8,115 |
| Total liabilities | 988,352 | 1,054,761 |
| Stockholders' Equity | | |
| Additional paid-in capital | 1,065,745 | 1,003,954 |
| Retained earnings | 77,611 | 51,602 |
| Total stockholders' equity | 1,109,174 | 1,021,374 |

As a result of the Company's adoption of FSP APB 14-1, the Company's Condensed Consolidated Statements of Operations for the three and six months ended June 29, 2008 have been adjusted as follows:

| (In thousands) | Three Months Ended | | Six Months Ended | |
|---|---|---|---|---|
| | As Adjusted in this Quarterly Report on Form 10-Q | As Previously Reported in Quarterly Report on Form 10-Q | As Adjusted in this Quarterly Report on Form 10-Q | As Previously Reported in Quarterly Report on Form 10-Q |
| Cost of systems revenue | \$ 209,223 | \$ 209,137 | \$ 352,487 | \$ 352,350 |
| Cost of components revenue | 80,688 | 80,584 | 157,930 | 157,752 |
| Operating income | 44,819 | 45,009 | 59,514 | 59,829 |
| Interest expense | (6,097) | (1,411) | (12,394) | (2,875) |
| Other, net | (3,570) | (3,570) | (2,855) | (3,827) |
| Income before income taxes and equity in earnings of unconsolidated investees | 37,441 | 42,317 | 50,701 | 59,563 |
| Income tax provision | 7,614 | 15,039 | 9,419 | 20,072 |
| Income before equity in earnings of unconsolidated investees | 29,827 | 27,278 | 41,282 | 39,491 |
| Net income | 31,157 | 28,608 | 43,156 | 41,365 |

As a result of the Company's adoption of FSP APB 14-1, the Company's Condensed Consolidated Statement of Cash Flows for the six months ended June 29, 2008 has been adjusted as follows:

| (In thousands) | As Adjusted in this Quarterly Report on Form 10-Q | As Previously Reported in Quarterly Report on Form 10-Q |
|---|---|---|
| Cash flows from operating activities: | | |
| Net income | \$ 43,156 | \$ 41,365 |
| Depreciation | 22,053 | 21,971 |
| Non-cash interest expense | 8,679 | — |
| Amortization of debt issuance costs | 1,074 | 972 |
| Deferred income taxes and other tax liabilities | 10,080 | 20,734 |
| Net cash used in operating activities | (39,372) | (39,372) |

Earnings Per Share

On December 29, 2008, the Company adopted FSP Emerging Issues Task Force Issue (“EITF”) 03-6-1, “Determining Whether Instruments Granted in Share-Based Payment Transactions Are Participating Securities” (“FSP EITF 03-6-1”), which clarifies that all outstanding unvested share-based payment awards that contain rights to nonforfeitable dividends participate in undistributed earnings with common shareholders. In fiscal 2007, the Company granted restricted stock awards with the same dividend rights as its other stockholders, therefore, unvested restricted stock awards are considered participating securities and the two-class method of computing basic and diluted earnings per share must be applied (see Note 15). The new guidance was applied retroactively to the Company’s historical results of operations, and as a result, the Company’s Condensed Consolidated Statements of Operations for the three and six months ended June 29, 2008 have been adjusted as follows:

| (In thousands, except per share data) | Three Months Ended | | Six Months Ended | |
|---|---|---|---|---|
| | As Adjusted in this Quarterly Report on Form 10-Q | As Previously Reported in Quarterly Report on Form 10-Q | As Adjusted in this Quarterly Report on Form 10-Q | As Previously Reported in Quarterly Report on Form 10-Q |
| Net income | \$ 31,157 | \$ 28,608 | \$ 43,156 | \$ 41,365 |
| Net income per share of class A and class B common stock: | | | | |
| Basic | \$ 0.39 | \$ 0.36 | \$ 0.54 | \$ 0.52 |
| Diluted | \$ 0.37 | \$ 0.34 | \$ 0.51 | \$ 0.49 |
| Weighted-average shares: | | | | |
| Basic | 79,412 | 79,412 | 79,188 | 79,188 |
| Diluted | 83,365 | 84,036 | 83,182 | 83,848 |

Disclosures about Derivative Instruments and Hedging Activities

On December 29, 2008, the Company adopted Statement of Financial Accounting Standards (“SFAS”) No. 161, “Disclosures about Derivative Instruments and Hedging Activities — an amendment of SFAS No. 133” (“SFAS No. 161”), which had no financial impact on the Company’s condensed consolidated financial statements and only required additional financial statement disclosures as set forth in Note 13. SFAS No. 161 specifically requires entities to provide enhanced disclosures addressing the following: (a) how and why an entity uses derivative instruments; (b) how derivative instruments and related hedged items are accounted for under SFAS No. 133, “Accounting for Derivative Instruments and Hedging Activities” (“SFAS No. 133”), and its related interpretations; and (c) how derivative instruments and related hedged items affect an entity’s financial position, financial performance, and cash flows.

Fair Value of Assets and Liabilities

In February 2008, the FASB issued FSP SFAS No. 157-2, “Effective Date of FASB Statement No. 157” (“FSP SFAS No. 157-2”), which delayed the effective date of SFAS No. 157, “Fair Value Measurements” (“SFAS No. 157”), for all nonfinancial assets and nonfinancial liabilities, except for items that are recognized or disclosed at fair value in the financial statements on a recurring basis (at least annually), until the beginning of the first quarter of fiscal 2009. Therefore, in the first quarter of fiscal 2009, the Company adopted SFAS No. 157 for nonfinancial assets and nonfinancial liabilities. The adoption of SFAS No. 157 for nonfinancial assets and nonfinancial liabilities that are not measured and recorded at fair value on a recurring basis did not have a significant impact on the Company’s condensed consolidated financial statements.

In April 2009, the FASB issued three Staff Positions: (i) SFAS No. 157-4, “Determining Fair Value When the Volume and Level of Activity for the Asset or Liability Have Significantly Decreased and Identifying Transactions That Are Not Orderly” (“FSP SFAS No. 157-4”), (ii) SFAS No. 115-2 and SFAS No. 124-2, “Recognition and Presentation of Other-Than-Temporary Impairments” (“FSP SFAS No. 115-2 and FSP SFAS No. 124-2”), and (iii) SFAS No. 107-1 and APB 28-1, “Interim Disclosures about Fair Value of Financial Instruments” (“FSP SFAS No. 107-1 and APB 28-1”), which were adopted by the Company in the second quarter of fiscal 2009. FSP SFAS No. 157-4 provides guidance on how to determine the fair value of assets and liabilities under SFAS No. 157 in the current economic environment and reemphasizes that the objective of a fair value measurement remains an exit price. If the Company were to conclude that there has been a significant decrease in the volume and level of activity of the asset or liability in relation to normal market activities, quoted market values may not be representative of fair value and the Company may conclude that a change in valuation technique or the use of multiple valuation techniques may be appropriate. FSP SFAS No. 115-2 and FSP SFAS No. 124-2 provide additional guidance on presenting impairment losses on securities to bring consistency to the timing of impairment recognition, and provide clarity to investors about the credit and noncredit components of impaired debt securities that are not expected to be sold. FSP SFAS No. 107-1 and APB 28-1 requires disclosures about fair value of financial instruments for interim reporting periods of publicly traded companies as well as in annual financial statements. FSP SFAS No. 107-1 and APB 28-1 also amends APB Opinion No. 28, “Interim Financial Reporting,” to require those disclosures in summarized financial information at interim reporting periods. The adoption of these Staff Positions had no financial impact on the Company’s condensed consolidated financial statements and only required additional financial statement disclosures (see Notes 2, 5 and 7).

Business Combinations

In April 2009, the FASB issued FSP SFAS No. 141(R)-1 which amends the provisions in SFAS No. 141 (revised 2007), "Business Combinations" ("SFAS No. 141(R)"), for the initial recognition and measurement, subsequent measurement and accounting, and disclosures for assets and liabilities arising from contingencies in business combinations. FSP SFAS No. 141(R)-1 eliminates the distinction between contractual and non-contractual contingencies, including the initial recognition and measurement criteria in SFAS No. 141(R) and instead carries forward most of the provisions in SFAS No. 141, "Business Combinations" ("SFAS No. 141"), for acquired contingencies. FSP SFAS No. 141(R)-1 is effective for contingent assets and contingent liabilities acquired in business combinations for which the acquisition date is on or after the beginning of the first annual reporting period beginning on or after December 15, 2008. The Company's adoption of FSP SFAS No. 141(R)-1 in the first quarter of fiscal 2009 did not have a material effect on its condensed consolidated financial statements. As a result of the adoption of SFAS No. 141(R), the Company reflected an asset for in-process research and development of \$1.0 million in connection with the acquisition of Tilt Solar LLC ("Tilt Solar") during the second quarter of fiscal 2009 which would have been expensed under previous guidance (see Note 4).

Subsequent Events

In May 2009, the FASB issued SFAS No. 165, "Subsequent Events" ("SFAS No. 165"), which established general standards of accounting for and disclosure of events that occur after the balance sheet date but before financial statements are issued or are available to be issued. SFAS No. 165 requires the disclosure of the date through which an entity has evaluated subsequent events and the basis for selecting that date, that is, whether that date represents the date the financial statements were issued or were available to be issued. The Company evaluated subsequent events through the date the Quarterly Report on Form 10-Q was issued on July 31, 2009. The Company's adoption of SFAS No. 165 in the second quarter of fiscal 2009 did not have a material effect on its condensed consolidated financial statements and only required additional financial statement disclosures.

Recent Accounting Pronouncements Not Yet Adopted

With the exception of those discussed below, there have been no recent accounting pronouncements not yet adopted that are of significance, or potential significance, to the Company.

In June 2009, the FASB ratified EITF Issue No. 09-1, "Accounting for Own-Share Lending Arrangements in Contemplation of Convertible Debt Issuance" ("EITF 09-1"), which clarifies that share lending arrangements that are executed in connection with convertible debt offerings or other financings should be considered debt issuance costs. At the date of issuance, share lending arrangements entered into on the Company's class A common stock are required to be measured at fair value and recognized as debt issuance costs in its condensed consolidated financial statements. In connection with the issuance of the 1.25% debentures and 0.75% debentures, the Company loaned approximately 2.9 million shares of its class A common stock to Lehman Brothers International (Europe) Limited ("LBIE") and approximately 1.8 million shares of its class A common stock to Credit Suisse International ("CSI") under share lending arrangements. EITF 09-1 will result in significantly higher non-cash amortization of the debt issuance costs and a loss resulting from Lehman Brothers Holding Inc. ("Lehman") filing a petition for protection under Chapter 11 of the U.S. bankruptcy code on September 15, 2008, and LBIE commencing administration proceedings (analogous to bankruptcy) in the United Kingdom. EITF 09-1 is effective for fiscal years beginning after December 15, 2009, and retrospective application is required for all periods presented. The Company is currently evaluating the impact of the adoption of EITF 09-1 on its condensed consolidated financial statements.

In June 2009, the FASB issued SFAS No. 167, "Amendments to FASB Interpretation No. 46(R)" ("SFAS No. 167"). SFAS No. 167 was issued to amend FASB Interpretation No. 46, "Consolidation of Variable Interest Entities" ("FIN 46(R)"), to eliminate the exemption for qualifying special purpose entities, provide a new approach for determining which entity should consolidate a variable interest entity, and require an enterprise to regularly perform an analysis to determine whether the enterprise's variable interest or interests give it a controlling financial interest in a variable interest entity. SFAS No. 167 is effective for fiscal years beginning after November 15, 2009. Earlier application is prohibited. The Company is currently evaluating the potential impact, if any, of the adoption of SFAS No. 167 on its condensed consolidated financial statements.

In June 2009, the FASB issued SFAS No. 168, "The FASB Accounting Standards Codification and the Hierarchy of Generally Accepted Accounting Principles – a replacement of FASB Statement No. 162" ("SFAS No. 168"), to establish the codification as the source of authoritative accounting principles in the preparation of financial statements in conformity with generally accepted accounting principles ("GAAP"). All guidance contained in the codification carries an equal level of authority. SFAS No. 168 is effective for financial statements issued for interim and annual periods ending after September 15, 2009 and will not have an effect on the Company's condensed consolidated financial statements.

Fiscal Years

The Company reports on a fiscal-year basis and ends its quarters on the Sunday closest to the end of the applicable calendar quarter, except in a 53-week fiscal year, in which case the additional week falls into the fourth quarter of that fiscal year. Fiscal year 2009 consists of 53 weeks while fiscal year 2008 consists of 52 weeks. The second quarter of fiscal 2009 ended on June 28, 2009 and the second quarter of fiscal 2008 ended on June 29, 2008.

Basis of Presentation

The accompanying condensed consolidated interim financial statements have been prepared pursuant to the rules and regulations of the Securities and Exchange Commission ("SEC") regarding interim financial reporting and include the accounts of the Company and all of its subsidiaries. Intercompany transactions and balances have been eliminated in consolidation. The year-end Condensed Consolidated Balance Sheet data was derived from audited financial statements as adjusted for the retrospective application of FSP APB 14-1 discussed above. Accordingly, these financial statements do not include all of the information and footnotes required by GAAP for complete financial statements and should be read in conjunction with the financial statements and notes thereto included in the Company's Annual Report on Form 10-K for the year ended December 28, 2008.

The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America ("United States" or "U.S.") requires management to make estimates and assumptions that affect the amounts reported in the financial statements and accompanying notes. Significant estimates in these financial statements include percentage-of-completion for construction projects, allowances for doubtful accounts receivable and sales returns, inventory write-downs, estimates for future cash flows and economic useful lives of property, plant and equipment, goodwill, other intangible assets and other long-term assets, asset impairments, valuation of auction rate securities, investments in joint ventures, certain accrued liabilities including accrued warranty reserves, valuation of debt without the conversion feature, and income taxes and tax valuation allowances. Actual results could materially differ from those estimates.

In the three months ended June 28, 2009, the Company identified certain adjustments related to fiscal 2008, primarily due to systems costs and inventory that resulted in recording additional out of period costs of approximately \$2.1 million. The effect of these items is not material to estimated pre-tax or net income for the current year.

In the opinion of management, the accompanying condensed consolidated interim financial statements contain all adjustments, consisting only of normal recurring adjustments, which the Company believes are necessary for a fair statement of the Company's financial position as of June 28, 2009 and its results of operations for the three and six months ended June 28, 2009 and June 29, 2008 and its cash flows for the six months ended June 28, 2009 and June 29, 2008. These condensed consolidated interim financial statements are not necessarily indicative of the results to be expected for the entire year.

Note 2. BALANCE SHEET COMPONENTS

| (In thousands) | June 28, 2009 | December 28, 2008 |
|---------------------------------------|-------------------|----------------------|
| Accounts receivable, net: | | |
| Accounts receivable, gross | \$ 223,326 | \$ 196,316 |
| Less: Allowance for doubtful accounts | (2,648) | (1,863) |
| Less: Allowance for sales returns | (1,034) | (231) |
| | <u>\$ 219,644</u> | <u>\$ 194,222</u> |
| Inventories: | | |
| Raw materials(1) | \$ 51,558 | \$ 130,082 |
| Work-in-process | 5,865 | 15,505 |
| Finished goods(2) | 205,470 | 105,955 |
| | <u>\$ 262,893</u> | <u>\$ 251,542</u> |

(1) In addition to polysilicon and other raw materials for solar cell manufacturing, raw materials include installation materials for systems projects.

(2) The balance of finished goods as of December 28, 2008 increased by \$0.2 million for the change in amortization of capitalized non-cash interest expense capitalized in inventory as a result of the Company's adoption of FSP APB 14-1 (see Note 1).

Prepaid expenses and other current assets:

| | | |
|---|-------------------|------------------|
| VAT receivables, current portion | \$ 28,026 | \$ 26,489 |
| Deferred tax assets, current portion | 5,658 | 5,658 |
| Debt issuance costs, current portion | 2,825 | 2,150 |
| Foreign currency forward exchange contracts | 1,378 | 11,443 |
| Deferred project costs | 34,106 | 1,459 |
| Other receivables(3) | 34,977 | 36,749 |
| Other prepaid expenses | 15,290 | 14,306 |
| | <u>\$ 122,260</u> | <u>\$ 98,254</u> |

(3) Includes tolling agreements with suppliers in which the Company provides polysilicon required for silicon ingot manufacturing and procures the manufactured silicon ingots from the suppliers (see Note 9).

| (In thousands) | June 28, 2009 | December 28, 2008 |
|---|------------------|-------------------------|
| Other long-term assets: | | |
| VAT receivables, net of current portion | \$ 6,935 | \$ 6,692 |
| Debt issuance costs, net of current portion | 5,339 | 2,527 |
| Investments in joint ventures | 33,366 | 29,007 |
| Note receivable(4) | 10,000 | 10,000 |
| Other | 30,186 | 28,525 |
| | <u>\$ 85,826</u> | <u>\$ 76,751</u> |

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

| | | |
|---|-------------------|-------------------|
| Accrued liabilities: | | |
| VAT payables | \$ 13,883 | \$ 18,934 |
| Income taxes payable | — | 13,402 |
| Deferred tax liability | 5,658 | 5,658 |
| Foreign currency forward exchange contracts | 28,477 | 45,791 |
| Warranty reserves | 30,400 | 23,872 |
| Employee compensation and employee benefits | 14,139 | 19,018 |
| Deferred revenue | 5,908 | 5,159 |
| Other | 31,559 | 25,215 |
| | <u>\$ 130,024</u> | <u>\$ 157,049</u> |

Note 3. PROPERTY, PLANT AND EQUIPMENT

| (In thousands) | June 28, 2009 | December 28, 2008(1) |
|-------------------------------------|-------------------|-------------------------|
| Property, plant and equipment, net: | | |
| Land and buildings | \$ 17,166 | \$ 13,912 |
| Manufacturing equipment | 451,717 | 387,860 |
| Computer equipment | 37,734 | 26,957 |
| Furniture and fixtures | 4,406 | 4,327 |
| Leasehold improvements | 160,257 | 148,190 |
| Construction-in-process | 152,426 | 149,657 |
| | <u>823,706</u> | <u>730,903</u> |
| Less: Accumulated depreciation | (140,695) | (101,656) |
| | <u>\$ 683,011</u> | <u>\$ 629,247</u> |

(1) Property, plant and equipment, net increased \$16.6 million for non-cash interest expense associated with the 1.25% debentures and 0.75% debentures that was capitalized and added to the cost of qualified assets as a result of the Company's adoption of FSP APB 14-1 (see Note 1).

Certain manufacturing equipment associated with solar cell manufacturing lines located at one of the Company's facilities in the Philippines are collateralized in favor of a customer by way of a chattel mortgage, a first ranking mortgage and a security interest in the property. The Company provided security for advance payments received from a customer in fiscal 2008 totaling \$40.0 million in the form of collateralized manufacturing equipment with a net book value of \$39.4 million and \$43.1 million as of June 28, 2009 and December 28, 2008, respectively (see Note 7).

The Company evaluates its long-lived assets, including property, plant and equipment and other intangible assets with finite lives (see Note 4), for impairment whenever events or changes in circumstances indicate that the carrying value of such assets may not be recoverable in accordance with SFAS No. 144, "Accounting for the Impairment or Disposal of Long-Lived Assets" ("SFAS No. 144"). Factors considered important that could result in an impairment review include significant underperformance relative to expected historical or projected future operating results, significant changes in the manner of use of acquired assets and significant negative industry or economic trends.

Ongoing weak global credit market conditions have had a negative impact on the Company's earnings during the first half of fiscal 2009. From time to time, the Company may temporarily remove certain long-lived assets from service based on projections of reduced capacity needs. The Company believes the current adverse change in its business climate resulting in lower forecasted revenue for fiscal 2009 is temporary in nature and does not indicate that the fair values of its long-lived assets have fallen below their carrying values as of June 28, 2009.

Note 4. BUSINESS COMBINATION, GOODWILL AND OTHER INTANGIBLE ASSETS

Acquisition of Tilt Solar

On April 14, 2009, the Company completed the acquisition of Tilt Solar which was not material to the Company's financial position or results of operations.

Goodwill

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

| (In thousands) | Systems | Components | Total |
|-------------------------|------------|------------|------------|
| As of December 28, 2008 | \$ 181,801 | \$ 14,919 | \$ 196,720 |
| Goodwill acquired | 581 | — | 581 |
| Translation adjustment | — | 392 | 392 |
| As of June 28, 2009 | \$ 182,382 | \$ 15,311 | \$ 197,693 |

The balance of goodwill within the Systems Segment increased \$0.6 million as of June 28, 2009 due to the Company's acquisition of Tilt Solar, which represents the excess of the purchase price over the fair value of the underlying net tangible and other intangible assets of Tilt Solar. The Company records a translation adjustment for the revaluation of its Euro and Australian dollar functional currency subsidiaries' goodwill and other intangible assets into U.S. dollar. For the three months ended June 28, 2009, the translation adjustment increased the balance of goodwill within the Components Segment by \$0.4 million.

In accordance with SFAS No. 142, "Accounting for Goodwill and Other Intangible Assets" ("SFAS No. 142"), goodwill is tested for impairment at least annually, or more frequently if certain indicators are present. The Company conducts its annual impairment test of goodwill as of the Sunday closest to the end of the third fiscal quarter of each year. Impairment of goodwill is tested at the Company's reporting unit level which is at the segment level by comparing each segment's carrying amount, including goodwill, to the fair value of that segment. To determine fair value, the Company has historically utilized a market multiples comparative approach. In performing its analysis, the Company has utilized information with assumptions and projections it considers reasonable and supportable. If the carrying amount of the reporting unit exceeds its implied fair value, goodwill is considered impaired and a second step is performed to measure the amount of impairment loss, if any. Based on its last impairment test as of September 28, 2008, the Company determined there was no impairment.

Under SFAS No. 142, goodwill of a reporting unit shall be tested for impairment between annual tests if an event occurs or circumstances change that would more likely than not reduce the fair value of a reporting unit below its carrying amount. Ongoing weak global credit market conditions have had a negative impact on the Company's earnings and the profitability of its Systems Segment during the first half of fiscal 2009. Management evaluated all the facts and circumstances, including the duration and severity of the decline in its revenue and market capitalization and the reasons for it, to assess whether an impairment indicator exists that would require impairment testing of its reporting units. Management concluded that no impairment indicator existed as of June 28, 2009, because the decline in revenue is deemed to be temporary in nature and management does not believe that there is a significant adverse change in the long-term business prospects for its Systems Segment.

Other Intangible Assets

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

| (In thousands) | Gross | Accumulated Amortization | Net |
|---|------------------|--------------------------|------------------|
| As of June 28, 2009 | | | |
| Patents and purchased technology | \$ 51,398 | \$ (36,668) | \$ 14,730 |
| Purchased in-process research and development | 1,000 | — | 1,000 |
| Tradenames | 2,566 | (1,934) | 632 |
| Customer relationships and other | 28,303 | (11,576) | 16,727 |
| | <u>\$ 83,267</u> | <u>\$ (50,178)</u> | <u>\$ 33,089</u> |
| As of December 28, 2008 | | | |
| Patents and purchased technology | \$ 51,398 | \$ (31,322) | \$ 20,076 |
| Tradenames | 2,501 | (1,685) | 816 |
| Customer relationships and other | 27,456 | (8,858) | 18,598 |
| | <u>\$ 81,355</u> | <u>\$ (41,865)</u> | <u>\$ 39,490</u> |

In connection with the acquisition of Tilt Solar, the Company recorded \$1.5 million of other intangible assets in the second quarter of fiscal 2009. All of the Company's acquired other intangible assets, excluding goodwill, are subject to amortization. Amortization expense for other intangible assets totaled \$4.1 million and \$8.2 million for the three and six months ended June 28, 2009, respectively, and \$4.0 million and \$8.4 million for the three and six months ended June 29, 2008, respectively. As of June 28, 2009, the estimated future amortization expense related to other intangible assets is as follows (in thousands):

| | | |
|-----------------------------|----|---------------|
| 2009 (remaining six months) | \$ | 8,288 |
| 2010 | | 15,308 |
| 2011 | | 5,274 |
| 2012 | | 4,114 |
| Thereafter | | 105 |
| | \$ | <u>33,089</u> |

Note 5. INVESTMENTS

SFAS No. 157 establishes a fair value hierarchy that prioritizes the inputs to valuation techniques used to measure fair value. The hierarchy assigns the highest priority to unadjusted quoted prices in active markets for identical assets or liabilities ("Level 1") and the lowest priority to unobservable inputs ("Level 3"). Level 2 measurements are inputs that are observable for assets or liabilities, either directly or indirectly, other than quoted prices included within Level 1.

Assets Measured at Fair Value on a Recurring Basis

The following tables present information about the Company's available-for-sale securities accounted for under SFAS No. 115, "Accounting for Investment in Certain Debt and Equity Securities" ("SFAS No. 115"), that are measured at fair value on a recurring basis and indicate the fair value hierarchy of the valuation techniques utilized by the Company to determine such fair value in accordance with the provisions of SFAS No. 157. Information about the Company's foreign currency derivatives measured at fair value on a recurring basis is disclosed in Note 13. The Company does not have any nonfinancial assets or nonfinancial liabilities that are recognized or disclosed at fair value in its condensed consolidated financial statements on a recurring basis.

| June 28, 2009 | | | | |
|-------------------------------------|-------------------|-------------|------------------|-------------------|
| (In thousands) | Level 1 | Level 2 | Level 3 | Total |
| Assets | | | | |
| Money market funds | \$ 496,130 | \$ — | \$ 796 | \$ 496,926 |
| Bank notes | 19,825 | — | — | 19,825 |
| Corporate securities | — | — | 18,482 | 18,482 |
| Total available-for-sale securities | <u>\$ 515,955</u> | <u>\$ —</u> | <u>\$ 19,278</u> | <u>\$ 535,233</u> |

| December 28, 2008 | | | | |
|-------------------------------------|-------------------|-----------------|------------------|-------------------|
| (In thousands) | Level 1 | Level 2 | Level 3 | Total |
| Assets | | | | |
| Money market funds | \$ 227,190 | \$ — | \$ 7,185 | \$ 234,375 |
| Bank notes | 49,610 | — | — | 49,610 |
| Corporate securities | — | 9,994 | 23,577 | 33,571 |
| Total available-for-sale securities | <u>\$ 276,800</u> | <u>\$ 9,994</u> | <u>\$ 30,762</u> | <u>\$ 317,556</u> |

Available-for-sale securities utilizing Level 3 inputs to determine fair value are comprised of investments in money market funds totaling \$0.8 million and \$7.2 million as of June 28, 2009 and December 28, 2008, respectively, and auction rate securities totaling \$18.5 million and \$23.6 million as of June 28, 2009 and December 28, 2008, respectively.

Money Market Funds

Investments in money market funds utilizing Level 3 inputs consist of the Company's investments in the Reserve Primary Fund and the Reserve International Liquidity Fund (collectively referred to as the "Reserve Funds"). The net asset value per share for the Reserve Funds fell below \$1.00 because the funds had investments in Lehman, which filed for bankruptcy on September 15, 2008. As a result of this event, the Reserve Funds wrote down their investments in Lehman to zero and also announced that the funds would be closed and distributed to holders. The Company has estimated its loss on the Reserve Funds to be approximately \$2.2 million based upon information publicly disclosed by the Reserve Funds relative to its holdings and remaining obligations. The Company recorded impairment charges of zero and \$1.2 million in the three and six months ended June 28, 2009, respectively, and \$1.0 million during the second half of fiscal 2008, in "Other, net" in its Condensed Consolidated Statements of Operations, thereby establishing a new cost basis for each fund. The Company's other money market fund instruments are classified within Level 1 of the fair value hierarchy because they are valued using quoted prices for identical instruments in active markets.

Auction Rate Securities

Auction rate securities in which the Company invested are primarily student loans, the majority of which are triple-A rated and substantially guaranteed by the U.S. government under the Federal Family Education Loan Program ("FFELP"). Historically, these securities have provided liquidity through a Dutch auction at pre-determined intervals every 7 to 49 days. At the end of each reset period, investors can continue to hold the securities or sell the securities at par through an auction process. The "stated" or "contractual" maturities for these securities generally are between 20 to 30 years. Beginning in February 2008, the auction rate securities market experienced a significant increase in the number of failed auctions, resulting from a lack of liquidity, which occurs when sell orders exceed buy orders, and does not necessarily signify a default by the issuer.

All auction rate securities held by the Company have failed to clear at auctions in subsequent periods. For failed auctions, the Company continues to earn interest on these investments at the contractual rate. Prior to 2008, failed auctions rarely occurred, however, such failures could continue to occur in the future. In the event the Company needs to access funds invested in such auction rate securities, the Company will not be able to do so until a future auction is successful, the issuer redeems the securities, a buyer is found outside of the auction process or the securities mature. Accordingly, auction rate securities held are classified as "Long-term investments" in the Condensed Consolidated Balance Sheets, because they are not expected to be used to fund current operations and such classification is consistent with the stated contractual maturities of the securities.

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

- 5 years to liquidity;
- continued receipt of contractual interest which provides a premium spread for failed auctions; and
- discount rates ranging from 4.4% to 9.47%, which incorporates a spread for both credit and liquidity risk.

Based on these assumptions, the Company estimated that the auction rate securities with a stated par value of \$21.1 million at June 28, 2009 would be valued at approximately 88% of their stated par value, or \$18.5 million, representing a decline in value of approximately \$2.6 million. At December 28, 2008, the Company estimated that auction rate securities with a stated par value of \$26.1 million would be valued at approximately 91% of their stated par value, or \$23.6 million, representing a decline in value of approximately \$2.5 million. Due to one auction rate security's downgrade from a triple-A rating to a Baa1 rating, the length of time that has passed since the auctions failed and the ongoing uncertainties regarding future access to liquidity, the Company has determined the impairment is other-than-temporary and recorded impairment losses of \$0.5 million and \$0.6 million in the three and six months ended June 28, 2009, respectively, and \$2.5 million in the fourth quarter of fiscal 2008, in "Other, net" in its Condensed Consolidated Statements of Operations. The following table provides a summary of changes in fair value of the Company's available-for-sale securities utilizing Level 3 inputs for the six months ended June 28, 2009:

| (In thousands) | Money Market Funds | Auction Rate Securities |
|--|-----------------------|----------------------------|
| Balance at December 28, 2008 | \$ 7,185 | \$ 23,577 |
| Sales and distributions (1) | (5,151) | (4,526) |
| Impairment loss recorded in "Other, net" | (1,238) | (569) |
| Balance at June 28, 2009 | <u>\$ 796</u> | <u>\$ 18,482</u> |

- (1) The Company sold an auction rate security with a carrying value of \$4.5 million for \$4.6 million to a third-party outside of the auction process and received distributions of \$5.2 million from the Reserve Funds.

The following table provides a summary of changes in fair value of the Company's available-for-sale securities which utilized Level 3 inputs for the six months ended June 29, 2008:

| (In thousands) | Auction Rate Securities |
|--|----------------------------|
| Balance at December 31, 2007 | \$ — |
| Transfers from Level 2 to Level 3 | 29,050 |
| Purchases | 10,000 |
| Sales | (13,000) |
| Unrealized loss included in other comprehensive income | (964) |
| Balance at June 29, 2008 | <u>\$ 25,086</u> |

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

| (In thousands) | June 28, 2009 | | | | December 28, 2008 | | | |
|-------------------------------------|-------------------|-------------|--------------|-------------------|-------------------|-------------|----------------|-------------------|
| | Cost | Unrealized | | Fair Value | Cost | Unrealized | | Fair Value |
| | | Gross Gains | Gross Losses | | | Gross Gains | Gross Losses | |
| Money market funds | \$ 496,926 | \$ — | \$ — | \$ 496,926 | \$ 234,375 | \$ — | \$ — | \$ 234,375 |
| Bank notes | 19,825 | — | — | 19,825 | 49,610 | — | — | 49,610 |
| Corporate securities | 18,482 | — | — | 18,482 | 33,579 | 2 | (10) | 33,571 |
| Total available-for-sale securities | <u>\$ 535,233</u> | <u>\$ —</u> | <u>\$ —</u> | <u>\$ 535,233</u> | <u>\$ 317,564</u> | <u>\$ 2</u> | <u>\$ (10)</u> | <u>\$ 317,556</u> |

The classification of available-for-sale securities and cash deposits is as follows:

| (In thousands) | June 28, 2009 | | | December 28, 2008 | | |
|-------------------------------|--------------------|-------------------|-------------------|--------------------|-------------------|-------------------|
| | Available-For-Sale | Cash Deposits | Total | Available-For-Sale | Cash Deposits | Total |
| Cash and cash equivalents | \$ 384,226 | \$ 72,609 | \$ 456,835 | \$ 101,523 | \$ 100,808 | \$ 202,331 |
| Short-term restricted cash(1) | 28,303 | — | 28,303 | 13,240 | — | 13,240 |
| Short-term investments | 796 | — | 796 | 17,179 | — | 17,179 |
| Long-term restricted cash(1) | 103,426 | 85,809 | 189,235 | 162,037 | — | 162,037 |
| Long-term investments | 18,482 | — | 18,482 | 23,577 | — | 23,577 |
| | <u>\$ 535,233</u> | <u>\$ 158,418</u> | <u>\$ 693,651</u> | <u>\$ 317,556</u> | <u>\$ 100,808</u> | <u>\$ 418,364</u> |

(1) The Company provided security in the form of cash collateralized bank standby letters of credit for advance payments received from customers.

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

| (In thousands) | June 28, 2009 | December 28, 2008 |
|-------------------------------|-------------------|-------------------|
| Due in less than one year | \$ 516,751 | \$ 186,540 |
| Due from one to two years (1) | — | 3,206 |
| Due from two to twenty years | 18,482 | 127,810 |
| | <u>\$ 535,233</u> | <u>\$ 317,556</u> |

(1) The Company classifies all available-for-sale securities that are intended to be available for use in current operations as short term investments.

Assets Measured at Fair Value on a Non-Recurring Basis

The Company holds minority investments comprised of common and preferred stock in certain non-public companies. The Company monitors these minority investments for impairment and records reductions in the carrying values when necessary. Circumstances that indicate an other-than-temporary decline include valuation ascribed to the issuing company in subsequent financing rounds, decreases in quoted market price and declines in operations of the issuer. As of June 28, 2009 and December 28, 2008, the Company had \$33.4 million and \$29.0 million, respectively, in investments accounted for under APB Opinion No. 18, "The Equity Method of Accounting for Investments in Common Stock" (the "equity method"), and \$3.1 million in investments accounted for under the cost method (see Note 10). During the fourth quarter of fiscal 2008, the Company recorded an other-than-temporary impairment charge of \$1.9 million on its non-publicly traded investment accounted for using the cost method, due to the deterioration of the credit market and economic environment.

The following table provides a summary of changes in fair value of the Company's minority investments in certain non-public companies, all of which utilize Level 3 inputs under the fair value hierarchy:

| (In thousands) | Common and Preferred Stock | |
|--|----------------------------|------------------|
| | June 28, 2009 | June 29, 2008 |
| Balance at the beginning of the period | \$ 32,066 | \$ 5,304 |
| Purchases | — | 12,625 |
| Payments | (19) | — |
| Equity in earnings of unconsolidated investees | 4,378 | 1,874 |
| Balance at the end of the period | <u>\$ 36,425</u> | <u>\$ 19,803</u> |

Note 6. ADVANCES TO SUPPLIERS

The Company has entered into agreements with various polysilicon, ingot, wafer, solar cell and solar panel vendors that specify future quantities and pricing of products to be supplied by the vendors for periods up to 12 years. Certain agreements also provide for penalties or forfeiture of advanced deposits in the event the Company terminates the arrangements (see Note 9). Under certain agreements, the Company is required to make prepayments to the vendors over the terms of the arrangements. In the first half of fiscal 2009, the Company paid advances totaling \$5.6 million in accordance with the terms of existing supply agreements. As of June 28, 2009 and December 28, 2008, advances to suppliers totaled \$141.1 million and \$162.6 million, respectively, the current portion of which is \$28.0 million and \$43.2 million, respectively.

The Company's future prepayment obligations related to these agreements as of June 28, 2009 are as follows (in thousands):

| | | |
|-----------------------------|----|----------------|
| 2009 (remaining six months) | \$ | 92,546 |
| 2010 | | 161,414 |
| 2011 | | 121,564 |
| 2012 | | 72,694 |
| | \$ | <u>448,218</u> |

Note 7. ADVANCES FROM CUSTOMERS

From time to time, the Company enters into agreements where customers make advances for future purchases of solar power products. In general, the Company pays no interest on the advances and applies the advances as shipments of products occur.

In August 2007, the Company entered into an agreement with a third-party to supply polysilicon. Under the polysilicon agreement, the Company received advances of \$40.0 million in each of fiscal 2008 and 2007 from this third party. Commencing in fiscal 2010 and continuing through 2019, these advance payments are to be applied as a credit against the third party's polysilicon purchases from the Company. Such polysilicon is expected to be used by the third party to manufacture ingots, and potentially wafers, which are to be sold to the Company under an ingot supply agreement. As of June 28, 2009, the outstanding advance was \$80.0 million of which \$4.0 million had been classified in short-term customer advances and \$76.0 million in long-term customer advances in the accompanying Condensed Consolidated Balance Sheets, based on projected product shipment dates. As of December 28, 2008, the outstanding advance of \$80.0 million was classified in long-term customer advances. The Company provided security for advances of \$40.0 million received in fiscal 2008 in the form of collateralized manufacturing equipment with a net book value of \$39.4 million and \$43.1 million as of June 28, 2009 and December 28, 2008, respectively (see Note 3).

In April 2005, the Company entered into an agreement with one of its customers to supply solar cells. As part of this agreement, the customer agreed to fund 30.0 million Euros (approximately \$35.5 million based on the exchange rate as of January 1, 2006) for the expansion of the Company's manufacturing capacity to support this customer's solar cell product demand. Beginning on January 1, 2006, the Company was obligated to pay interest at a rate of 5.7% per annum on the remaining unpaid balance. The Company's settlement of principal on the advances was recognized over product deliveries at a specified rate on a per-unit-of-product-delivered basis through the second quarter of fiscal 2009. As of June 28, 2009, the remaining outstanding advance was 10.3 million Euros (approximately \$14.5 million based on the exchange rate as of June 28, 2009) of which \$8.4 million and \$6.1 million had been classified in short-term and long-term customer advances, respectively. As of December 28, 2008, the remaining outstanding advance was 12.5 million Euros (approximately \$17.5 million based on the exchange rate as of December 28, 2008) of which \$8.4 million and \$9.1 million had been classified in short-term and long-term customer advances, respectively. The Company has utilized all funds advanced by this customer towards expansion of the Company's manufacturing capacity.

The Company has also entered into other agreements with customers who have made advance payments for solar products. These advances will be applied as shipments of product occur. As of June 28, 2009 and December 28, 2008, such customers had made advances of \$7.7 million and \$12.9 million, respectively.

The estimated utilization of advances from customers and the related interest of \$0.7 million thereto are (in thousands):

| | | |
|-----------------------------|----|----------------|
| 2009 (remaining six months) | \$ | 10,295 |
| 2010 | | 20,314 |
| 2011 | | 8,282 |
| 2012 | | 8,000 |
| 2013 | | 8,000 |
| Thereafter | | 48,000 |
| | \$ | <u>102,891</u> |

Note 8. RESTRUCTURING COSTS

The Company records restructuring costs in accordance with SFAS No. 146, “Accounting for Costs Associated with Exit or Disposal Activities” (“SFAS No. 146”). In response to deteriorating economic conditions, the Company reduced its global workforce of regular employees by approximately 80 positions in the first half of fiscal 2009 in order to reduce its annual operating expenses. The restructuring actions included charges of \$0.5 million and \$1.7 million in the three and six months ended June 28, 2009, respectively, for severance, benefits and related costs.

A summary of total restructuring activity for the three and six months ended June 28, 2009 is as follows:

| (In thousands) | Workforce Reduction Accrual | |
|--|-----------------------------|------------------|
| | Three Months Ended | Six Months Ended |
| Balance at the beginning of the period | \$ 156 | \$ — |
| Restructuring charges | 497 | 1,682 |
| Cash payments | (540) | (1,569) |
| Balance at the end of the period | <u>\$ 113</u> | <u>\$ 113</u> |

Restructuring accruals totaled \$0.1 million as of June 28, 2009 and are recorded in “Accrued liabilities” in the Condensed Consolidated Balance Sheet and represent estimated future cash outlays primarily related to severance expected to be paid within the third quarter of fiscal 2009.

A summary of the charges in the Condensed Consolidated Statements of Operations resulting from workforce reductions during the three and six months ended June 28, 2009 is as follows:

| (In thousands) | Three Months Ended | Six Months Ended |
|-----------------------------------|--------------------|------------------|
| | | |
| Cost of systems revenue | \$ 80 | \$ 259 |
| Cost of components revenue | 21 | 49 |
| Research and development | 53 | 130 |
| Sales, general and administrative | 343 | 1,244 |
| Total restructuring charges | <u>\$ 497</u> | <u>\$ 1,682</u> |

Note 9. COMMITMENTS AND CONTINGENCIES

Operating Lease Commitments

The Company leases its San Jose, California facility under a non-cancelable operating lease from Cypress, which expires in April 2011. In addition, the Company leases its Richmond, California facility under a non-cancelable operating lease from an unaffiliated third-party, which expires in September 2018. The Company also has various lease arrangements, including for its European headquarters located in Geneva, Switzerland under a lease that expires in September 2012, as well as sales and support offices in Southern California, New Jersey, Australia, Canada, Germany, Italy, Spain and South Korea, all of which are leased from unaffiliated third-parties. Future minimum obligations under all non-cancelable operating leases as of June 28, 2009 are as follows (in thousands):

| | |
|-----------------------------|------------------|
| 2009 (remaining six months) | \$ 2,828 |
| 2010 | 5,063 |
| 2011 | 3,735 |
| 2012 | 2,843 |
| 2013 | 2,761 |
| Thereafter | 14,630 |
| | <u>\$ 31,860</u> |

Purchase Commitments

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

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

As of June 28, 2009, total obligations related to non-cancelable purchase orders totaled approximately \$82.9 million and long-term supply agreements totaled approximately \$4,040.3 million. Future purchase obligations under non-cancelable purchase orders and long-term supply agreements as of June 28, 2009 are as follows (in thousands):

| | | |
|-----------------------------|----|------------------|
| 2009 (remaining six months) | \$ | 283,425 |
| 2010 | | 585,909 |
| 2011 | | 584,502 |
| 2012 | | 360,028 |
| 2013 | | 278,338 |
| Thereafter | | 2,031,026 |
| | \$ | <u>4,123,228</u> |

Total future purchase commitments of \$4,123.2 million as of June 28, 2009 include tolling agreements with suppliers in which the Company provides polysilicon required for silicon ingot manufacturing and procures the manufactured silicon ingots from the supplier. Annual future purchase commitments in the table above are calculated using the gross price paid by the Company for silicon ingots and are not reduced by the price paid by suppliers for polysilicon. Total future purchase commitments as of June 28, 2009 would be reduced by \$598.7 million to \$3,524.5 million had the Company's obligations under such tolling agreements been disclosed using net cash outflows.

Product Warranties

The Company generally warrants or guarantees the performance of the solar panels that it manufactures at certain levels of power output for 25 years. In addition, the Company passes through to customers long-term warranties from the original equipment manufacturers ("OEMs") of certain system components. Warranties of 25 years from solar panels suppliers are standard in the solar industry, while inverters typically carry warranty periods ranging from 5 to 10 years. In addition, the Company generally warrants its workmanship on installed systems for a period of 1, 2, 5 or 10 years. The Company maintains reserves to cover potential liability that could result from these warranties. The Company's potential liability is generally in the form of product replacement or repair. Warranty reserves are based on the Company's best estimate of such liabilities and are recognized as a cost of revenue. The Company continuously monitors product returns for warranty failures and maintains a reserve for the related warranty expenses based on various factors including, historical warranty claims, results of accelerated lab testing, field monitoring, vendor reliability estimates, and data on industry averages for similar products. Historically, warranty costs have been within management's expectations.

Provisions for warranty reserves charged to cost of revenue were \$5.3 million and \$9.0 million during the three and six months ended June 28, 2009, respectively, and \$4.9 million and \$9.8 million for the three and six months ended June 29, 2008, respectively. Activity within accrued warranty for the three and six months ended June 28, 2009 and June 29, 2008 is summarized as follows:

| (In thousands) | Three Months Ended | | Six Months Ended | |
|--|--------------------|------------------|------------------|------------------|
| | June 28, 2009 | June 29, 2008 | June 28, 2009 | June 29, 2008 |
| Balance at the beginning of the period | \$ 30,566 | \$ 19,517 | \$ 28,062 | \$ 17,194 |
| Accruals for warranties issued during the period | 5,316 | 4,941 | 8,993 | 9,840 |
| Settlements made during the period | (1,774) | (1,937) | (2,947) | (4,513) |
| Balance at the end of the period | <u>\$ 34,108</u> | <u>\$ 22,521</u> | <u>\$ 34,108</u> | <u>\$ 22,521</u> |

The accrued warranty balance at June 28, 2009 and December 28, 2008 includes \$3.7 million and \$4.2 million, respectively, of accrued costs primarily related to servicing the Company's obligations under long-term maintenance contracts entered into under the Systems Segment and such balances are included in "Other long-term liabilities" in the Condensed Consolidated Balance Sheets.

Uncertain Tax Positions

Total liabilities associated with uncertain tax positions under FASB Interpretation No. 48, "Accounting for Uncertainty in Income Taxes, and Related Implementation Issues" ("FIN 48"), were \$12.9 million and \$12.8 million as of June 28, 2009 and December 28, 2008, respectively, and are included in "Other long-term liabilities" in the Company's Condensed Consolidated Balance Sheets as they are not expected to be paid within the next twelve months. Due to the complexity and uncertainty associated with its tax positions, the Company cannot make a reasonably reliable estimate of the period in which cash settlement will be made for its liabilities associated with uncertain tax positions in other long-term liabilities.

Indemnifications

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

Legal Matters

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

Note 10. JOINT VENTURES

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

The Company and Woongjin Holdings Co., Ltd. ("Woongjin"), a provider of environmental products located in Korea, formed Woongjin Energy in fiscal 2006, a joint venture to manufacture monocrystalline silicon ingots. The Company and Woongjin have funded the joint venture through capital investments. In January 2008, the Company invested an additional \$5.4 million in the joint venture. Until Woongjin Energy engages in an IPO, Woongjin Energy will refrain from declaring or making any distributions, including dividends, unless its debt-to-equity ratio immediately following such distribution would not be greater than 200%. The Company supplies polysilicon, services and technical support required for silicon ingot manufacturing to the joint venture, and the Company procures the manufactured silicon ingots from the joint venture under a five-year agreement. Payments to Woongjin Energy for manufacturing silicon ingots totaled \$42.5 million and \$74.8 million during the three and six months ended June 28, 2009, respectively, and \$9.2 million and \$15.0 million during the three and six months ended June 29, 2008, respectively. As of June 28, 2009 and December 28, 2008, \$13.6 million and \$22.5 million, respectively, remained due and payable to Woongjin Energy.

As of June 28, 2009 and December 28, 2008, the Company had a \$28.5 million and \$24.0 million, respectively, investment in the joint venture in its Condensed Consolidated Balance Sheets which represented a 40% equity investment. The Company periodically evaluates the qualitative and quantitative attributes of its relationship with Woongjin Energy to determine whether the Company is the primary beneficiary of the joint venture and needs to consolidate Woongjin Energy's results into the Company's financial statements in accordance with FIN 46(R). The Company has concluded it is not the primary beneficiary of the joint venture because Woongjin Energy supplies only a portion of the Company's future estimated total ingot requirement through 2012 and the existing supply agreement is shorter than the estimated economic life of the joint venture. In addition, the Company believes that Woongjin is the primary beneficiary of the joint venture because Woongjin guarantees the initial \$33.0 million loan for Woongjin Energy and exercises significant control over Woongjin Energy's board of directors, management, and daily operations.

The Company accounts for its investment in Woongjin Energy using the equity method of accounting in which the investment is classified as "Other long-term assets" in the Condensed Consolidated Balance Sheets and the Company's share of Woongjin Energy's income totaling \$3.2 million and \$4.5 million for the three and six months ended June 28, 2009, respectively, and \$1.3 million and \$1.9 million for the three and six months ended June 29, 2008, respectively, is included in "Equity in earnings of unconsolidated investees" in the Condensed Consolidated Statements of Operations. The amount of equity earnings increased year-over-year due to: (i) increases in production since Woongjin Energy began manufacturing in the third quarter of fiscal 2007 and (ii) the Company's equity investment increased from 27.4% as of June 29, 2008 to 40% as of June 28, 2009. Neither party has contractual obligations to provide any additional funding to the joint venture. The Company's maximum exposure to loss as a result of its involvement with Woongjin Energy is limited to its carrying value.

The Company conducted other related-party transactions with Woongjin Energy during fiscal 2008. The Company recognized zero and \$0.6 million in components revenue during the three and six months ended June 29, 2008, respectively, related to the sale of solar panels to Woongjin Energy. As of June 28, 2009 and December 28, 2008, zero and \$0.8 million, respectively, remained due and receivable from Woongjin Energy related to the sale of solar panels.

Summarized financial information adjusted to conform to U.S. GAAP for Woongjin Energy, as it qualifies as a “significant investee” of the Company as defined in SEC Regulation S-X Rule 1-02(bb) during the six months ended June 28, 2009, is as follows:

| (In thousands) | Six Months Ended |
|------------------|---------------------|
| Revenue | \$ 43,701 |
| Gross margin | 25,993 |
| Operating income | 23,817 |
| Net income | 12,339 |

First Philec Solar Corporation (“First Philec Solar”)

The Company and First Philippine Electric Corporation (“First Philec”) formed First Philec Solar in fiscal 2007, a joint venture to provide wafer slicing services of silicon ingots to the Company. The Company and First Philec have funded the joint venture through capital investments. In fiscal 2008, the Company invested an additional \$4.2 million in the joint venture. The Company supplies to the joint venture silicon ingots and technology required for slicing silicon, and the Company procures the silicon wafers from the joint venture under a five-year wafering supply and sales agreement. This joint venture is located in the Philippines and became operational in the second quarter of fiscal 2008. In the three and six months ended June 28, 2009, the Company paid \$9.0 million and \$15.8 million, respectively, to First Philec Solar for wafer slicing services of silicon ingots. As of June 28, 2009 and December 28, 2008, \$3.3 million and \$1.9 million, respectively, remained due and payable to First Philec Solar.

As of June 28, 2009 and December 28, 2008, the Company had a \$4.9 million and \$5.0 million, respectively, investment in the joint venture in its Condensed Consolidated Balance Sheets which represented a 19% equity investment. The Company periodically evaluates the qualitative and quantitative attributes of its relationship with First Philec Solar to determine whether the Company is the primary beneficiary of the joint venture and needs to consolidate First Philec Solar’s results into the Company’s financial statements in accordance with FIN 46(R). The Company has concluded it is not the primary beneficiary of the joint venture because the existing five-year agreement discussed above is considered a short period compared against the estimated economic life of the joint venture. In addition, the Company believes that First Philec is the primary beneficiary of the joint venture because First Philec exercises significant control over First Philec Solar’s board of directors, management, and daily operations.

The Company accounts for this investment using the equity method of accounting since the Company is able to exercise significant influence over First Philec Solar due to its board positions. The Company’s investment is classified as “Other long-term assets” in the Condensed Consolidated Balance Sheets and the Company’s share of First Philec Solar’s losses totaling \$0.1 million in each of the three and six months ended June 28, 2009 is included in “Equity in earnings of unconsolidated investees” in the Condensed Consolidated Statement of Operations. The Company’s maximum exposure to loss as a result of its involvement with First Philec Solar is limited to its carrying value.

Note 11. DEBT AND CREDIT SOURCES

Line of Credit

On July 13, 2007, the Company entered into a credit agreement with Wells Fargo Bank, N.A. (“Wells Fargo”) and has entered into amendments to the credit agreement from time to time. As of June 28, 2009, the credit agreement provides for a \$50.0 million revolving credit line, with a \$50.0 million letter of credit subfeature, and a separate \$150.0 million collateralized letter of credit facility. The Company may borrow up to \$50.0 million and request that Wells Fargo issue up to \$50.0 million in letters of credit under the letter of credit subfeature through March 27, 2010. Letters of credit issued under the subfeature reduce the Company’s borrowing capacity under the revolving credit line. Additionally, the Company may request that Wells Fargo issue up to \$150.0 million in letters of credit under the collateralized letter of credit facility through March 27, 2014. As detailed in the agreement, the Company pays interest of LIBOR plus 2% on outstanding borrowings under the revolving credit line, and a fee of 2% and 0.2% to 0.4% depending on maturity for outstanding letters of credit under the letter of credit subfeature and collateralized letter of credit facility, respectively. At any time, the Company can prepay outstanding loans without penalty. All borrowings under the revolving credit line must be repaid by March 27, 2010, and all letters of credit issued under the letter of credit subfeature expire on or before March 27, 2010 unless the Company provides by such date collateral in the form of cash or cash equivalents in the aggregate amount available to be drawn under letters of credit outstanding at such time. All letters of credit issued under the collateralized letter of credit facility expire no later than March 27, 2014.

In connection with the credit agreement, the Company entered into a security agreement with Wells Fargo, granting a security interest in a securities account and a deposit account to secure its obligations in connection with any letters of credit that might be issued under the collateralized letter of credit facility. SunPower North America, LLC and SunPower Corporation, Systems (“SP Systems”), both wholly-owned subsidiaries of the Company, also entered into an associated continuing guaranty with Wells Fargo. In addition, SP Systems pledged 60% of its equity interest in SunPower Systems SARL to Wells Fargo in the second quarter of fiscal 2009 to collateralize up to \$50.0 million of the Company’s obligations under the revolving credit line. The terms of the credit agreement include certain conditions to borrowings, representations and covenants, and events of default customary for financing

transactions of this type. Covenants contained in the credit agreement include, but are not limited to, restrictions on the incurrence of additional indebtedness, pledging of assets, payment of dividends or distribution on its common stock, and purchases of property, plant and equipment and financial covenants with respect to certain liquidity, net worth and profitability metrics. If the Company fails to comply with the financial and other restrictive covenants contained in the credit agreement resulting in an event of default, all debt to Wells Fargo could become immediately due and payable and the Company's other debt may become due and payable in the event there are cross-default provisions in the agreements governing such debt.

As of June 28, 2009 and December 28, 2008, no amounts were outstanding on the revolving credit line and letters of credit totaling \$49.1 million and \$29.9 million, respectively, were issued by Wells Fargo under the letter of credit subfeature. In addition, letters of credit totaling \$93.1 million and \$76.5 million were issued by Wells Fargo under the collateralized letter of credit facility as of June 28, 2009 and December 28, 2008, respectively. As of June 28, 2009 and December 28, 2008, cash available to be borrowed under the revolving credit line was \$0.9 million and \$20.1 million, respectively, and includes letter of credit capacities available to be issued by Wells Fargo under the letter of credit subfeature. Letters of credit available under the collateralized letter of credit facility at June 28, 2009 and December 28, 2008 totaled \$56.9 million and \$73.5 million, respectively.

Term Loan with Union Bank, N.A. ("Union Bank")

On April 17, 2009, the Company entered into a loan agreement with Union Bank under which the Company borrowed \$30.0 million for a term of three years at an interest rate of LIBOR plus 2%, or approximately 2.3% at June 28, 2009. The loan is to be repaid in eight equal quarterly installments of principal plus interest commencing June 30, 2010. Unless and until the Company has granted to Union Bank a security interest in cash collateral not less than 105% of the outstanding principal amount of the loan, the Company must maintain a depository account with Union Bank holding a predetermined amount of funds. During the first year of the loan, such account is required to hold at all times a balance equal to the aggregate sum of \$10.0 million plus interest due and payable during the following 12 months, calculated monthly on a rolling basis. During the second and third years of the loan, such account is required to hold at all times a balance equal to the aggregate payments due and payable with respect to principal and interest during the following 12 months, calculated monthly on a rolling basis. In connection with the loan agreement, the Company entered into a security agreement with Union Bank, which will grant a security interest in the deposit account in favor of Union Bank on April 1, 2010 if, prior to then, all of the Company's 0.75% debentures have not been converted or exchanged in a manner satisfactory to Union Bank. SunPower North America, LLC and SP Systems, both wholly-owned subsidiaries of the Company, have each guaranteed \$30.0 million in principal plus interest of the Company's obligations under the loan agreement. The agreements governing the term loan with Union Bank include certain representations, covenants, and events of default customary for financing transactions of this type.

Debt Facility Agreement with the Malaysian Government

On December 18, 2008, the Company entered into a facility agreement with the Malaysian Government. In connection with the facility agreement, the Company executed a debenture and deed of assignment in favor of the Malaysian Government, granting a security interest in a deposit account and all assets of SunPower Malaysia Manufacturing Sdn. Bhd., a wholly-owned subsidiary of the Company, to secure its obligations under the facility agreement.

Under the terms of the facility agreement, the Company may borrow up to Malaysian Ringgit 1.0 billion (approximately \$283.1 million based on the exchange rate as of June 28, 2009) to finance the construction of its third solar cell manufacturing facility in Malaysia. The loans within the facility agreement are divided into two tranches that may be drawn through June 2010. Principal is to be repaid in six quarterly payments starting in July 2015, and a non-weighted average interest rate of approximately 4.4% per annum accrues and is payable starting in July 2015. The Company has the ability to prepay outstanding loans without premium or penalty and all borrowings must be repaid by October 30, 2016. The terms of the facility agreement include certain conditions to borrowings, representations and covenants, and events of default customary for financing transactions of this type. As of June 28, 2009 and December 28, 2008, the Company had borrowed Malaysian Ringgit 375.0 million (approximately \$106.2 million based on the exchange rate as of June 28, 2009) and Malaysian Ringgit 190.0 million (approximately \$54.6 million based on the exchange rate as of December 28, 2008), respectively, under the facility agreement.

4.75%, 1.25% and 0.75% Convertible Debentures

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

| (In thousands) | June 28, 2009 | | | December 28, 2008 | | |
|------------------|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|
| | Carrying Value | Face Value | Fair Value(1) | Carrying Value | Face Value | Fair Value(1) |
| 4.75% debentures | \$ 230,000 | \$ 230,000 | \$ 264,617 | \$ — | \$ — | \$ — |
| 1.25% debentures | 162,339 | 198,608 | 155,731 | 156,350 | 198,608 | 143,991 |
| 0.75% debentures | 140,501 | 151,883 | 137,454 | 200,823 | 225,000 | 166,747 |
| | <u>\$ 532,840</u> | <u>\$ 580,491</u> | <u>\$ 557,802</u> | <u>\$ 357,173</u> | <u>\$ 423,608</u> | <u>\$ 310,738</u> |

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

In May 2009, the Company issued \$230.0 million in principal amount of its 4.75% senior convertible debentures and received net proceeds of \$225.0 million, before payment of the offering expenses and the cost of the convertible debenture hedge transactions described below. Interest on the 4.75% debentures is payable on April 15 and October 15 of each year, beginning on October 15, 2009. Holders of the 4.75% debentures are able to exercise their right to convert the debentures at any time into shares of the Company's class A common stock at a conversion price equal to \$26.40 per \$1,000 principal amount. The applicable conversion rate may adjust in certain circumstances, including upon a fundamental change, as defined in the indenture governing the 4.75% debentures. If not earlier converted, the 4.75% debentures mature on April 15, 2014. Holders may also require the Company to repurchase all or a portion of their 4.75% debentures upon a fundamental change at a cash repurchase price equal to 100% of the principal amount plus accrued and unpaid interest. In the event of certain events of default, such as the Company's failure to make certain payments or perform or observe certain obligations thereunder, Wells Fargo, the trustee, or holders of a specified amount of then-outstanding 4.75% debentures will have the right to declare all amounts then outstanding due and payable.

In February 2007, the Company issued \$200.0 million in principal amount of its 1.25% senior convertible debentures and received net proceeds of \$194.0 million. Interest on the 1.25% debentures is payable on February 15 and August 15 of each year, which commenced August 15, 2007. The 1.25% debentures mature on February 15, 2027. Holders may require the Company to repurchase all or a portion of their 1.25% debentures on each of February 15, 2012, February 15, 2017 and February 15, 2022, or if the Company experiences certain types of corporate transactions constituting a fundamental change, as defined in the indenture governing the 1.25% debentures. In addition, the Company may redeem some or all of the 1.25% debentures on or after February 15, 2012. The 1.25% debentures are convertible, subject to certain conditions, into cash up to the lesser of the principal amount or the conversion value. If the conversion value is greater than \$1,000, then the excess conversion value will be convertible into the Company's class A common stock. The initial effective conversion price of the 1.25% debentures is approximately \$56.75 per share and is subject to customary adjustments in certain circumstances.

In July 2007, the Company issued \$225.0 million in principal amount of its 0.75% senior convertible debentures and received net proceeds of \$220.1 million. Interest on the 0.75% debentures is payable on February 1 and August 1 of each year, which commenced February 1, 2008. The 0.75% debentures mature on August 1, 2027. Holders may require the Company to repurchase all or a portion of their 0.75% debentures on each of August 1, 2010, August 1, 2015, August 1, 2020, and August 1, 2025, or if the Company is involved in certain types of corporate transactions constituting a fundamental change, as defined in the indenture governing the 0.75% debentures. In addition, the Company may redeem some or all of the 0.75% debentures on or after August 1, 2010. The 0.75% debentures will be classified as short-term debt in the Company's Condensed Consolidated Balance Sheet beginning on August 1, 2009. The 0.75% debentures are convertible, subject to certain conditions, into cash up to the lesser of the principal amount or the conversion value. If the conversion value is greater than \$1,000, then the excess conversion value will be convertible into cash, class A common stock or a combination of cash and class A common stock, at the Company's election. The initial effective conversion price of the 0.75% debentures is approximately \$82.24 per share and is subject to customary adjustments in certain circumstances.

The 4.75% debentures, 1.25% debentures and 0.75% debentures are senior, unsecured obligations of the Company, ranking equally with all existing and future senior unsecured indebtedness of the Company. The 4.75% debentures, 1.25% debentures and 0.75% debentures are effectively subordinated to the Company's indebtedness to the extent of the value of the related collateral and structurally subordinated to indebtedness and other liabilities of the Company's subsidiaries. The 4.75% debentures, 1.25% debentures and 0.75% debentures do not contain any sinking fund requirements.

If the closing price of the Company's class A common stock equaled or exceeded 125% of the initial effective conversion price governing the 1.25% debentures and/or 0.75% debentures for 20 out of 30 consecutive trading days in the last month of the fiscal quarter then holders of the 1.25% debentures and/or 0.75% debentures have the right to convert the debentures any day in the following fiscal quarter. For the quarter ended September 28, 2008, the closing price of the Company's class A common stock equaled or exceeded 125% of the \$56.75 per share initial effective conversion price governing the 1.25% debentures for 20 out of 30 consecutive trading days ending on September 28, 2008, thus holders of the 1.25% debentures were able to exercise their right to convert the debentures any day during the fourth quarter in fiscal 2008. As of December 28, 2008, the Company received notices for the conversion of approximately \$1.4 million of the 1.25% debentures which the Company settled for approximately \$1.2 million in cash and 1,000 shares of class A common stock.

Because the closing price of the Company's class A common stock on at least 20 of the last 30 trading days during the fiscal quarters ending June 28, 2009, March 29, 2009 and December 28, 2008 did not equal or exceed \$70.94, or 125% of the applicable conversion price for its 1.25% debentures, and \$102.80, or 125% of the applicable conversion price for its 0.75% debentures, holders of the 1.25% debentures and 0.75% debentures are unable to exercise their right to convert the debentures, based on the market price conversion trigger, any day in the first, second and third quarters of fiscal 2009. Accordingly, the Company classified the 1.25% debentures and 0.75% debentures as long-term debt in its Condensed Consolidated Balance Sheets as of June 28, 2009 and December 28, 2008. This test is repeated each fiscal quarter, therefore, if the market price conversion trigger is satisfied in a subsequent quarter, the debentures may again be re-classified as short-term debt.

The 1.25% debentures and 0.75% debentures are subject to the provisions of FSP APB 14-1, adopted by the Company on December 29, 2008, since the debentures must be settled at least partly in cash upon conversion. The 4.75% debentures are not subject to the provisions of FSP APB 14-1 since they are only convertible into the Company's class A common stock. The Company estimated that the effective interest rate for similar debt without the conversion feature was 9.25% and 8.125% on the 1.25% debentures and 0.75% debentures, respectively. The principal amount of the outstanding debentures, the unamortized discount and the net carrying value as of June 28, 2009 was \$350.5 million, \$47.7 million and \$302.8 million, respectively, and as of December 28, 2008 was \$423.6 million, \$66.4 million and \$357.2 million, respectively. In the second quarter of fiscal 2009, the Company repurchased a portion of its 0.75% debentures with a principal amount, unamortized discount and net carrying value of \$73.1 million, \$5.9 million and \$67.2 million, respectively, for approximately \$67.9 million. The Company recognized \$5.9 million and \$10.9 million in non-cash interest expense during the three and six months ended June 28, 2009, respectively, related to the adoption of FSP APB 14-1, as compared to \$4.3 million and \$8.7 million during the three and six months ended June 29, 2008, respectively (see Note 1). As of June 28, 2009, the remaining weighted average period over which the unamortized discount will be recognized is as follows (in thousands):

| | | |
|-----------------------------|----|---------------|
| 2009 (remaining six months) | \$ | 11,405 |
| 2010 | | 19,661 |
| 2011 | | 14,687 |
| 2012 | | 1,898 |
| | \$ | <u>47,651</u> |

Call Spread Overlay ("CSO")

Concurrent with the issuance of the 4.75% debentures, the Company entered into certain convertible debenture hedge transactions (the "Purchased Options") with affiliates of certain of the 4.75% debenture underwriters. The Purchased Options allow the Company to purchase up to approximately 8.7 million shares of the Company's class A common stock and are intended to reduce the potential dilution upon conversion of the 4.75% debentures in the event that the market price per share of the Company's class A common stock at the time of exercise is greater than the conversion price of the 4.75% debentures. The Purchased Options will be settled on a net share basis. Each convertible debenture hedge transaction is a separate transaction, entered into by the Company with each option counter-party, and is not part of the terms of the 4.75% debentures. The Company paid aggregate consideration of \$97.3 million for the Purchased Options on May 4, 2009. The exercise price of the Purchased Options is \$26.40 per share of the Company's class A common stock, subject to adjustment for customary anti-dilution and other events.

Under EITF 07-5, "Determining Whether an Instrument (or Embedded Feature) Is Indexed to an Entity's Own Stock" ("EITF 07-5"), the Purchased Options are deemed to be a mark-to-market derivative during the period in which the over-allotment option in favor of the 4.75% debenture underwriters is unexercised. The Company entered into the debenture underwriting agreement on April 28, 2009 and the 4.75% debenture underwriters exercised the over-allotment option in full on April 29, 2009. During the one-day period that the underwriters' over-allotment option was outstanding, the Company's class A common stock price increased substantially, resulting in a non-cash non-taxable gain on Purchased Options of \$21.2 million in each of the three and six months ended June 28, 2009 in its Condensed Consolidated Statements of Operations.

The Company also entered into certain warrant transactions whereby the Company agreed to sell to affiliates of certain of the 4.75% debenture underwriters warrants (the "warrants") to acquire up to approximately 8.7 million shares of the Company's class A common stock. The warrants expire in 2014. If the market price per share of the Company's class A common stock exceeds the exercise price of the warrants, the warrants will have a dilutive effect on the Company's earnings per share. Each warrant transaction is a separate transaction, entered into by the Company with each option counter-party, and is not part of the terms of the 4.75% debentures. Holders of the 4.75% debentures do not have any rights with respect to the warrants. The warrants were sold for aggregate cash consideration of approximately \$71.0 million on May 4, 2009. The exercise price of the warrants is \$38.50 per share of the Company's class A common stock, subject to adjustment for customary anti-dilution and other events.

The Purchased Options and sale of warrants described above represent a CSO with respect to the 4.75% debentures. Assuming full performance by the counter-parties, the transactions effectively increase the conversion price of the 4.75% debentures from \$26.40 to \$38.50. The Company's net cost of the Purchased Options and sale of warrants for the CSO was \$26.3 million.

Note 12. COMPREHENSIVE INCOME

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

| (In thousands) | Three Months Ended | | Six Months Ended | |
|---|--------------------|------------------|------------------|------------------|
| | June 28, 2009 | June 29, 2008 | June 28, 2009 | June 29, 2008 |
| Net income | \$ 24,171 | \$ 31,157 | \$ 19,385 | \$ 43,156 |
| Other comprehensive income: | | | | |
| Translation adjustment | 2,550 | 1,924 | (14,057) | 12,329 |
| Unrealized gain (loss) on investments, net of tax | — | 469 | 8 | (1,002) |
| Unrealized gain (loss) on derivatives, net of tax | (18,968) | 5,051 | 3,565 | 3,595 |
| Total comprehensive income | <u>\$ 7,753</u> | <u>\$ 38,601</u> | <u>\$ 8,901</u> | <u>\$ 58,078</u> |

Note 13. FOREIGN CURRENCY DERIVATIVES

The Company has non-U.S. subsidiaries that operate and sell the Company's products in various global markets, primarily in Europe. As a result, the Company is exposed to risks associated with changes in foreign currency exchange rates. It is the Company's policy to use various hedge instruments to manage the exposures associated with purchases of foreign sourced equipment, net asset or liability positions of its subsidiaries and forecasted revenues and expenses. Beginning in the second quarter of fiscal 2008, the Company changed the flow of transactions to European subsidiaries that have Euro functional currency, resulting in greater exposure to changes in the value of the Euro and limiting the Company's ability to fully hedge certain Euro-denominated revenue. The Company currently does not enter into foreign currency derivative financial instruments for speculative or trading purposes.

On December 29, 2008, the Company adopted SFAS No. 161 which had no financial impact on the Company's condensed consolidated financial statements and only required additional financial statement disclosures related to derivatives (see Note 1). The Company has applied the requirements of SFAS No. 161 on a prospective basis. Accordingly, disclosures related to interim periods prior to the date of adoption have not been presented.

Under SFAS No. 133, the Company is required to recognize derivative instruments as either assets or liabilities at fair value in the Condensed Consolidated Balance Sheets. The Company calculates the fair value of its option and forward contracts based on market volatilities, spot rates and interest differentials from published sources. The following table presents information about the Company's hedge instruments measured at fair value on a recurring basis as of June 28, 2009 and indicates the fair value hierarchy of the valuation techniques utilized by the Company to determine such fair value in accordance with the provisions of SFAS No. 157:

| (In thousands) | Balance Sheet Classification | Significant Other Observable Inputs (Level 2) |
|---|---|---|
| Assets | | |
| Cash flow hedges under SFAS No. 133: | | |
| Foreign currency option contracts | Prepaid expenses and other current assets | \$ 1,378 |
| Liabilities | | |
| Cash flow hedges under SFAS No. 133: | | |
| Foreign currency forward exchange contracts | Accrued liabilities | \$ 28,477 |

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

| (In thousands) | Unrealized Loss Recognized in OCI (Effective Portion) | Loss Reclassified from OCI to Cost of Revenue (Effective Portion) | | Loss Recognized in Other, Net on Derivatives (Ineffective Portion and Amount Excluded from Effectiveness Testing) | |
|---|---|---|---|--|---|
| | As of June 28, 2009 | Three Months Ended June 28, 2009 | Six Months Ended June 28, 2009 | Three Months Ended June 28, 2009 | Six Months Ended June 28, 2009 |
| Cash flow hedges: | | | | | |
| Foreign currency forward exchange contracts | \$ (22,520) | \$ — | \$ (125) | \$ (180) | \$ (1,658) |
| Foreign currency option contracts | — | — | — | (391) | (876) |
| | <u>\$ (22,520)</u> | <u>\$ —</u> | <u>\$ (125)</u> | <u>\$ (571)</u> | <u>\$ (2,534)</u> |

The following table summarizes the amount of loss recognized in “Other, net” in the Condensed Consolidated Statements of Operations in the three and six months ended June 28, 2009:

| (In thousands) | Three Months Ended June 28, 2009 | Six Months Ended June 28, 2009 |
|--|---|---|
| Balance sheet hedges not designated as hedging instruments under SFAS No. 133: | | |
| Foreign currency forward exchange contracts | \$ (2,148) | \$ (3,986) |

Foreign Currency Exchange Risk

Cash Flow Exposure

The Company’s subsidiaries have had and will continue to have material cash flows, including revenues and expenses, that are denominated in currencies other than their functional currencies. The Company’s cash flow exposure primarily relates to trade accounts receivable and accounts payable. Changes in exchange rates between the Company’s subsidiaries’ functional currencies and other currencies in which they transact will cause fluctuations in cash flows expectations and cash flows realized or settled. Accordingly, the Company enters into option and forward contracts to hedge the value of a portion of these forecasted cash flows.

In accordance with SFAS No. 133, the Company accounts for its hedges of forecasted foreign currency purchases as cash flow hedges. As of June 28, 2009, the Company has outstanding cash flow hedge forward contracts and option contracts with an aggregate notional value of \$391.7 million and \$50.3 million, respectively. As of December 28, 2008, the Company had outstanding cash flow hedge forward contracts and option contracts with an aggregate notional value of \$364.5 million and \$147.5 million, respectively. The maturity dates of the outstanding contracts as of June 28, 2009 range from July 2009 to June 2010. Changes in fair value of the effective portion of hedge contracts are recorded in “Accumulated other comprehensive loss” in “Stockholders’ equity” in the Condensed Consolidated Balance Sheets. Amounts deferred in accumulated other comprehensive loss are reclassified to “Cost of revenue” in the Condensed Consolidated Statements of Operations in the periods in which the hedged exposure impacts earnings. The Company expects to reclassify \$22.5 million of net losses related to these option and forward contracts that are included in accumulated other comprehensive loss at June 28, 2009 to “Cost of revenue” in the following twelve months as the Company realizes the cost effects of the related forecasted foreign currency cost of revenue transactions. The amounts ultimately recorded in the Condensed Consolidated Statements of Operations will be contingent upon the actual exchange rates when the related forecasted foreign currency cost of revenue transactions are realized, and therefore, unrealized losses at June 28, 2009 could change.

Cash flow hedges are tested for effectiveness each period on an average to average rate basis using regression analysis. The change in the time value of the options as well as the cost of forward points (the difference between forward and spot rates at inception) on forward exchange contracts are excluded from the Company’s assessment of hedge effectiveness. The premium paid or time value of an option whose strike price is equal to or greater than the market price on the date of purchase is recorded as an asset in the Condensed Consolidated Balance Sheets. Thereafter, any change to this time value and the cost of forward points is included in “Other, net” in the Condensed Consolidated Statements of Operations. Amounts recorded in “Other, net” were losses of \$0.6 million and \$2.5 million during the three and six months ended June 28, 2009, respectively, due to loss in time value and cost of forward points, as compared to zero during the comparable periods of 2008.

Transaction Exposure

Other derivatives not designated as hedging instruments under SFAS No. 133 consist of forward contracts used to hedge the net balance sheet effect of foreign currency denominated assets and liabilities primarily for intercompany transactions, receivables from customers, prepayments to suppliers and advances received from customers. Changes in exchange rates between the Company’s subsidiaries’ functional currencies and the currencies in which these assets and liabilities are denominated can create fluctuations in the Company’s reported consolidated financial position, results of operations and cash flows. The Company enters into forward contracts to hedge foreign currency denominated monetary assets and liabilities against the short-term effects of currency exchange rate fluctuations. The Company records its derivative contracts at fair value with the related gains or losses recorded in “Other, net.” The gains or losses on these contracts are substantially offset by transaction gains or losses on the underlying balances being hedged. As of June 28, 2009 and December 28, 2008, the Company held forward contracts with an aggregate notional value of \$394.6 million and \$66.6 million, respectively, to hedge balance sheet exposure related to transactions with third-parties. These forward contracts have maturities of one month or less.

Credit Risk

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

Note 14. INCOME TAXES

In the three and six months ended June 28, 2009, the Company's effective rate of income tax provision of 16.2% and benefit of 42.9%, respectively, was primarily attributable to domestic and foreign income taxes in certain jurisdictions where the Company's operations were profitable, net of nondeductible amortization of purchased other intangible assets, discrete stock option deductions and the discrete non-cash non-taxable gain on purchased options of \$21.2 million. The Company's income tax provision for the three and six months ended June 29, 2008 of 20.3% and 18.6%, respectively, was primarily attributable to domestic and foreign income taxes in certain jurisdictions where the Company's operations were profitable, net of the consumption of non-stock net operating loss carryforwards. As a result of the Company's adoption of FSP APB 14-1, the tax provision during the three and six months ended June 29, 2008 was retroactively adjusted from 34.5% and 32.7%, respectively, to 20.3% and 18.6%, respectively (see Note 1). The Company's interim period tax provision is estimated based on the expected annual worldwide tax rate and takes into account the tax effect of discrete items.

Note 15. NET INCOME PER SHARE OF CLASS A AND CLASS B COMMON STOCK

Effective December 29, 2008, the Company adopted FSP EITF 03-6-1, which requires to include certain participating securities when it uses the two-class method to calculate net income per share. Under the two-class method, net income per share is computed by dividing earnings allocated to common stockholders by the weighted-average number of common shares outstanding for the period. In applying the two-class method, earnings are allocated to both common stock and other participating securities based on their respective weighted-average shares outstanding during the period. No allocation is generally made to other participating securities in the case of a loss per share. In accordance with the implementation provisions of FSP EITF 03-6-1, prior period share data and net income per share has been retroactively adjusted (see Note 1).

Basic weighted-average shares is computed using the weighted-average of the combined class A and class B common stock outstanding. Class A and class B common stock are considered equivalent securities for purposes of the earnings per share calculation because the holders of each class are legally entitled to equal per share distributions whether through dividends or in liquidation. The Company's outstanding unvested restricted stock awards are considered participating securities as they may participate in dividends, if declared, even though the awards are not vested. As participating securities, the unvested restricted stock awards are allocated a proportionate share of net income, but excluded from the basic weighted-average shares. Diluted weighted-average shares is computed using basic weighted-average shares plus any potentially dilutive securities outstanding during the period using the if-converted method and treasury-stock-type method, except when their effect is anti-dilutive. Potentially dilutive securities include stock options, restricted stock units and senior convertible debentures.

The following is a summary of other outstanding anti-dilutive potential common stock:

| (In thousands) | As of | |
|------------------------|------------------|------------------|
| | June 28, 2009 | June 29, 2008 |
| Stock options | 407 | 17 |
| Restricted stock units | 2,014 | 301 |

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

| (In thousands, except per share data) | Three Months Ended | | Six Months Ended | |
|--|--------------------|------------------|------------------|------------------|
| | June 28, 2009 | June 29, 2008 | June 28, 2009 | June 29, 2008 |
| Basic net income per share: | | | | |
| Net income | \$ 24,171 | \$ 31,157 | \$ 19,385 | \$ 43,156 |
| Less: Undistributed earnings allocated to unvested restricted stock awards | (88) | (433) | (88) | (620) |
| Net income available to common stockholders | <u>\$ 24,083</u> | <u>\$ 30,724</u> | <u>\$ 19,297</u> | <u>\$ 42,536</u> |
| Basic weighted-average common shares | <u>90,873</u> | <u>79,412</u> | <u>87,311</u> | <u>79,188</u> |
| Basic net income per share | <u>\$ 0.27</u> | <u>\$ 0.39</u> | <u>\$ 0.22</u> | <u>\$ 0.54</u> |
| Diluted net income per share: | | | | |
| Net income | \$ 24,171 | \$ 31,157 | \$ 19,385 | \$ 43,156 |
| Add: Interest expense incurred on 4.75% debentures, net of tax | 1,037 | — | — | — |
| Less: Undistributed earnings allocated to unvested restricted stock awards | (85) | (413) | (86) | (607) |
| Diluted net income | <u>\$ 25,123</u> | <u>\$ 30,744</u> | <u>\$ 19,299</u> | <u>\$ 42,549</u> |
| Basic weighted-average common shares | 90,873 | 79,412 | 87,311 | 79,188 |
| Effect of dilutive securities: | | | | |
| Stock options | 1,625 | 2,649 | 1,700 | 2,843 |
| Restricted stock units | 142 | 100 | 99 | 69 |
| 4.75% debentures | 5,772 | — | — | — |
| 1.25% debentures | — | 1,145 | — | 1,052 |
| 0.75% debentures | — | 59 | — | 30 |
| Diluted weighted-average common shares | <u>98,412</u> | <u>83,365</u> | <u>89,110</u> | <u>83,182</u> |
| Diluted net income per share | <u>\$ 0.26</u> | <u>\$ 0.37</u> | <u>\$ 0.22</u> | <u>\$ 0.51</u> |

After reviewing the circumstances of the LBIE administrative proceedings regarding the Lehman bankruptcy, the Company recorded approximately 2.9 million shares of class A common stock lent to LBIE in connection with the 1.25% debentures as issued and outstanding starting on September 15, 2008, the date on which LBIE commenced administrative proceedings, for the purpose of computing and reporting the Company's basic weighted-average common shares.

Holders of the Company's 4.75% debentures may convert the debentures into shares of the Company's class A common stock, at the applicable conversion rate, at any time on or prior to maturity (see Note 11). Pursuant to SFAS No. 128, "Earnings per Share" ("SFAS No. 128"), the 4.75% debentures are included in the calculation of diluted net income per share if their inclusion is dilutive under the if-converted method. During the three and six months ended June 28, 2009, dilutive potential common shares includes approximately 5.8 million shares and zero, respectively, for the impact of the 4.75% debentures.

Holders of the Company's 1.25% debentures and 0.75% debentures may, under certain circumstances at their option, convert the debentures into cash and, if applicable, shares of the Company's class A common stock at the applicable conversion rate, at any time on or prior to maturity (see Note 11). Pursuant to EITF 04-8, "The Effect of Contingently Convertible Instruments on Diluted Earnings per Share" ("EITF 04-8"), the 1.25% debentures and 0.75% debentures are included in the calculation of diluted net income per share if their inclusion is dilutive under the treasury-stock-type method. For the three and six months ended June 28, 2009, the Company's average stock price for the period did not exceed the conversion price for the 1.25% debentures and 0.75% debentures. During each of the three and six months ended June 29, 2008, dilutive potential common shares includes approximately 1.1 million shares for the impact of the 1.25% debentures as the Company experienced a substantial increase in its common stock price during the first half of fiscal 2008 as compared to the conversion price pursuant to the terms of the 1.25% debentures. Similarly, dilutive potential common shares includes approximately 59,000 shares and 30,000 shares for the three and six months ended June 29, 2008, respectively, for the impact of the 0.75% debentures. Under the treasury-stock-type method, the Company's 1.25% debentures and 0.75% debentures will generally have a dilutive impact on net income per share if the Company's average stock price for the period exceeds the conversion price for the debentures.

Note 16. STOCK-BASED COMPENSATION

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

| (In thousands) | Three Months Ended | | Six Months Ended | |
|--|--------------------|------------------|------------------|------------------|
| | June 28, 2009 | June 29, 2008 | June 28, 2009 | June 29, 2008 |
| Cost of systems revenue | \$ 1,474 | \$ 2,239 | \$ 1,772 | \$ 4,750 |
| Cost of components revenue | 3,156 | 2,890 | 3,681 | 4,093 |
| Research and development | 1,482 | 972 | 2,913 | 1,783 |
| Sales, general and administrative | 5,535 | 12,506 | 12,764 | 22,489 |
| Total stock-based compensation expense | <u>\$ 11,647</u> | <u>\$ 18,607</u> | <u>\$ 21,130</u> | <u>\$ 33,115</u> |

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

| (In thousands) | Three Months Ended | | Six Months Ended | |
|---|--------------------|------------------|------------------|------------------|
| | June 28, 2009 | June 29, 2008 | June 28, 2009 | June 29, 2008 |
| Employee stock options | \$ 1,270 | \$ 1,014 | \$ 2,298 | \$ 2,201 |
| Restricted stock awards and units | 9,002 | 10,229 | 19,515 | 18,130 |
| Shares and options released from re-vesting restrictions | — | 7,627 | 168 | 13,633 |
| Change in stock-based compensation capitalized in inventory | 1,375 | (263) | (851) | (849) |
| Total stock-based compensation expense | <u>\$ 11,647</u> | <u>\$ 18,607</u> | <u>\$ 21,130</u> | <u>\$ 33,115</u> |

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

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

| | Shares (in thousands) | Weighted-Average Exercise Price Per Share |
|-------------------------------------|--------------------------|--|
| Outstanding as of December 28, 2008 | 2,545 | \$ 8.96 |
| Exercised | (273) | 3.07 |
| Forfeited | (47) | 22.34 |
| Outstanding as of June 28, 2009 | <u>2,225</u> | 9.40 |
| Exercisable as of June 28, 2009 | <u>1,655</u> | 4.58 |

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

| | Stock Options | | Restricted Stock Awards and Units | |
|-------------------------------------|--------------------------|---|-----------------------------------|--|
| | Shares (in thousands) | Weighted-Average Exercise Price Per Share | Shares (in thousands) | Weighted-Average Grant Date Fair Value Per Share |
| Outstanding as of December 28, 2008 | 1,113 | \$ 14.82 | 1,604 | \$ 69.71 |
| Granted | — | — | 1,497 | 28.03 |
| Vested(1) | (496) | 4.26 | (298) | 65.87 |
| Forfeited | (47) | 22.34 | (269) | 69.20 |
| Outstanding as of June 28, 2009 | <u>570</u> | 23.39 | <u>2,534</u> | 45.45 |

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

Note 17. SEGMENT AND GEOGRAPHICAL INFORMATION

The Chief Operating Decision Maker (“CODM”), as defined by SFAS No. 131, “Disclosures about Segments of an Enterprise and Related Information” (“SFAS No. 131”), is the Company’s Chief Executive Officer. The CODM assesses the performance of the Systems Segment and Components Segment using information about their revenue and gross margin. The following tables present revenue by geography and segment, gross margin by segment and revenue by significant customer. Revenue is based on the destination of the shipments.

| (As a percentage of total revenue) | | Three Months Ended | | Six Months Ended | |
|------------------------------------|--|--------------------|------------------|------------------|------------------|
| | | June 28, 2009 | June 29, 2008 | June 28, 2009 | June 29, 2008 |
| Revenue by geography: | | | | | |
| United States | | 49% | 15% | 55% | 18% |
| Europe: | | | | | |
| Spain | | 1% | 66% | 1% | 60% |
| Germany | | 21% | 8% | 17% | 8% |
| Italy | | 16% | 5% | 15% | 3% |
| Other | | 7% | 3% | 6% | 4% |
| Rest of world | | 6% | 3% | 6% | 7% |
| | | <u>100%</u> | <u>100%</u> | <u>100%</u> | <u>100%</u> |
| Revenue by segment: | | | | | |
| Systems | | 37% | 71% | 42% | 68% |
| Components | | 63% | 29% | 58% | 32% |
| | | <u>100%</u> | <u>100%</u> | <u>100%</u> | <u>100%</u> |
| Gross margin by segment: | | | | | |
| Systems | | 16% | 23% | 16% | 22% |
| Components | | 22% | 28% | 24% | 24% |

| (As a percentage of total revenue) | | Three Months Ended | | Six Months Ended | |
|------------------------------------|-------------------------|--------------------|------------------|------------------|------------------|
| | | June 28, 2009 | June 29, 2008 | June 28, 2009 | June 29, 2008 |
| Significant Customers: | Business Segment | | | | |
| Florida Power & Light Company | Systems | 19% | * | 22% | * |
| Sedwick Corporate, S.L. | Systems | * | 19% | * | 24% |
| Naturener Group | Systems | * | 43% | * | 30% |

* denotes less than 10% during the period

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

Cautionary Statement Regarding Forward-Looking Statements

This Quarterly Report on Form 10-Q contains forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995. Forward-looking statements are statements that do not represent historical facts and may be based on underlying assumptions. We use words such as "may," "will," "should," "could," "would," "expect," "pipeline," "believe," "estimate," "predict," "potential" and "continue" to identify forward-looking statements in this Quarterly Report on Form 10-Q including our plans and expectations regarding future financial results, operating results, business strategies, projected costs, products, competitive positions, management's plans and objectives for future operations, our ability to obtain financing and industry trends. Such forward-looking statements are based on information available to us as of the date of this Quarterly Report on Form 10-Q and involve a number of risks and uncertainties, some beyond our control, that could cause actual results to differ materially from those anticipated by these forward-looking statements. Please see "PART II. OTHER INFORMATION, Item 1A: Risk Factors" and our other filings with the Securities and Exchange Commission, including our Annual Report on Form 10-K for the year ended December 28, 2008, for additional information on risks and uncertainties that could cause actual results to differ. These forward-looking statements should not be relied upon as representing our views as of any subsequent date, and we are under no obligation to, and expressly disclaim any responsibility to, update or alter our forward-looking statements, whether as a result of new information, future events or otherwise.

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

Business

We are a vertically integrated solar products and services company that designs, manufactures and markets high-performance solar electric power technologies. Our solar cells and solar panels are manufactured using proprietary processes, and our technologies are based on more than 15 years of research and development. Of all the solar cells available for the mass market, we believe our solar cells have the highest conversion efficiency, a measurement of the amount of sunlight converted by the solar cell into electricity. Our solar power products are sold through our components and systems business segments.

Business Segments Overview

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

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

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

We manufacture our solar cells at our two facilities in the Philippines, and are developing a third solar cell manufacturing facility in Malaysia. Our solar cells are then combined into solar panels at our solar panel assembly facility located in the Philippines or by third-party subcontractors.

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

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

Our customers include commercial and governmental entities, investors, utilities, production home builders, dealers and home owners. We work with development, construction, system integration and financing companies to deliver our solar power systems to customers. Our solar power systems are designed to generate electricity over a system life typically exceeding 25 years and are principally designed to be used in large-scale applications with system ratings of typically more than 500 kilowatts. Worldwide, more than 550 SunPower solar power systems have been constructed or are under contract, rated in the aggregate at more than 450 megawatts of peak capacity.

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

In 2008, we began serving the utility market in the United States, as regulated utilities began seeking cost-effective renewable energy to meet governmental renewable portfolio standard requirements. We believe we are well positioned for long-term success, despite difficult near-term conditions, with our substantial order pipeline for utility scale projects. Examples include an agreement with Pacific Gas and Electric Company, or PG&E, to build a 210 megawatt (MW_{AC}) solar power plant in California from 2010 to 2012, an agreement with FPL Group Inc., or FPL Group, to supply solar panels and photovoltaic tracking and support structure equipment of 300 to 600 MW_{AC} from 2010 to 2012, an agreement with Florida Power & Light Company, or FPL, to build two solar photovoltaic power plants totaling 35 MW_{AC} in Florida from 2009 to 2010, an agreement with Xcel Energy Inc., or Xcel, to build a 17 MW_{AC} solar power plant in Colorado in 2010, and another agreement with Exelon Corporation, or Exelon, to build a 8 MW_{AC} solar power plant in Chicago in 2009. While we have contracts for these projects, there are substantial additional events, including obtaining financing and proper governmental permits, which must occur in order for the projects to move forward.

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

Restructuring Costs

In response to deteriorating economic conditions, we reduced our global workforce of regular employees by approximately 80 positions in the first half of fiscal 2009 in order to reduce our annual operating expenses. The restructuring actions included charges of \$0.5 million and \$1.7 million in the three and six months ended June 28, 2009, respectively, for severance, benefits and related costs. Restructuring accruals totaled \$0.1 million as of June 28, 2009 and are recorded in "Accrued liabilities" in the Condensed Consolidated Balance Sheet and represent estimated future cash outlays primarily related to severance expected to be paid within the third quarter of fiscal 2009. For additional details see Note 8 of Notes to our Condensed Consolidated Financial Statements.

Accounting Changes and Recent Accounting Pronouncements

For a description of accounting changes and recent accounting pronouncements, including the expected dates of adoption and estimated effects, if any, in our Condensed Consolidated Financial Statements, see Note 1 of Notes to our Condensed Consolidated Financial Statements.

Results of Operations for the Three and Six Months Ended June 28, 2009 and June 29, 2008

Revenue

| (Dollars in thousands) | Three Months Ended | | Six Months Ended | |
|------------------------|--------------------|-------------------|-------------------|-------------------|
| | June 28, 2009 | June 29, 2008 | June 28, 2009 | June 29, 2008 |
| Systems revenue | \$ 108,724 | \$ 270,593 | \$ 214,821 | \$ 449,444 |
| Components revenue | 188,920 | 112,158 | 296,610 | 207,008 |
| Total revenue | <u>\$ 297,644</u> | <u>\$ 382,751</u> | <u>\$ 511,431</u> | <u>\$ 656,452</u> |

Total Revenue: During the three and six months ended June 28, 2009, our total revenue of approximately \$297.6 million and \$511.4 million, respectively, represented a decrease of 22% from total revenue reported in each of the comparable periods of 2008. The decrease in our total revenue during the three and six months ended June 28, 2009 compared to the same periods in 2008 is attributable to the difficult economic and credit environment globally. Revenue earned in the three and six months ended June 29, 2008 primarily related to the then ongoing construction of several large-scale solar power plants in Spain and high demand for our solar cells and solar panels.

Sales outside the United States represented approximately 51% and 45% of our total revenue for the three and six months ended June 28, 2009, respectively, compared to 85% and 82% in the three and six months ended June 29, 2008, respectively. The change in geography mix is primarily due to: (i) the expiration of an attractive governmental feed-in tariff in Spain in September 2008; (ii) the construction of a 25 megawatt solar power plant for FPL in Desoto County, Florida in the first half of fiscal 2009; and (iii) revenue growth from our Components Segment in the United States, particularly in California, due to generous government incentives, focused advertising and our effective dealer network.

Concentrations: We have three customers that each accounted for more than 10 percent of our total revenue in one period during the three and six months ended June 28, 2009 and June 29, 2008 as follows:

| (As a percentage of total revenue) | | Three Months Ended | | Six Months Ended | |
|------------------------------------|-------------------------|--------------------|------------------|------------------|------------------|
| | | June 28, 2009 | June 29, 2008 | June 28, 2009 | June 29, 2008 |
| Significant Customers: | Business Segment | | | | |
| FPL | Systems | 19% | —% | 22% | —% |
| Sedwick Corporate, S.L. | Systems | * | 19% | * | 24% |
| Naturener Group | Systems | * | 43% | * | 30% |

* denotes less than 10% during the period

We generate revenue from two business segments, as follows:

Systems Segment Revenue: Our systems revenue for the three and six months ended June 28, 2009 was \$108.7 million and \$214.8 million, respectively, which accounted for 37% and 42%, respectively, of our total revenue. Systems revenue for the three and six months ended June 29, 2008 was \$270.6 million and \$449.4 million, respectively, which accounted for 71% and 68%, respectively, of our total revenue. During the three and six months ended June 28, 2009, our systems revenue decreased 60% and 52%, respectively, as compared to revenue earned in the comparable periods of 2008, due to the difficult economic conditions resulting in near-term challenges in financing system projects. However, we are beginning to see some recent improvements in the financial markets as exemplified by our signing of a \$100 million commercial project financing agreement with Wells Fargo Bank, or Wells Fargo, providing financing for system projects under power purchase agreements with customers. In the three and six months ended June 29, 2008, our Systems Segment benefited from strong power plant scale demand in Europe, primarily in Spain, and reflected the significant completion of Spain based projects in the second quarter of fiscal 2008 before the expiration of a governmental feed-in tariff in September 2008.

FPL was a significant customer to the Systems Segment during the three and six months ended June 28, 2009 due to the construction of a 25 megawatt solar power plant in Desoto County, Florida. Sedwick Corporate, S.L. and Naturener Group were significant customers to the Systems Segment during the three and six months ended June 29, 2008 due to then ongoing construction of several large-scale solar power plants in Spain. FPL, Sedwick Corporate, S.L. and Naturener Group purchased systems from us as central-station power plants which generate electricity for sale to commercial customers and under tariff to regional and public utilities customers. In the three and six months ended June 28, 2009, approximately 24% and 29%, respectively, of our total revenue was derived from such sales of systems to financing companies that engage in power purchase agreements with end-users of electricity, compared to 55% and 52% in the three and six months ended June 29, 2008, respectively.

Components Segment Revenue: Components revenue for the three and six months ended June 28, 2009 was \$188.9 million and \$296.6 million, respectively, or 63% and 58%, respectively, of our total revenue. Components revenue for the three and six months ended June 29, 2008 was \$112.2 million and \$207.0 million, respectively, or 29% and 32%, respectively, of our total revenue. During the three and six months ended June 28, 2009, our components revenue increased 68% and 43%, respectively, as compared to revenue earned in the comparable periods of 2008, primarily due to growing demand in Germany and the United States, particularly in California, due to generous government incentives, focused advertising and our effective dealer network. In the three and six months ended June 29, 2008, our Components Segment benefited from strong demand in the residential and small commercial roof-top markets through our third-party dealer network in both Europe and the United States.

Cost of Revenue

Details to cost of revenue by segment:

| (Dollars in thousands) | Three Months Ended | | | | | |
|--|--------------------|-------------------|-------------------|------------------|-------------------|-------------------|
| | Systems | | Components | | Consolidated | |
| | June 28, 2009 | June 29, 2008 | June 28, 2009 | June 29, 2008 | June 28, 2009 | June 29, 2008 |
| Amortization of other intangible assets | \$ 1,841 | \$ 1,841 | \$ 954 | \$ 1,066 | \$ 2,795 | \$ 2,907 |
| Stock-based compensation | 1,474 | 2,239 | 3,156 | 2,890 | 4,630 | 5,129 |
| Non-cash interest expense | 347 | 65 | 893 | 80 | 1,240 | 145 |
| Materials and other cost of revenue | 88,131 | 205,078 | 142,385 | 76,652 | 230,516 | 281,730 |
| Total cost of revenue | <u>\$ 91,793</u> | <u>\$ 209,223</u> | <u>\$ 147,388</u> | <u>\$ 80,688</u> | <u>\$ 239,181</u> | <u>\$ 289,911</u> |
| Total cost of revenue as a percentage of revenue | 84% | 77% | 78% | 72% | 80% | 76% |
| Total gross margin percentage | 16% | 23% | 22% | 28% | 20% | 24% |

| (Dollars in thousands) | Six Months Ended | | | | | |
|--|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|
| | Systems | | Components | | Consolidated | |
| | June 28, 2009 | June 29, 2008 | June 28, 2009 | June 29, 2008 | June 28, 2009 | June 29, 2008 |
| Amortization of other intangible assets | \$ 3,682 | \$ 4,009 | \$ 1,906 | \$ 2,110 | \$ 5,588 | \$ 6,119 |
| Stock-based compensation | 1,772 | 4,750 | 3,681 | 4,093 | 5,453 | 8,843 |
| Impairment of long-lived assets | — | 1,343 | — | 4,146 | — | 5,489 |
| Non-cash interest expense | 577 | 101 | 1,163 | 132 | 1,740 | 233 |
| Materials and other cost of revenue | 174,113 | 342,284 | 218,326 | 147,449 | 392,439 | 489,733 |
| Total cost of revenue | <u>\$ 180,144</u> | <u>\$ 352,487</u> | <u>\$ 225,076</u> | <u>\$ 157,930</u> | <u>\$ 405,220</u> | <u>\$ 510,417</u> |
| Total cost of revenue as a percentage of revenue | 84% | 78% | 76% | 76% | 79% | 78% |
| Total gross margin percentage | 16% | 22% | 24% | 24% | 21% | 22% |

Total Cost of Revenue: We had 14 and 8 active solar cell manufacturing lines in our two solar cell manufacturing facilities as of June 28, 2009 and June 29, 2008, respectively, with a total rated annual solar cell manufacturing capacity of 494 megawatts and 254 megawatts, respectively. During the three and six months ended June 28, 2009, our two solar cell manufacturing facilities operated at approximately 49% and 61% capacity, respectively, producing only 63.6 megawatts and 157.3 megawatts, respectively, as compared to the three and six months ended June 29, 2008 when our facilities operated at approximately 74% and 71% capacity, respectively, producing 49.8 megawatts and 88.3 megawatts, respectively. During the three and six months ended June 28, 2009, our total cost of revenue was \$239.2 million and \$405.2 million, respectively, which represented decreases of 17% and 21%, respectively, compared to the total cost of revenue reported in the comparable periods of 2008. As a percentage of total revenue, our total cost of revenue increased to 80% and 79% in the three and six months ended June 28, 2009, respectively, compared to 76% and 78% in the three and six months ended June 29, 2008, respectively. This increase in total cost of revenue as a percentage of total revenue is reflective of: (i) lower factory utilization due to our planned transition to a demand driven manufacturing strategy to reduce inventory levels and (ii) higher amortization of capitalized non-cash interest expense associated with the adoption of Financial Accounting Standards Board, or FASB, Staff Position, or FSP, Accounting Principles Board, or APB, 14-1, "Accounting for Convertible Debt Instruments That May Be Settled in Cash upon Conversion (Including Partial Cash Settlement)," or FSP APB 14-1. This increase in total cost of revenue as a percentage of total revenue was partially offset by: (i) decreased costs of polysilicon beginning in the second quarter of fiscal 2008; (ii) reduced expenses associated with the amortization of other intangible assets and stock-based compensation; and (iii) one-time asset impairment charges of \$5.5 million in the first quarter of fiscal 2008 relating to the wind down of our imaging detector product line and for the write-down of certain solar product manufacturing equipment which became obsolete due to new processes (the costs associated with the \$3.3 million write-down of certain solar product manufacturing equipment was recovered from the vendor in the third quarter of fiscal 2008).

Systems Segment Cost of Revenue: Our cost of systems revenue consists primarily of solar panels, mounting systems, inverters and subcontractor costs. The cost of solar panels is the single largest cost element in our cost of systems revenue. Our Systems Segment sourced virtually all of its solar panel installations with SunPower solar panels in the three and six months ended June 28, 2009, as compared to 61% and 52% for the three and six months ended June 29, 2008, respectively. Our Systems Segment generally experiences higher gross margin on construction projects that utilize SunPower solar panels compared to construction projects that utilize solar panels purchased from third-parties.

Systems Segment Gross Margin: Gross margin was \$16.9 million and \$34.7 million for the three and six months ended June 28, 2009, respectively, or 16% of systems revenue. Gross margin was \$61.4 million and \$97.0 million for the three and six months ended June 29, 2008, respectively, or 23% and 22%, respectively, of systems revenue. Gross margin decreased due to lower average selling prices for our solar power systems and system group department overhead costs incurred that are fixed in nature when systems revenue decreased 60% and 52% in the three and six months ended June 28, 2009, respectively, as compared to the same periods in 2008.

Components Segment Cost of Revenue: Our cost of components revenue consists primarily of silicon ingots and wafers used in the production of solar cells, along with other materials such as chemicals and gases that are needed to transform silicon wafers into solar cells. For our solar panels, our cost of revenue includes the cost of solar cells and raw materials such as glass, frame, backing and other materials, as well as the assembly costs we pay to our third-party subcontractor in China. Our Components Segment's gross margin each quarter is affected by a number of factors, including average selling prices for our solar power products, our product mix, our actual manufacturing costs and the utilization rate of our solar cell manufacturing facilities.

Components Segment Gross Margin: Gross margin was \$41.5 million and \$71.5 million for the three and six months ended June 28, 2009, respectively, or 22% and 24%, respectively, of components revenue. Gross margin was \$31.5 million and \$49.1 million for the three and six months ended June 29, 2008, respectively, or 28% and 24%, respectively, of components revenue. Gross margin decreased due to lower average selling prices for our solar power products and higher unabsorbed variance costs due to lower factory utilization, partially offset by continued reduction in silicon costs. Over the next several years, we expect average selling prices for our solar power products to decline as the market becomes more competitive, as financial incentives for solar power decline as typically planned by local, state, and national policy programs designed to accelerate solar power adoption, as certain products mature and as manufacturers are able to lower their manufacturing costs and pass on some of the savings to their customers.

Other Cost of Revenue Factors: Other factors contributing to cost of revenue include amortization of other intangible assets, stock-based compensation, depreciation, provisions for estimated warranty, salaries, personnel-related costs, freight, royalties, facilities expenses and manufacturing supplies associated with contracting revenue and solar cell fabrication as well as factory pre-operating costs associated with our second solar cell manufacturing facility, or FAB2, and our solar panel assembly facility. Such pre-operating costs included compensation and training costs for factory workers as well as utilities and consumable materials associated with preproduction activities. Additionally, within our own solar panel assembly facility in the Philippines we incur personnel-related costs, depreciation, utilities and other occupancy costs. From fiscal 2005 through 2008, demand for our solar power products was robust and our production output increased allowing us to spread a significant amount of our fixed costs over relatively high production volume, thereby reducing our per unit fixed cost. During the first half of fiscal 2009, we responded to the oversupply of solar power products in the market by temporarily reducing manufacturing output to better match the current demand environment.

Research and Development

| (Dollars in thousands) | Three Months Ended | | Six Months Ended | |
|----------------------------|--------------------|------------------|------------------|------------------|
| | June 28, 2009 | June 29, 2008 | June 28, 2009 | June 29, 2008 |
| Research and development | \$ 6,853 | \$ 4,813 | \$ 14,817 | \$ 9,455 |
| As a percentage of revenue | 2% | 1% | 3% | 1% |

During the three and six months ended June 28, 2009, our research and development expense was \$6.9 million and \$14.8 million, respectively, which represented increases of 42% and 57%, respectively, from research and development expense reported in the comparable periods of fiscal 2008. Research and development expense consists primarily of salaries and related personnel costs, depreciation and the cost of solar cell and solar panel materials and services used for the development of products, including experiment and testing. The increase in spending during the three and six months ended June 28, 2009 compared to the same periods in fiscal 2008 resulted primarily from costs related to the improvement of our current generation solar cell manufacturing technology, development of our third generation of solar cells, development of next generation solar panels, development of next generation trackers and rooftop systems, and development of systems performance monitoring products. These increases were partially offset by grants and cost reimbursements received from various government entities in the United States totaling approximately \$0.5 million and \$2.3 million in the three and six months ended June 28, 2009, respectively, compared to approximately \$2.0 million and \$3.7 million in the three and six months ended June 29, 2008, respectively.

As a percentage of total revenue, research and development expense totaled 2% and 3% in the three and six months ended June 28, 2009, respectively, compared to 1% in each of the three and six months ended June 29, 2008 because we invested more in research and development during the first half of fiscal 2009 when our total revenue was lower as compared to revenue earned in the same periods of 2008.

Sales, General and Administrative

| (Dollars in thousands) | Three Months Ended | | Six Months Ended | |
|-----------------------------------|--------------------|------------------|------------------|------------------|
| | June 28, 2009 | June 29, 2008 | June 28, 2009 | June 29, 2008 |
| Sales, general and administrative | \$ 41,755 | \$ 43,208 | \$ 84,038 | \$ 77,066 |
| As a percentage of revenue | 14% | 11% | 16% | 12% |

During the three and six months ended June 28, 2009, our sales, general and administrative expense, or SG&A expense, was \$41.8 million and \$84.0 million, respectively, which represents a decrease of 3% and increase of 9%, respectively, from SG&A expense reported in the comparable periods of fiscal 2008. SG&A expense for our business consists primarily of salaries and related personnel costs, professional fees, insurance and other selling and marketing expenses. The decrease in our SG&A expense during the three months ended June 28, 2009 compared to the same period of fiscal 2008 resulted primarily from cost-reduction efforts, including headcount reductions. The increase in our SG&A expense during the six months ended June 28, 2009 compared to the same period of fiscal 2008 resulted primarily from higher spending in all areas of sales, marketing, finance and information technology to support the growth of our business, particularly sales and marketing costs to launch our new marketing campaign and expand our third-party dealer network with nearly 600 dealers worldwide. During the three and six months ended June 28, 2009, stock-based compensation included in SG&A expense was approximately \$5.5 million and \$12.8 million, respectively, compared to \$12.5 million and \$22.5 million in the three and six months ended June 29, 2008, respectively.

As a percentage of total revenue, SG&A expense increased to 14% and 16% in the three and six months ended June 28, 2009, respectively, from 11% and 12% in the three and six months ended June 29, 2008, respectively, due to higher advertising costs to increase brand awareness and demand for our solar power products during the first half of fiscal 2009 when our total revenue was lower as compared to revenue earned in the same period of 2008.

Other Income (Expense), Net

| (Dollars in thousands) | Three Months Ended | | Six Months Ended | |
|----------------------------|--------------------|------------------|------------------|------------------|
| | June 28, 2009 | June 29, 2008 | June 28, 2009 | June 29, 2008 |
| Interest income | \$ 765 | \$ 2,289 | \$ 1,949 | \$ 6,436 |
| As a percentage of revenue | —% | 1% | —% | 1% |
| Interest expense | \$ (9,528) | \$ (6,097) | \$ (15,649) | \$ (12,394) |
| As a percentage of revenue | 3% | 2% | 3% | 2% |
| Gain on purchased options | \$ 21,193 | \$ — | \$ 21,193 | \$ — |
| As a percentage of revenue | 7% | —% | 4% | —% |
| Other, net | \$ 2,807 | \$ (3,570) | \$ (4,350) | \$ (2,855) |
| As a percentage of revenue | 1% | 1% | 1% | —% |

Interest income represents interest income earned on our cash, cash equivalents, restricted cash, restricted cash equivalents, available-for-sale securities and a note receivable. The decrease in interest income of 67% and 70% during the three and six months ended June 28, 2009, respectively, as compared to the same periods in fiscal 2008, resulted from lower interest rates earned on cash holdings during the first half of fiscal 2009 as compared to the same period in fiscal 2008.

Interest expense during the three and six months ended June 28, 2009 relates to borrowings under our senior convertible debentures, the facility agreement with the Malaysian Government, the term loan with Union Bank, N.A., or Union Bank, and customer advance payments. Interest expense during the three and six months ended June 29, 2008 relates to borrowings under our senior convertible debentures and customer advance payments. Non-cash interest expense related to the adoption of FSP APB 14-1 was \$4.7 million and \$9.2 million in the three and six months ended June 28, 2009, respectively, compared to \$4.1 and \$8.4 in the three and six months ended June 29, 2008, respectively. The increase in interest expense of 56% and 26% in the three and six months ended June 28, 2009, respectively, compared to the same periods in fiscal 2008 is primarily due to additional indebtedness related to our \$230.0 million in principal amount of 4.75% senior convertible debentures, or 4.75% debentures, issued on May 4, 2009, approximately \$106.2 million outstanding loans under the facility agreement with the Malaysian Government and \$30.0 million under the term loan with Union Bank. This increase was partially offset by higher capitalized interest of \$2.3 million and \$4.8 million in the three and six months ended June 28, 2009, respectively, compared to \$2.0 million and \$3.8 million in the three and six months ended June 29, 2008, respectively, and the repurchase of a portion of our 0.75% senior convertible debentures, or 0.75% debentures, with a principal amount, unamortized discount and net carrying value of \$73.1 million, \$5.9 million and \$67.2 million, respectively. For additional details see Notes 1 and 11 of Notes to our Condensed Consolidated Financial Statements.

In connection with the issuance of our 4.75% debentures, we entered into certain convertible debenture hedge transactions, or the Purchased Options, intended to reduce the potential dilution that would occur upon conversion of the debentures. Under Emerging Issues Task Force, or EITF, Issue No. 07-5, "Determining Whether an Instrument (or Embedded Feature) Is Indexed to an Entity's Own Stock," or EITF 07-5, the Purchased Options are deemed to be a mark-to-market derivative during the period in which the over-allotment option in favor of the 4.75% debenture underwriters is unexercised. We entered into the debenture underwriting agreement on April 28, 2009 and the 4.75% debenture underwriters exercised the over-allotment option in full on April 29, 2009. During the one-day period that the underwriters' over-allotment option was outstanding, our class A common stock price increased substantially, resulting in a non-cash non-taxable gain on Purchased Options of \$21.2 million in both the three and six months ended June 28, 2009 in our Condensed Consolidated Statements of Operations. For additional details see Note 11 of Notes to our Condensed Consolidated Financial Statements.

In accordance with Statement of Financial Accounting Standards, or SFAS, No. 142, "Accounting for Goodwill and Other Intangible Assets," or SFAS No. 142, we will conduct our annual impairment test of goodwill as of September 27, 2009. Ongoing weak global credit market conditions have had a negative impact on our earnings and the profitability of our Systems Segment during the first half of fiscal 2009, and our overall market capitalization has also declined. We do not believe the current credit market conditions indicate that the fair value of our reporting units have more likely than not fallen below their carrying values. There is an increased risk, however, as a result of further deterioration in economic conditions, we could record a non-cash impairment charge relating to goodwill during the third quarter of fiscal 2009 in connection with our annual impairment tests for our reporting units, particularly in the Systems Segment. For additional details see Note 4 of Notes to our Condensed Consolidated Financial Statements.

In June 2009, the FASB ratified EITF 09-1, "Accounting for Own-Share Lending Arrangements in Contemplation of Convertible Debt Issuance," or EITF 09-1, which clarifies that share lending arrangements that are executed in connection with convertible debt offerings or other financings should be considered debt issuance costs. At the date of issuance, share lending arrangements entered into on our own class A common stock are required to be measured at fair value and recognized as debt issuance costs in our condensed consolidated financial statements. In connection with the issuance of our 1.25% senior convertible debentures, or 1.25% debentures, and 0.75% debentures, we loaned approximately 2.9 million shares of our class A common stock to Lehman Brothers International (Europe) Limited, or LBIE, and approximately 1.8 million shares of our class A common stock to Credit Suisse International, or CSI, under share lending arrangements. EITF 09-1 will result in significantly higher non-cash amortization of the debt issuance costs and a loss resulting from Lehman Brothers Holding Inc., or Lehman, filing a petition for protection under Chapter 11 of the U.S. bankruptcy code on September 15, 2008, and LBIE commencing administration proceedings (analogous to bankruptcy) in the United Kingdom. EITF 09-1 is effective for fiscal years beginning after December 15, 2009, and retrospective application is required for all periods presented. We are currently evaluating the impact of the adoption of EITF 09-1 on our condensed consolidated financial statements.

The following table summarizes the components of other, net:

| (Dollars in thousands) | Three Months Ended | | Six Months Ended | |
|---|--------------------|-------------------|-------------------|-------------------|
| | June 28, 2009 | June 29, 2008 | June 28, 2009 | June 29, 2008 |
| Gain (loss) on derivatives and foreign exchange | \$ 3,230 | \$ (3,584) | \$ (2,548) | \$ (2,828) |
| Impairment of investments | (489) | — | (1,807) | — |
| Other income (expense), net | 66 | 14 | 5 | (27) |
| Total other, net | <u>\$ 2,807</u> | <u>\$ (3,570)</u> | <u>\$ (4,350)</u> | <u>\$ (2,855)</u> |

Other, net was comprised of \$2.8 million of income and \$4.4 million of expenses during the three and six months ended June 28, 2009, respectively, consisting primarily of \$3.2 million of gains and \$2.5 million of losses during the three and six months ended June 28, 2009, respectively, on derivatives and changes in foreign exchange rates largely due to the volatility in the current markets as well as impairment charges of \$0.5 million and \$1.8 million during the three and six months ended June 28, 2009, respectively, for certain money market funds and auction rate securities. Other, net was comprised of \$3.6 million and \$2.9 million of expenses during the three and six months ended June 29, 2008, respectively, consisting primarily of \$3.6 million and \$2.8 million of losses during the three and six months ended June 29, 2008, respectively, on derivatives and foreign exchange. For additional details see Notes 5 and 13 of Notes to our Condensed Consolidated Financial Statements.

Income Taxes

| (Dollars in thousands) | Three Months Ended | | Six Months Ended | |
|--------------------------------|--------------------|------------------|------------------|------------------|
| | June 28, 2009 | June 29, 2008 | June 28, 2009 | June 29, 2008 |
| Income tax provision (benefit) | \$ 4,054 | \$ 7,614 | \$ (4,508) | \$ 9,419 |
| As a percentage of revenue | 1% | 2% | 1% | 1% |

In the three and six months ended June 28, 2009, our effective rate of income tax provision of 16.2% and benefit of 42.9%, respectively, was primarily due to domestic and foreign income taxes in certain jurisdictions where our operations are profitable, net of nondeductible amortization of purchased other intangible assets, discrete stock option deductions and the discrete non-cash non-taxable gain on purchased options of \$21.2 million. Our income tax provision for the three and six months ended June 29, 2008 of 20.3% and 18.6%, respectively, was primarily attributable to domestic and foreign income taxes in certain jurisdictions where our operations were profitable, net of the consumption of non-stock net operating loss carryforwards. As a result of our adoption of FSP APB 14-1, the tax provision during the three and six months ended June 29, 2008 was retroactively adjusted from 34.5% and 32.7%, respectively, to 20.3% and 18.6%, respectively. Our interim period tax provision is estimated based on the expected annual worldwide tax rate and takes into account the tax effect of discrete items. For additional details see Note 14 of Notes to our Condensed Consolidated Financial Statements.

Currently, a majority of our total revenue is generated from customers located outside the U.S., and a substantial portion of our assets and employees are located outside the U. S. U.S. income taxes and foreign withholding taxes have not been provided on much of the undistributed earnings of our non-U.S. subsidiaries as such earnings are intended to be indefinitely reinvested in operations outside the U.S. The Obama administration recently announced several proposals pertaining to the taxation of non-U.S. earnings of U.S. multinationals, including proposals that may result in a reduction or elimination of the deferral of U. S. income tax on un-repatriated foreign earnings. If enacted, these proposals could potentially require those earnings to be taxed at the U. S. federal income tax rate. Our future reported financial results may be adversely affected if the tax or accounting rules regarding un-repatriated earnings change.

Equity in earnings of unconsolidated investees

| (Dollars in thousands) | Three Months Ended | | Six Months Ended | |
|--|--------------------|------------------|------------------|------------------|
| | June 28, 2009 | June 29, 2008 | June 28, 2009 | June 29, 2008 |
| Equity in earnings of unconsolidated investees | \$ 3,133 | \$ 1,330 | \$ 4,378 | \$ 1,874 |
| As a percentage of revenue | 1% | 0% | 1% | 0% |

During the three and six months ended June 28, 2009, our equity in earnings of unconsolidated investees were gains of \$3.1 million and \$4.4 million, respectively, compared to gains of \$1.3 million and \$1.9 million in the three and six months ended June 29, 2008, respectively. Our share of Woongjin Energy Co., Ltd's, or Woongjin Energy's, income totaled \$3.2 million and \$4.5 million in the three and six months ended June 28, 2009, respectively, compared to \$1.3 million and \$1.9 million in the three and six months ended June 29, 2008, respectively, due to: (i) increases in production since Woongjin Energy began manufacturing in the third quarter of fiscal 2007 and (ii) our equity investment increased from 27.4% as of June 29, 2008 to 40% as of June 28, 2009. First Philec Solar Corporation, or First Philec Solar, became operational in the second quarter of fiscal 2008 and our share of the joint venture's loss totaled \$0.1 million in each of the three and six months ended June 28, 2009, compared to zero in each of the three and six months ended June 29, 2008. For additional details see Note 10 of Notes to our Condensed Consolidated Financial Statements.

Liquidity and Capital Resources

Cash Flows

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

| (In thousands) | Six Months Ended | |
|---|------------------|------------------|
| | June 28, 2009 | June 29, 2008 |
| Net cash used in operating activities | \$ (50,299) | \$ (39,372) |
| Net cash used in investing activities | (126,423) | (76,187) |
| Net cash provided by financing activities | 432,105 | 12,780 |

Operating Activities

Net cash used in operating activities of \$50.3 million in the six months ended June 28, 2009 was primarily the result of a decrease in accounts payable and other accrued liabilities of \$129.5 million due to decreased purchases in response to the overall poor business climate and an increase in accounts receivable of \$24.5 million, partially offset by net income of \$19.4 million, plus non-cash charges totaling \$82.7 million for depreciation, amortization, impairment of investments, stock-based compensation and non-cash interest expense, less non-cash income of \$25.6 million related to a gain on Purchased Options and our equity share in earnings of joint ventures, and other changes in operating assets and liabilities of \$27.2 million.

Net cash used in operating activities of \$39.4 million in the six months ended June 29, 2008 was primarily the result of increases in accounts receivable of \$103.1 million and inventory of \$67.8 million, as well as decreases in billings in excess of costs and estimated earnings of \$38.9 million related to contractual timing of system project billings and other changes in operating assets and liabilities of \$32.1 million. These items were partially offset by net income of \$43.2 million, plus non-cash charges totaling \$78.8 million for depreciation, amortization, impairment of long-lived assets, stock-based compensation and non-cash interest expense, less non-cash income of \$1.9 million for our share in earnings of Woongjin Energy. In addition, these items were offset by increases in accounts payable and other accrued liabilities of \$82.4 million. The significant increases in substantially all of our operating assets and liabilities resulted from our substantial revenue increase in the six months ended June 29, 2008 compared to previous periods which impacted net income and working capital.

Investing Activities

Net cash used in investing activities during the six months ended June 28, 2009 was \$126.4 million, of which \$103.8 million relates to capital expenditures primarily associated with manufacturing capacity expansion in the Philippines and Malaysia and \$42.3 million relates to increases in restricted cash and cash equivalents for the second drawdown under the facility agreement with the Malaysian government, partially offset by \$19.7 million in proceeds received from the sales or maturities of available-for-sale securities.

Net cash used in investing activities during the six months ended June 29, 2008 was \$76.2 million, of which \$95.1 million relates to capital expenditures primarily associated with manufacturing capacity expansion in the Philippines. Also during the six months ended June 29, 2008: (i) restricted cash and cash equivalents increased by \$16.0 million for advanced payments received from customers that we provided security in the form of cash collateralized bank standby letters of credit; (ii) we paid \$13.5 million in cash for the acquisition of Solar Solutions, a division of Combigas S.r.l., net of cash acquired; and (iii) we invested an additional \$22.6 million in joint ventures and other non-public companies. Cash used in investing activities was partially offset by \$71.0 million in proceeds received from the sales or maturities of available-for-sale securities, net of available-for-sale securities purchased during the period.

Financing Activities

Net cash provided by financing activities during the six months ended June 28, 2009 reflects cash received of: (i) \$218.9 million in net proceeds from our public offering of 10.35 million shares of our class A common stock; (ii) \$198.7 million in net proceeds from the issuance of \$230.0 million in principal amount of 4.75% debentures, after reflecting the payment of the net cost of the convertible debenture hedge transactions; (iii) Malaysian Ringgit 185.0 million (approximately \$52.4 million based on the exchange rate as of June 28, 2009) from the Malaysian Government under our facility agreement; (iv) \$29.8 million in net proceeds from Union Bank under our \$30.0 million term loan; (v) \$2.6 million in excess tax benefits from stock-based award activity; and (vi) \$0.8 million from stock option exercises. Cash received during the six months ended June 28, 2009 was partially offset by cash paid of \$67.9 million to repurchase approximately \$73.1 million in principal amount of our 0.75% debentures and \$3.1 million for treasury stock purchases that were used to pay withholding taxes on vested restricted stock.

Net cash provided by financing activities during the six months ended June 29, 2008 reflects \$2.3 million from stock option exercises and \$14.6 million in excess tax benefits from stock-based award activity, partially offset by cash paid of \$4.2 million for treasury stock purchases that were used to pay withholding taxes on vested restricted stock.

Debt and Credit Sources

Line of Credit

As of June 28, 2009 and December 28, 2008, no amounts were outstanding on the revolving credit line and letters of credit totaling \$49.1 million and \$29.9 million, respectively, were issued by Wells Fargo under the letter of credit subfeature. In addition, letters of credit totaling \$93.1 million and \$76.5 million were issued by Wells Fargo under the collateralized letter of credit facility as of June 28, 2009 and December 28, 2008, respectively. As of June 28, 2009 and December 28, 2008, cash available to be borrowed under the revolving credit line was \$0.9 million and \$20.1 million, respectively, and includes letter of credit capacities available to be issued by Wells Fargo under the letter of credit subfeature. Letters of credit available under the collateralized letter of credit facility as of June 28, 2009 and December 28, 2008 totaled \$56.9 million and \$73.5 million, respectively. As detailed in the agreement, we pay fees of 2% and 0.2% to 0.4% depending on maturity for outstanding letters of credit under the letter of credit subfeature and collateralized letter of credit facility, respectively. All letters of credit issued under the letter of credit subfeature expire on or before March 27, 2010 unless we provide by such date collateral in the form of cash or cash equivalents in the aggregate amount available to be drawn under letters of credit outstanding at such time. All letters of credit issued under the collateralized letter of credit facility expire no later than March 27, 2014. For additional details see Note 11 of Notes to our Condensed Consolidated Financial Statements.

Term Loan

On April 17, 2009, we entered into a loan agreement with Union Bank under which we borrowed \$30.0 million for a three year term at an interest rate of LIBOR plus 2%, or approximately 2.3% at June 28, 2009. The loan is to be repaid in eight equal quarterly installments of principal plus interest commencing June 30, 2010. For additional details see Note 11 of Notes to our Condensed Consolidated Financial Statements.

Debt Facility Agreement with the Malaysian Government

As of June 28, 2009 and December 28, 2008, we borrowed Malaysian Ringgit 375.0 million, approximately \$106.2 million based on the exchange rate as of June 28, 2009, and Malaysian Ringgit 190.0 million, approximately \$54.6 million based on the exchange rate as of December 28, 2008, respectively, under the facility agreement with the Malaysian Government to finance the construction of our third solar cell manufacturing facility, FAB3, in Malaysia. An additional Malaysian Ringgit 625.0 million, approximately \$176.9 million based on the exchange rate as of June 28, 2009, may be drawn through June 2010. Principal is to be repaid in six quarterly payments starting in July 2015, and a non-weighted average interest rate of approximately 4.4% per annum accrues and is payable starting in July 2015. We have the ability to prepay outstanding loans without premium or penalty and all borrowings must be repaid by October 30, 2016. For additional details see Note 11 of Notes to our Condensed Consolidated Financial Statements.

4.75%, 1.25% and 0.75% Convertible Debentures

In May 2009, we issued \$230.0 million in principal amount of our 4.75% debentures and received net proceeds of \$225.0 million, before payment of the net cost of the convertible debenture hedge transactions of \$26.3 million. Interest on the 4.75% debentures is payable on April 15 and October 15 of each year, beginning on October 15, 2009. Holders of the 4.75% debentures are able to exercise their right to convert the debentures at any time into shares of our class A common stock at a conversion price equal to \$26.40 per \$1,000 principal amount. The applicable conversion rate may adjust in certain circumstances, including upon a fundamental change, as defined in the indenture governing the 4.75% debentures. If not earlier converted, the 4.75% debentures mature on April 15, 2014. Holders may also require us to repurchase all or a portion of their 4.75% debentures upon a fundamental change at a cash repurchase price equal to 100% of the principal amount plus accrued and unpaid interest. In the event of certain events of default, such as our failure to make certain payments or perform or observe certain obligations thereunder, Wells Fargo (the trustee) or holders of a specified amount of then-outstanding 4.75% debentures will have the right to declare all amounts then outstanding due and payable. For additional details see Note 11 of Notes to our Condensed Consolidated Financial Statements.

In February 2007, we issued \$200.0 million in principal amount of our 1.25% debentures and received net proceeds of \$194.0 million. In the fourth quarter of fiscal 2008, we received notices for the conversion of approximately \$1.4 million of the 1.25% debentures which we settled for approximately \$1.2 million in cash and 1,000 shares of class A common stock. Interest on the 1.25% debentures is payable on February 15 and August 15 of each year, which commenced August 15, 2007. The 1.25% debentures mature on February 15, 2027. Holders may require us to repurchase all or a portion of their 1.25% debentures on each of February 15, 2012, February 15, 2017 and February 15, 2022, or if we experience certain types of corporate transactions constituting a fundamental change, as defined in the indenture governing the 1.25% debentures. Any repurchase of the 1.25% debentures pursuant to these provisions will be for cash at a price equal to 100% of the principal amount of the 1.25% debentures to be repurchased plus accrued and unpaid interest. In addition, we may redeem some or all of the 1.25% debentures on or after February 15, 2012 for cash at a redemption price equal to 100% of the principal amount of the 1.25% debentures to be redeemed plus accrued and unpaid interest. For additional details see Note 11 of Notes to our Condensed Consolidated Financial Statements.

In July 2007, we issued \$225.0 million in principal amount of our 0.75% debentures and received net proceeds of \$220.1 million. In the second quarter of fiscal 2009, we repurchased approximately \$73.1 million in principal amount of the 0.75% debentures for \$67.9 million in cash. Interest on the 0.75% debentures is payable on February 1 and August 1 of each year, which commenced February 1, 2008. The 0.75% debentures mature on August 1, 2027. Holders may require us to repurchase all or a portion of their 0.75% debentures on each of August 1, 2010, August 1, 2015, August 1, 2020 and August 1, 2025, or if we experience certain types of corporate transactions constituting a fundamental change, as defined in the indenture governing the 0.75% debentures. Therefore, the 0.75% debentures will be classified as short-term debt in our Condensed Consolidated Balance Sheet beginning on August 1, 2009. Any repurchase of the 0.75% debentures pursuant to these provisions will be for cash at a price equal to 100% of the principal amount of the 0.75% debentures to be repurchased plus accrued and unpaid interest. In addition, we may redeem some or all of the 0.75% debentures on or after August 1, 2010 for cash at a redemption price equal to 100% of the principal amount of the 0.75% debentures to be redeemed plus accrued and unpaid interest. For additional details see Note 11 of Notes to our Condensed Consolidated Financial Statements.

Commercial Project Financing Agreement with Wells Fargo

On June 29, 2009, we signed a commercial project financing agreement with Wells Fargo to fund up to \$100 million of commercial-scale solar system projects during 2009. Pursuant to the financing agreement, we would design and build the systems, and upon completion of each system, sell the systems to Wells Fargo, who would, in turn, lease back the systems to us. Separately, we would enter into power purchase agreements with end customers, who would host the systems and buy the electricity directly from us.

Liquidity

As of June 28, 2009, we had cash and cash equivalents of \$456.8 million as compared to \$202.3 million as of December 28, 2008. The increase in the balance of our cash and cash equivalents as of June 28, 2009 compared to the balance as of December 28, 2008 was primarily due to the receipt of aggregate net proceeds of \$417.6 million from the public offering of 10.35 million shares of our class A common stock and the issuance of \$230.0 million in principal amount of our 4.75% debentures, after deducting the underwriters' discounts and commissions and offering expenses payable by us (including approximately \$26.3 million paid as the net cost of convertible debenture hedge transactions entered into in connection with the 4.75% debenture offering). For additional details see Notes 1 and 11 of Notes to our Condensed Consolidated Financial Statements.

Our cash balances are held in numerous locations throughout the world, including substantial amounts held outside of the U.S. Most of the amounts held outside of the U.S. could be repatriated to the U.S. but, under current law, would be subject to U.S. federal income taxes, less applicable foreign tax credits. We have accrued U.S. federal taxes on the earnings of our foreign subsidiaries except when the earnings are considered indefinitely reinvested outside of the U.S. Repatriation could result in additional U.S. federal income tax payments in future years.

In addition, we had short-term investments and long-term investments of \$0.8 million and \$18.5 million as of June 28, 2009, respectively, as compared to \$17.2 million and \$23.6 million as of December 28, 2008, respectively. Long-term investments are made up of auction rate securities that failed to clear at auctions in subsequent periods and have stated contractual maturities between 20 to 30 years. Due to the illiquidity associated with recent failed auctions, we estimate that auction rate securities we hold with a stated par value of \$21.1 million and \$26.1 million at June 28, 2009 and December 28, 2008, respectively, would be valued at approximately 88% and 91%, respectively, of their stated par value, or \$18.5 million and \$23.6 million, respectively, representing a decline in value of approximately \$2.6 million and \$2.5 million, respectively. Due to one auction rate security's downgrade from a triple-A rating to a Baa1 rating, the length of time that has passed since the auction rate securities failed to clear at auctions and the ongoing uncertainties regarding future access to liquidity, we have determined the impairment is other-than-temporary and recorded impairment losses of \$0.5 million and \$0.6 million during the three and six months ended June 28, 2009, respectively, and \$2.5 million in the fourth quarter of fiscal 2008, in "Other, net" in our Condensed Consolidated Statements of Operations. If market conditions were to deteriorate even further such that the current fair value were not achievable, we could realize additional impairment losses related to our auction rate securities. On February 4, 2009, we sold an auction rate security with a carrying value of \$4.5 million as of December 28, 2008 for \$4.6 million to a third-party outside of the auction process. For additional details see Note 5 of Notes to our Condensed Consolidated Financial Statements.

If the closing price of our class A common stock equaled or exceeded 125% of the initial effective conversion price governing the 1.25% debentures and/or 0.75% debentures for 20 out of 30 consecutive trading days in the last month of the fiscal quarter then holders of the 1.25% debentures and/or 0.75% debentures have the right to convert the debentures any day in the following fiscal quarter. Because the closing price of our class A common stock on at least 20 of the last 30 trading days during the fiscal quarters ending June 28, 2009, March 29, 2009 and December 28, 2008 did not equal or exceed \$70.94, or 125% of the applicable conversion price for our 1.25% debentures, and \$102.80, or 125% of the applicable conversion price for our 0.75% debentures, holders of the 1.25% debentures and 0.75% debentures are unable to exercise their right to convert the debentures, based on the market price conversion trigger, any day in the first, second and third quarters of fiscal 2009. Accordingly, the 1.25% debentures and 0.75% debentures are classified as long-term debt in our Condensed Consolidated Balance Sheets as of June 28, 2009 and December 28, 2008. This test is repeated each fiscal quarter, therefore, if the market price conversion trigger is satisfied in a subsequent quarter, the debentures may again be re-classified as short-term debt. For additional details see Note 11 of Notes to our Condensed Consolidated Financial Statements.

In addition, the holders of our 1.25% debentures and 0.75% debentures would be able to exercise their right to convert the debentures during the five consecutive business days immediately following any five consecutive trading days in which the trading price of our 1.25% debentures and 0.75% debentures is less than 98% of the average of the closing sale price of a share of class A common stock during the five consecutive trading days, multiplied by the applicable conversion rate. As of June 28, 2009 and December 28, 2008, our 1.25% debentures and 0.75% debentures traded significantly below their historic trading prices. If the trading prices of our debentures continue to decline, holders of the 1.25% debentures and 0.75% debentures may have the right to convert the debentures in the future.

We have used, and intend to continue to use, the net proceeds from the public offering of 10.35 million shares of our class A common stock and the issuance of the 4.75% debentures for general corporate purposes, including working capital and capital expenditures as well as for the purposes described below. From time to time, we will evaluate potential acquisitions and strategic transactions of business, technologies, or products, and may use a portion of the net proceeds for such acquisitions or transactions. Currently, however, we do not have any agreements with respect to any such material acquisitions or strategic transactions.

In the second quarter of fiscal 2009, we used \$67.9 million in cash to repurchase approximately \$73.1 million in principal amount of our 0.75% debentures. We may use a portion of the net proceeds from the public offering of 10.35 million shares of our class A common stock and the issuance of our 4.75% debentures to repurchase more of our outstanding 1.25% debentures or 0.75% debentures. We expect that holders of our outstanding 1.25% debentures or 0.75% debentures from whom we may repurchase such debentures (which holders may include one or more of the underwriters) may have outstanding short hedge positions in our class A common stock relating to such debentures. Upon repurchase, we expect that such holders will unwind or offset those hedge positions by purchasing class A common stock in secondary market transactions, including purchases in the open market, and/or entering into various derivative transactions with respect to our class A common stock. These activities could have the effect of increasing, or preventing a decline in, the market price of our class A common stock. The effect, if any, of any of these transactions and activities on the market price of our class A common stock or the debentures will depend in part on market conditions and cannot be ascertained at this time, but may be material.

We believe that our current cash and cash equivalents, cash generated from operations, and funds available from the credit agreement with Wells Fargo and facility agreement with the Malaysian Government will be sufficient to meet our working capital and capital expenditure commitments for at least the next 12 months. However, there can be no assurance that our liquidity will be adequate over time. We expect total capital expenditures in the range of \$250 million to \$300 million in 2009 as we continue to increase our solar cell and solar panel manufacturing capacity in the Philippines and Malaysia. These expenditures would be greater if we decide to bring capacity on line more rapidly. If our capital resources are insufficient to satisfy our liquidity requirements, we may seek to sell additional equity securities or debt securities or obtain other debt financing. However, after the tax-free distribution of our shares by Cypress Semiconductor Corporation, or Cypress, on September 29, 2008, our ability to sell additional equity securities to obtain additional financing is subject to Cypress's consent in certain circumstances to ensure the tax-free nature of its distribution of our class B common stock. The sale of additional equity securities or convertible debt securities would result in additional dilution to our stockholders and may not be available on favorable terms or at all, particularly in light of the current crises in the financial and credit markets. Additional debt would result in increased expenses and would likely impose new restrictive covenants like the covenants under the credit agreement with Wells Fargo, the facility agreement with the Malaysian Government, the term loan with Union Bank, the 4.75% debentures, 1.25% debentures and the 0.75% debentures. Financing arrangements may not be available to us, or may not be available in amounts or on terms acceptable to us.

Contractual Obligations

The following summarizes our contractual obligations at June 28, 2009:

| (In thousands) | Total | Payments Due by Period | | | |
|---|---------------------|---------------------------------|---------------------|-------------------|---------------------|
| | | 2009 (remaining 6 months) | 2010 – 2011 | 2012 – 2013 | Beyond 2013 |
| Customer advances, including interest | \$ 102,891 | \$ 10,295 | \$ 28,596 | \$ 16,000 | \$ 48,000 |
| Convertible debt, including interest | 697,195 | 7,272 | 29,094 | 29,094 | 631,735 |
| Term loan from Union Bank, including interest | 31,547 | 412 | 27,359 | 3,776 | — |
| Loan from Malaysian Government | 106,169 | — | — | — | 106,169 |
| Lease commitments | 31,860 | 2,828 | 8,798 | 5,604 | 14,630 |
| Utility obligations | 750 | — | — | — | 750 |
| Non-cancelable purchase orders | 82,921 | 82,271 | 650 | — | — |
| Purchase commitments under agreements | 4,040,307 | 201,154 | 1,169,761 | 638,366 | 2,031,026 |
| Total | <u>\$ 5,093,640</u> | <u>\$ 304,232</u> | <u>\$ 1,264,258</u> | <u>\$ 692,840</u> | <u>\$ 2,832,310</u> |

Customer advances and interest on customer advances relate to advance payments received from customers for future purchases of solar power products. Convertible debt and interest on convertible debt relate to the aggregate of \$580.5 million in outstanding principal amount of our senior convertible debentures. For the purpose of the table above, we assume that all holders of the 4.75% debentures will hold the debentures through the date of maturity in fiscal 2014 and all holders of the 1.25% debentures and 0.75% debentures will hold the debentures through the date of maturity in fiscal 2027 and upon conversion, the values of the 1.25% debentures and 0.75% debentures are equal to the aggregate principal amount of \$350.5 million with no premiums. The term loan from Union Bank including interest relates to borrowings totaling \$30.0 million for three years at an interest rate of LIBOR plus 2%. The loan from the Malaysian Government relates to amounts borrowed for the financing and operation of FAB3 to be constructed in Malaysia. Lease commitments primarily relate to our 5-year lease agreement with Cypress for our headquarters in San Jose, California, an 11-year lease agreement with an unaffiliated third-party for our administrative, research and development offices in Richmond, California and other leases for various office space. Utility obligations relate to our 11-year lease agreement with an unaffiliated third-party for our administrative, research and development offices in Richmond, California. Non-cancelable purchase orders relate to purchases of raw materials for inventory, services and manufacturing equipment from a variety of vendors. Purchase commitments under agreements relate to arrangements entered into with suppliers of polysilicon, ingots, wafers, solar cells and solar panels as well as agreements to purchase solar renewable energy certificates from solar installation owners in New Jersey. These agreements specify future quantities and pricing of products to be supplied by the vendors for periods up to twelve years and there are certain consequences, such as forfeiture of advanced deposits and liquidated damages relating to previous purchases, in the event that we terminate the arrangements. For additional details see Notes 9 and 11 of Notes to our Condensed Consolidated Financial Statements.

As of June 28, 2009 and December 28, 2008, total liabilities associated with uncertain tax positions under FASB Interpretation No. 48, "Accounting for Uncertainty in Income Taxes, and Related Implementation Issues," or FIN 48, were \$12.9 million and \$12.8 million, respectively, and are included in "Other long-term liabilities" in our Condensed Consolidated Balance Sheets as they are not expected to be paid within the next twelve months. Due to the complexity and uncertainty associated with our tax positions, we cannot make a reasonably reliable estimate of the period in which cash settlement will be made for our liabilities associated with uncertain tax positions in other long-term liabilities, therefore, they have been excluded from the table above. For additional details see Note 9 of Notes to our Condensed Consolidated Financial Statements.

Item 3. Quantitative and Qualitative Disclosure About Market Risk

Foreign Currency Exchange Risk

Our exposure to adverse movements in foreign currency exchange rates is primarily related to sales to European customers that are denominated in Euros. In the second quarter of fiscal 2008, we changed the functional currency of certain European subsidiaries from U.S. dollar to Euro, resulting in greater exposure to changes in the value of the Euro and limiting our ability to fully hedge certain Euro-denominated revenue. Revenue generated from European customers represented 45% and 39% of our total revenue for the three and six months ended June 28, 2009, respectively, compared to 82% and 75% of our total revenue for the three and six months ended June 29, 2008, respectively. A 10% change in the Euro exchange rate would have impacted our revenue by approximately \$13.4 million and \$19.9 million for the three and six months ended June 28, 2009, respectively, compared to \$31.4 million and \$49.2 million for the three and six months ended June 29, 2008, respectively.

In the past, we have experienced an adverse impact on our revenue, gross margin and profitability as a result of foreign currency fluctuations. When foreign currencies appreciate against the U.S. dollar, inventories and expenses denominated in foreign currencies become more expensive. Strengthening of the Korean Won against the U.S. dollar could result in a foreign currency translation loss by our joint venture, Woongjin Energy, which in turn negatively impacts our equity in earnings of the unconsolidated investee. In addition, strengthening of the Malaysian Ringgit against the U.S. dollar will increase our liability under the facility agreement with the Malaysian Government. An increase in the value of the U.S. dollar relative to foreign currencies could make our solar power products more expensive for international customers, thus potentially leading to a reduction in demand, our sales and profitability. Furthermore, many of our competitors are foreign companies that could benefit from such a currency fluctuation, making it more difficult for us to compete with those companies. We currently conduct hedging activities which involve the use of option and forward contracts to address our exposure to changes in the foreign exchange rate between the U.S. dollar and other currencies. As of June 28, 2009, we held option and forward contracts totaling \$50.3 million and \$391.7 million, respectively. As of December 28, 2008, we held option and forward contracts totaling \$147.5 million and \$364.5 million, respectively. Due to the volatility in the current markets, we experienced gains of \$3.2 million and losses of \$2.5 million on derivatives and changes in foreign exchange rates during the three and six months ended June 28, 2009, respectively, compared to losses of \$3.6 million and \$2.8 million in the three and six months ended June 29, 2008, respectively. We cannot predict the impact of future exchange rate fluctuations on our business and operating results. In the past, we have experienced an adverse impact on our revenue and profitability as a result of foreign currency fluctuations. We believe that we may have increased risk associated with currency fluctuations in the future. For additional details see Note 13 of Notes to our Condensed Consolidated Financial Statements.

Credit Risk

We are exposed to credit losses in the event of nonperformance by suppliers which we have provided advanced deposits for future deliveries of polysicon as well as the counter-parties of our foreign currency option contracts, foreign currency forward contracts and Purchased Options to purchase up to approximately 8.7 million shares of our class A common stock, as convertible debenture hedge transactions intended to reduce the potential dilution upon conversion of our 4.75% debentures. We enter into agreements with vendors that specify future quantities and pricing of polysilicon to be supplied for periods up to 12 years. Under certain agreements, we are required to make prepayments to the vendors over the terms of the arrangements. As of June 28, 2009 and December 28, 2008, advances to suppliers totaled \$141.1 million and \$162.6 million, respectively.

In addition, we enter into foreign currency derivative contracts and convertible debenture hedge transactions with high-quality financial institutions and limit the amount of credit exposure to any one counter-party. The foreign currency derivative contracts are limited to a time period of less than one year, while the Purchased Options will expire in 2014, and we continuously evaluate the credit standing of our counter-party financial institutions. For additional details see Notes 7, 11 and 13 of Notes to our Condensed Consolidated Financial Statements.

Interest Rate Risk

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

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

Reserve Funds

As of June 28, 2009 and December 28, 2008, we had \$0.8 million and \$7.2 million, respectively, invested in the Reserve Primary Fund and the Reserve International Liquidity Fund, or collectively referred to as the Reserve Funds. The net asset value per share for the Reserve Funds fell below \$1.00 because the funds had investments in Lehman, which filed for bankruptcy on September 15, 2008. As a result of this event, the Reserve Funds wrote down their investments in Lehman to zero and also announced that the funds would be closed and distributed to holders. We have estimated our loss on the Reserve Funds to be approximately \$2.2 million based upon information publicly disclosed by the Reserve Funds relative to our holdings and remaining obligations. We recorded impairment charges of zero and \$1.2 million during the three and six months ended June 28, 2009, respectively, and \$1.0 million during the second half of fiscal 2008, in "Other, net" in our Condensed Consolidated Statements of Operations, thereby establishing a new cost basis for each fund.

We expect that the remaining distribution of \$0.8 million from the Reserve Funds will occur over the remaining six months as the investments held in the funds mature. While we expect to receive substantially all of the current carrying value of our holdings in the Reserve Funds within the next six months, it is possible we may encounter difficulties in receiving distributions given the current credit market conditions. If market conditions were to deteriorate even further such that the current fair value was not achievable, we could realize additional losses in our holdings with the Reserve Funds and distributions could be further delayed. For additional details see Note 5 of Notes to our Condensed Consolidated Financial Statements.

Auction Rate Securities

Auction rate securities are variable rate debt instruments with interest rates that, unless they fail to clear at auctions, are reset in pre-determined intervals every 7 to 49 days. The "stated" or "contractual" maturities for these securities generally are between 20 to 30 years. The auction rate securities are classified as available for sale under SFAS No. 115, "Accounting for Certain Investments in Debt and Equity Securities," or SFAS No. 115, and are recorded at fair value. We estimated that the auction rate securities held with a stated par value of \$21.1 million and \$26.1 million as of June 28, 2009 and December 28, 2008, respectively, would be valued at approximately 88% and 91%, respectively, of their stated par value, or \$18.5 million and \$23.6 million, respectively, representing a decline in value of approximately \$2.6 million and \$2.5 million, respectively. Due to one auction rate security's downgrade from a triple-A rating to a Baa1 rating, the length of time that has passed since the auctions failed and the ongoing uncertainties regarding future access to liquidity, we have determined the impairment is other-than-temporary and recorded impairment losses of \$0.5 million and \$0.6 million during the three and six months ended June 28, 2009, respectively, and \$2.5 million in the fourth quarter of fiscal 2008, in "Other, net" in our Condensed Consolidated Statements of Operations. If market conditions were to deteriorate even further such that the current fair value was not achievable, we could realize additional impairment losses related to our auction rate securities. All our auction rate securities as of June 28, 2009 and December 28, 2008 have failed to clear at auctions in subsequent periods. On February 4, 2009, we sold an auction rate security with a carrying value of \$4.5 million as of December 28, 2008 for \$4.6 million to a third-party outside of the auction process. For additional details see Note 5 of Notes to our Condensed Consolidated Financial Statements.

Investments in Non-Public Companies

Our investments held in non-public companies expose us to equity price risk. As of June 28, 2009 and December 28, 2008, non-publicly traded investments of \$33.4 million and \$29.0 million, respectively, are accounted for using the equity method, and \$3.1 million are accounted for using the cost method. These strategic investments in third-parties are subject to risk of changes in market value, which if determined to be other-than-temporary, could result in realized impairment losses. We generally do not attempt to reduce or eliminate our market exposure in these equity and cost method investments. We monitor these non-publicly traded investments for impairment and record reductions in the carrying values when necessary. Circumstances that indicate an other-than-temporary decline include valuation ascribed to the issuing company in subsequent financing rounds, decreases in quoted market price and declines in operations of the issuer. During the fourth quarter of fiscal 2008, we recorded an other-than-temporary impairment charge of \$1.9 million in our Condensed Consolidated Statement of Operations related to our non-publicly traded investment accounted for using the cost method, due to the deterioration of the credit market and economic environment. If the recent credit market conditions continue or worsen, we may be required to record an additional impairment charge, which could be material. There can be no assurance that our equity and cost method investments will not face additional risks of loss. For additional details see Note 5 and 10 of Notes to our Condensed Consolidated Financial Statements.

Convertible Debt

The fair market value of our senior convertible debentures is subject to interest rate risk, market price risk and other factors due to the convertible feature of the debentures. The fair market value of the debentures will generally increase as interest rates fall and decrease as interest rates rise. In addition, the fair market value of the debentures will generally increase as the market price of our class A common stock increases and decrease as the market price of our class A common stock falls. The interest and market value changes affect the fair market value of the debentures but do not impact our financial position, cash flows or results of operations due to the fixed nature of the debt obligations. The aggregate estimated fair value of the 4.75% debentures, 1.25% debentures and 0.75% debentures was approximately \$557.8 million as of June 28, 2009 and the aggregate estimated fair value of the 1.25% debentures and 0.75% debentures was approximately \$310.7 million as of December 28, 2008, based on quoted market prices as reported by an independent pricing source. A 10% increase in quoted market prices would increase the estimated fair value of our then-outstanding debentures to approximately \$613.6 million and \$341.8 million as of June 28, 2009 and December 28, 2008, respectively, and a 10% decrease in the quoted market prices would decrease the estimated fair value of our then-outstanding debentures to approximately \$502.0 million and \$279.7 million as of June 28, 2009 and December 28, 2008, respectively. For additional details see Note 11 of Notes to our Condensed Consolidated Financial Statements.

Item 4. Controls and Procedures**Evaluation of Disclosure Controls and Procedures**

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

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

Changes in Internal Control over Financial Reporting

We maintain a system of internal control over financial reporting that is designed to provide reasonable assurance that our books and records accurately reflect our transactions and that our established policies and procedures are followed. There were no changes in our internal control over financial reporting that occurred during the three months ended June 28, 2009 that materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

PART II. OTHER INFORMATION

Item 1. LEGAL PROCEEDINGS

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

Item 1A: RISK FACTORS

In addition to the other information set forth in this report, you should carefully consider the risk factors discussed in “PART I. Item 1A: Risk Factors” in our Annual Report on Form 10-K for the year ended December 28, 2008, which could materially affect our business, financial condition or future results. The risks described in our Annual Report on Form 10-K are not the only risks facing our company. Additional risks and uncertainties not currently known to us or that we currently deem to be immaterial also may materially adversely affect our business, financial condition or future results. We have updated these risk factors to reflect changes during the first half of fiscal 2009.

Risks Related to Our Sales Channels

Our operating results will be subject to fluctuations and are inherently unpredictable.

We do not know if our revenue will grow, or if it will grow sufficiently to outpace our expenses, which we expect to increase as we expand our manufacturing capacity. We may not be profitable on a quarterly or an annual basis. Our quarterly revenue and operating results will be difficult to predict and have in the past fluctuated from quarter to quarter. In particular, our Systems Segment is difficult to forecast and is susceptible to large fluctuations in financial results. The amount, timing and mix of sales of our Systems Segment, often for a single medium or large-scale project, may cause large fluctuations in our revenue and other financial results. Further, our revenue mix of high margin materials sales versus lower margin projects in the Systems Segment can fluctuate dramatically quarter to quarter, which may adversely affect our revenue and financial results in any given period. Finally, our ability to meet project completion schedules for an individual project and the corresponding revenue impact under the percentage-of-completion method of recognizing revenue may similarly cause large fluctuations in our revenue and other financial results. This may cause us to miss any future guidance announced by us.

We base our planned operating expenses in part on our expectations of future revenue, and a significant portion of our expenses is fixed in the short-term. If revenue for a particular quarter is lower than we expect, we likely will be unable to proportionately reduce our operating expenses for that quarter, which would harm our operating results for that quarter. This may cause us to miss any guidance announced by us.

Risks Related to Our Operations

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

Historically, we have relied on Jiawei SolarChina Co., Ltd., a third-party subcontractor in China, to assemble a significant portion of our solar cells into solar panels and perform panel testing and to manage packaging, warehousing and shipping of our solar panels. In May 2009, we entered into an arrangement with Jabil Circuit, Inc. for similar services that will be provided in Mexico. As a result of outsourcing a significant portion of this final step in our production, we face several significant risks, including limited control over assembly and testing capacity, delivery schedules, quality assurance, manufacturing yields and production costs. If the operations of Jiawei or Jabil were disrupted or their financial stability impaired, or if they were unable or unwilling to devote capacity to our solar panels in a timely manner, our business could suffer as we might be unable to produce finished solar panels on a timely basis. We also risk customer delays resulting from an inability to move module production to an alternate provider or to complete production internationally, and it may not be possible to obtain sufficient capacity or comparable production costs at another facility in a timely manner. In addition, migrating our design methodology to a new third-party subcontractor or to a captive panel assembly facility could involve increased costs, resources and development time, and utilizing additional third-party subcontractors could expose us to further risk of losing control over our intellectual property and the quality of our solar panels. Any reduction in the supply of solar panels could impair our revenue by significantly delaying our ability to ship products and potentially damage our relationships with new and existing customers, any of which could have a material and adverse effect on our financial condition and results of operation.

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

Recent Sales of Unregistered Securities

On April 14, 2009 we completed the acquisition of Tilt Solar, LLC, a California limited liability company, pursuant to a Membership Interest Purchase Agreement, dated as of April 14, 2009, by and among the selling stockholders and SunPower. Under the terms of the Purchase Agreement, we purchased the outstanding membership interest of Tilt Solar from the selling stockholders for an aggregate purchase price equal to 55,471 shares of our class A common stock, which shares of our class A common stock were subsequently registered for resale pursuant to a prospectus supplement that we filed with the SEC on April 24, 2009. We will not receive any proceeds from the resale of such shares of class A common stock.

Issuer Purchases of Equity Securities

The following table sets forth all purchases made by or on behalf of the Company or any “affiliated purchaser,” as defined in Rule 10b-18(a) (3) under the Securities Exchange Act of 1934, of shares of our class A common stock during each of the indicated months.

| Period | Total Number of Shares Purchased (in thousands) | Average Price Paid Per Share | Total Number of Shares Purchased as Part of Publicly Announced Plans or Programs | Maximum Number of Shares That May Yet Be Purchased Under the Publicly Announced Plans or Programs |
|--|---|---------------------------------|--|--|
| March 30, 2009 through April 26, 2009(1) | 4 | \$25.11 | — | — |
| April 27, 2009 through May 24, 2009(2) | 15 | \$26.19 | — | — |
| May 25, 2009 through June 28, 2009(1) | 14 | \$29.48 | — | — |
| Total | 33 | \$27.39 | — | — |

- (1) The total number of shares purchased includes only shares surrendered to satisfy tax withholding obligations in connection with the vesting of restricted stock issued to employees.
- (2) Shares repurchased were open-market purchases made by Dennis V. Arriola, our Senior Vice President and Chief Financial Officer, or Mr. McDaniel and were previously disclosed on Forms 4 filed with the SEC as well as shares surrendered to satisfy tax withholding obligations in connection with the vesting of restricted stock issued to employees.

Item 4: SUBMISSION OF MATTERS TO A VOTE OF SECURITY HOLDERS

At our annual meeting of stockholders on May 8, 2009, stockholders (1) re-elected two Class I directors and (2) ratified the appointment of PricewaterhouseCoopers LLP as our independent registered public accounting firm for the fiscal year ending January 3, 2010. Each holder of shares of class A common stock was entitled to one vote for each share of class A common stock held as of the record date of March 10, 2009, and each holder of shares of class B common stock was entitled to eight votes for each share of class B common stock held as of such date. After giving effect to the increased voting power of class B common stock the voting results were as follows:

- Proposal One — Class I Directors Nominated for Re-Election:

| | Number of Votes | |
|----------------|-----------------|-------------|
| | For | Withheld |
| Uwe-Ernst Bufe | 314,669,657 | 15,337,481 |
| Pat Wood III | 178,247,394 | 151,759,744 |

- Proposal Two — Ratification of PricewaterhouseCoopers LLP:

| Number of Votes | | | |
|-----------------|-----------|---------|------------------|
| For | Against | Abstain | Broker Non-Votes |
| 327,210,653 | 2,275,435 | 435,567 | 0 |

Ms. Betsy S. Atkins and Messrs. W. Steve Albrecht, Thomas R. McDaniel, T.J. Rodgers and Thomas H. Werner also continued to serve as directors following the annual meeting of stockholders. Their terms of office as directors did not expire in 2009 and were therefore not included in the nomination and election process of this year’s annual meeting of stockholders.

Item 6: EXHIBITS

| Exhibit Number | Description |
|-----------------------|--|
| 4.1 | Third Supplemental Indenture, dated May 4, 2009, by and between SunPower Corporation and Wells Fargo Bank, N.A., as Trustee (incorporated by reference to Exhibit 4.1 to the Current Report on Form 8-K filed by SunPower Corporation on May 6, 2009). |
| 4.2 | Form of 4.75% Senior Convertible Debenture due 2014 (incorporated by reference to Exhibit 4.2 to the Current Report on Form 8-K filed by SunPower Corporation on May 6, 2009). |
| 10.1*† | Amendment No. 1 to Long-Term Ingot and Wafer Supply Agreement, dated November 20, 2007, by and between SunPower Corporation and NorSun AS. |
| 10.2*† | First Amendment to Amended and Restated Credit Agreement, dated April 17, 2009, by and between SunPower Corporation and Wells Fargo Bank, National Association. |
| 10.3* | Third Party Pledge Agreement, dated May 20, 2009, by and between SunPower Corporation, Systems and Wells Fargo Bank, National Association. |
| 10.4* | Amended and Restated Security Agreement: (Deposit Accounts), dated April 17, 2009, by and between SunPower Corporation and Wells Fargo Bank, National Association. |
| 10.5* | Second Amended and Restated Joint Addendum to Security Agreement (Deposit Accounts) and Security Agreement (Securities Account), dated April 17, 2009, by and between SunPower Corporation and Wells Fargo Bank, National Association. |
| 10.6* | Loan Agreement, dated April 17, 2009, by and between SunPower Corporation and Union Bank, N.A. |
| 10.7*† | Security Agreement, dated April 17, 2009, by and between SunPower Corporation and Union Bank, N.A. |
| 10.8* | Continuing Guaranty, dated April 17, 2009, by and among SunPower Corporation, Systems, SunPower North America, LLC and Union Bank, N.A. |
| 10.9*† | Photovoltaic Equipment Master Supply Agreement, dated April 21, 2009, by and between SunPower Corporation, Systems and FPL Group, Inc. |
| 10.10 | Convertible Debenture Hedge Transaction Confirmation, dated April 28, 2009, by and between SunPower Corporation and Wachovia Bank, National Association (incorporated by reference to Exhibit 10.1 to the Current Report on Form 8-K filed by SunPower Corporation on April 30, 2009). |
| 10.11 | Convertible Debenture Hedge Transaction Confirmation, dated April 28, 2009, by and between SunPower Corporation and Credit Suisse International (incorporated by reference to Exhibit 10.2 to the Current Report on Form 8-K filed by SunPower Corporation on April 30, 2009). |
| 10.12 | Convertible Debenture Hedge Transaction Confirmation, dated April 28, 2009, by and between SunPower Corporation and Deutsche Bank AG, London Branch (incorporated by reference to Exhibit 10.3 to the Current Report on Form 8-K filed by SunPower Corporation on April 30, 2009). |
| 10.13 | Warrant Transaction Confirmation, dated April 28, 2009, by and between SunPower Corporation and Wachovia Bank, National Association (incorporated by reference to Exhibit 10.4 to the Current Report on Form 8-K filed by SunPower Corporation on April 30, 2009). |
| 10.14 | Warrant Transaction Confirmation, dated April 28, 2009, by and between SunPower Corporation and Credit Suisse International (incorporated by reference to Exhibit 10.5 to the Current Report on Form 8-K filed by SunPower Corporation on April 30, 2009). |
| 10.15 | Warrant Transaction Confirmation, dated April 28, 2009, by and between SunPower Corporation and Deutsche Bank AG, London Branch (incorporated by reference to Exhibit 10.6 to the Current Report on Form 8-K filed by SunPower Corporation on April 30, 2009). |
| 31.1* | Certification by Chief Executive Officer Pursuant to Rule 13a-14(a)/15d-14(a). |
| 31.2* | Certification by Chief Financial Officer Pursuant to Rule 13a-14(a)/15d-14(a). |
| 32.1* | Certification Furnished Pursuant to 18 U.S.C. Section 1350 as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002. |

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

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

SIGNATURES

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

SUNPOWER CORPORATION

Dated: July 31, 2009

By: /s/ DENNIS V. ARRIOLA

Dennis V. Arriola
Senior Vice President and
Chief Financial Officer

Index to Exhibits

| Exhibit Number | Description |
|-----------------------|--|
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| 10.2*† | First Amendment to Amended and Restated Credit Agreement, dated April 17, 2009, by and between SunPower Corporation and Wells Fargo Bank, National Association. |
| 10.3* | Third Party Pledge Agreement, dated May 20, 2009, by and between SunPower Corporation, Systems and Wells Fargo Bank, National Association. |
| 10.4* | Amended and Restated Security Agreement: (Deposit Accounts), dated April 17, 2009, by and between SunPower Corporation and Wells Fargo Bank, National Association. |
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Exhibits marked with an asterisk (*) are filed herewith.

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

CONFIDENTIAL TREATMENT REQUESTED

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

Amendment no. 1 to

Long-Term Ingot and Wafer Supply Agreement

between

NorSun AS

and

SunPower Corporation

JW

JH

This Amendment No. 1 to the Long-Term Ingot and Wafer Supply Agreement dated 9. August 2007 (the “Amendment”) is entered into as of __. November 2007 (the “Amendment Date”), between SunPower Corporation, a company organized under the laws of Delaware, USA, with registered address 3939 North First Street, San Jose, California 95134, USA ("SunPower") and NorSun AS, a company organized under the laws of Norway with registered address Bankplassen 1, 0151 OSLO.

WHEREAS SunPower and NorSun (collectively referred to as the “Parties”) are parties to a certain Long-Term Ingot and Wafer Supply Agreement, effective as of 9. August 2007 (the “Wafer and Ingot Agreement”). Capitalized terms not otherwise defined in this Amendment shall have the meanings given to such terms in the Contract.

WHEREAS The Parties desire to amend the Wafer and Ingot Agreement to modify certain supply quantities for Polysilicon.

Agreement

The parties to this Amendment, intending to be legally bound, agree as follows:

- 1. Schedule no. 2:** The quantities of Polysilicon set forth in column 6 of Schedule 2 for 2007 and 2008 shall be amended as follows:

Polysilicon to be supplied by Sunpower to NorSun in December 2007, (Schedule 2, line 3, column 6) shall be changed from *** to *** metric tonnes (“MT”)

Polysilicon to be supplied by Sunpower to NorSun in March 2008, (Schedule 2, line 6, column 6) shall be changed from *** to ***MT.
- 2. Execution:** This Amendment is executed in two counterparts, one to each of the Parties.
- 3. Effect of Amendment.** Except as specifically modified herein, all terms and conditions of the Wafer and Ingot Agreement shall continue in full force and effect.

The parties have caused this Amendment to be executed and delivered as of the Amendment Date.

| For and on behalf of NorSun AS | For and on behalf of Sunpower Corporation | |
|-----------------------------------|--|----------|
| /s/ Jon Hindar | /s/ Jon Whiteman | 11-20-07 |
| Name: Jon Hindar | Name: Jon Whiteman | |
| Title: Chief Executive Officer | Title: Vice President, Strategic Supply | |

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

CONFIDENTIAL TREATMENT REQUESTED

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

FIRST AMENDMENT TO AMENDED AND RESTATED CREDIT AGREEMENT

THIS FIRST AMENDMENT TO AMENDED AND RESTATED CREDIT AGREEMENT (this "Amendment") is entered into as of April 17, 2009, by and between SUNPOWER CORPORATION, a Delaware corporation ("Borrower"), and WELLS FARGO BANK, NATIONAL ASSOCIATION ("Bank").

RECITALS

WHEREAS, Borrower is currently indebted to Bank pursuant to the terms and conditions of that certain Amended and Restated Credit Agreement between Borrower and Bank dated as of March 20, 2009, as amended from time to time ("Credit Agreement").

WHEREAS, Bank and Borrower have agreed to certain changes in the terms and conditions set forth in the Credit Agreement and have agreed to amend the Credit Agreement to reflect said changes.

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree that the Credit Agreement and certain other of the Loan Documents shall be amended as follows:

1. The following defined terms and their respective definitions are hereby deemed incorporated into the Credit Agreement:

"Approved Currency" means (a) the lawful currency of the United States, Great Britain, Canada, Japan, Australia, or of any of the Participating Member States introduced in accordance with the EMU Legislation, or (b) any other currency approved by Bank in its sole discretion.

"L/C Line Commitment Amount" means the Dollar Equivalent Amount of \$150,000,000.00.

"L/C Line Exposure" means the aggregate Dollar Equivalent Amount available to be drawn under Letters of Credit plus the Dollar Equivalent Amount drawn and not yet reimbursed under Letters of Credit.

"Line of Credit Commitment Amount" means the Dollar Equivalent Amount of \$50,000,000.00.

"Line of Credit Exposure" means the aggregate of the outstanding principal balance of advances outstanding under the Line of Credit, plus the aggregate Dollar Equivalent Amount available to be drawn under Subfeature Letters of Credit plus the Dollar Equivalent Amount drawn and not yet reimbursed under Subfeature Letters of Credit.

"Dollar Equivalent Amount" means, at any time, (a) with respect to any amount denominated in Dollars, such amount, and (b) with respect to any amount denominated in a currency other than Dollars, the equivalent amount thereof in Dollars as determined by Bank at such time on the basis of the Spot Rate (determined in respect of the most recent Revaluation Date) for the purchase of Dollars with the applicable Approved Currency. The term "Equivalent Amount" as used with respect to determining the equivalent amount of a currency in a currency

other than Dollars shall have the same meaning except that the other currency shall be substituted for Dollars in the foregoing definition.

“Dollars” means the lawful currency of the United States of America.

“EMU Legislation” means the legislative measures of the European Council for the introduction of, changeover to or operation of a single or unified European currency.

“Participating Member State” means each state so described in any EMU Legislation.

“Revaluation Date” means each of the following: (a) each date on which an Approved Currency-denominated Subfeature Letter of Credit or Letter of Credit, as applicable, is issued or renewed, (b) the last Business Day of each month, and (c) if an Event of Default under any of the Loan Documents has occurred and is continuing, such additional dates as Bank may determine.

“Spot Rate” for Dollars or another Approved Currency means the rate quoted by the Bank as the spot rate for the purchase by the Bank of such currency with the other currency through its foreign exchange desk (San Francisco time) on the date two Business Days prior to the date as of which the foreign exchange computation is made.

2. Section 1.1 is hereby amended to read as follows:

“SECTION 1.1. LINE OF CREDIT.

- (a) Line of Credit. Subject to the terms and conditions of this Agreement, Bank hereby agrees to make advances (in Dollars only) to and issue Subfeature Letters of Credit (as defined and described below) for the account of Borrower from time to time up to and including March 27, 2010, not to exceed at any time the Line of Credit Commitment Amount (the "Line of Credit"), the proceeds of which shall be used for working capital and other corporate requirements. Borrower's obligation to repay advances under the Line of Credit shall be evidenced by a promissory note dated as of March 20, 2009 ("Line of Credit Note"), all terms of which are incorporated herein by this reference.
- (b) Letter of Credit Subfeature. As a subfeature under the Line of Credit, Bank agrees from time to time during the term thereof to issue or cause an affiliate to issue standby letters of credit (denominated in an Approved Currency) for the account of Borrower (each, a "Subfeature Letter of Credit" and collectively, "Subfeature Letters of Credit"); provided however, that the Line of Credit Exposure shall not at any time exceed the Line of Credit Commitment Amount. The form and substance of each Subfeature Letter of Credit shall be subject to approval by Bank, in its sole discretion. Each Subfeature Letter of Credit shall be issued for an initial term not to exceed three hundred sixty-five (365) days, as designated by Borrower; provided however, that if Borrower requests that Bank issue a Subfeature Letter of Credit hereunder with a final expiration subsequent to the maturity date of the Line of Credit, such Subfeature Letter of Credit shall provide for automatic renewals of the expiration date thereof (up to the final expiration date thereof, to be agreed upon by Bank and Borrower) subject to Bank's right to prevent any such renewal from occurring by sending notice to that effect to the beneficiary not less than 60 days prior to the initial (or any extended) expiration date. The undrawn amount of all Subfeature Letters of Credit shall be reserved under the Line of Credit and shall not be available for borrowings thereunder. Each Subfeature Letter of

Credit shall be subject to the additional terms and conditions of the Standby Letter of Credit Agreement previously executed by Borrower and of applications and any related documents required by Bank in connection with the issuance thereof. Each drawing paid under a Subfeature Letter of Credit shall be deemed an advance under the Line of Credit and shall be repaid by Borrower in accordance with the terms and conditions of this Agreement applicable to such advances; provided however, that if advances under the Line of Credit are not available, for any reason, at the time any drawing is paid, then Borrower shall immediately pay to Bank the full amount drawn, together with interest thereon from the date such drawing is paid to the date such amount is fully repaid by Borrower, at the rate of interest applicable to advances under the Line of Credit. In such event Borrower agrees that Bank, in its sole discretion, may debit any account maintained by Borrower with Bank for the amount of any such drawing. In the event that any Subfeature Letters of Credit remain outstanding on the maturity date of the Line of Credit (and the Line of Credit has not been renewed or extended), Borrower shall on demand by Bank deliver to Bank cash or cash equivalents acceptable to Bank, to be maintained in an account at Bank (including at its Cayman Islands Branch) to be maintained separate and apart from any account which secures the Letter of Credit Line (the "Line of Credit Cash Collateral Account"), in the aggregate Dollar Equivalent Amount then available to be drawn under such outstanding Subfeature Letter of Credit (plus the amount drawn and not yet reimbursed under Subfeature Letters of Credit) in which Bank is granted a possessory security interest of first priority.

- (b) Borrowing and Repayment. Borrower may from time to time during the term of the Line of Credit borrow, partially or wholly repay its outstanding borrowings, and reborrow, subject to all of the limitations, terms and conditions contained herein or in the Line of Credit Note; provided however, that the total outstanding borrowings under the Line of Credit shall not at any time exceed the maximum principal amount available thereunder, as set forth above, subject to the terms of Section 1.2(d).

(c) Spot Rate Determination. Bank will determine the Spot Rate as of each Revaluation Date to be used for calculating Dollar Equivalent Amounts of Foreign-denominated Subfeature Letters of Credit. Such Spot Rate will become effective as of such Revaluation Date and will be the Spot Rate employed in converting any amounts between the applicable currencies until the next Revaluation Date to occur.

(d) Limitations. If Bank notifies Borrower at any time that the Line of Credit Exposure at such time exceeds 100% of the Line of Credit Commitment Amount, Borrower will either prepay advances under the Line of Credit in an aggregate amount sufficient to reduce such Line of Credit Exposure as of such date of prepayment to an amount not to exceed 100% of the Line of Credit Commitment Amount and/or to deposit Dollars in an amount equal to 110% of such excess into a Line of Credit Cash Collateral Account."

3. Section 1.2 is hereby amended to read as follows:

"SECTION 1.2. LETTER OF CREDIT LINE.

- (a) Letter of Credit Line. Subject to the terms and conditions of this Agreement, Bank hereby agrees to establish a letter of credit line ("Letter of Credit Line") under which Bank shall issue or cause an affiliate to issue commercial and standby letters of credit (denominated in an Approved Currency) for the account of Borrower to finance

working capital and other corporate requirements (each, a "Letter of Credit" and collectively, "Letters of Credit") from time to time up to and including March 27, 2014; provided however, that the aggregate of all undrawn amounts, and all amounts drawn and unreimbursed, under any Letters of Credit issued under the Letter of Credit Line shall not at any time exceed the L/C Line Commitment Amount. The form and substance of each Letter of Credit shall be subject to approval by Bank, in its sole discretion. Each Letter of Credit shall be issued for a term not to extend beyond March 27, 2014, as designated by Borrower. Each Letter of Credit shall be subject to the additional terms of the Commercial and Standby Letter of Credit Agreements, as applicable, to be dated as of the date of their respective execution, applications thereunder, and any related documents required by Bank in connection with the issuance thereof (each, a "Letter of Credit Agreement"). Bank shall be under no obligation to issue any Letter of Credit if, following its issuance, the Required Collateral Value would be less than the amount required under the Second Amended and Restated Joint Addendum to Amended and Restated Security Agreement (Deposits Account) and Security Agreement (Securities Account) dated as of April 17, 2009 - (the "Addendum")

(b) Repayment of Drafts. Each drawing paid under any Letter of Credit shall be repaid by Borrower in accordance with the provisions of the applicable Letter of Credit Agreement.

(c) Spot Rate Determination. Bank will determine the Spot Rate as of each Revaluation Date to be used for calculating Dollar Equivalent Amounts of Letters of Credit denominated in Approved Currencies other than Dollars. Such Spot Rate will become effective as of such Revaluation Date and will be the Spot Rate employed in converting any amounts between the applicable currencies until the next Revaluation Date to occur.

4. Section 1.5 is hereby amended to read as follows:

"SECTION 1.5. COLLATERAL.

As security for all indebtedness of Borrower to Bank in connection with Letters of Credit issued (or deemed issued) under the Letter of Credit Line, Borrower shall grant to Bank security interests in (i) Borrower's deposit account *** maintained at Bank (the "U.S. Deposit Account"), Borrower's multi-currency account accounts as set forth in Schedule A hereto (as said Schedule may be supplemented from time to time) and as maintained at Bank's Cayman Islands branch (the "Multi-currency Accounts") and Borrower's investment account *** maintained at Bank (the "Securities Account"), in each case including renewals thereof, together with all proceeds thereof.

All of the foregoing shall be evidenced by and subject to the terms of, with respect to the U.S. Deposit Account and Multi-currency Accounts, an Amended and Restated Security Agreement (Deposit Accounts) dated as of April 17, 2009, and with respect to the Securities Account, a Security Agreement (Securities Account) dated as of March 18, 2008, a Securities Account Control Agreement dated March 18, 2008, and, with respect to all of the foregoing, the Addendum.

In addition to the foregoing collateral, Borrower shall, on or before April 30, 2009, cause SunPower Corporation, Systems to pledge to Bank 60% of the stock in SunPower Systems SA ("SPSA") to secure up to \$50,000,000 of the obligations of Borrower hereunder, and, in connection therewith, shall by said date, deliver to Bank such documents as Bank may require

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to evidence such pledge, to include, without limitation, a legal opinion from Swiss counsel in form and substance acceptable to Bank. Borrower shall ensure that in the event of issuance of additional stock in SPSA, 60% of such additional stock is promptly pledged to Bank.”

Borrower shall pay to Bank immediately upon demand the full amount of all charges, costs and expenses (to include fees paid to third parties and all allocated costs of Bank personnel), expended or incurred by Bank in connection with any of the foregoing security.”

5. The following is added as a new last sentence to Section 1.6:

“In the event of a conflict between the terms of this Agreement and the terms of any guaranty required hereunder, the terms of this Agreement shall control.”

6. The following sentence is added at the end of Section 4.9(a):

“For purposes of this covenant, funds (in an amount not to exceed \$11,000,000.00) maintained in an account at UBOC (as defined below) pursuant to the requirements of Borrower’s loan agreement with UBOC shall be deemed to constitute unrestricted cash so long Borrower has not granted to any party (including UBOC) a security interest in such funds or deposit account.”

7. The last sentence of Section 4.9(b) is hereby amended to read as follows:

“Without limitation of the foregoing, Total Liabilities shall include the amount available to be drawn under all outstanding letters of credit (including Letters of Credit and Subfeature Letters of Credit and letters of credit issued by UBOC) issued for the account of Borrower and/or any Subsidiary.”

8. Section 5.3 is hereby amended to read as follows:

“SECTION 5.3. OTHER INDEBTEDNESS. Create, incur, assume or permit to exist any indebtedness or liabilities resulting from borrowings, loans or advances, whether secured or unsecured, matured or unmatured, liquidated or unliquidated, joint or several, except (a) the liabilities of Borrower or such Third Party Obligor to Bank, and (b) Permitted Indebtedness. “Permitted Indebtedness” shall mean (i) indebtedness of Borrower or a Third Party Obligor to Borrower or any Subsidiary in the ordinary course of business, (ii) indebtedness in favor of Solon AG and its affiliates under the Amended and Restated Supply Agreement, dated as of April 14, 2005, as amended, between Borrower and Solon AG fur Solartechnik; (iii) indebtedness in favor of customers and suppliers of the Borrower and Third Party Obligors in connection with supply and purchase agreements in an aggregate principal amount not to exceed Two Hundred Million Dollars (\$200,000,000.00) at any one time and any refinancings, refundings, renewals or extensions thereof (without shortening the maturity thereof or increasing the principal amount thereof); (iv) 1.25% senior convertible debentures issued in February 2007 in the aggregate principal amount of Two Hundred Million Dollars (\$200,000,000.00) plus accrued interest thereon; (v) obligations owed to bonding companies in connection with obligations under bonding contracts (however titled) entered into in the ordinary course of business, pursuant to which such bonding companies issue bonds or otherwise secure performance of Borrower and Subsidiaries for the benefit of their customers and contract counterparties; (vi) 0.75% senior convertible debentures issued in August 2007 in the aggregate principal amount of Two Hundred Twenty-Five Million Dollars

(\$225,000,000.00) plus accrued interest thereon; (vii) unsecured indebtedness to International Finance Corporation in a principal amount not to exceed \$75,000,000.00, provided that (1) prior to Borrower or any Third Party Obligor entering into any definitive or binding agreement with respect to any such indebtedness, Bank shall have reviewed and approved in writing all material terms and conditions of such indebtedness, and (2) the loan agreement and other definitive agreements (the "IFC Documents") are in all material respects consistent with such terms and conditions; (viii) indebtedness to Union Bank of California ("UBOC") consisting of an unsecured term loan in a principal amount not to exceed \$30,000,000.00, provided that (1) prior to Borrower or any Third Party Obligor entering into any definitive or binding agreement with respect to any such indebtedness, Bank shall have reviewed and approved in writing all material terms and conditions of such indebtedness, and (2) the loan agreement and other definitive agreements (the "UBOC Documents") are in all material respects consistent with such terms and conditions; (ix) additional indebtedness of Borrower and Third Party Obligors in an aggregate principal amount not to exceed Twenty Five Million Dollars (\$25,000,000.00) outstanding at any one time; and (x) accrued interest on any of the foregoing. For clarity, Bank and Borrower agree that Borrower's or any Subsidiary's trade payables incurred in the ordinary course of business do not constitute indebtedness prohibited or restricted by the terms of this Section 5.3. Borrower shall not agree to any amendment of or departure from any terms or conditions of the IFC Documents or the UBOC Documents which would render the terms thereof more restrictive or onerous to Borrower or any Third Party Obligor than the material terms and conditions reviewed and approved by Bank in writing.

9. Section 5.4(iv) is hereby amended to read as follows:

(iv) unsecured guarantees of indebtedness of SunPower Philippines Manufacturing Limited to International Finance Corporation in an aggregate amount (when added to indebtedness described in clause 5.3(vii)) not to exceed, at any time, Seventy Five Million Dollars (\$75,000,000), subject to the terms of such clause 5.3(vii);"

9. Section 6.1(d) is hereby amended to read as follows:

"(d) Any default in the payment or performance of any obligation, or any defined event of default, under the terms of any contract or instrument (other than any of the Loan Documents) pursuant to which Borrower or any Third Party Obligor or SunPower Philippines Manufacturing Limited has incurred any debt or other liability to any person or entity, including Bank, and, if the debt or other liability is owed to a party other than Bank, such default accelerates or causes or permits to become due and payable prior to its stated maturity date an amount in excess of ten million dollars (\$10,000,000.00), and, with respect to SunPower Philippines Manufacturing Limited, only if demand has been made under Borrower's or any Third Party Obligor's guaranty of such debt and the amount of such demand has not been paid in full in the time, if any, provided for in such demand."

10. The following as added as Section 7.12 of the Credit Agreement:

SECTION 7.12. JUDGMENT CURRENCY.

"(a) Conversion Rate. If, for the purposes of obtaining judgment in any court, it is necessary to convert a sum due hereunder in any currency (the "Original Currency") into another currency (the "Other Currency"), the parties hereto agree, to the fullest extent permitted by law, that the rate of exchange used shall be that at which in accordance with

normal banking procedures the Bank could purchase the Original Currency with the Other Currency on the Business Day preceding that on which final judgment is given.

(b) Discharge of Judgment. The obligations of the Borrower in respect of any sum due from it to the Bank hereunder shall, notwithstanding any judgment in such Other Currency, be discharged only to the extent that, on the Business Day following receipt by the Bank of any sum adjudged to be so due in the Other Currency, the Bank may in accordance with normal banking procedures purchase the Original Currency with the Other Currency; if the Original Currency so purchased is less than the sum originally due to the Bank in the Original Currency, the Borrower agrees, as a separate obligation and notwithstanding any such judgment, to indemnify the Bank against such loss, and if the amount of the Original Currency so purchased exceeds the sum originally due to the Bank in the Original Currency, the Bank shall remit such excess to the Borrower.”

11. Except as specifically provided herein, all terms and conditions of the Credit Agreement remain in full force and effect, without waiver or modification. All terms defined in the Credit Agreement shall have the same meaning when used in this Amendment. This Amendment and the Credit Agreement shall be read together, as one document.

12. Borrower hereby remakes all representations and warranties contained in the Credit Agreement and reaffirms all covenants set forth therein. Borrower further certifies that as of the date of this Amendment there exists no Event of Default as defined in the Credit Agreement, nor any condition, act or event which with the giving of notice or the passage of time or both would constitute any such Event of Default.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed as of the day and year first written above.

SUNPOWER CORPORATION

/s/ Dennis Arriola

Dennis Arriola
Chief Financial Officer

WELLS FARGO BANK,
NATIONAL ASSOCIATION

/s/ Matthew A. Servatius

Matthew A. Servatius
Vice President

Schedule A
Multi-Currency Accounts and Deposit Accounts

Multi-Currency Accounts

Account Numbers

Deposit Accounts

Account Numbers

Type

This Schedule may be supplemented from time to time to add Multi-Currency Accounts as collateral in a writing signed by Bank and Borrower indicating (i) that such writing supplements this Schedule, (ii) the account number(s) of the Multi-Currency Accounts, and (iii) that such Multi-Currency Account(s) constitutes collateral under and subject to the terms of the Loan Documents (as defined in the Amended and Restated Credit Agreement dated as of March 20, 2009, as amended from time to time).

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

THIRD PARTY PLEDGE AGREEMENT

1. GRANT OF SECURITY INTEREST. In consideration of any credit or other financial accommodation heretofore, now or hereafter extended or made to SUNPOWER CORPORATION, a Delaware corporation ("Borrower"), by WELLS FARGO BANK, NATIONAL ASSOCIATION ("Bank") pursuant to the obligations of Borrower in connection with the "Line of Credit" under that certain Amended and Restated Credit Agreement between Borrower and Bank and dated as of March 20, 2009 and as amended on April 17, 2009 (as may be further amended from time to time, the "Credit Agreement"), and for other valuable consideration, as security for the payment of all such obligations of Borrower to Bank, the undersigned SUNPOWER CORPORATION, SYSTEMS, a Delaware corporation ("Owner") hereby assigns, transfers to and pledges with Bank, and grants to Bank a security interest in, the following money and property:

60 registered shares of SunPower Systems SA, a Swiss limited company

(collectively called "Collateral"), together with whatever is receivable or received when any of the Collateral or proceeds thereof are sold, collected, exchanged or otherwise disposed of, whether such disposition is voluntary or involuntary, including without limitation, (a) all rights to payment, including returned premiums, with respect to any insurance relating to any of the foregoing, (b) all rights to payment with respect to any claim or cause of action affecting or relating to any of the foregoing, and (c) all stock rights, rights to subscribe, stock splits, liquidating dividends, cash dividends, dividends paid in stock, new securities or other property of any kind which Owner is or may hereafter be entitled to receive on account of any securities pledged hereunder, including without limitation, stock received by Owner due to stock splits or dividends paid in stock or sums paid upon or in respect of any securities pledged hereunder upon the liquidation or dissolution of the issuer thereof (hereinafter called "Proceeds"), and in the event that Owner receives any such Proceeds, Owner will hold the same in trust on behalf of and for the benefit of Bank and will immediately deliver all such Proceeds to Bank in the exact form received, with the endorsement of Owner if necessary and/or appropriate undated stock powers duly executed in blank, to be held by Bank as part of the Collateral, subject to all terms hereof. The word "Indebtedness" is used herein to mean any and all advances, debts, obligations and liabilities of Borrower, heretofore, now or hereafter made, incurred or created, whether voluntary or involuntary and however arising, whether due or not due, absolute or contingent, liquidated or unliquidated, determined or undetermined, all in connection with the Line of Credit. Notwithstanding any provision to the contrary herein, Bank shall only be entitled to retain \$US50,000,000 in cash proceeds of Collateral received by Bank in connection with the enforcement of its rights hereunder. Furthermore, Bank and Owner agree that at such time as Bank exercises its rights to the Collateral hereunder, Bank's rights and obligations will be exercised in accordance with that certain Right of First Refusal Agreement dated of even date herewith between Bank and Owner.

2. CONTINUING AGREEMENT; REVOCATION; OBLIGATION UNDER OTHER AGREEMENTS. This is a continuing agreement and all rights, powers and remedies hereunder shall apply to all past, present and future Indebtedness of Borrower to Bank, including that arising under successive transactions which shall either continue the Indebtedness, increase or decrease it, or from time to time create new Indebtedness after all or any prior Indebtedness has been satisfied, and notwithstanding the death, incapacity, dissolution, liquidation or

bankruptcy of Borrower or Owner or any other event or proceeding affecting Borrower or Owner. This Agreement shall not apply to any new Indebtedness created after actual receipt by Bank of written notice of its revocation as to such new Indebtedness; provided however, that loans or advances made by Bank to Borrower after revocation under commitments existing prior to receipt by Bank of such revocation, and extensions, renewals or modifications, of any kind, of Indebtedness incurred by Borrower or committed by Bank prior to receipt by Bank of such revocation, shall not be considered new Indebtedness. Any such notice must be sent to Bank by registered U.S. mail, postage prepaid, addressed to its office at 400 Hamilton Avenue, Palo Alto, California 94301, or at such other address as Bank shall from time to time designate. The obligations of Owner hereunder shall be in addition to any obligations of Owner under any other grants or pledges of security for any liabilities or obligations of Borrower or any other person heretofore or hereafter given to Bank unless said other grants or pledges of security are expressly modified or revoked in writing; and this Agreement shall not, unless expressly herein provided, affect or invalidate any such other grants or pledges of security.

3. OBLIGATIONS JOINT AND SEVERAL; SEPARATE ACTIONS; WAIVER OF STATUTE OF LIMITATIONS; REINSTATEMENT OF LIABILITY. The obligations hereunder are joint and several and independent of the obligations of Borrower, and a separate action or actions may be brought and prosecuted against Owner whether action is brought against Borrower or any other person, or whether Borrower or any other person is joined in any such action or actions. Owner acknowledges that this Agreement is absolute and unconditional, there are no conditions precedent to the effectiveness of this Agreement, and this Agreement is in full force and effect and is binding on Owner as of the date written below, regardless of whether Bank obtains collateral or any guaranties from others or takes any other action contemplated by Owner. Owner waives the benefit of any statute of limitations affecting Owner's liability hereunder or the enforcement thereof, and Owner agrees that any payment of any Indebtedness or other act which shall toll any statute of limitations applicable thereto shall similarly operate to toll such statute of limitations applicable to Owner's liability hereunder. The liability of Owner hereunder shall be reinstated and revived and the rights of Bank shall continue if and to the extent that for any reason any amount at any time paid on account of any Indebtedness secured hereby is rescinded or must be otherwise restored by Bank, whether as a result of any proceedings in bankruptcy or reorganization or otherwise, all as though such amount had not been paid. The determination as to whether any amount so paid must be rescinded or restored shall be made by Bank in its sole discretion; provided however, that if Bank chooses to contest any such matter at the request of Owner. Owner agrees to indemnify and hold Bank harmless from and against all costs and expenses, including reasonable attorneys' fees (to include outside counsel fees), expended or incurred by Bank in connection therewith, including without limitation, in any litigation with respect thereto.

4. OBLIGATIONS OF BANK: Any money received by Bank in respect of the Collateral may be deposited, at Bank's option, into a non-interest bearing account over which Owner shall have no control, and the same shall, for all purposes, be deemed Collateral hereunder. Bank's obligation with respect to Collateral and Proceeds in its possession shall be strictly limited to the duty to exercise reasonable care in the custody and preservation of such Collateral and Proceeds, and such duty shall not include any obligation to ascertain or to initiate any action with respect to or to inform Owner of maturity dates, conversion, call or exchange rights, or offers to purchase the Collateral or Proceeds, or any similar matters, notwithstanding Bank's knowledge of the same. Bank shall have no duty to take any steps necessary to preserve the rights of Owner against prior parties, or to initiate any action to protect against the possibility of a decline in the market value of the Collateral or Proceeds. Bank shall not be obligated to take any actions with respect to the Collateral or Proceeds requested by Owner

unless such request is made in writing and Bank determines, in its sole discretion, that the requested action would not unreasonably jeopardize the value of the Collateral and Proceeds as security for the Indebtedness. Bank may at any time deliver the Collateral and Proceeds, or any part thereof, to Owner, and the receipt thereof by Owner shall be a complete and full acquittance for the Collateral and Proceeds so delivered, and Bank shall thereafter be discharged from any liability or responsibility therefor.

5. REPRESENTATIONS AND WARRANTIES.

(a) Owner represents and warrants to Bank that: (i) Owner's legal name is exactly as set forth on the first page of this Agreement, and all of Owner's organizational documents or agreements delivered to Bank are complete and accurate in every respect; (ii) Owner is the owner and has possession or control of the Collateral and Proceeds; (iii) Owner has the exclusive right to pledge the Collateral and Proceeds; (iv) all Collateral and Proceeds are genuine, free from liens, adverse claims, setoffs, default, prepayment, defenses and conditions precedent of any kind or character, except the lien created hereby or as otherwise agreed to by Bank, or heretofore disclosed by Owner to Bank, in writing; (v) all statements contained herein and, where applicable, in the Collateral are true and complete in all material respects; (vi) no financing statement covering any of the Collateral or Proceeds, and naming any secured party other than Bank, is on file in any public office; and (vii) specifically with respect to Collateral and Proceeds consisting of investment securities, instruments, chattel paper, documents, contracts, insurance policies or any like property, all persons appearing to be obligated thereon have authority and capacity to contract and are bound as they appear to be, and the same comply with applicable laws concerning form, content and manner of preparation and execution.

(b) Owner further represents and warrants to Bank that: (i) the Collateral pledged hereunder is so pledged at Borrower' request; (ii) Bank has made no representation to Owner as to the creditworthiness of Borrower; and (iii) Owner has established adequate means of obtaining from Borrower on a continuing basis financial and other information pertaining to Borrower's financial condition. Owner agrees to keep adequately informed from such means of any facts, events or circumstances which might in any way affect Owner's risks hereunder, and Owner further agrees that Bank shall have no obligation to disclose to Owner any information or material about Borrower which is acquired by Bank in any manner.

6. COVENANTS OF OWNER.

(a) Owner agrees in general: (i) to indemnify Bank against all losses, claims, demands, liabilities and expenses of every kind caused by property subject hereto; (ii) to permit Bank to exercise its powers; (iii) to execute and deliver such documents as Bank deems necessary to create, perfect and continue the security interests contemplated hereby; (iv) not to change Owner's name, and as applicable, its chief executive office, its principal residence or the jurisdiction in which it is organized and/or registered without giving Bank prior written notice thereof; (v) not to change the places where Owner keeps any Collateral or Owner's records concerning the Collateral and Proceeds without giving Bank prior written notice of the address to which Owner is moving same; and (vi) to cooperate with Bank in perfecting all security interests granted herein and in obtaining such agreements from third parties as Bank deems necessary, proper or convenient in connection with the preservation, perfection or enforcement of any of its rights hereunder.

(b) Owner agrees with regard to the Collateral and Proceeds, unless Bank agrees otherwise in writing: (i) that Bank is authorized to file financing statements in the name of

Owner to perfect Bank's security interest in Collateral and Proceeds; (ii) not to permit any lien on the Collateral or Proceeds, except in favor of Bank; (iii) not to sell, hypothecate or otherwise dispose of, nor permit the transfer by operation of law of, any of the Collateral or Proceeds or any interest therein, nor withdraw any funds from any deposit account pledged to Bank hereunder; (iv) to keep, in accordance with generally accepted accounting principles, complete and accurate records regarding all Collateral and Proceeds, and to permit Bank to inspect the same and make copies thereof at any reasonable time; (v) if requested by Bank, to receive and use reasonable diligence to collect Proceeds, in trust and as the property of Bank, and to immediately endorse as appropriate and deliver such Proceeds to Bank daily in the exact form in which they are received together with a collection report in form satisfactory to Bank; (vi) in the event Bank elects to receive payments of Proceeds hereunder, to pay all expenses incurred by Bank in connection therewith, including expenses of accounting, correspondence, collection efforts, reporting to account or contract debtors, filing, recording, record keeping and expenses incidental thereto; (vii) to provide any service and do any other acts which may be necessary to keep all Collateral and Proceeds free and clear of all defenses, rights of offset and counterclaims; and (viii) if the Collateral or Proceeds consists of securities and so long as no Event of Default exists, to vote said securities and to give consents, waivers and ratifications with respect thereto, provided that no vote shall be cast or consent, waiver or ratification given or action taken which would impair Bank's interest in the Collateral and Proceeds or be inconsistent with or violate any provisions of this Agreement.

7. **POWERS OF BANK.** Owner appoints Bank its true attorney in fact to perform any of the following powers, which are coupled with an interest, are irrevocable until termination of this Agreement and may be exercised from time to time by Bank's officers and employees, or any of them, whether or not Borrower or Owner is in default: (a) to perform any obligation of Owner hereunder in Owner's name or otherwise; (b) to notify any person obligated on any security, instrument or other document subject to this Agreement of Bank's rights hereunder; (c) to collect by legal proceedings or otherwise all dividends, interest, principal or other sums now or hereafter payable upon or on account of the Collateral or Proceeds; (d) to enter into any extension, modification, reorganization, deposit, merger or consolidation agreement, or any other agreement relating to or affecting the Collateral or Proceeds, and in connection therewith to deposit or surrender control of the Collateral and Proceeds, to accept other property in exchange for the Collateral and Proceeds, and to do and perform such acts and things as Bank may reasonably deem proper, with any money or property received in exchange for the Collateral or Proceeds, at Bank's option, to be applied to the Indebtedness or held by Bank under this Agreement; (e) to make any compromise or settlement Bank reasonably deems desirable or proper in respect of the Collateral and Proceeds; (f) to insure, process and preserve the Collateral and Proceeds; (g) to exercise all rights, powers and remedies which Owner would have, but for this Agreement, with respect to all Collateral and Proceeds subject hereto; and (h) to do all acts and things and execute all documents in the name of Owner or otherwise, reasonably deemed by Bank as necessary in connection with the preservation, perfection or enforcement of its rights hereunder. To effect the purposes of this Agreement or otherwise upon instructions of Owner, Bank may cause any Collateral and/or Proceeds to be transferred to Bank's name or the name of Bank's nominee. If an Event of Default has occurred and is continuing, any or all Collateral and/or Proceeds consisting of securities may be registered, without notice, in the name of Bank or its nominee, and thereafter Bank or its nominee may exercise, without notice, all voting and corporate rights at any meeting of the shareholders of the issuer thereof, any and all rights of conversion, exchange or subscription, or any other rights, privileges or options pertaining to such Collateral and/or Proceeds, all as if it were the absolute owner thereof. The foregoing shall include, without limitation, the right of Bank or its nominee to exchange, at its discretion, any and all Collateral and/or Proceeds upon the merger,

consolidation, reorganization, recapitalization or other readjustment of the issuer thereof, or upon the exercise by the issuer thereof or Bank of any right, privilege or option pertaining to any shares of the Collateral and/or Proceeds, and in connection therewith, the right to deposit and deliver any and all of the Collateral and/or Proceeds with any committee, depository, transfer agent, registrar or other designated agent upon such terms and conditions as Bank may determine. All of the foregoing rights, privileges or options may be exercised without liability on the part of Bank or its nominee except to account for property actually received by Bank. Bank shall have no duty to exercise any of the foregoing, or any other rights, privileges or options with respect to the Collateral or Proceeds and shall not be responsible for any failure to do so or delay in so doing.

8. OWNER'S WAIVERS.

(a) Owner waives any right to require Bank to: (i) proceed against Borrower or any other person; (ii) marshal assets or proceed against or exhaust any security held from Borrower or any other person; (iii) give notice of the terms, time and place of any public or private sale or other disposition of personal property security held from Borrower or any other person; (iv) take any other action or pursue any other remedy in Bank's power; or (v) make any presentment or demand for performance, or give any notice of nonperformance, protest, notice of protest or notice of dishonor hereunder or in connection with any obligations or evidences of indebtedness held by Bank as security for or which constitute in whole or in part the Indebtedness secured hereunder, or in connection with the creation of new or additional Indebtedness.

(b) Owner waives any defense to its obligations hereunder based upon or arising by reason of: (i) any disability or other defense of Borrower or any other person; (ii) the cessation or limitation from any cause whatsoever, other than payment in full, of the Indebtedness of Borrower or any other person; (iii) any lack of authority of any officer, director, partner, agent or any other person acting or purporting to act on behalf of Borrower which is a corporation, partnership or other type of entity, or any defect in the formation of any such Borrower; (iv) the application by Borrower of the proceeds of any Indebtedness for purposes other than the purposes represented by Borrower to, or intended or understood by, Bank or Owner; (v) any act or omission by Bank which directly or indirectly results in or aids the discharge of Borrower or any portion of the Indebtedness by operation of law or otherwise, or which in any way impairs or suspends any rights or remedies of Bank against Borrower; (vi) any impairment of the value of any interest in the Collateral or Proceeds, or any other security for the Indebtedness or any portion thereof, including without limitation, the failure to obtain or maintain perfection or recordation of any interest in any such security, the release of any such security without substitution, and/or the failure to preserve the value of, or to comply with applicable law in disposing of, any such security; (vii) any modification of the Indebtedness, in any form whatsoever, including any modification made after revocation hereof to any Indebtedness incurred prior to such revocation, and including without limitation the renewal, extension, acceleration or other change in time for payment of, or other change in the terms of, the Indebtedness or any portion thereof, including increase or decrease of the rate of interest thereon; or (viii) any requirement that Bank give any notice of acceptance of this Agreement. Until all Indebtedness shall have been paid in full, Owner shall have no right of subrogation, and Owner waives any right to enforce any remedy which Bank now has or may hereafter have against Borrower or any other person, and waives any benefit of, or any right to participate in, any security now or hereafter held by Bank. Owner further waives all rights and defenses Owner may have arising out of (A) any election of remedies by Bank, even though that election of remedies, such as a non-judicial foreclosure with respect to any security for any portion of the Indebtedness, destroys Owner's rights of subrogation or Owner's rights to proceed against

Borrower for reimbursement, or (B) any loss of rights Owner may suffer by reason of any rights, powers or remedies of Borrower in connection with any anti-deficiency laws or any other laws limiting, qualifying or discharging Borrower's Indebtedness.

9. AUTHORIZATIONS TO BANK. Owner authorizes Bank either before or after revocation hereof, without notice to or demand on Owner, and without affecting Owner's liability hereunder, from time to time to: (a) alter, compromise, renew, extend, accelerate or otherwise change the time for payment of, or otherwise change the terms of, the Indebtedness or any portion thereof, including increase or decrease of the rate of interest thereon; (b) take and hold security, other than the Collateral and Proceeds, for the payment of the Indebtedness or any portion thereof, and exchange, enforce, waive, subordinate or release the Collateral and Proceeds, or any part thereof, or any such other security; (c) apply the Collateral and Proceeds or such other security and direct the order or manner of sale thereof, including without limitation, a non-judicial sale permitted by the terms of the controlling security agreement, mortgage or deed of trust, as Bank in its discretion may determine; (d) release or substitute any one or more of the endorsers or guarantors of the Indebtedness, or any portion thereof, or any other party thereto; and (e) apply payments received by Bank from Borrower to any Indebtedness of Borrower to Bank, in such order as Bank shall determine in its sole discretion, whether or not such Indebtedness is covered by this Agreement, and Owner hereby waives any provision of law regarding application of payments which specifies otherwise. Bank may without notice assign this Agreement in whole or in part.

10. PAYMENT OF PREMIUMS, TAXES, CHARGES, LIENS AND ASSESSMENTS. Owner agrees to pay, prior to delinquency, all insurance premiums, taxes, charges, liens and assessments against the Collateral and Proceeds, and upon the failure of Owner to do so, Bank at its option may pay any of them and shall be the sole judge of the legality or validity thereof and the amount necessary to discharge the same. Any such payments made by Bank shall be obligations of Owner to Bank, due and payable promptly upon demand, together with interest at a rate determined in accordance with the provisions of this Agreement, and shall be secured by the Collateral and Proceeds, subject to all terms and conditions of this Agreement.

11. EVENTS OF DEFAULT. The occurrence of any of the following shall constitute an "Event of Default" under this Agreement: (a) any default in the payment or performance of any obligation, or any defined event of default, under (i) the Credit Agreement; (b) any representation or warranty made by Owner herein shall prove to be incorrect in any material respect when made; (c) Owner shall fail to observe or perform any obligation or agreement contained herein; and (d) any impairment of the rights of Bank in any Collateral or Proceeds, or any attachment or like levy on any property of Owner.

12. REMEDIES. Upon the occurrence of any Event of Default, Bank shall have and may exercise without demand any and all rights, powers, privileges and remedies granted to a secured party upon default under the California Uniform Commercial Code, the laws of Switzerland or otherwise provided by law, including without limitation, the right (a) to contact all persons obligated to Owner on any Collateral or Proceeds and to instruct such persons to deliver all Collateral and/or Proceeds directly to Bank, and (b) to sell, lease, license or otherwise dispose of any or all Collateral. All rights, powers, privileges and remedies of Bank shall be cumulative. No delay, failure or discontinuance of Bank in exercising any right, power, privilege or remedy hereunder shall affect or operate as a waiver of such right, power, privilege or remedy; nor shall any single or partial exercise of any such right, power, privilege or remedy preclude, waive or otherwise affect any other or further exercise thereof or the exercise of any other right, power, privilege or remedy. Any waiver, permit, consent or approval of any kind by

Bank of any default hereunder, or any such waiver of any provisions or conditions hereof, must be in writing and shall be effective only to the extent set forth in writing. It is agreed that public or private sales or other dispositions, for cash or on credit, to a wholesaler or retailer or investor, or user of property of the types subject to this Agreement, or public auctions, are all commercially reasonable since differences in the prices generally realized in the different kinds of dispositions are ordinarily offset by the differences in the costs and credit risks of such dispositions. While an Event of Default exists: (a) Owner will not dispose of any of the Collateral or Proceeds except on terms approved by Bank; (b) Bank may appropriate the Collateral and apply all Proceeds toward repayment of the Indebtedness in such order as Bank may from time to time elect; (c) Bank may, at any time and at Bank's sole option, liquidate any time deposits pledged to Bank hereunder, whether or not said time deposits have matured and notwithstanding the fact that such liquidation may give rise to penalties for early withdrawal of funds; and (d) at Bank's request, Owner will assemble and deliver all Collateral and Proceeds, and books and records pertaining thereto, to Bank at a reasonably convenient place designated by Bank. For any Collateral or Proceeds consisting of securities, Bank shall be under no obligation to delay a disposition of any portion thereof for the period of time necessary to permit the issuer thereof to register such securities for public sale under any applicable state or federal law, even if the issuer thereof would agree to do so. Owner further agrees that Bank shall have no obligation to process or prepare any Collateral for sale or other disposition.

13. **DISPOSITION OF COLLATERAL AND PROCEEDS; TRANSFER OF INDEBTEDNESS.** In disposing of Collateral hereunder, Bank may disclaim all warranties of title, possession, quiet enjoyment and the like. Any proceeds of any disposition of any Collateral or Proceeds, or any part thereof, may be applied by Bank to the payment of expenses incurred by Bank in connection with the foregoing, including reasonable attorneys' fees, and the balance of such proceeds may be applied by Bank toward the payment of the Indebtedness in such order of application as Bank may from time to time elect. Upon the transfer of all or any part of the Indebtedness, Bank may transfer all or any part of the Collateral or Proceeds and shall be fully discharged thereafter from all liability and responsibility with respect to any of the foregoing so transferred, and the transferee shall be vested with all rights and powers of Bank hereunder with respect to any of the foregoing so transferred; but with respect to any Collateral or Proceeds not so transferred, Bank shall retain all rights, powers, privileges and remedies herein given.

14. **NOTICES.** All notices, requests and demands required under this Agreement must be in writing, addressed to Bank at the address specified in Section 2 hereof and to Owner at the address of its chief executive office (or principal residence, if applicable) specified below or to such other address as any party may designate by written notice to each other party, and shall be deemed to have been given or made as follows: (a) if personally delivered, upon delivery; (b) if sent by mail, upon the earlier of the date of receipt or three (3) days after deposit in the U.S. mail, first class and postage prepaid; and (c) if sent by telecopy, upon receipt.

15. **COSTS, EXPENSES AND ATTORNEYS' FEES.** Owner shall pay to Bank promptly upon demand the full amount of all payments, advances, charges, costs and expenses, including reasonable attorneys' fees, reasonably expended or incurred by Bank in connection with (a) the perfection and preservation of the Collateral or Bank's interest therein, and (b) the realization, enforcement and exercise of any right, power, privilege or remedy conferred by this Agreement, whether incurred at the trial or appellate level, in an arbitration proceeding or otherwise, and including any of the foregoing incurred in connection with any bankruptcy proceeding (including without limitation, any adversary proceeding, contested matter or motion brought by Bank or any other person) relating to Owner or in any way affecting any of

the Collateral or Bank's ability to exercise any of its rights or remedies with respect thereto. All of the foregoing shall be paid by Owner with interest from the date of demand until paid in full at a rate per annum equal to the greater of ten percent (10%) or Bank's Prime Rate in effect from time to time.

16. **SUCCESSORS; ASSIGNMENT.** This Agreement shall be binding upon and inure to the benefit of the heirs, executors, administrators, legal representatives, successors and assigns of the parties; provided however, that Owner may not assign or transfer any of its interests or rights hereunder without Bank's prior written consent. Owner acknowledges that Bank has the right to sell, assign, transfer, negotiate or grant participations in all or any part of, or any interest in, any Indebtedness of Borrower to Bank and any obligations with respect thereto, including this Agreement. In connection therewith, Bank may disclose all documents and information which Bank now has or hereafter acquires relating to Owner and/or this Agreement, whether furnished by Borrower, Owner or otherwise, subject to the confidentiality provisions of the Confidentiality Agreement between SunPower Corporation and Bank, dated as of June 19, 2007. Owner further agrees that Bank may disclose such documents and information to Borrower.

17. **AMENDMENT.** This Agreement may be amended or modified only in writing signed by Bank and Owner.

18. **APPLICATION OF SINGULAR AND PLURAL.** In all cases where there is but a single Borrower, then all words used herein in the plural shall be deemed to have been used in the singular where the context and construction so require; and when there is more than one Borrower named herein or when this Agreement is executed by more than one Owner, the word "Borrower" and the word "Owner" respectively shall mean all or any one or more of them as the context requires.

19. **SEVERABILITY OF PROVISIONS.** If any provision of this Agreement shall be held to be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or any remaining provisions of this Agreement.

20. **GOVERNING LAW.** This Agreement shall be governed by and construed in accordance with the laws of the State of California.

21. **ARBITRATION.**

(a) **Arbitration.** The parties hereto agree, upon demand by any party, to submit to binding arbitration all claims, disputes and controversies between or among them (and their respective employees, officers, directors, attorneys, and other agents), whether in tort, contract or otherwise in any way arising out of or relating to this Agreement and its negotiation, execution, collateralization, administration, repayment, modification, extension, substitution, formation, inducement, enforcement, default or termination.

(b) **Governing Rules.** Any arbitration proceeding will (i) proceed in a location in California selected by the American Arbitration Association ("AAA"); (ii) be governed by the Federal Arbitration Act (Title 9 of the United States Code), notwithstanding any conflicting choice of law provision in any of the documents between the parties; and (iii) be conducted by the AAA, or such other administrator as the parties shall mutually agree upon, in accordance with the AAA's commercial dispute resolution procedures, unless the claim or counterclaim is at

least \$US1,000,000.00 exclusive of claimed interest, arbitration fees and costs in which case the arbitration shall be conducted in accordance with the AAA's optional procedures for large, complex commercial disputes (the commercial dispute resolution procedures or the optional procedures for large, complex commercial disputes to be referred to herein, as applicable, as the "Rules"). If there is any inconsistency between the terms hereof and the Rules, the terms and procedures set forth herein shall control. Any party who fails or refuses to submit to arbitration following a demand by any other party shall bear all costs and expenses incurred by such other party in compelling arbitration of any dispute. Nothing contained herein shall be deemed to be a waiver by any party that is a bank of the protections afforded to it under 12 U.S.C. §91 or any similar applicable state law.

(c) No Waiver of Provisional Remedies, Self-Help and Foreclosure. The arbitration requirement does not limit the right of any party to (i) foreclose against real or personal property collateral; (ii) exercise self-help remedies relating to collateral or proceeds of collateral such as setoff or repossession; or (iii) obtain provisional or ancillary remedies such as replevin, injunctive relief, attachment or the appointment of a receiver, before during or after the pendency of any arbitration proceeding. This exclusion does not constitute a waiver of the right or obligation of any party to submit any dispute to arbitration or reference hereunder, including those arising from the exercise of the actions detailed in sections (i), (ii) and (iii) of this paragraph.

(d) Arbitrator Qualifications and Powers. Any arbitration proceeding in which the amount in controversy is \$US5,000,000.00 or less will be decided by a single arbitrator selected according to the Rules, and who shall not render an award of greater than \$US5,000,000.00. Any dispute in which the amount in controversy exceeds \$US5,000,000.00 shall be decided by majority vote of a panel of three arbitrators; provided however, that all three arbitrators must actively participate in all hearings and deliberations. The arbitrator will be a neutral attorney licensed in the State of California or a neutral retired judge of the state or federal judiciary of California, in either case with a minimum of ten years experience in the substantive law applicable to the subject matter of the dispute to be arbitrated. The arbitrator will determine whether or not an issue is arbitratable and will give effect to the statutes of limitation in determining any claim. In any arbitration proceeding the arbitrator will decide (by documents only or with a hearing at the arbitrator's discretion) any pre-hearing motions which are similar to motions to dismiss for failure to state a claim or motions for summary adjudication. The arbitrator shall resolve all disputes in accordance with the substantive law of California and may grant any remedy or relief that a court of such state could order or grant within the scope hereof and such ancillary relief as is necessary to make effective any award. The arbitrator shall also have the power to award recovery of all costs and fees, to impose sanctions and to take such other action as the arbitrator deems necessary to the same extent a judge could pursuant to the Federal Rules of Civil Procedure, the California Rules of Civil Procedure or other applicable law. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction. The institution and maintenance of an action for judicial relief or pursuit of a provisional or ancillary remedy shall not constitute a waiver of the right of any party, including the plaintiff, to submit the controversy or claim to arbitration if any other party contests such action for judicial relief.

(e) Discovery. In any arbitration proceeding, discovery will be permitted in accordance with the Rules. All discovery shall be expressly limited to matters directly relevant to the dispute being arbitrated and must be completed no later than 20 days before the hearing date. Any requests for an extension of the discovery periods, or any discovery disputes, will be subject to final determination by the arbitrator upon a showing that the request for discovery is

essential for the party's presentation and that no alternative means for obtaining information is available.

(f) Class Proceedings and Consolidations. No party hereto shall be entitled to join or consolidate disputes by or against others in any arbitration, except parties who have executed this Agreement or any other contract, instrument or document relating to any Indebtedness, or to include in any arbitration any dispute as a representative or member of a class, or to act in any arbitration in the interest of the general public or in a private attorney general capacity.

(g) Payment Of Arbitration Costs And Fees. The arbitrator shall award all costs and expenses of the arbitration proceeding.

(h) Miscellaneous. To the maximum extent practicable, the AAA, the arbitrators and the parties shall take all action required to conclude any arbitration proceeding within 180 days of the filing of the dispute with the AAA. No arbitrator or other party to an arbitration proceeding may disclose the existence, content or results thereof, except for disclosures of information by a party required in the ordinary course of its business or by applicable law or regulation. If more than one agreement for arbitration by or between the parties potentially applies to a dispute, the arbitration provision most directly related to the documents between the parties or the subject matter of the dispute shall control. This arbitration provision shall survive termination, amendment or expiration of any of the documents or any relationship between the parties.

(i) Small Claims Court. Notwithstanding anything herein to the contrary, each party retains the right to pursue in Small Claims Court any dispute within that court's jurisdiction. Further, this arbitration provision shall apply only to disputes in which either party seeks to recover an amount of money (excluding attorneys' fees and costs) that exceeds the jurisdictional limit of the Small Claims Court.

Owner warrants that Owner is an organization registered under the laws of Delaware.

Owner warrants that its chief executive office (or principal residence, if applicable) is located at the following address: 3939 N. First Street, San Jose, CA 95134.

IN WITNESS WHEREOF, this Agreement has been duly executed as of May 20, 2009.

OWNER:

SUNPOWER CORPORATION, SYSTEMS

By: /s/ Dennis V. Arriola

Dennis V. Arriola

Title: CFO

AMENDED AND RESTATED SECURITY AGREEMENT:
(DEPOSIT ACCOUNTS)

1. GRANT OF SECURITY INTEREST. For valuable consideration, the undersigned SUNPOWER CORPORATION ("Debtor"), hereby grants and transfers to WELLS FARGO BANK, NATIONAL ASSOCIATION ("Bank") a security interest in Debtor's deposit accounts referenced in Schedule A to that certain First Amendment to Credit Agreement (as such Schedule may be supplemented from time to time) by and between Debtor and Bank and dated as of the date hereof (such accounts, collectively, the "Collateral") and all renewals thereof, together with all proceeds thereof (hereinafter called "Proceeds").
2. OBLIGATIONS SECURED. The obligations secured hereby are the payment and performance of: (a) all present and future Indebtedness of Debtor to Bank arising under or in connection with a Letter of Credit Line and all Letters of Credit issued thereunder, as such terms are defined in a Credit Agreement dated as of March 20, 2009 between Bank and Debtor (as amended, extended or renewed – the "Credit Agreement"); and (b) all obligations of Debtor and rights of Bank under this Agreement. The word "Indebtedness" is used herein in its most comprehensive sense and includes any and all advances, debts, obligations and liabilities of Debtor, or any of them, heretofore, now or hereafter made, incurred or created, whether voluntary or involuntary and however arising, whether due or not due, absolute or contingent, liquidated or unliquidated, determined or undetermined, and whether Debtor may be liable individually or jointly with others, or whether recovery upon such Indebtedness may be or hereafter becomes unenforceable.
3. TERMINATION. This Agreement will terminate upon the performance of all obligations of Debtor to Bank, including without limitation, the payment of all Indebtedness of Debtor to Bank, and the termination of all commitments of Bank to extend credit to Debtor, existing at the time Bank receives written notice from Debtor of the termination of this Agreement.
4. REPRESENTATIONS AND WARRANTIES. Debtor represents and warrants to Bank that: (a) Debtor's legal name is exactly as set forth on the first page of this Agreement, and all of Debtor's organizational documents or agreements delivered to Bank are complete and accurate in every respect; (b) Debtor is the owner and has possession or control of the Collateral and Proceeds; (c) Debtor has the exclusive right to grant a security interest in the Collateral and Proceeds; (d) all Collateral and Proceeds are genuine, free from liens, adverse claims, setoffs, default, prepayment, defenses and conditions precedent of any kind or character, except the lien created hereby or as otherwise agreed to by Bank, or as heretofore disclosed by Debtor to Bank, in writing; (e) all statements contained herein and, where applicable, in the Collateral are true and complete in all material respects; and (f) no financing statement covering any of the Collateral or Proceeds, and naming any secured party other than Bank, is on file in any public office.
5. COVENANTS OF DEBTOR.
 - (a) Debtor agrees in general: (i) to indemnify Bank against all losses, claims, demands, liabilities and expenses of every kind caused by property subject hereto; (ii) to pay all costs and expenses, including reasonable attorneys' fees, incurred by Bank in the perfection and preservation of the Collateral or Bank's interest therein and/or the realization, enforcement and exercise of Bank's rights, powers and remedies hereunder; (iii) to permit Bank to exercise

its powers hereunder; (iv) to execute and deliver such documents as Bank deems necessary to create, perfect and continue the security interests contemplated hereby; and (v) to cooperate with Bank in perfecting all security interests granted herein and in obtaining such agreements from third parties as Bank deems necessary, proper or convenient in connection with the preservation, perfection or enforcement of any of its rights hereunder.

(b) Debtor agrees with regard to the Collateral and Proceeds, unless Bank agrees otherwise in writing: (i) that Bank is authorized to file financing statements in the name of Debtor to perfect Bank's security interest in Collateral and Proceeds; (ii) not to permit any lien on the Collateral or Proceeds, except in favor of Bank; (iii) not to withdraw any funds constituting Collateral if following any such withdrawal the Required Collateral Value (as defined in the Amended and Restated Joint Addendum by and between the parties hereto and dated as of the date hereto) would be less than the amount required pursuant to the term of said Addendum; and (iv) to provide any service and do any other acts which may be necessary to keep all Collateral and Proceeds free and clear of all defenses, rights of offset and counterclaims.

6. **POWERS OF BANK.** Debtor appoints Bank its true attorney in fact to perform any of the following powers, which are coupled with an interest, are irrevocable until termination of this Agreement and may be exercised from time to time by Bank's officers and employees, or any of them, whether or not Debtor is in default: (a) to perform any obligation of Debtor hereunder in Debtor's name or otherwise following Debtor's failure to do so; (b) to exercise all rights, powers and remedies which Debtor would have, but for this Agreement, with respect to all Collateral and Proceeds subject hereto; and (c) to do all acts and things and execute all documents in the name of Debtor or otherwise, deemed by Bank as necessary, proper and convenient in connection with the preservation, perfection or, after default, enforcement of its rights hereunder.

7. **EVENTS OF DEFAULT.** The occurrence of any of the following shall constitute an "Event of Default" under this Agreement: (a) any defined event of default, under the Credit Agreement, as defined above; (b) any representation or warranty made by Debtor herein shall prove to be incorrect, false or misleading in any material respect when made; (c) Debtor shall fail to observe or perform any obligation or agreement contained herein; or (d) any impairment of the rights of Bank in any Collateral or Proceeds, or any attachment or like levy on any Collateral or Proceeds.

8. **REMEDIES.** Upon the occurrence of any Event of Default, Bank shall have the right to declare immediately due and payable all or any Indebtedness secured hereby and to terminate any commitments to make loans or otherwise extend credit to Debtor. Bank shall have all other rights, powers, privileges and remedies granted to a secured party upon default under the California Uniform Commercial Code or otherwise provided by law, including without limitation, the right to contact all persons obligated to Debtor on any Collateral or Proceeds and to instruct such persons to deliver all Collateral and/or Proceeds directly to Bank. All rights, powers, privileges and remedies of Bank shall be cumulative. No delay, failure or discontinuance of Bank in exercising any right, power, privilege or remedy hereunder shall affect or operate as a waiver of such right, power, privilege or remedy; nor shall any single or partial exercise of any such right, power, privilege or remedy preclude, waive or otherwise affect any other or further exercise thereof or the exercise of any other right, power, privilege or remedy. Any waiver, permit, consent or approval of any kind by Bank of any default hereunder, or any such waiver of any provisions or conditions hereof, must be in writing and shall be effective only to the extent set forth in writing. While an Event of Default exists, Bank may, at any time and at Bank's sole option, liquidate any time deposits pledged to Bank hereunder and apply the

Proceeds thereof to payment of the Indebtedness, whether or not said time deposits have matured and notwithstanding the fact that such liquidation may give rise to penalties for early withdrawal of funds.

9. **DISPOSITION OF COLLATERAL.** Any proceeds of any disposition of any Collateral or Proceeds, or any part thereof, may be applied by Bank to the payment of expenses incurred by Bank in connection with the foregoing, including reasonable attorneys' fees, and the balance of such proceeds may be applied by Bank toward the payment of the Indebtedness in such order of application as Bank may from time to time elect.

10. **STATUTE OF LIMITATIONS.** Until all Indebtedness shall have been paid in full and all commitments by Bank to extend credit to Debtor have been terminated, the power of sale or other disposition and all other rights, powers, privileges and remedies granted to Bank hereunder shall continue to exist and may be exercised by Bank at any time and from time to time irrespective of the fact that the Indebtedness or any part thereof may have become barred by any statute of limitations, or that the personal liability of Debtor may have ceased, unless such liability shall have ceased due to the payment in full of all Indebtedness secured hereunder.

11. **NOTICES.** All notices, requests and demands required under this Agreement must be in writing, addressed to Bank at the address specified in any other loan documents entered into between Debtor and Bank and to Debtor at the address of its chief executive office (or principal residence, if applicable) specified below or to such other address as any party may designate by written notice to each other party, and shall be deemed to have been given or made as follows: (a) if personally delivered, upon delivery; (b) if sent by mail, upon the earlier of the date of receipt or three (3) days after deposit in the U.S. mail, first class and postage prepaid; and (c) if sent by telecopy, upon receipt.

12. **COSTS, EXPENSES AND ATTORNEYS' FEES.** Debtor shall pay to Bank immediately upon demand the full amount of all payments, advances, charges, costs and expenses, including reasonable attorneys' fees (to include outside counsel fees and all allocated costs of Bank's in-house counsel), expended or incurred by Bank in exercising any right, power, privilege or remedy conferred by this Agreement or in the enforcement thereof, whether incurred at the trial or appellate level, in an arbitration proceeding or otherwise, and including any of the foregoing incurred in connection with any bankruptcy proceeding (including without limitation, any adversary proceeding, contested matter or motion brought by Bank or any other person) relating to Debtor or in any way affecting any of the Collateral or Bank's ability to exercise any of its rights or remedies with respect thereto. All of the foregoing shall be paid by Debtor with interest from the date of demand until paid in full at a rate per annum equal to the greater of ten percent (10%) or Bank's Prime Rate in effect from time to time.

13. **SUCCESSORS; ASSIGNS; AMENDMENT.** This Agreement shall be binding upon and inure to the benefit of the heirs, executors, administrators, legal representatives, successors and assigns of the parties, and may be amended or modified only in writing signed by Bank and Debtor.

14. **SEVERABILITY OF PROVISIONS.** If any provision of this Agreement shall be held to be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or any remaining provisions of this Agreement.

15. GOVERNING LAW. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

Debtor warrants that Debtor is an organization existing under the laws of the State of Delaware.

Debtor warrants that its chief executive office is located at the following address: 3939 North 1st Street, San Jose, CA 95134.

IN WITNESS WHEREOF, this Agreement, which amends and restates a Security Agreement (Deposit Account) dated as of July 13, 2007 has been duly executed on April 17, 2009.

SUNPOWER CORPORATION

By: /s/ Dennis V. Arriola

Title: SVP & CFO

SECOND AMENDED AND RESTATED JOINT ADDENDUM TO SECURITY AGREEMENT (DEPOSIT ACCOUNTS) AND SECURITY AGREEMENT (SECURITIES ACCOUNT)

THIS SECOND AMENDED AND RESTATED JOINT ADDENDUM, dated as of April 17, 2009, is attached to and made a part of that certain (i) Security Agreement: Securities Account executed by SUNPOWER CORPORATION ("Debtor") in favor of WELLS FARGO BANK, NATIONAL ASSOCIATION ("Bank"), dated as of March 18, 2008 (the "Securities Agreement") and Amended and Restated Security Agreement (Deposit Accounts) executed by SUNPOWER CORPORATION ("Debtor") in favor of WELLS FARGO BANK, NATIONAL ASSOCIATION ("Bank"), dated as of April 17, 2009 (the "Deposit Agreement"), and amends and restates the Amended and Restated Addendum to the Securities Agreement dated as of May 19, 2008. The Securities Agreement and the Deposit Agreement are referred to collectively as the "Agreement." Capitalized terms used herein and not defined in the Agreement shall have the respective meanings ascribed to them in the Credit Agreement as defined below

The following provisions are hereby incorporated into the Agreement:

1. Securities Account Activity. So long as no Event of Default exists, Debtor, or any party authorized by Debtor to act with respect to the Securities Account, may (a) receive payments of interest and/or cash dividends earned on financial assets maintained in the Securities Account, (b) subject to the limitations in this Addendum (and, unless and until Bank sends notice pursuant to Section 3.3 of the Securities Account Control Agreement dated March 18, 2008, notwithstanding any provision to the contrary in said Securities Account Control Agreement), withdraw Collateral, and (c) trade financial assets maintained in the Securities Account. Without Bank's prior written consent, except as permitted by the preceding sentence, neither Debtor nor any party other than Bank may withdraw or receive any distribution of any Collateral from the Securities Account.

2. Required Collateral Value. Debtor shall at all times maintain the Required Collateral Value. The "Required Collateral Value" means the aggregate of:

(a) with respect to L/C Line Exposure arising from Dollar-denominated Letters of Credit, (i) Dollars in the U.S. Deposit Account and/or assets in the Securities Account with a Collateral Value, in either case, equal to 100% of such Exposure, and/or (ii) the Dollar Equivalent Amount of Approved Currency (other than Dollars) in the Multi-currency Accounts and/or assets in the Securities Account with a Collateral Value equal to 110% of such Exposure to the extent not covered by Dollars or assets as described in clause (i) hereof; and

(b) with respect to L/C Line Exposure arising from Approved Currency (other than Dollar)-denominated Letters of Credit, (i) Approved Currency (of the same type as the Letter(s) of Credit giving rise to the L/C Line Exposure) in the Multi-currency Accounts equal to 100% of such Exposure, and/or (ii) other Approved Currency in the Multi-currency Accounts, Dollars in the U.S. Deposit Account and/or assets in the Securities Account with a Collateral Value, in all cases, equal to 110% of the aggregate Dollar Equivalent Amount of such Exposure to the extent not covered by Approved Currency in the Multi-currency Accounts as described in clause (i) hereof.

In determining the Required Collateral Value, (x) Dollars in the U.S. Deposit Account shall be applied first to L/C Line Exposure arising from Dollar-denominated Letters of Credit, (y) Applicable Currency (other than Dollars) in the Multi-currency Accounts shall be applied first to

L/C Line Exposure arising from Letters of Credit denominated in such Applicable Currency, and (z) no asset (whether Dollars, any other Applicable Currency or assets in the Securities Account) shall be counted more than once. Further, Debtor understands that Bank will not consider the Collateral Value of the Securities Account unless and until Debtor has at least the Dollar Equivalent Amount of \$100,000,000.00 in the U.S. Deposit Account and/or the Multi-currency Accounts. If the \$100,000,000.00 balance condition in the preceding sentence is satisfied and the Required Collateral Value, for any reason and at any month end (as reflected in the monthly Securities Account statement issued by Wells Capital Management Incorporated) is less than the amount required hereunder, Debtor shall, within 3 business days after Bank's demand, deposit additional assets of a nature satisfactory to Bank into the Securities Account, Dollars into the U.S. Deposit Account and/or other Approved Currency into the Multi-currency Accounts, in any case in amounts or with values sufficient to achieve the Required Collateral Value. So long as the Required Collateral Value is satisfied by balances maintained in the U.S. Deposit Account and/or the Multi-currency Accounts, Debtor shall have no obligation to maintain Collateral in the Securities Account.

3. "Collateral Value" means the percentage set forth below of the lower of the face or market value, or the lower of the face or redemption value, as appropriate, for each type of investment property held in the Securities Account at the time of computation, with such value and the classification of any particular investment property in all instances determined by Bank in its sole discretion, and excluding from such computation all WF Securities and Collective Investment Funds. Notwithstanding the foregoing, Bank shall exclude from the determination of Collateral Value, at Bank's sole discretion (a) any stock with a market value of \$10.00 or less, and (b) all investment property from an issuer if Bank determines such issuer to be ineligible:

| | |
|---|-----|
| Listed Money Market (MM) | 95% |
| U.S. Government Bills, Notes and Bonds and U.S. Government sponsored agency securities with maturities \leq 5 years | 90% |
| U.S. Government Bills, Notes and Bonds and U.S. Government sponsored agency securities with maturities > 5 years, but \leq 10 years | 85% |
| U.S. Government Bills, Notes and Bonds and U.S. Government sponsored agency securities with maturities > 10 years | 80% |
| High Grade Corporate or Municipal Bonds/Notes (AAA/Aaa, AA/Aa, SP-1) with maturities \leq 5 years | 85% |
| High Grade Corporate or Municipal Bonds/Notes (AAA/Aaa, AA/Aa, SP-1) with maturities > 5 years, but \leq 10 years | 80% |
| High Grade Corporate or Municipal Bonds/Notes (AAA/Aaa, AA/Aa, SP-1) with maturities > 10 years | 75% |
| Intermediate Grade Corporate or Municipal Bonds/Notes (A, Baa, BBB, SP-2) with maturities \leq 5 years | 75% |
| Intermediate Grade Corporate or Municipal Bonds/Notes (A, Baa, BBB, SP-2) with maturities > 5 years, but \leq 10 years | 70% |
| Intermediate Grade Corporate or Municipal Bonds/Notes (A, Baa, BBB, SP-2) with maturities > 10 years | 65% |
| A1 and P1 Graded Commercial Paper | 85% |
| MUTUAL FUNDS: | |
| Short Term Corporate Taxable Bond | 90% |
| Short Term Municipal Bond | 90% |
| Short Term U.S. Taxable Bond | 90% |

| | |
|---|-----|
| Intermediate Term Municipal Bond | 85% |
| Intermediate Term Corporate Taxable Bond | 85% |
| Intermediate U.S. Taxable Bond | 85% |
| General U.S. Taxable Bond | 80% |
| Long Term U.S. Taxable Bond | 80% |
| Long Term Corporate Taxable Bond | 75% |
| General Municipal or Insured All Maturities or Single State Bonds | 75% |

4. Exclusion from Collateral. Notwithstanding anything herein to the contrary, the terms "Collateral" and "Proceeds" do not include, and Bank disclaims a security interest in, all WF Securities and Collective Investment Funds now or hereafter maintained in the Securities Account.
5. "Collective Investment Funds" means collective investment funds as described in 12 CFR 9.18 and includes, without limitation, common trust funds maintained by Bank for the exclusive use of its fiduciary clients.
6. "WF Securities" means stock, securities or obligations of Wells Fargo & Company or of any affiliate thereof (as the term affiliate is defined in Section 23A of the Federal Reserve Act (12 USC 371(c), as amended from time to time).
7. Limitation on Indebtedness. Notwithstanding anything in this Agreement to the contrary, the obligations secured hereby are limited to all present and future Indebtedness of Debtor to Bank arising under or in connection with the Letter of Credit Line and all Letters of Credit issued thereunder, as such terms are defined in a Credit Agreement dated as of March 20, 2009 between Bank and Debtor (as amended, extended or renewed – the "Credit Agreement").
8. Events of Default. The occurrence of any of the following shall constitute an "Event of Default" under this Agreement: (a) any defined event of default, under the Credit Agreement, as defined above; (b) any representation or warranty made by Debtor herein shall prove to be incorrect, false or misleading in any material respect when made; (c) Debtor shall fail to observe or perform any obligation or agreement contained herein; or (d) any impairment of the rights of Bank in any Collateral or Proceeds, or any attachment or like levy on any Collateral or Proceeds.

IN WITNESS WHEREOF, this Addendum has been executed as of the date indicated above.

SUNPOWER CORPORATION

/s/Dennis V. Arriola

Title SVP & CFO

WELLS FARGO BANK,
NATIONAL ASSOCIATION

/s/ Matthew A. Servatius

Title Vice President

LOAN AGREEMENT

THIS LOAN AGREEMENT ("**Agreement**") is made and entered into as of April 17, 2009 by and between SUNPOWER CORPORATION, a Delaware corporation ("**Borrower**"), and UNION BANK, N.A., a national banking association ("**Bank**").

SECTION 1. THE CREDIT

1.1 CREDIT FACILITIES

1.1.1 The Term Loan. Subject to and on the terms and conditions set forth herein, Bank will loan to Borrower the sum of Thirty Million Dollars (\$30,000,000) (the "**Term Loan**") in one (1) disbursement on or before April 30, 2009 in accordance with the terms hereof and of the Note (defined below). The proceeds of the Term Loan shall be used for general working capital and corporate purposes. The Term Loan shall be evidenced by Bank's standard form of commercial promissory note (the "**Note**").

1.2 Terminology. The following words and phrases, whether used in their singular or plural form, shall have the meanings set forth below:

"**Bankruptcy Code**" means Title 11 of the United States Code (11 U.S.C. Sections 101 et seq.).

"**Capitalized Lease Obligation**" means, with respect to any Person, that portion of any obligation as lessee under a lease of (or other agreement conveying the right to use) real and/or personal property that is required to be capitalized on, or disclosed in a footnote to, the balance sheet of such Person in accordance with GAAP, and, for purposes of this Agreement, the amount of such obligation shall be the capitalized amount thereof, determined in accordance with GAAP.

"**Change in Control**" means any event, transaction, or occurrence as a result of which (a) any "person" (as such term is defined in Sections 3(a)(9) and 13(d)(3) of the Securities Exchange Act of 1934, as amended (the "**Exchange Act**")), other than a trustee or other fiduciary holding securities under an employee benefit plan of Borrower, is or becomes a beneficial owner (within the meaning of Rule 13d-3 promulgated under the Exchange Act), directly or indirectly, of securities of Borrower, representing fifty-one percent (51%) or more of the combined voting power of Borrower's then outstanding securities; (b) a "Fundamental Change" (as that term is defined in the Indenture) occurs; or (c) Borrower shall cease to own and control 100% of the issued and outstanding capital stock of each Guarantor.

"**Closing Date**" means the date of this Agreement.

"**Continuing Guaranty**" means that certain Continuing Guaranty, dated as of the date hereof, by the Guarantors in favor of Bank.

"**Debtor Relief Laws**" means the Bankruptcy Code, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief laws of the United States or other applicable jurisdictions from time to time in effect and affecting the rights of creditors generally.

“Eligible Assets” means unencumbered and unrestricted cash, cash equivalents, and marketable securities acceptable to Bank, which, if cash, is U.S. Dollar denominated, or if held in an account not maintained in the United States, is denominated in any currency for which a U.S. Dollar equivalent is routinely calculated by Bank, and, if other than cash, consist of financial instruments or securities, acceptable to Bank; provided, that in no event shall “Eligible Assets” include any auction rate securities or auction rate certificates.

“Foreign Subsidiary” means each Subsidiary of Borrower, other than Subsidiaries that are organized under the laws of the United States or any state or territory thereof or the District of Columbia, that is a controlled foreign corporation (as defined in the Internal Revenue Code) in respect of which either (a) the pledge of all of the capital stock of such Subsidiary or (b) the guaranteeing by such Subsidiary of the Obligations could reasonably be expected to result in material adverse tax consequences to Borrower.

“GAAP” means generally accepted accounting principles and practices in the United States, consistently applied. Accounting terms used in this Agreement but not otherwise expressly defined have the meanings given them by GAAP.

“Guaranteed Indebtedness” means, with respect to any Person, any obligation of such Person guaranteeing any indebtedness, lease, dividend, or other obligation (“primary obligations”) of any other Person (the “primary obligor”) in any manner, including any obligation or arrangement of such Person (a) to purchase or repurchase any such primary obligation, (b) to advance or supply funds (1) for the purchase or payment of any such primary obligation or (2) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency or any balance sheet condition of the primary obligor, (c) to purchase property, securities or services primarily for the purpose of assuring the holder of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation, or (d) to indemnify the holder of such primary obligation against loss in respect thereof; provided that Guaranteed Indebtedness shall not include endorsements of instruments for deposit or collection in the ordinary course. The amount of any “Guaranteed Indebtedness” at any time shall be deemed to be an amount equal to the lesser at such time of (x) the stated or determinable amount of the primary obligation in respect of which such Guaranteed Indebtedness is made, and (y) the maximum amount for which such Person may be liable pursuant to the terms of the instrument embodying such Guaranteed Indebtedness; or, if not stated or determinable, the maximum reasonably anticipated liability (assuming full performance) in respect thereof.

“Guarantor(s)” means individually or collectively, each of SunPower Corporation, Systems, a Delaware corporation (formerly known as PowerLight Corporation), SunPower North America, LLC, a Delaware limited liability company (successor in interest to SunPower North America, Inc., a Delaware corporation) and each Person which executes or is required pursuant to this Agreement to execute a guaranty, or a joinder to an existing guaranty, of the Term Loan.

“Hedge Agreement” means any transaction, agreement or document now existing or hereafter entered into that provides for an interest rate, credit, commodity or equity swap, cap, floor, collar, forward foreign exchange transaction, currency swap, cross currency rate swap, currency option, or any similar transactions or any combination of,

or option with respect to, these or similar transactions, for the purpose of hedging Borrower's exposure to fluctuations in interest or exchange rates, loan, credit exchange, security or currency valuations or commodity prices.

"Indebtedness" of any Person means, at the time of computation thereof (without duplication): (a) all indebtedness and liabilities of such Person for borrowed money, under repurchase agreements (whether on a recourse or non-recourse basis) or for the deferred purchase price of property or services (including reimbursement and all other obligations with respect to surety bonds and bankers' acceptances, in each case whether or not matured, but excluding obligations to non-Affiliate trade creditors incurred in the ordinary course of business and excluding deferred taxes); (b) all obligations and liabilities, whether or not for borrowed money (i) represented by notes payable or drafts accepted, in each case representing extensions of credit, or (ii) evidenced by notes, bonds, debentures or similar instruments; (c) all indebtedness created or arising under any conditional sale, other title retention agreements or other similar instruments with respect to property acquired by such Person (even though the rights and remedies of the seller or lender under such agreement in the event of default are limited to repossession or sale of such property); (d) all Capitalized Lease Obligations; (e) all Guaranteed Indebtedness; (f) all reimbursement obligations of such Person under any letters of credit or acceptances (whether or not the same have been presented for payment), and all obligations of such Person as the issuer of any letters of credit or acceptances (whether or not the same have been presented for payment); (g) all liabilities under Hedge Agreements, in each case whether or not matured; and (h) with respect to Borrower, the Obligations.

"Indenture" means collectively, that certain Indenture, dated as of February 7, 2007 by and among Borrower and Wells Fargo Bank, National Association (the "Trustee"), that certain First Supplemental Indenture, dated as of February 7, 2007 by and among Borrower and the Trustee with respect to Borrower's 1.25% Senior Convertible Debentures due 2027, and that certain Second Supplemental Indenture, dated as of July, 2007 by and among Borrower and the Trustee with respect to Borrower's 0.75% Senior Convertible Debentures due 2027, each as in effect on the date hereof.

"Lien" means any voluntary or involuntary security interest, mortgage, pledge, claim, charge, encumbrance, title retention agreement, or third party interest, covering all or any part of the property of Borrower or any Guarantor.

"Loan Documents" means this Agreement, the Note, the Continuing Guaranty executed by the Guarantors, the Security Agreement, and all other documents, instruments and agreements required by Bank or executed, from time to time, in connection with this Agreement, the Note, the Term Loan, and with all other credit facilities from time to time made available to Borrower by Bank.

"Loan Party" means each of Borrower, each Guarantor and SPSA.

"Material Adverse Effect" means a material adverse effect on, or material impairment of (a) the business, assets, operations, liabilities (actual or contingent) or financial condition of Borrower, individually, or of Borrower and its Subsidiaries, taken as a whole, or (b) the ability of Borrower or any Guarantor to pay or perform in accordance with the terms of any of the Loan Documents, or (c) the validity or enforceability of the Loan Documents, or (d) the rights and remedies of Bank under any of the Loan Documents, or (e) the

timely payment of the principal of or interest on the Obligations or other amounts payable in connection therewith.

“Material Domestic Subsidiary” means any Material Subsidiary that is not a Foreign Subsidiary.

“Material Subsidiary” means any Subsidiary whose assets have a book value which exceed ten percent (10%) of the book value of Borrower’s consolidated assets (based on the then most recent fiscal year end financial statement then delivered or deemed delivered to Bank hereunder). In no event shall any Special Purpose Entity be considered a Material Subsidiary for any purpose under this Agreement.

“Note” has the meaning given in Section 1.1.1.

“Obligations” means all loans, advances, debts, expense reimbursements, fees, liabilities and obligations, for the performance of covenants, tasks or duties or for payment of monetary amounts (whether or not such performance is then required or contingent, or amounts are liquidated or determinable) owing by Borrower or any Guarantor arising under or in any way in connection with any Loan Document or otherwise with respect to the Term Loan, of any kind or nature, present or future, whether voluntary or involuntary, whether incurred directly or acquired by Bank by assignment, assumption or succession, whether due or not due, absolute or contingent, liquidated or unliquidated, legal or equitable, whether Borrower is liable individually or jointly or with others, whether or not evidenced by any note, agreement or other instrument, whether arising under this Agreement or any of the other Loan Documents, or under any other agreement between Borrower, any Guarantor or any of their respective Subsidiaries and Bank, whether recovery thereof is or becomes barred by a statute of limitations or is or becomes otherwise unenforceable, together with all expenses of, for and incidental to collection, including reasonable attorneys’ fees, and all covenants and duties regarding such amounts. “Obligations” includes, without limitation: (a) all principal, interest, fees, charges, expenses, reasonable attorneys’ fees and any other sum chargeable to Borrower or any Loan Party under this Agreement or any of the other Loan Documents, and all principal, interest and other amounts due or owing in respect of the Term Loan, and (b) all interest, fees and other amounts that accrue after the commencement by or against Borrower or any Loan Party or any affiliate thereof of any case or proceeding under any Debtor Relief Law, regardless of whether such interest and fees are allowed claims in such proceeding.

“Permitted Indebtedness” means (i) indebtedness of Borrower or a Guarantor to Borrower or any Subsidiary in the ordinary course of business; (ii) indebtedness in favor of Solon AG and its affiliates under the Amended and Restated Supply Agreement, dated as of April 14, 2005, as amended, between Borrower and Solon AG fur Solartechnik; (iii) indebtedness in favor of customers and suppliers of the Borrower and Guarantors in connection with supply and purchase agreements in an aggregate principal amount not to exceed Two Hundred Million Dollars (\$200,000,000) at any one time and any refinancings, refundings, renewals or extensions thereof (without shortening the maturity thereof or increasing the principal amount thereof); (iv) indebtedness in respect of Borrower’s 1.25% Senior Convertible Debentures due 2027 issued under the Indenture in February 2007 in the maximum aggregate principal amount not to exceed Two Hundred Million Dollars (\$200,000,000) plus accrued interest thereon and Borrower’s 0.75% Senior Convertible Debentures issued under the

Indenture in August 2007 in the maximum aggregate principal amount of Two Hundred Twenty-Five Million Dollars (\$225,000,000) plus accrued interest thereon; (v) indebtedness owed to bonding companies in connection with obligations under bonding contracts (however titled) entered into in the ordinary course of business, pursuant to which such bonding companies issue bonds or otherwise secure performance of Borrower and Subsidiaries for the benefit of their customers and contract counterparties; (vi) unsecured indebtedness of Borrower owing to International Finance Corporation, in an aggregate principal amount (when added to any amounts permitted to be guaranteed pursuant to clause (e) of Section 5.5) not to exceed, at any time, Seventy Five Million Dollars (\$75,000,000); provided that prior to entering into any definitive or binding agreement with respect to any such indebtedness, Bank shall have reviewed and approved in writing all material terms and conditions of such indebtedness; (vii) unsecured indebtedness of Borrower in an aggregate principal amount not to exceed Fifty Million Dollars (\$50,000,000) under the Wells Fargo Line of Credit as in effect on the Closing Date; (viii) indebtedness of Borrower in an aggregate principal amount not to exceed One Hundred Fifty Million Dollars (\$150,000,000) under the secured letter of credit facility provided under the Wells Fargo Credit Agreement as in effect on the Closing Date; provided that such amount may be increased to an aggregate principal amount not more than One Hundred Seventy Five Million Dollars (\$175,000,000); (ix) liabilities of Borrower and Guarantors under Hedge Agreements with nationally recognized financial institutions reasonably satisfactory to Bank pursuant to bona fide hedging transactions and not for speculation; (x) refinancing of Permitted Indebtedness described in (vii) and (viii) above, provided that the maximum permitted principal amount thereof is not increased, the terms thereof are not modified to impose materially more burdensome terms upon Borrower or its Subsidiaries, as the case may be, no collateral or security (other than as permitted in clause (xiii)(b) and (xx) of the definition of "Permitted Liens") is granted or exists in connection therewith, and none of Borrower or the Guarantors is subject to any new or additional financial covenants, in each case, without the prior written consent of Bank, (xi) Permitted Refinancing Indebtedness in an amount not to exceed the principal amount of the debentures being refinanced with the proceeds thereof; and (xii) additional unsecured indebtedness of Borrower and Guarantors in an aggregate principal amount not to exceed Twenty Five Million Dollars (\$25,000,000) outstanding at any one time.

"Permitted Investments" means (a) loans, advances or investments existing as of, and disclosed to Bank prior to, the Closing Date, (b) additional loans or advances by Borrower or a Guarantor to employees and officers in the ordinary course of business and in amounts not to exceed an aggregate of Fifteen Million Dollars (\$15,000,000) outstanding at any time, (c) investments which are made in accordance with Borrower's investment policy as from time to time adopted by its Board of Directors, (d) investments which constitute Specified Transactions expressly permitted under Section 5.3, (e) loans, advances or investments that constitute Permitted Indebtedness, (f) advances to, or investments in, a Subsidiary or in Woongjin Energy Co. Ltd. by Borrower or any Guarantor in the ordinary course of business as conducted from time to time; and (g) prepayment of obligations to vendors and suppliers in the ordinary course in an amount not to exceed Three Hundred Million Dollars (\$300,000,000).

"Permitted Liens" means (i) liens for taxes not yet due or that are being contested in good faith by appropriate proceedings; (ii) carriers', warehousemen's, materialmen's, repairmen's or other like liens arising in the ordinary course of business that are not

overdue for a period of more than 90 days or that are being contested in good faith by appropriate proceedings; (iii) pledges or deposits in connection with workers' compensation, unemployment insurance and other social security legislation; (iv) deposits to secure the performance of bids, trade contracts (other than for borrowed money), leases, statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature incurred in the ordinary course of business; (v) easements, rights-of-way, restrictions and other similar encumbrances incurred in the ordinary course of business that, in the aggregate are not substantial in amount and that do not in any case materially detract from the value of the property subject thereto or materially interfere with the ordinary conduct of the business of the Borrower or any of its Subsidiaries; (vi) any lien granted as a replacement or substitute for another Permitted Lien; (vii) liens existing as of the date of this Agreement and securing indebtedness of Borrower or any Subsidiary, incurred to finance the acquisition of fixed or capital assets (including refinancings thereof) provided that such liens are limited to the assets financed with such indebtedness; (viii) liens created pursuant to the Loan Documents; (ix) any interest or title of a lessor under any lease entered into by the Borrower or any other Subsidiary in the ordinary course of its business and covering only the assets so leased; (x) liens in favor of customers or suppliers of the Borrower and its Subsidiaries on equipment, supplies and inventory purchased with the proceeds of advances made by such customers or suppliers under, and securing obligations in connection with, supply agreements; (xi) liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods; (xii) licenses of patents, trademarks and other intellectual property rights granted by the Borrower or any of its Subsidiaries in the ordinary course of business and not interfering in any respect with the ordinary conduct of the business of the Borrower or such Subsidiary; (xiii) bankers' liens, rights of setoff and other similar liens existing solely with respect to cash and cash equivalents on deposit in one or more accounts maintained by the Borrower or any Guarantor, in each case existing in the ordinary course of business (a) in favor of the bank or banks with which such accounts are maintained, securing customary obligations owing to such bank relating to such account, but not obligations for borrowed money; provided that if Borrower or such Subsidiary has an obligation to such bank or banks for borrowed money, the amount of cash and cash equivalents subject to such liens and setoff rights shall not at any time exceed Five Million Dollars (\$5,000,000), and (b) in favor of Wells Fargo with respect to accounts maintained at Wells Fargo; provided that the amount of such cash and cash equivalents subject to such liens and setoff rights shall not at any time exceed Thirty Million Dollars (\$30,000,000); (xiv) [reserved]; (xv) liens that arise by operation of law for obligations not yet due; (xvi) liens arising out of judgments or awards not resulting in a default under this Agreement; (xvii) liens arising out of conditional sale, title retention, consignment or similar arrangements for the sale of goods entered into by Borrower in the ordinary course of business; (xviii) existing and future liens related to or arising from rebates in the ordinary course of business; and (xix) existing and future liens in favor of the Borrower's bonding company covering materials, contracts, receivables and other assets which are related to, or arise out of, contracts which are bonded by that bonding company; (xx) security interests: (1) in cash, cash equivalents and securities maintained as pledged collateral in deposit or securities accounts in an aggregate amount not to exceed at any time the then outstanding Wells Fargo Exposure Amount securing the Indebtedness described in clause (viii) of the definition of "Permitted Indebtedness", and (2) in sixty-percent (60%) of the stock in SPSA, securing up to Fifty Million Dollars (\$50,000,000) of the obligations of Borrower under the Wells Fargo Line of Credit as in

effect on the Closing Date, and (xxi) other liens so long as the aggregate outstanding principal amount of the obligations secured thereby does not exceed (as to the Borrower and the Guarantors on a consolidated basis) Five Million Dollars (\$5,000,000) at any one time; provided, however, that in no event shall any Permitted Lien (except those in favor of Bank) extend to the deposit, investment or securities account maintained with Bank.

“Permitted Refinancing Indebtedness” means Indebtedness evidenced by notes or debentures or convertible equity securities of Borrower the proceeds of which are used to repay in full all of Borrower’s outstanding 0.75% Senior Convertible Debentures due 2027 if and to the extent that such Indebtedness and convertible equity securities: (a) have no maturity date, scheduled redemption date or other mandatory redemption date exercisable in the discretion of the holder thereof, occurring prior to the Term Loan Maturity Date, (b) contain no financial covenants, (c) contain no other covenants that are more restrictive on the Borrower or its business or operations than the restrictions in the Indenture in effect as of the Closing Date, (d) are subject to terms and conditions (other than with regard to pricing) substantially identical to those contained in such debentures and the Indenture, and (e) are on terms and conditions satisfactory to Bank.

“Person” means any individual, sole proprietorship, partnership, limited liability partnership, joint venture, trust, unincorporated organization, association, corporation, limited liability company, institution, public benefit corporation, entity or government (whether Federal, state, county, city, municipal or otherwise, including any instrumentality, division, agency, body or department thereof).

“Reference 10-K” means Borrower’s annual report on Form 10-K filed by Borrower with the Securities and Exchange Commission for the fiscal year ending December 28, 2008.

“Security Agreement” means the Security Agreement, dated as of the Closing Date, by and between Borrower and Bank, in form and substance satisfactory to Bank, as the same may be amended, renewed, extended, supplemented, restated, replaced or otherwise modified or in effect from time to time.

“Solvent” means, with respect to any Person as of a particular date, that on such date (a) such Person is generally able to pay its debts and other liabilities, contingent obligations and other commitments as they mature in the normal course of business, (b) such Person does not intend to, and does not believe that it will, incur debts or liabilities beyond such Person’s ability to pay as such debts and liabilities mature in their ordinary course, (c) such Person is not engaged in a business or transaction, and is not about to engage in a business or a transaction, for which such Person’s assets would constitute unreasonably small capital after giving due consideration to the prevailing practice in the industry in which such Person is engaged or is to engage, (d) the fair value of the assets of such Person is greater than the total amount of liabilities, including contingent liabilities, of such Person, and (e) the aggregate fair saleable value (i.e., the amount that may be realized within a reasonable time, considered to be six months to one year, either through collection or sale at the regular market value, conceiving the latter as the amount that could be obtained for the assets in question within such period by a capable and diligent businessman from an interested buyer who is willing to purchase under ordinary selling conditions) of the assets of such Person will exceed its debts and other liabilities (including contingent, subordinated, unmatured and unliquidated debts and liabilities). For purposes of this definition, “debt” means any liability on a claim, and “claim” means (i) a right to payment, whether or not such a right

is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured, or (ii) a right to an equitable remedy for breach of performance if such breach gives rise to a payment, whether or not such right is an equitable remedy, is reduced judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, secured or unsecured.

“Special Purpose Entity” means an entity formed in connection with a specific transaction with a customer, investor, lender and/or financing party of Borrower or any Subsidiary wherein such entity is used solely in connection with such transaction.

“Specified Transaction” means any of the following: (a) the acquisition by Borrower or a Guarantor of all or substantially all of the assets of another Person or a division of such Person; (b) the merger or consolidation of Borrower or any Guarantor with or into any other Person; (c) the acquisition by Borrower or any Guarantor of a controlling or majority interest in any other Person; and (d) investments in other Persons, including joint ventures.

“SPML” means SunPower Philippines Manufacturing, Ltd., a company organized under the laws of the Philippines.

“SPSA” means SunPower Systems SA, a corporation organized under the laws of Switzerland.

“Subsidiary” means, as applied to any Person, (a) a corporation or limited liability company whose stock regularly entitled to vote (other than directors’ qualifying shares) having ordinary voting power to elect a majority of its board of directors (or other governing body) is 50% or more owned, directly or indirectly, by such Person, (b) a partnership or joint venture whose partnership or venture interests are 50% or more owned, directly or indirectly, by such Person, and (c) each other Person (whether now existing or hereafter formed or acquired) in which such Person, directly or indirectly, owns a controlling or majority interest. The term “Subsidiary”, when used in this Agreement without reference to any particular Person, means a Subsidiary of Borrower.

“Tangible Net Worth” means Borrower’s consolidated stockholders’ equity increased by the outstanding amount of indebtedness included in the calculation thereof that is subordinated to Bank on terms satisfactory to Bank and decreased by any intangible assets and any loans or advances to, or investments in, any related entities or individuals, all determined in accordance with GAAP.

“Term Loan” has the meaning given to such term in Section 1.1.1 above.

“Term Loan Maturity Date” means April 17, 2012.

“Total Liabilities” means total consolidated liabilities of Borrower (including both current and non-current liabilities), less the outstanding amount of indebtedness included in the calculation thereof that is subordinated to Bank on terms satisfactory to Bank, plus the aggregate amount available to Borrower to be drawn under all letters of credit issued for the account of Borrower and/or any Subsidiary, all determined in accordance with GAAP.

“Total Non-Stock Consideration” means all consideration whatsoever (other than common stock in Borrower) and shall include, without limitation, cash, other property, assumed indebtedness, amounts payable, whether evidenced by notes or otherwise and “earn-out” payments.

“Wells Fargo” means Wells Fargo Bank, National Association.

“Wells Fargo Agreements” means, collectively, the Wells Fargo Credit Agreement and the documents, instruments and agreements entered into in connection therewith, in each case, as amended, renewed, extended, supplemented, restated, replaced, refinanced or otherwise modified or in effect from time to time.

“Wells Fargo Credit Agreement” means that certain Amended and Restated Credit Agreement, dated as of March 20, 2009, by and between Borrower and Wells Fargo as amended, renewed, extended, supplemented, restated, replaced, refinanced or otherwise modified or in effect from time to time.

“Wells Fargo Exposure” means the sum of (a) the aggregate outstanding principal balance of advances owing under the Wells Fargo Line of Credit, plus (b) the aggregate amount available to be drawn under any letter of credit sublimit or subfeature to the Wells Fargo Line of Credit, plus (c) the amount drawn and not yet reimbursed under any letters of credit issued under such sublimit or subfeature.

“Wells Fargo Line of Credit” means Borrower’s line of credit for advances in an aggregate principal amount up to Fifty Million Dollars (\$50,000,000), under the Wells Fargo Credit Agreement, as such line of credit may be amended, renewed, extended, supplemented, restated, replaced, refinanced or otherwise modified from time to time.

1.3 Prepayment. The Term Loan may be prepaid in full or in part but only in accordance with the terms of the Note, and any such prepayment shall be subject to any prepayment fee (if any) provided for therein. In the event of a principal prepayment on any term indebtedness, the amount prepaid shall be applied to the scheduled principal installments due in the reverse order of their maturity on the Term Loan being prepaid.

1.4 Interest. The unpaid principal balance of the Term Loan shall bear interest at the rate or rates provided in the Note.

1.5 Upfront Commitment Fee. On or before the date of execution of this Agreement, Borrower shall pay to Bank a nonrefundable commitment fee with respect to the Term Loan of One Hundred Seventy Two Thousand Five Hundred Dollars (\$172,500) which shall be fully-earned on receipt.

1.6 Balances. Borrower shall maintain one or more depository accounts with Bank until all Obligations relating to the Term Loan have been paid in full.

1.7 Disbursement. Bank shall disburse the proceeds of the Term Loan as provided in Bank’s standard form Authorization(s) to Disburse executed by Borrower.

1.8 Automatic Charge. Borrower agrees that each payment of any amounts owing pursuant to this Agreement or the other Loan Documents relating to the Term Loan shall be made by

automatic deduction from Borrower's designated deposit account with Bank. These debits shall not constitute a set-off.

SECTION 2. CONDITIONS PRECEDENT

Bank shall not be obligated to disburse the Term Loan unless at or prior to the time of such disbursement, the following conditions have been fulfilled to Bank's satisfaction:

2.1 Compliance; Loan Documents. (a) Borrower shall have performed and complied with all terms and conditions required by this Agreement to be performed or complied with, including payment of the fees required hereunder, and Borrower shall have delivered to Bank a compliance certificate in the form attached hereto as **Exhibit C** executed by Borrower's chief financial officer evidencing compliance, as of December 28, 2008, with each of the financial covenants set forth herein. (b) Borrower shall have executed and delivered to Bank this Agreement, the Note, the Security Agreement, and all other Loan Documents.

2.2 Guaranties. Each Guarantor shall have executed and delivered to Bank the Continuing Guaranty.

2.3 Authorization to Obtain Credit. Borrower and each Guarantor shall have provided Bank with an executed copy of Bank's form Authorization to Obtain Credit with certified copies of resolutions duly adopted by Borrower's and such Guarantor's board of directors, managers, members or other governing body, and in form reasonably satisfactory to Bank, authorizing the execution, delivery and performance of this Agreement and the other Loan Documents to which they are a party. Such resolutions shall also designate the persons who are authorized to act on Borrower's and such Guarantor's behalf in connection with this Agreement and the other Loan Documents, and to do the things required of Borrower and the Guarantors pursuant to this Agreement and the other Loan Documents.

2.4 Legal Opinion. Bank shall have received opinions of counsel to Borrower and the Guarantors, which opinions shall be in a form and cover such matters as Bank shall reasonably request.

2.5 Lien Searches. Bank shall have received written advice relating to such Lien searches as Bank shall have requested, and such termination statements or other documents as may be necessary to confirm that the assets and properties of Borrower and the Guarantors are subject to no other Liens in favor of any Persons (other than Permitted Liens).

2.6 Continuing Compliance. At the time any disbursement is to be made and immediately thereafter, there shall not exist any Event of Default (as hereinafter defined) or any event, condition, or act which with notice or lapse of time, or both, would constitute an Event of Default.

2.7 Financial Condition. At the time any disbursement is to be made and immediately thereafter, there shall have been no material adverse change, as determined by Bank in the exercise of its good faith business judgment, in the financial condition or business of Borrower or any Guarantor, nor any material decline, as reasonably determined by Bank, in the market value of any collateral required hereunder or a substantial or material portion of the assets of Borrower or any such Guarantor.

2.8 Disbursement Request. Bank shall have received a disbursement request and an authorization to disburse, and such other documents, certificates and instruments as Bank may reasonably require.

SECTION 3. REPRESENTATIONS AND WARRANTIES

Borrower represents and warrants that:

3.1 Business Activity. Borrower's principal business is the design, manufacture and sale of high-performance solar electric power technologies.

3.2 Organization and Qualification. Borrower is a corporation duly organized and existing under the laws of the State of Delaware; each Guarantor is a corporation or limited liability company duly organized and validly existing under the laws of its state of organization and formation; each Loan Party is duly qualified and in good standing in each jurisdiction where such qualification is required except to the extent that a failure to qualify could not reasonably be expected to result in a Material Adverse Effect, and each Loan Party has the power and authority to carry on the business in which it is engaged and/or proposes to engage. Borrower and each Subsidiary possesses, and shall hereafter possess, all permits, consents, approvals, franchises and licenses required and rights to all trademarks, trade names, patents, and fictitious names, if any, necessary to enable it to conduct the business in which it is now engaged in compliance with applicable law except to the extent that non-compliance could not reasonably be expected to have a Material Adverse Effect.

3.3 Power and Authorization. Borrower and each Guarantor has the power and authority to enter into this Agreement, the Note and the other Loan Documents to which it is a party, and to execute and deliver the Note and all other Loan Documents to which it is a party. This Agreement and all things required by this Agreement and the other Loan Documents have been duly authorized by all requisite action of Borrower and the Guarantors (as applicable). This Agreement and each other Loan Document has been duly authorized, and upon their execution and delivery in accordance with the provisions hereof will constitute legal, valid and binding agreements and obligations of Borrower or the party which executes the same (other than Bank), enforceable in accordance with their respective terms.

3.4 Authority to Borrow. The execution, delivery and performance by Borrower and each Guarantor of each of the Loan Documents to which it is a party do not violate any provision of any law or regulation, or contravene any provision of the certificate or articles of incorporation, bylaws, operating or limited liability company agreement or other organizational document of such entity, or result in any breach of or default under any material contract, obligation, indenture or other instrument to which such entity is a party or by which such entity may be bound.

3.5 Compliance with Laws. Borrower and each of its Subsidiaries are in compliance with all applicable laws, rules, ordinances or regulations which materially affect the operations or financial condition of Borrower and such Subsidiaries, except to the extent that non-compliance could not reasonably be expected to have a Material Adverse Effect.

3.6 Title. Borrower has good and marketable title to all material property and assets reflected in its financial statements delivered to Bank and to all material property acquired by Borrower since the date of said financial statements, free and clear of all Liens, except Permitted Liens.

3.7 Financial Statements. Borrower's financial statements, including its audited balance sheet as at December 28, 2008, and its audited statement of operation, audited statement of stockholders equity, and audited statement of cash flows for the fiscal year ended December 28, 2008, each prepared on a consolidated basis, have heretofore been furnished to Bank, and (a) fairly present in all material respects Borrower's financial condition and results of operations for the period covered thereby, (b) disclose all consolidated liabilities of Borrower that were, as of such date, required to be reflected or reserved against under GAAP, whether liquidated or unliquidated, fixed or contingent, and (c) have been prepared in accordance with GAAP consistently applied. Since the dates of such financial statements there has been no material adverse change in the consolidated financial condition or operations of Borrower, nor has Borrower mortgaged, pledged, granted a security interest in or otherwise encumbered any of its material assets or properties except Permitted Liens and security interests and liens in favor of Bank.

3.8 Litigation. Except as disclosed in the Reference 10-K, there is no litigation or proceeding pending or threatened against Borrower or any of its property which could reasonably be expected to result in a Material Adverse Effect.

3.9 No Subordination. There is no agreement, indenture, contract or instrument to which Borrower or any Guarantor is a party or by which Borrower or any Guarantor may be bound that requires the subordination in right of payment of any of Borrower's or such Guarantor's obligations subject to this Agreement or any other Loan Document to any other obligation of Borrower or such Guarantor.

3.10 ERISA. Borrower's defined benefit pension plans (as defined in the Employee Retirement Income Security Act of 1974, as amended ("ERISA")), meet, as of the date hereof, the minimum funding standards of Section 302 of ERISA, and no Reportable Event or Prohibited Transaction as defined in ERISA has occurred with respect to any such plan.

3.11 [Reserved.]

3.12 OFAC. No Loan Party or any of their Subsidiaries (i) is a person whose property or interest in property is blocked or subject to blocking pursuant to Section 1 of Executive Order 13224 of September 23, 2001 Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism (66 Fed. Reg. 49079 (2001)), (ii) engages in any dealings or transactions prohibited by Section 2 of such executive order, or is otherwise associated with any such person in any manner violative of Section 2, or (iii) is a person on the list of Specially Designated Nationals and Blocked Persons or subject to the limitations or prohibitions under any other U.S. Department of Treasury's Office of Foreign Assets Control regulation or executive order.

3.13 Patriot Act. Each Loan Party, and each of their respective Subsidiaries, is in compliance, in all material respects, with (i) the Trading with the Enemy Act, as amended, and each of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) and any other enabling legislation or executive order relating thereto, and (ii) the Uniting And Strengthening America By Providing Appropriate Tools Required To Intercept And Obstruct Terrorism (USA Patriot Act of 2001) and the USA PATRIOT Improvement and Reauthorization Act of 2005 (Pub. L. 109-177) (the "Patriot Act").

3.14 Environmental Matters. Except as disclosed by Borrower to Bank in writing prior to the date hereof and except as to matters which could not reasonably be expected to have a

Material Adverse Effect, Borrower and each other Loan Party is in compliance in all material respects with all applicable federal or state environmental, hazardous waste, health and safety statutes, and any rules or regulations adopted pursuant thereto, which govern or affect any of Borrower's or its Subsidiaries' operations and/or properties, including without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, the Superfund Amendments and Reauthorization Act of 1986, the Federal Resource Conservation and Recovery Act of 1976, and the Federal Toxic Substances Control Act, as any of the same may be amended, modified or supplemented from time to time. None of the operations of Borrower or any of its Subsidiaries is the subject of any federal or state investigation evaluating whether any remedial action involving a material expenditure is needed to respond to a release of any toxic or hazardous waste or substance into the environment. Neither Borrower nor any Subsidiary has any material contingent liability in connection with any release of any toxic or hazardous waste or substance into the environment. None of Borrower's or any of its Subsidiaries' properties or assets has been used by Borrower or any Subsidiary or, to the best of Borrower's knowledge, by previous Persons, in disposing, producing, storing, treating, or transporting any hazardous substance other than legally.

3.15 Regulatory Compliance. Borrower is not an "investment company" or a company "controlled" by an "investment company" under the Investment Company Act of 1940, as amended. No action has been taken or is currently planned by Borrower, or any agent acting on its behalf, which would cause this Agreement or the Note to violate Regulation U or any other regulation of the Board of Governors of the Federal Reserve System, or to violate the Securities and Exchange Act of 1934, in each case as in effect now or as the same may hereafter be in effect. Borrower is not engaged as one of its important activities in extending credit for margin stock (under Regulations X, T and U of the Federal Reserve Board of Governors). Borrower has complied in all material respects with the Federal Fair Labor Standards Act. Neither Borrower nor any of its Subsidiaries is a "holding company" or an "affiliate" of a "holding company" or a "subsidiary company" of a "holding company" as each term is defined and used in the Public Utility Holding Company Act of 2005.

3.16 Subsidiaries. As of the date hereof, the entities named in Schedule 3.16(a) hereto are the only Subsidiaries of Borrower, with the Borrower's direct or indirect percentage ownership interest and the state or country of formation set forth in said Schedule. Schedule 3.16(b) lists all Special Purpose Entities existing as of the date hereof.

3.17 Other Agreements. Neither Borrower nor any Guarantor is a party to (or will enter into) any master foreign exchange agreement which covers forward foreign exchange transactions, currency swap transactions, cross currency rate swap transactions, currency options, or any other similar transactions or any combination of any of the foregoing (however titled) with any party (other than Bank) which includes covenants, defaults or other material provisions which are more restrictive to Borrower or such Guarantor than those contained herein.

3.18 No Event of Default. Neither Borrower nor any Guarantor is now in default in the payment of any of its material obligations, and there exists no Event of Default, and no condition, event or act which with notice or lapse of time, or both, would constitute an Event of Default.

SECTION 4. AFFIRMATIVE COVENANTS

Until such time as Bank no longer has any commitment to extend credit to Borrower hereunder, and all Obligations relating to the Term Loan are fully and indefeasibly, paid, performed and satisfied, Borrower agrees that:

4.1 Use of Proceeds. Borrower shall use the proceeds of the Term Loan only as provided in Section 1 and not for any purpose prohibited under the Loan Documents. No part of the proceeds of the Term Loan or any other extension of credit provided by Bank will be used, directly or indirectly: (a) for any payments to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended; or (b) in extending credit for margin stock (under Regulations X, T and U of the Federal Reserve Board of Governors).

4.2 Payment of Obligations. Borrower shall pay and discharge, and shall cause each of its Subsidiaries to, promptly all taxes, assessments and other governmental charges and claims levied or imposed upon it or its property, or any part thereof; **provided, however,** that Borrower shall have the right in good faith to contest any such taxes, assessments, charges or claims and, pending the outcome of such contest, to delay or refuse payment thereof provided that adequately funded reserves are established by it to pay and discharge any such taxes, assessments, charges and claims.

4.3 Maintenance of Existence. Borrower shall maintain and preserve its, and each other Loan Party's, existence, and all rights, franchises, licenses and other authority necessary for the conduct of its business except where the failure to do so could not reasonably be expected to have a Material Adverse Effect, and shall maintain and preserve its property and assets, equipment and facilities in good order, condition and repair (ordinary wear and tear excepted). Bank may, at reasonable times, visit and inspect any of Borrower's or its Subsidiaries' properties.

4.4 Records. Borrower shall keep and maintain adequate accounts and records of its operations in accordance with GAAP and shall permit Bank to have access thereto, to make examination and photocopies thereof, and to make audits of Borrower's assets, accounts and records on at least one day's notice (unless an Event of Default has occurred and is continuing) and during regular business hours, provided that such audits shall be no more frequent than one time each fiscal year, unless an Event of Default has occurred and is continuing.

4.5 Information Furnished. Borrower shall furnish and with respect to (a), (b), (c) and (j) below, cause each Guarantor to furnish to Bank:

(a) Within forty-five (45) days after the close of each fiscal quarter, its unaudited balance sheet as of the close of such fiscal quarter, and its unaudited statement of operation, unaudited statement of stockholders equity, and unaudited statement of cash flows for that fiscal quarter, each prepared on a consolidated basis, with year-to-date totals and supportive schedules, all prepared in accordance with GAAP.

(b) Within one hundred twenty (120) days after the close of each fiscal year, a copy of its balance sheet as of the close of such fiscal year, and its statement of operation, statement of stockholders equity, and statement of cash flows for that fiscal year, each

prepared on a consolidated basis, examined and prepared on an audited basis by independent certified public accountants selected by Borrower and reasonably satisfactory to Bank (provided that Bank agrees that the current accountants of Borrower are satisfactory), in accordance with GAAP, along with any management letter provided by such accountants.

(c) As soon as available, copies of any Form 10-Q quarterly reports, Form 10-K annual reports, and any other material filings (such as a Form 8-K current report regarding any material occurrence) made by Borrower with the SEC or any other federal or state regulatory authority. Anything required to be delivered pursuant to Sections 4.5(a) or 4.5(b) above or this Section 4.5(c) (to the extent any such financial statements, reports or proxy statements are included in materials otherwise filed with the SEC) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date on which the Borrower posts such reports, or provides a link thereto, on the Borrower's website on the Internet or the date on which such reports are filed with the SEC and become publicly available.

(d) Within forty-five (45) days after the close of each fiscal quarter other than the last quarter of each fiscal year (and concurrent with the delivery of the annual audited financial statements after the close of each fiscal year), a compliance certificate, substantially in the form attached hereto as Exhibit A (the "**Compliance Certificate**"), certifying, among other things, with supporting calculations in reasonable detail, compliance with all covenants under this Agreement, executed by Borrower's chief financial officer or other duly authorized officer.

(e) Not later than twenty (20) days after and as of the end of each of Borrower's fiscal months, either (i) a certificate, in form satisfactory to Bank, executed by Borrower's chief financial officer or other duly authorized officer, certifying that the Wells Fargo Exposure, at such date, is zero, or (ii) a compliance certificate, substantially in the form attached hereto as Exhibit B, certifying, among other things, that Borrower is in full compliance with the Minimum Unrestricted Liquidity covenants of Section 4.6, executed by Borrower's chief financial officer or other duly authorized officer, including a schedule of the balances for each account as reported in the Borrower's consolidated general ledger evidencing such compliance, and if requested by Bank, copies of all deposit account, securities account and brokerage account statements demonstrating compliance therewith, provided however that such statements shall be provided as soon as they become commercially available, and further, such statements may include downloads from internet-based bank balance reporting and information systems.

(f) Within ninety (90) days after the last day of each fiscal year, Borrower's operating budget and financial projections for the period through and including the Term Loan Maturity Date.

(g) Prompt written notice to Bank of: (i) any Event of Default or any event, circumstance or condition that, with the passage of time, the giving of notice or both, could result in an Event of Default, (ii) any litigation or other matter which could reasonably be expected to have a Material Adverse Effect, (iii) the occurrence of any default under, or any modification, amendment or change to, the Indenture, any of the Wells Fargo Agreements or any of the credit facilities provided thereunder, or (iv) any request for Borrower to perform under the terms of any guaranty permitted hereunder.

- (h) Prompt written notice to Bank of any change in Borrower's or any Guarantor's legal name or state of organization.
- (i) Within fifteen (15) days after Borrower knows that any Reportable Event or Prohibited Transaction (as defined in ERISA) has occurred with respect to any defined benefit pension plan of Borrower, a statement of an authorized officer of Borrower describing such event or condition and the action, if any, which Borrower proposes to take with respect thereto.
- (j) Such other financial statements, reports and information as Bank may reasonably request from time to time.
- (k) Within thirty (30) days of the formation acquisition, dissolution or disposition of any Subsidiary, including Special Purpose Entities, notice of such formation acquisition, dissolution or disposition.

4.6 Minimum Unrestricted Liquidity. Borrower, on a consolidated basis, shall maintain: Eligible Assets with a value not less than two (2.00) times the outstanding Wells Fargo Exposure with a minimum amount of such liquidity equal to 100% of the Wells Fargo Exposure to be held in accounts maintained and domiciled in the United States consisting of US Dollar denominated instruments and deposits, in all instances to be determined as of the end of each of Borrower's fiscal months. For purposes of calculating U.S. Dollar equivalent value of Eligible Assets not denominated in U.S. Dollars, Bank will convert the value of such assets as of the applicable statement date based on Bank's foreign exchange closing rates for such date.

4.7 Minimum Unrestricted Liquidity at Bank. Unless and until Borrower has granted to Bank, and Bank holds, a perfected, first-priority security interest in cash collateral acceptable to Bank in an amount not less than one hundred five percent (105%) of the outstanding principal amount of the Term Loan, Borrower, on a consolidated basis, shall at all times maintain Eligible Assets held in general (i.e., not special or limited, or any accounts in the nature of a bailment or trust) deposit accounts maintained with Bank, that are identified in the definition of collateral in the Security Agreement, consisting of U.S. dollar-denominated time deposit, certificate of deposit, demand deposit, money market account, overnight bank deposits, or a combination thereof, equal to or greater than (a) for any date of determination occurring from the Closing Date until one day prior to the first anniversary of the Closing Date, the sum of (x) Ten Million Dollars (\$10,000,000), plus (y) the amount of interest due or to become due under the Term Loan during the period from such date of determination through the earlier of the date that is 365 days after such date of determination and the Term Loan Maturity Date (such period, the "**Subject Period**"); and (b) from the first anniversary of the Closing Date and at all times thereafter, the amount of principal and interest due or to become due in respect of the Term Loan during the applicable Subject Period, in each case determined as of the end of each month. The calculation of the amount of interest accruing, due or to become due for purposes of this Section 4.7 shall be made based on the applicable interest rate(s) in effect with respect to the Term Loan on the first day of the fiscal quarter during which such Subject Period begins, as though such rate(s) will remain in effect during the entire Subject Period.

4.8 Total Liabilities to Tangible Net Worth. Borrower, on a consolidated basis, shall maintain a ratio of Total Liabilities to Tangible Net Worth of not greater than 2.00 to 1.00, determined as of the end of each fiscal quarter.

4.9 Minimum Profitability. Borrower, on a consolidated basis, shall maintain net income (determined in accordance with GAAP) not less than Twenty Five Million Dollars (\$25,000,000) in each period of four consecutive fiscal quarters, determined as of each fiscal quarter end on a rolling four-quarter basis. Borrower shall not have a single quarterly net loss of more than Thirty Million Dollars (\$30,000,000), and Borrower shall not have a cumulative net loss in any period of two consecutive quarters in aggregate of more than Thirty Million Dollars (\$30,000,000), in each case calculated on a GAAP basis and determined as of the last day of each fiscal quarter.

4.10 Insurance. Borrower shall maintain and keep in force insurance with companies acceptable to Bank and in such amounts and types, including without limitation fire and public liability insurance, as is usual in the business carried on by Borrower, or as Bank may reasonably request. Such insurance policies must be in form and substance reasonably satisfactory to Bank. Borrower shall maintain adequate worker's compensation insurance.

4.11 Maintenance of Account for Payment of Amounts Due to Bank.

(a) Borrower shall at all times: (i) maintain with Bank a deposit account that Bank is authorized to charge for any amounts then due to Bank from Borrower under this Agreement, the Note or any other Loan Documents, including interest, principal, fees, costs, expenses or other amounts due to Bank hereunder or thereunder, provided that, so long as no Event of Default (or event, circumstance or condition that, with the passage of time, the giving of notice or both, could result in an Event of Default) then exists, Bank shall provide an invoice at least two (2) days in advance of such debit for regularly scheduled payments of principal and/or interest and shall provide an invoice and at least ten (10) days' advance notice of all other debits, and (ii) ensure that such account has immediately available funds sufficient to pay any such amounts payable to Bank as and when they become due and payable.

(b) In addition, Borrower shall immediately deposit unrestricted and unencumbered cash into one or more general deposit accounts (i.e. not special or limited, or any accounts in the nature of a bailment or trust) maintained with Bank that are identified in the definition of "Collateral" in the Security Agreement, and at all times thereafter maintain in such account(s), funds in an amount not less than one hundred five percent (105%) of the outstanding principal amount of the Term Loan (the "**Minimum Balance**") if, as of March 27, 2010, all of Borrower's 0.75% Senior Convertible Debentures due 2027 outstanding as of Closing Date have not been converted or exchanged in their entirety into cash, equity securities of Borrower or Permitted Refinancing Indebtedness; provided that (i) the consideration (whether cash, securities or other property) paid or payable, and the Indebtedness incurred or assumed, in connection with any such conversion or exchange shall be limited to and shall consist exclusively of: (A) payment of cash in an aggregate amount not greater than \$50,000,000, (B) distribution of auction-rate securities by Borrower with an aggregate face value not greater than \$20,000,000; and (C) Permitted Refinancing Indebtedness in an aggregate amount not to exceed the outstanding principal amount of the debentures being converted or exchanged, and (ii) in no event shall Borrower be permitted to effect any such conversion or exchange, or any refinancing of such debentures, unless Borrower shall have delivered to Bank a Compliance Certificate, certifying among other things, Borrower's compliance, on an actual and pro forma basis, with each of the financial covenants set forth herein as of date of such conversion or exchange, and immediately after giving effect to the transactions related thereto. For the sake of clarity, subject to

clause (ii) above, Borrower's 0.75% Senior Convertible Debentures due 2027 may be refinanced using exclusively (1) the net cash proceeds from the substantially contemporaneous sale and issuance of equity securities of Borrower, (2) the net cash proceeds from the substantially contemporaneous issuance of Indebtedness subordinated to Bank on terms satisfactory to Bank in its sole discretion, (3) Permitted Refinancing Indebtedness, or (4) any combination of means specified in (1), (2) and (3) of this sentence. Such balances shall remain subject to Bank's rights of setoff under applicable law, and Bank is hereby authorized to decline to honor any drafts thereon or any requests, instructions or orders by Borrower or any other Person with respect to the withdrawal or disposition of any of the funds contained in such accounts or with respect to the payment or any other transfer of any part of such balances if doing so would result in a violation of the Minimum Balance requirement.

4.12 Guaranties. The payment and performance of all indebtedness and other Obligations of Borrower to Bank arising in connection with the Term Loan shall be jointly and severally guaranteed by (a) SunPower Corporation, Systems (formerly known as PowerLight Corporation), a Delaware corporation, (b) SunPower North America, LLC, a Delaware limited liability company (successor in interest to SunPower North America, Inc., a Delaware corporation), and (c) each other Material Domestic Subsidiary from time to time, as evidenced by and subject to the terms of one or more guaranties, each in substantially the form of the Continuing Guaranty. In the event Borrower or any Subsidiary creates or acquires any Subsidiary that qualifies as a Material Domestic Subsidiary, or if any Subsidiary becomes a Material Domestic Subsidiary, Borrower shall promptly notify Bank of the same and Borrower and such Material Domestic Subsidiary shall take all such action as may be reasonably required by Bank to cause such Material Domestic Subsidiary to guaranty, jointly and severally, the Obligations of Borrower relating to the Term Loan within 30 days after its qualifying as a Material Domestic Subsidiary.

4.13 Taxes and Liabilities. Borrower shall pay and discharge when due any and all indebtedness, obligations, assessments and taxes, both real or personal, including without limitation federal and state income taxes and state and local property taxes and assessments, except (a) such as Borrower or such Guarantor may in good faith contest or as to which a bona fide dispute may arise, and (b) for which Borrower has made provision, to the satisfaction of Bank, for eventual payment thereof in the event Borrower or such Guarantor is obligated to make such payment.

4.14 Additional Requirements. Upon Bank's demand, Borrower shall promptly take such further action and execute all such additional documents and instruments in connection with this Agreement and the other Loan Documents as Bank in its reasonable discretion deems necessary, and promptly supply Bank with such other information concerning its affairs as Bank may reasonably request from time to time.

4.15 Litigation and Attorneys' Fees. Upon Bank's demand, Borrower shall promptly pay to Bank reasonable attorneys' fees, including the reasonable estimate of the allocated costs and expenses of in-house legal counsel and staff, and all costs and other reasonable expenses paid or incurred by Bank in collecting, modifying or compromising the Term Loan or in enforcing or exercising its rights or remedies created by, connected with or provided for in this Agreement and the other Loan Documents. If any judicial action, arbitration or other proceeding is commenced, only the prevailing party shall be entitled to attorneys' fees and court costs.

4.16 Bank Expenses. Upon Bank's request, Borrower shall pay or reimburse Bank for all reasonable costs, expenses and fees incurred by Bank in preparing and documenting this Agreement and the Term Loan, and all amendments and modifications to any Loan Documents, including but not limited to all filing and recording fees, costs of appraisals, insurance and reasonable attorneys' fees, including the reasonable estimate of the allocated costs and expenses of in-house legal counsel and staff.

4.17 Domestic Subsidiary Asset Limit. Borrower shall ensure that the book value of the assets of Domestic Subsidiaries which are not Guarantors represent no more than twenty-five percent (25%) of the book value of Borrower's consolidated assets (based on the then most recent fiscal year end financial statement then delivered or deemed delivered to Bank hereunder).

4.18 Post-Closing Matters. Not later than forty-five (45) days after the Closing Date, Borrower shall deliver to Bank evidence satisfactory to Bank of the reassignment and release of security interests evidenced by filings with the United States Patent and Trademark Office relating to any Loan Party's intellectual property.

SECTION 5. NEGATIVE COVENANTS

Until such time as Bank no longer has any commitment to extend credit to Borrower hereunder, and all Obligations relating to the Term Loan are fully and indefeasibly, paid, performed and satisfied, Borrower agrees that:

5.1 Liens. Borrower shall not, and shall not permit any Guarantor to, create, assume or suffer to exist any Lien on any of its property, whether real, personal or mixed, now owned or hereafter acquired, or upon the income or profits thereof, except for Liens in favor of Bank and Permitted Liens. Borrower shall not, and shall not permit any Guarantor to, agree or consent to any restriction on Borrower's or such Guarantor's ability to create, assume or suffer to exist any Lien on any of its property to secure its obligations under this Agreement, except (i) agreements in favor of the Bank or (ii) prohibitions or conditions under (A) purchase money debt or capital lease obligation solely to the extent that the agreement or instrument governing such purchase money debt or capital lease obligation prohibits a Lien on the property acquired with the proceeds of such purchase money debt or capital lease, and (B) the Wells Fargo Agreements as in effect on the date hereof.

5.2 Indebtedness. Borrower shall not incur, or cause or permit any Guarantor to incur, Indebtedness, except Permitted Indebtedness.

5.3 Specified Transactions. Borrower shall not, and shall not cause or permit any Guarantor to, enter into any Specified Transaction; provided however:

(a) Borrower and Guarantors may enter into a Specified Transaction with respect to which each of the following conditions has been satisfied: (i) the applicable transaction has been approved by the Board of Directors of the Person whose assets or equity interests are being acquired, or which is merging with Borrower or a Guarantor; (ii) the Total Non-Stock Consideration paid or payable by Borrower and/or any Subsidiary in such transaction, taken together with all other Total Non-Stock Consideration paid or payable during such fiscal year, does not exceed Two Hundred Million Dollars (\$200,000,000); (iii) Borrower (if a party thereto) is the surviving or successor Person, or

(if Borrower is not a party thereto) a Guarantor is the surviving or successor Person, (iv) the assets so acquired are not and will not be subject to any Lien following the effective date of such transaction, except for Permitted Liens, (v) no Event of Default shall have occurred and be continuing or shall result therefrom, and (vi) as of the effective date of and after giving effect to such transaction, Borrower would be in compliance on a pro forma basis, with each of the financial covenants in Sections 4.6, 4.7, 4.8, 4.9, 4.17 and 5.9; and

(b) Borrower and Guarantors may enter into a Specified Transaction regardless of the value of Total Non-Stock Consideration so long as: (i) the applicable transaction has been approved by the Board of Directors of the Person whose assets or equity interests are being acquired, or which is merging with Borrower or a Guarantor, (ii) such Specified Transaction (or series of related transactions) involves no unaffiliated third parties, and (iii) such Specified Transaction involves only (A) the Borrower and one or more Subsidiaries (and Borrower is the surviving or successor Person in such transaction), or (B) two or more Subsidiaries (and if a Guarantor is a party in a transaction with a non-Guarantor, such Guarantor is the surviving or successor Person in such transaction).

5.4 Sale of Assets, Change in Business, Liquidation or Merger. In no event shall Borrower: (a) merge into or consolidate with any other entity; (b) make any substantial change in the nature of Borrower's business as conducted as of the date hereof; (c) cause or permit any Guarantor to engage in any material business substantially unrelated to Borrower's business; or (iv) sell, lease, transfer or otherwise dispose of all or a material portion of Borrower's consolidated assets, or cause or permit any Material Subsidiary to do so, except transfers by and among Borrower and Subsidiaries in the ordinary course of business, and with "a material portion" defined for the purpose of this covenant as twenty-five (25%) or more of the book value of such consolidated assets (based on the then most recent fiscal year end financial statements then delivered or deemed delivered to Bank hereunder) in any fiscal year.

5.5 Guaranties. Borrower shall not, and shall not cause or permit any Guarantor to, guaranty, become liable in any way as surety, endorser (other than as endorser of negotiable instruments for deposit or collection in the ordinary course of business), accommodation endorser or otherwise for Guaranteed Indebtedness, other than (a) in the ordinary course of business: (i) Borrower may guarantee the obligations of any Guarantor or any other Subsidiary, and (ii) any Guarantor may guarantee (A) the obligations of Borrower or (B) the obligations of other Guarantor or any other Subsidiary, in each case for any obligation other than obligations for borrowed money, (b) each Guarantor may provide an unsecured guaranty of up to Fifty Million Dollars (\$50,000,000) of Borrower's principal Indebtedness arising under the Wells Fargo Line of Credit plus accrued and unpaid interest on such amount, (c) guaranties in favor of bonding companies in connection with obligations under bonding contracts entered into in the ordinary course of business, pursuant to which such bonding companies issues bonds or otherwise secures performance of Borrower and Subsidiaries for the benefit of their customers and contract counterparties, (d) guaranties made by Borrower for the account of Subsidiaries with respect to liabilities under Hedge Agreements with nationally recognized financial institutions reasonably satisfactory to Bank pursuant to bona fide hedging transactions and not for speculation; (e) unsecured guaranties by Borrower of secured or unsecured indebtedness of SPML to International Finance Corporation in an aggregate amount (when added to Indebtedness of the type described in clause (vi) of the definition of Permitted Indebtedness) not to exceed, at any time, Seventy Five Million Dollars (\$75,000,000), subject to the terms of such clause (vi), and (f) guaranties of liabilities that constitute Permitted Indebtedness. In no event

shall any Foreign Subsidiary provide a guaranty with respect to Indebtedness of Borrower or any Guarantor unless a like guaranty is provided to Bank with respect to the Obligations.

5.6 Loans, Advances and Investments. Borrower shall not, and shall not permit any Guarantor to, make any loans, advances or other investments, except for Permitted Investments.

5.7 Redemption of Stock. Borrower shall not declare or pay any dividend or distribution either in cash, stock or any other property on Borrower's stock now or hereafter outstanding, nor redeem, retire, repurchase or otherwise acquire any shares of any class of Borrower's stock now or hereafter outstanding (other than repurchases or the like from employees, consultants, officers, and directors in connection with Borrower's board-approved stock plan); nor agree (or cause or permit any Subsidiary to agree) with any third party to prohibit, condition or restrict the payment of dividends and distributions by such Subsidiary to Borrower or to another Subsidiary.

5.8 Affiliate Transactions. Neither Borrower nor any Guarantor shall enter into any transaction or transfer any property to any affiliate, except for value received in the normal course of business and for an amount, as would be conducted and charged with an unrelated or unaffiliated entity in an arms' length transaction, except that the following in any event shall be permitted:

- (a) transactions between Borrower and its Subsidiaries and between its Subsidiaries in the ordinary course of business, as conducted from time to time;
- (b) transactions constituting the incurrence of Permitted Indebtedness and Permitted Investments;
- (c) the payment of reasonable fees, compensation, or employee benefit arrangements to, and any indemnity provided for the benefit of, officers, employees, and directors; and
- (d) loans or advances to employees in the ordinary course of business in compliance with applicable law.

5.9 Capital Expenditures. Borrower shall not, and shall not cause or permit its Subsidiaries to, purchase fixed assets in the form of property, plant, equipment or fixtures in excess of: (a) Five Hundred Million Dollars (\$500,000,000) during fiscal year 2009, (b) Five Hundred Sixty Million Dollars (\$560,000,000) during fiscal year 2010, or (c) Five Hundred Twenty Million Dollars (\$520,000,000) during fiscal year 2011, in each case calculated on a consolidated basis. For purposes of calculating such expenditures to determine compliance with the above limitation, the amount shall be that represented as purchase of such items on the Consolidated Statement of Cash Flows of the Borrower's fiscal year-end financial statement.

5.10 Cash Limits. Borrower shall not cause or permit SPML's cash, cash equivalents and marketable securities at any time to exceed, in any fiscal month, an aggregate average daily amount of Twenty-Five Million Dollars (\$25,000,000). Borrower shall not cause or permit SPSA's cash, cash equivalents and marketable securities at any time to exceed, in any fiscal month, an aggregate average daily amount of Fifty Million Dollars (\$50,000,000).

SECTION 6. EVENTS OF DEFAULT

Any one or more of the following events shall constitute an event of default (each an “**Event of Default**”) under this Agreement:

6.1 Borrower shall fail to pay as and when due, any principal, interest, fees or other amounts owing under the Note, this Agreement or any of the other Loan Documents.

6.2 Borrower shall default in the due performance or observance of, or compliance with, any of the terms, provisions, covenants, conditions, obligations or agreements of Sections 4.1, 4.5, 4.6 through 4.9, 4.11, 4.12 and 4.17 or Section 5 of this Agreement.

6.3 Borrower or any Guarantor shall default in the due performance or observance of or compliance with any other term, provision, covenant, condition, obligation or agreement of the Loan Documents and, as to any default under such other term, provision, condition, covenant, obligation or agreement that can be cured, has failed to cure the default within thirty (30) days after the occurrence thereof.

6.4 Any certificate, representation or warranty made by the Borrower (or any of its officers, directors or representatives) herein or by any Loan Party (or any of their respective officers, directors or representatives) in connection with this Agreement, the Guaranties or the other Loan Documents shall prove to have been misleading, false, untrue or incorrect in any material respect when furnished, made or deemed made.

6.5 Any Loan Party or any Material Subsidiary shall for any reason cease to be Solvent, or any Loan Party or any Material Subsidiary shall be unable generally to pay its debts as such debts become due.

6.6 The commencement as to any Loan Party or any Material Subsidiary of any voluntary or involuntary case or proceeding under any Debtor Relief Law (and with respect to any involuntary case or proceeding, either such proceeding shall remain undismissed or unstayed and in effect for a period of sixty (60) days or the court shall have entered a decree or order granting the relief sought in such case or proceeding).

6.7 Any Loan Party or any Material Subsidiary shall make a general assignment for the benefit of its creditors.

6.8 The appointment, or commencement of any proceedings for the appointment, of a receiver, trustee, custodian or similar official for all or substantially all of any Loan Party’s or any Material Subsidiary’s property.

6.9 If any material portion of any Loan Party’s or any Material Subsidiary’s assets is attached, seized, subjected to a writ or distress warrant, or is levied upon, and the same is not discharged before the earlier of 10 days after the date it first arises.

6.10 The revocation of the Continuing Guaranty or any other guaranty of a Guarantor with respect to the Obligations.

6.11 Any default in the payment or performance of any obligation, or any defined event of default, under the terms of any contract or instrument (other than any of the Loan Documents)

pursuant to which Borrower, any Guarantor or any Material Subsidiary has incurred any debt or other liability to any Person, including Bank, and, if the debt or other liability is owed to a party other than Bank, such default accelerates or causes or permits to become immediately due and payable an amount, individually or in the aggregate, in excess of Ten Million Dollars (\$10,000,000).

6.12 Borrower is called upon to satisfy any guaranty obligation or simultaneous guaranty obligations permitted hereunder with an aggregate liability in excess of Ten Million Dollars (\$10,000,000), where Borrower's performance of such obligations, as substantiated by the beneficiary thereof, is not contingent on any additional condition, including the passage of time.

6.13 The filing of a notice of judgment lien(s) in excess of an aggregate of Ten Million Dollars (\$10,000,000) against Borrower or any Loan Party; or the recording of any abstract(s) of judgment in excess of an aggregate of Ten Million Dollars (\$10,000,000) against Borrower or any Loan Party in any county in which Borrower or such Loan Party has an interest in real property; or the service of a notice of levy and/or of a writ of attachment or execution, or other like process, in excess of an aggregate of Ten Million Dollars (\$10,000,000) against the assets of Borrower or any Loan Party; or the entry of a judgment(s) in excess of an aggregate of Ten Million Dollars (\$10,000,000) against Borrower or any Loan Party.

6.14 The dissolution, liquidation or termination of existence of Borrower or, except as otherwise expressly permitted under this Agreement, any other Loan Party; or Borrower or, except as otherwise expressly permitted under this Agreement, any such other Loan Party, or any of its directors, stockholders or members, shall take action seeking to effect the dissolution or liquidation of Borrower or such other Loan Party. The dissolution of a Guarantor shall not constitute an Event of Default if the assets and liabilities of such Guarantor are transferred to Borrower or to another Guarantor by reason of such dissolution.

6.15 A Change in Control shall occur.

Upon the occurrence and during the continuance of an Event of Default, (i) the obligation, if any, of Bank to make the Term Loan or provide further extensions of credit under any of the Loan Documents shall immediately cease and terminate, (ii) Bank may, without notice to the Borrower, declare the Term Loan, all interest thereon and all other Obligations to be immediately due and payable, whereupon the Term Loan, all such interest and all such Obligations shall become and be immediately due and payable, without presentment, demand, protest or further notice of any kind, all of which are hereby expressly waived by the Borrower; provided, however, that upon the occurrence of an Event of Default described in Sections 6.6, 6.7, 6.8 or 6.9 above, (i) Bank's obligation to make the Term Loan or provide further extensions of credit shall automatically terminate, and (ii) the Term Loan, all interest thereon and all other Obligations shall automatically become immediately due and payable. Bank shall have all rights, powers and remedies available under each of the Loan Documents, or accorded by law, including without limitation, the right to, without notice or demand do any one or more or all of the following: (a) resort to any or all security for any credit subject hereto; (b) exercise its banker's lien or right of setoff; (c) terminate any Hedge Agreements, including any and all foreign exchange contracts, interest rate swaps or similar agreements heretofore or hereafter entered into between Borrower and Bank; (d) apply to the Obligations any (1) balances and deposits of Borrower it holds, or (2) any amount held by Bank owing to or for the credit or the account of Borrower, (e) place a "hold" on any account maintained with Bank and (f) exercise any or all of the rights of a beneficiary or secured party pursuant to applicable law. All rights,

powers and remedies of Bank may be exercised at any time by Bank and from time to time after the occurrence of an Event of Default, are cumulative and not exclusive, and shall be in addition to any other rights, powers or remedies provided by law or equity.

SECTION 7. GENERAL PROVISIONS

7.1 Additional Remedies. The rights, powers and remedies given to Bank hereunder shall be cumulative and not alternative and shall be in addition to all rights, powers and remedies given to Bank by law against Borrower or any other Person, including but not limited to Bank's rights of setoff and banker's lien. To the full extent permitted by law, Borrower waives demand and notice of every kind; and the right to assert the defense of any statute of limitations. Bank may delay the credit of any item of payment based upon Bank's schedule of funds availability, and interest under the Term Loan shall accrue until the funds are deemed collected.

7.2 Nonwaiver. Any forbearance or failure or delay by Bank in exercising any right, power or remedy hereunder shall not be deemed a waiver thereof and any single or partial exercise of any right, power or remedy shall not preclude the further exercise thereof. No waiver shall be effective unless it is in writing and signed by an officer of Bank.

7.3 Inurement. The benefits of this Agreement and the other Loan Documents shall inure to the successors and assigns of Bank and the permitted successors and assigns of Borrower, but any attempted assignment by Borrower without Bank's prior written consent shall be null and void.

7.4 Applicable Law. THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS SHALL BE GOVERNED BY AND CONSTRUED ACCORDING TO THE INTERNAL LAWS OF THE STATE OF CALIFORNIA APPLICABLE TO CONTRACTS MADE AND PERFORMED IN THAT STATE, WITHOUT REGARD TO THE PRINCIPLES THEREOF REGARDING CONFLICTS OF LAWS. Borrower and Bank and any of their respective successors or assigns consent to the jurisdiction of any competent court thereof and consent to service of process by any authorized means.

7.5 Severability. Should any one or more provisions of this Agreement or any other Loan Document be determined to be illegal or unenforceable, all other provisions of such document shall nevertheless be effective.

7.6 Controlling Document. In the event of any inconsistency between the terms of this Agreement and any other Loan Document, the terms of this Agreement shall prevail.

7.7 Construction. The section and subsection headings herein are for convenient reference only and shall not limit or otherwise affect the interpretation of this Agreement.

7.8 Amendments. This Agreement may be amended only in writing signed by all parties hereto.

7.9 Counterparts. Borrower and Bank may execute one or more counterparts to this Agreement, each of which shall be deemed an original, but all such counterparts when taken together, shall constitute one and the same agreement.

7.10 Notices. Unless otherwise provided for in this Agreement, any notices or other communications provided for or allowed hereunder shall be effective only when given by one of the following methods and addressed to the respective party at its address given with the signatures at the end of this Agreement and shall be considered to have been validly given: (a) if sent by hand delivery, upon delivery; (b) on the third business day after mailing, if mailed, first class postage prepaid, with the United States Postal Service; (c) on the next business day, if sent by overnight courier service of recognized standing; (d) upon electronic confirmation of receipt, if faxed or (e) upon telephoned confirmation of receipt, if e-mailed. The addresses to which notices or demands are to be given may be changed from time to time by notice delivered as provided above.

7.11 Integration Clause. Except for the other Loan Documents, this Agreement constitutes the entire agreement between Bank and Borrower regarding the Term Loan, and all prior oral or written communications between Borrower and Bank shall be of no further effect or evidentiary value.

7.12 Disputes. To the extent permitted by law, in connection with any claim, cause of action, proceeding or other dispute concerning any of the Loan Documents (each, a “**Claim**”), Borrower and Bank expressly, intentionally and deliberately waive any right each may otherwise have to trial by jury. In the event that the waiver of jury trial set forth in the previous sentence is not enforceable under the law applicable to this Agreement, Borrower and Bank agree that any Claim, including any question of law or fact relating thereto, shall, at the written request of Borrower or Bank, be determined by judicial reference pursuant to the law applicable to this Agreement. Borrower and Bank shall select a single neutral referee, who shall be a retired state or federal judge. In the event that Borrower and Bank cannot agree upon a referee, the court shall appoint the referee. The referee shall report a statement of decision to the court. Nothing in this paragraph shall limit the right of Borrower or Bank at any time to exercise self-help remedies, foreclose against collateral or obtain provisional remedies. Borrower and Bank shall bear the fees and expenses of the referee equally, unless the referee orders otherwise. The referee shall also determine all issues relating to the applicability, interpretation and enforceability of this paragraph. Borrower and Bank acknowledge that if a referee is selected to determine the Claims, then the Claims will not be decided by a jury.

7.13 Patriot Act Notice. Bank is subject to the USA PATRIOT Improvement and Reauthorization Act of 2005 (the “**Patriot Act**”) and hereby notifies Borrower that, pursuant to the requirements of the Patriot Act, Bank is required to obtain, verify and record information that identifies Borrower, which information includes the name and address of Borrower and other information that will allow Bank to identify Borrower in accordance with the Patriot Act.

7.14 Setoff. In addition to any rights now or hereafter granted under the Loan Documents or applicable law and not by way of limitation of any such rights, upon the occurrence and during the continuance of any Event of Default, Bank is hereby authorized at any time or from time to time, without notice to Borrower or any other Person, any such notice being hereby expressly waived, to offset and to appropriate and to apply any and all balances held by it at any of its offices for the account of Borrower (regardless of whether such balances are then due to Borrower) and any other properties or assets at any time held or owing by Bank or that holder to or for the credit or for the account of Borrower against and on account of any of the Obligations that are not paid when due.

7.15 Indemnity. Borrower shall indemnify and hold Bank and each of its employees, attorneys, consultants, representatives and agents and their respective successors and assigns (each an “**Indemnified Person**”), harmless, from and against any and all: (i) suits, actions, or proceedings in any court or forum, at law, in equity or otherwise; (ii) costs, fines, deficiencies, or penalties; (iii) asserted claims or demands by any Person; (iv) arbitration demands, proceedings or awards; (v) damages, losses, liabilities and expenses (including reasonable attorneys’ fees and disbursements and other costs of collection, defense or appeal); (vi) enforcement of rights and remedies; and (vii) criminal, civil or regulatory investigations (each an “**Indemnified Claim**”) that may be instituted or asserted against or incurred by any such Indemnified Person as the result of credit having been extended or not extended under this Agreement or the other Loan Documents or otherwise in connection with or arising out of the transactions contemplated hereunder or thereunder, including any Indemnified Claim for environmental liabilities and legal costs and expenses of disputes between any Loan Party and Bank; provided, that Borrower shall not be liable for indemnification of an Indemnified Person to the extent that any such Indemnified Claim is finally determined by a court of competent jurisdiction to have resulted solely from such Indemnified Person’s gross negligence or willful misconduct. This Section 7.15 shall survive the termination of this Agreement.

7.16 Confidentiality. Bank agrees that material, non-public information regarding the Borrower or the Guarantors shall be treated by the Bank in a confidential manner, and Bank shall use commercially reasonable efforts (equivalent to the efforts the Bank applies to maintaining the confidentiality of its own confidential information) to maintain as confidential all information provided to it by Borrower or any Guarantor, except for disclosures from time to time: (i) to attorneys for and other advisors, accountants, auditors, and consultants to the Bank (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such information and instructed to keep such information confidential), (ii) to subsidiaries and affiliates of the Bank (provided that such subsidiaries and affiliates have agreed to treat such information as confidential in accordance with this Section 7.16), (iii) as may be required by statute, decision, or judicial or administrative law, order, rule, or regulation, (iv) as requested or required by any governmental authority pursuant to any subpoena or other legal process, (v) as to any such information that is or becomes generally available to the public (other than as a result of prohibited disclosure by Bank), (vi) in connection with any assignment or participation of Bank’s interest under this Agreement and the other Loan Documents, provided that any such assignee or participant shall have agreed in writing to receive such information hereunder subject to the terms of this Section 7.16 (and any such assignee or participant or potential assignee or participant may disclose such information to persons employed or engaged by them as described in clause (i) above), and (vii) in connection with any litigation or other adversary proceeding involving parties hereto which such litigation or adversary proceeding involves claims related to the rights or duties of such parties under this Agreement or the other Loan Documents. Confidential information does not include information that: (i) is in the public domain or in Bank’s possession when disclosed to Bank, or becomes part of the public domain after disclosure to Bank; (ii) is disclosed to Bank by a third party, if Bank does not know that the third party is prohibited from disclosing the information, or (iii) ceases to be confidential through no fault of Agent or such Lender. Notwithstanding the foregoing, Bank is authorized to release information concerning Borrower’s and its Subsidiaries’ credit records and financial condition to other creditors, credit bureaus, credit reporting agencies, credit reporters, and guarantors hereunder, or pursuant to an order from a governmental agency or court, or among departments of Bank, and its affiliates. Bank is authorized to obtain credit reports, copies of tax returns and other information regarding

Borrower and its Subsidiaries and to take such other steps as Bank deems appropriate to verify the information provided in connection herewith.

7.17 Term. This Agreement shall become effective on the Closing Date and shall continue in full force and effect until all Obligations relating to the Term Loan have been irrevocably and indefeasibly repaid in full or Bank no longer has any obligation to make credit extensions under this Agreement. The obligations of Borrower to indemnify the Indemnified Persons pursuant to Section 7.15 shall survive until all applicable statute of limitations periods with respect to actions that may be brought against such Indemnified Persons have run.

[Signature page follows]

THIS AGREEMENT is executed on behalf of the parties by their duly authorized representatives as of the date first above written.

SUNPOWER CORPORATION

/s/ Dennis V. Arriola
By: Dennis V. Arriola
Title: SVP & CFO

Address:

3939 North First Street
San Jose, CA 95134
Attn: Chief Financial Officer
Fax: (408) 240-5400

UNION BANK, N.A.

/s/ J. William Bloore
By: J. William Bloore
Title: Vice President

Address:

601 East Potrero Grande Drive
Monterey Park, California 91754
Attn: Commercial Loan Operations
Fax: (323) 720-2252

East Bay Corporate Banking Group
200 Pringle Avenue, Suite 500
Walnut Creek, CA 94596-3570
Attn: J. William Bloore
Fax: (925) 943-7442

[Signature Page to Loan Agreement]

EXHIBIT A

[FORM OF] QUARTERLY COMPLIANCE CERTIFICATE

To: Union Bank, N.A.
Commercial Loan Operations
601 East Potrero Grande Drive
Monterey Park, CA 91754
Facsimile: (323) 720-2252

with a copy to:

Union Bank, N.A.
Attention: J. William Bloore
East Bay Corporate Banking Group
200 Pringle Avenue, Suite 500
Walnut Creek, CA 94596

Re: Compliance Certificate as of and for period ending: _____, 20__

Ladies and Gentlemen:

This certificate (this “**Compliance Certificate**”) is submitted pursuant to the Loan Agreement, dated as of April 17, 2009 (as amended, modified, supplemented, restated or renewed from time to time, the “**Loan Agreement**”) by and between SUNPOWER CORPORATION, a Delaware corporation (the “**Borrower**”) and UNION BANK, N.A. (the “**Bank**”). All capitalized terms used herein shall have the meanings specified in the Loan Agreement unless otherwise defined herein.

The undersigned hereby certifies that: (a) [he][she] is the acting and incumbent Chief Financial Officer of Borrower and Parent, and (b) in such capacity, [he] [she] is authorized to execute this Compliance Certificate on behalf of Borrower in connection with the Loan Agreement.

The undersigned has reviewed the terms and conditions of the Loan Agreement and the definitions and provisions contained in the Loan Agreement, and, has made, or have caused to be made under the supervision of the undersigned, such examination or investigation as is necessary to enable the undersigned to express an informed opinion, and to provide a certification, as to the matters referred to herein.

The undersigned hereby further represents, warrants and certifies that:

(a) Borrower is in complete and strict compliance, as of, and for the period ending, _____, 20__ (the “**Compliance Date**”), with all agreements, conditions and covenants contained in the Loan Agreement and the other Loan Documents, except as noted below.

(b) The representations and warranties of Borrower contained in the Loan Agreement and the other Loan Documents are true and correct in all material respects as of the Compliance Date as if made on such date (or, in the case of representations and warranties stated as having been made only as of the Closing Date, such representations and warranties remain true and correct in all material respects as of the Closing Date); provided, however, the

foregoing materiality qualification does not apply to those representations and warranties that already are qualified or modified by materiality in the text thereof.

(c) There exists no Event of Default nor any event, circumstance or condition that, with the passage of time, the giving of notice or both, could reasonably be expected to result in an Event of Default under the Loan Agreement or any of the other Loan Documents.

(d) Borrower is in compliance with each of the covenants in **Sections 4.6, 4.7, 4.8, 4.9, 4.17, 5.9 and 5.10** of the Loan Agreement, as of, and for the period ending on, the Compliance Date, and attached hereto as Schedule 1 is a true and correct copy of the calculations of such financial covenants, prepared by the undersigned.

(e) Attached to such Schedule 1 are true, correct and complete copies of the documents and work sheets supporting the above certifications..

(f) Since December 28, 2008, there has been no Material Adverse Effect.

(g) Borrower is in compliance with each of the reporting and notice covenants in **Section 4.5** of the Loan Agreement, as of, and for the period ending on the Compliance Date, and attached hereto as Schedule 2 are the monthly, quarterly and annual (as applicable) Financial Statements required under **Section 4.5** of the Loan Agreement and the other reports, letters, opinions, notices and other required under the Loan Agreement.

(h) The financial statements furnished in connection herewith have been prepared in accordance with GAAP (except for the lack of footnotes required by GAAP and changes resulting for normal year end adjustments, in the case of financial statements other than those as of a fiscal year end), consistently applied from one period to the next, and fairly present the financial condition of Borrower and its consolidated Subsidiaries.

(i) There is no litigation, action, suit, investigation, or other arbitral, administrative, or judicial proceeding pending or, to the best of the knowledge of the undersigned, threatened which could reasonably be expected to (x) result in a Material Adverse Effect or (y) restrain or enjoin, impose materially burdensome conditions on, or otherwise materially and adversely affect the ability of Borrower or any Guarantor to fulfill its obligations under the Loan Documents; or (z) materially and adversely affect the rights and remedies of Bank under the Loan Documents.

(j) No Liens have arisen, been granted or otherwise exist with respect to the assets or properties of Borrower or any Guarantor, other than Permitted Liens.

(k) Borrower's Material Domestic Subsidiaries as of the Compliance Date are: _____.

THIS COMPLIANCE CERTIFICATE IS EXECUTED AND DELIVERED THIS _____ DAY OF _____, 20__.

Very Truly Yours,

SUNPOWER CORPORATION
By:
Print Name:
Title:

SCHEDULE 1
TO
COMPLIANCE CERTIFICATE

(a) **Minimum Unrestricted Liquidity.**

Required. Under **Section 4.6** of the Loan Agreement, on a consolidated basis, shall maintain Eligible Assets with a value not less than two times (2x) the Wells Fargo Exposure.

Actual. On a consolidated basis, as of the last day of the month ended _____, 20__:

- | | | |
|-----|------------------------------------|----------|
| (1) | the amount of Eligible Assets was: | \$ _____ |
| (2) | the Wells Fargo Exposure was: | \$ _____ |
| (3) | two times the Wells Fargo was: | \$ _____ |

Complies: Yes/ No

(b) **Minimum Domestic Unrestricted Liquidity.**

Required. Under **Section 4.6** of the Loan Agreement, on a consolidated basis, shall maintain US Dollar denominated Eligible Assets domiciled in the United States with a value not less than the Wells Fargo Exposure.

Actual. On a consolidated basis, as of the last day of the month ended _____, 20__:

- | | | |
|-----|---|----------|
| (1) | the amount of domestic Eligible Assets was: | \$ _____ |
| (2) | the Wells Fargo Exposure was: | \$ _____ |

Complies: Yes/ No

(c) **Minimum Unrestricted Liquidity at Bank.**

Required. Under **Section 4.7** of the Loan Agreement, on a consolidated basis, shall at all times maintain US Dollar denominated Eligible Assets at Bank (in specified deposit accounts) with a value not less than (a) \$10 million plus the Subject Period interest (during the first year of the Term Loan) and (b) thereafter, the amount of principal and interest due during the Subject Period*.

Actual. On a consolidated basis, as of the last day of the month ended _____, 20__:

- | | | |
|-----|--|----------|
| (1) | the amount of Eligible Assets in deposit accounts at Bank was: | \$ _____ |
| (2) | [\$10 million plus Subject Period interest]** | |
| | [Subject Period principal and interest]*** was: | \$ _____ |

* Subject Period is the shorter of next 12 months and remaining term of Term Loan.

** Applies if Compliance Certificate is delivered prior to first anniversary of Closing Date.

*** Applies if Compliance Certificate is delivered after first anniversary of Closing Date.

Complies: Yes/ No

(d) **Total Liabilities to Tangible Net Worth Ratio.**

Required. Under **Section 4.8** of the Loan Agreement, the ratio of Total Liabilities to Tangible Net Worth, on a consolidated basis, is not to be more than 2.00 to 1.00.

Actual. On a consolidated basis, as of the last day of the fiscal quarter ended

_____, 20__:

(1) Calculation of Total Liabilities:

- (a) Total consolidated liabilities was: \$ _____
- (b) less subordinated debt (\$ _____)
- (c) plus all undrawn letters of credit \$ _____
- (d) Total Liabilities \$ _____

(2) Calculation of Tangible Net Worth:

- (a) Total stockholders equity \$ _____
- (b) plus subordinated debt \$ _____
- (c) less intangible assets (\$ _____)
- (d) less loans/advances/investments per definition (\$ _____)
- (e) Tangible Net Worth \$ _____

- (3) The ratio of (1)(d) to (2)(e) was: _____ to 1.00

Complies: Yes/ No

(e) **Minimum Profitability- Rolling Four Quarters.**

Required. Under **Section 4.9** of the Loan Agreement, Borrower's net income, on a consolidated basis, for each period of four quarters shall, , be not less than \$25 million.

Actual. On a consolidated basis, as of the last day of the fiscal quarter ended _____, 20__:

Consolidated net income for current quarter ending _____ \$ _____

Consolidated net income for quarter ending _____ \$ _____

Consolidated net income for quarter ending _____ \$ _____

Consolidated net income for quarter ending _____ \$ _____

4 quarter net income \$ _____

Complies: Yes/ No

(f) **Maximum Single Quarter Net Loss.**

Required. Under **Section 4.9** of the Loan Agreement, Borrower may not incur a net loss, on a consolidated basis, for any one fiscal quarter that is greater than \$30 million.

Actual. On a consolidated basis, as of the last day of the fiscal quarter ended _____, 20__, Borrower's consolidated net income (loss) for such quarter was \$_____.

Complies: Yes/ No

(g) **Maximum Two Quarter Net Loss.**

Required. Under **Section 4.9** of the Loan Agreement, Borrower may not incur a net loss, on a consolidated basis, for any period of two consecutive fiscal quarters that is greater than \$30 million.

Actual. On a consolidated basis:

- (1) Net Income (Loss) for quarter ended _____ \$_____
- (2) Net Income (Loss) for quarter ended _____ \$_____
- (3) Net Income (Loss) for those two consecutive fiscal quarters \$_____

Complies: Yes/ No

(h) **Maximum Non-Guarantor Book Value.**

Required. Under **Section 4.17** of the Loan Agreement, the book value of all assets of Domestic Subsidiaries who are not Guarantors may not, at any time, be more than 25% of the book value of Borrower's consolidated assets.

Actual. As of the last day of the fiscal quarter ended _____, 20__:

- (1) Total book value of assets of non-Guarantor Domestic Subsidiaries was: \$_____
- (2) Total book value of Borrower's consolidated assets was: \$_____
- (3) 25% of (2) was: \$_____

Complies: Yes/ No

(i) **Maximum Capital Expenditures.**

Required. Under **Section 5.9** of the Loan Agreement, Borrower and its Subsidiaries may not incur capital expenditures in excess of: \$500 million during 2009, \$560 million during 2010 or \$520 million during 2011.

Actual. On a consolidated basis, as of the last day of the fiscal quarter ended _____, 20__, Borrower's consolidated capital expenditures for the most recently ended fiscal year were \$_____.

Complies: Yes/ No

Maximum Cash in Philippines Subsidiary.

Required. Under **Section 5.10** of the Loan Agreement, SPML's cash, cash equivalents and marketable securities may not exceed, in any fiscal month, an aggregate average daily amount of \$25 million.

Actual. As of the last day of each of the fiscal months in the fiscal quarter ended _____, 20__, the aggregate average daily value of SPML's cash, cash equivalents and marketable securities during such month was:

Month 1 \$ _____

Month 2 \$ _____

Month 3 \$ _____

Complies: Yes/ No

(j) **Maximum Cash in Swiss Subsidiary.**

Required. Under **Section 5.10** of the Loan Agreement, SPSA's cash, cash equivalents and marketable securities may not exceed, in any fiscal month, an aggregate average daily amount of \$50 million.

Actual. As of the last day of the fiscal month ended _____, 20__, the aggregate average daily value of SPSA's cash, cash equivalents and marketable securities during such month was:

Month 1 \$ _____

Month 2 \$ _____

Month 3 \$ _____

Complies: Yes/ No

EXHIBIT B

[FORM OF] MONTHLY COMPLIANCE CERTIFICATE

To: Union Bank, N.A.
Commercial Loan Operations
601 East Potrero Grande Drive
Monterey Park, CA 91754
Facsimile: (323) 720-2252

with a copy to:

Union Bank, N.A.
Attention: J. William Bloore
East Bay Corporate Banking Group
200 Pringle Avenue, Suite 500
Walnut Creek, CA 94596

Re: Monthly Compliance Certificate as of and for period ending: _____, 20__

Ladies and Gentlemen:

This certificate (this “**Compliance Certificate**”) is submitted pursuant to the Loan Agreement, dated as of April 17, 2009 (as amended, modified, supplemented, restated or renewed from time to time, the “**Loan Agreement**”) by and between SUNPOWER CORPORATION, a Delaware corporation (the “**Borrower**”) and UNION BANK, N.A. (the “**Bank**”). All capitalized terms used herein shall have the meanings specified in the Loan Agreement unless otherwise defined herein.

The undersigned hereby certifies that: (a) [he][she] is the acting and incumbent Chief Financial Officer of Borrower and Parent, and (b) in such capacity, [he] [she] is authorized to execute this Compliance Certificate on behalf of Borrower in connection with the Loan Agreement.

The undersigned has reviewed the terms and conditions of the Loan Agreement and the definitions and provisions contained in the Loan Agreement, and, has made, or have caused to be made under the supervision of the undersigned, such examination or investigation as is necessary to enable the undersigned to express an informed opinion, and to provide a certification, as to the matters referred to herein.

The undersigned hereby further represents, warrants and certifies that Borrower is in compliance with each of the covenants in **Section 4.6** of the Loan Agreement, as of, and for the period ending, _____, 20__. Attached are true, correct and complete copies of all deposit account, securities account and brokerage account statements demonstrating such compliance, if requested by Bank.

THIS COMPLIANCE CERTIFICATE IS EXECUTED AND DELIVERED THIS _____ DAY OF _____, 20__.

Very Truly Yours,

SUNPOWER CORPORATION
By:
Print Name:
Title:

EXHIBIT C

[FORM OF] CLOSING COMPLIANCE CERTIFICATE

To: Union Bank, N.A.
Commercial Loan Operations
601 East Potrero Grande Drive
Monterey Park, CA 91754
Facsimile: (323) 720-2252

with a copy to:

Union Bank, N.A.
Attention: J. William Bloore
East Bay Corporate Banking Group
200 Pringle Avenue, Suite 500
Walnut Creek, CA 94596

Re: Compliance Certificate as of and for period ending: December 28, 2008

Ladies and Gentlemen:

This certificate (this “**Compliance Certificate**”) is submitted pursuant to the Loan Agreement, dated as of April 17, 2009 (as amended, modified, supplemented, restated or renewed from time to time, the “**Loan Agreement**”) by and between SUNPOWER CORPORATION, a Delaware corporation (the “**Borrower**”) and UNION BANK, N.A. (the “**Bank**”). All capitalized terms used herein shall have the meanings specified in the Loan Agreement unless otherwise defined herein.

The undersigned hereby certifies that: (a) [he][she] is the acting and incumbent Chief Financial Officer of Borrower and Parent, and (b) in such capacity, [he] [she] is authorized to execute this Compliance Certificate on behalf of Borrower in connection with the Loan Agreement.

The undersigned has reviewed the terms and conditions of the Loan Agreement and the definitions and provisions contained in the Loan Agreement, and, has made, or have caused to be made under the supervision of the undersigned, such examination or investigation as is necessary to enable the undersigned to express an informed opinion, and to provide a certification, as to the matters referred to herein.

The undersigned hereby further represents, warrants and certifies that:

(a) Borrower is in complete and strict compliance, as of, and for the period ending, December 28, 2008 (the “**Compliance Date**”), with each of the covenants in **Sections 4.6, 4.8, 4.9 and 4.17** of the Loan Agreement, as of, and for the period ending on, the Compliance Date, and attached hereto as Schedule 1 is a true and correct copy of the calculations of such financial covenants, prepared by the undersigned.

THIS COMPLIANCE CERTIFICATE IS EXECUTED AND DELIVERED THIS _____ DAY OF _____, 20__.

Very Truly Yours,

SUNPOWER CORPORATION

By:

Print Name:

Title:

SCHEDULE 1
TO
COMPLIANCE CERTIFICATE

Minimum Unrestricted Liquidity.

Required. Under **Section 4.6** of the Loan Agreement, on a consolidated basis, shall maintain Eligible Assets with a value not less than two times (2x) the Wells Fargo Exposure.

Actual. On a consolidated basis, as of the last day of the month ended December 28, 2008:

- | | | |
|-----|------------------------------------|----------|
| (1) | the amount of Eligible Assets was: | \$ _____ |
| (2) | the Wells Fargo Exposure was: | \$ _____ |
| (3) | two times the Wells Fargo was: | \$ _____ |

Complies: Yes

Minimum Domestic Unrestricted Liquidity.

Required. Under **Section 4.6** of the Loan Agreement, on a consolidated basis, shall maintain Eligible Assets domiciled in the United States with a value not less than 100% of the Wells Fargo Exposure.

Actual. On a consolidated basis, as of the last day of the month ended December 28, 2008:

- | | | |
|-----|---|----------|
| (1) | the amount of domestic Eligible Assets was: | \$ _____ |
| (2) | the Wells Fargo Exposure was: | \$ _____ |

Complies: Yes

Total Liabilities to Tangible Net Worth Ratio.

Required. Under **Section 4.8** of the Loan Agreement, the ratio of Total Liabilities to Tangible Net Worth, on a consolidated basis, is not to be more than 2.00 to 1.00.

Actual. On a consolidated basis, as of the last day of the fiscal quarter ended

_____, 20__:

(1) Calculation of Total Liabilities:

- (a) Total consolidated liabilities was: \$ _____
- (b) less subordinated debt (\$ _____)
- (c) plus all undrawn letters of credit \$ _____
- (d) Total Liabilities \$ _____

(2) Calculation of Tangible Net Worth:

- (a) Total stockholders equity \$ _____
- (b) plus subordinated debt \$ _____
- (c) less intangible assets (\$ _____)
- (d) less loans/advances/investments per definition (\$ _____)
- (e) Tangible Net Worth \$ _____

- (3) The ratio of (1)(d) to (2)(e) was: _____ to 1.00

Complies: Yes

Minimum Profitability- Rolling Four Quarters.

Required. Under **Section 4.9** of the Loan Agreement, Borrower's net income, on a consolidated basis, for each period of four quarters shall be not less than \$25 million.

Actual. On a consolidated basis, as of the last day of the fiscal quarter ended _____, 2009:

Consolidated net income for current quarter ending March __, 2008: \$ _____

Consolidated net income for quarter ending June __, 2008
\$ _____

Consolidated net income for quarter ending September __, 2008 \$ _____

Consolidated net income for quarter ending December 28, 2008 \$ _____

4 quarter net income \$ _____

Complies: Yes

Maximum Single Quarter Net Loss.

Required. Under **Section 4.9** of the Loan Agreement, Borrower may not incur a net loss, on a consolidated basis, for any one fiscal quarter that is greater than \$30 million.

Actual. On a consolidated basis, as of the last day of the fiscal quarter ended December 28, 2008, Borrower's consolidated net income (loss) for such quarter was \$_____.

Complies: Yes

Maximum Two Quarter Net Loss.

Required. Under **Section 4.9** of the Loan Agreement, Borrower may not incur a net loss, on a consolidated basis, for any period of two consecutive fiscal quarters that is greater than \$30 million.

Actual. On a consolidated basis:

(1) Net Income (Loss) for quarter ended September __, 2008:
60; \$_____

☐

(2) Net Income (Loss) for quarter ended December __, 2008:
0; \$_____

☐

(3) Net Income (Loss) for those two consecutive fiscal
quarters

\$_____

Complies: Yes

Maximum Non-Guarantor Book Value.

Required. Under **Section 4.17** of the Loan Agreement, the book value of all assets of Domestic Subsidiaries who are not Guarantors may not, at any time, be more than 25% of the book value of Borrower's consolidated assets.

Actual. As of the last day of the fiscal quarter ended December 28, 2008:

(1) Total book value of assets of non-Guarantor
Domestic Subsidiaries was:

\$_____

(2) Total book value of Borrower's
consolidated assets was:

\$_____

(3) 25% of (2) was:

\$_____

Complies: Yes/ No

Schedule 3.16(a) – Subsidiaries

1. SunPower North America, LLC, a Delaware limited liability company and wholly owned subsidiary of SunPower Corporation;
2. Pluto Acquisition Company, LLC, a Delaware limited liability company in which SunPower Corporation is the sole member;
3. SunPower Corporation, Systems, a Delaware corporation, formerly known as PowerLight Corporation, and wholly owned subsidiary of Pluto Acquisition Company, LLC;
4. Solar Star TO, LLC, a Delaware limited liability company in which SunPower Corporation, Systems is the sole member;
5. Solar Star YC, LLC, a Delaware limited liability company in which SunPower Corporation, Systems is the sole member;
6. Solar Star I, LLC, a Delaware limited liability company in which SunPower Corporation, Systems is the sole member;
7. Solar Star II, LLC, a Delaware limited liability company in which SunPower Corporation, Systems is the sole member;
8. SunPower Technology Ltd., a Cayman Islands entity and wholly owned subsidiary of SunPower Corporation;
9. SunPower Corporation (Switzerland) SARL, a Swiss entity and wholly owned subsidiary of SunPower Technology, Ltd.;
10. SunPower Philippines Manufacturing Ltd., a Cayman Islands entity and wholly owned subsidiary of SunPower Technology, Ltd.;
11. SunPower Systems SA, a Swiss entity and wholly owned subsidiary of SunPower Corporation, Systems;
12. SunPower GmbH, a German entity and wholly owned subsidiary of SunPower Systems SA;
13. SPWR Energias Renovaveis Unipessoal Limitada, a Portuguese entity and wholly owned subsidiary of SunPower Systems SA;
14. SunPower Energy Systems Spain, S.L., a Spanish entity and wholly owned subsidiary of SunPower Systems SA;
15. SunPower Development Company, a Delaware corporation and wholly owned subsidiary of SunPower Corporation;
16. SunPower Bermuda Holdings, a Bermuda exempted general partnership in which SunPower Corporation and SunPower Corporation, Systems are general partners;
17. SunPower Foundation, a California nonprofit corporation and wholly-owned subsidiary of SunPower Corporation;
18. SunPower Philippines Ltd. – Regional Operating Headquarters (ROHQ), a Cayman Islands multinational company and a wholly-owned subsidiary of SunPower Technology Ltd.;
19. SunPower Malaysia Manufacturing Sdn Bhd, a Malaysian private company limited by shares and a wholly-owned subsidiary of SunPower Technology Ltd.;
20. SPML Land, Inc., a Philippines company and a wholly-owned subsidiary of SunPower Philippines Manufacturing Ltd.;
21. SunPower Energy Systems Korea, a company organized under the laws of Korea and a wholly-owned subsidiary of SunPower Systems SA;
22. SunPower Italia Srl, a company organized under the laws of Italy and a wholly-owned subsidiary of SunPower Systems SA;

23. SunPower Corporation Australia Pty Ltd, an Australian proprietary company limited by shares and a wholly-owned subsidiary of SunPower Systems SA;
24. SunPower France SAS, a company organized under the laws of France and a wholly-owned subsidiary of SunPower Systems SA;
25. SunPower Energy Systems Canada Corporation, an unlimited liability corporation incorporated under the laws of Nova Scotia and a wholly-owned subsidiary of SunPower Systems SA;
26. Helios Solar Star A-1 Company, an unlimited liability corporation incorporated under the laws of Nova Scotia and a wholly-owned subsidiary of SunPower Energy Systems Canada Corporation;
27. Helios Solar Star A-1, LP, a limited partnership organized under the laws of Nova Scotia in which SunPower Energy Systems Canada Corporation and Helios Solar Star A-1 Company are the only partners;
28. Greater Sandhill I, LLC, a Delaware limited liability company in which SunPower Corporation, Systems is the sole member;
29. High Plains Ranch I, LLC, a Delaware limited liability company in which SunPower Corporation, Systems is the sole member;
30. High Plains Ranch II, LLC, a Delaware limited liability company in which SunPower Corporation, Systems is the sole member;
31. Morgan Stanley SunPower Solar 2007 LLC, a Delaware limited liability company in which MS Solar I, LLC (95%) and SunPower Corporation, Systems (5%) are the only members;
32. MS Solar Star I, LLC, a Delaware limited liability company in which SunPower Corporation, Systems is the sole member;
33. Parrey, LLC, a Delaware limited liability company in which SunPower Corporation, Systems is the sole member;
34. Solar Star Arizona I, LLC, a Delaware limited liability company in which SunPower Corporation, Systems is the sole member;
35. Solar Star BBY CA I, LLC, a Delaware limited liability company in which SunPower Corporation, Systems is the sole member;
36. Solar Star BBY HI I, LLC, a Delaware limited liability company in which SunPower Corporation, Systems is the sole member;
37. Solar Star BBY NJ I, LLC, a Delaware limited liability company in which SunPower Corporation, Systems is the sole member;
38. Solar Star California I, LLC, a Delaware limited liability company in which SunPower Corporation, Systems is the sole member;
39. Solar Star California IV, LLC, a Delaware limited liability company in which SunPower Corporation, Systems is the sole member;
40. Solar Star California VII, LLC, a Delaware limited liability company in which SunPower Corporation, Systems is the sole member;
41. Solar Star California VIII, LLC, a Delaware limited liability company in which SunPower Corporation, Systems is the sole member;
42. Solar Star California XI, LLC, a Delaware limited liability company in which SunPower Corporation, Systems is the sole member;
43. Solar Star California XII, LLC, a Delaware limited liability company in which SunPower Corporation, Systems is the sole member;

44. Solar Star California XIII, a Delaware limited liability company in which SunPower Corporation, Systems is the sole member;
45. Solar Star California XIV, a Delaware limited liability company in which SunPower Corporation, Systems is the sole member;
46. Solar Star California XV, a Delaware limited liability company in which SunPower Corporation, Systems is the sole member;
47. Solar Star Connecticut I, LLC, a Delaware limited liability company in which SunPower Corporation, Systems is the sole member;
48. Solar Star Estancia I, LLC, a Delaware limited liability company in which SunPower Corporation, Systems is the sole member;
49. Solar Star Hawaii I, LLC, a Delaware limited liability company in which SunPower Corporation, Systems is the sole member;
50. Solar Star Hawaii II, LLC, a Delaware limited liability company in which SunPower Corporation, Systems is the sole member;
51. Solar Star Hawaii III, LLC, a Delaware limited liability company in which SunPower Corporation, Systems is the sole member;
52. Solar Star HI Air, LLC, a Delaware limited liability company in which SunPower Corporation, Systems is the sole member;
53. Solar Star Koyo I, LLC, a Delaware limited liability company in which SunPower Corporation, Systems is the sole member;
54. Solar Star Mervyns I, LLC, a Delaware limited liability company in which SunPower Corporation, Systems is the sole member;
55. Solar Star MWHI I, LLC, a Delaware limited liability company in which SunPower Corporation, Systems is the sole member;
56. Solar Star New Jersey II, LLC, a Delaware limited liability company in which SunPower Corporation, Systems is the sole member;
57. Solar Star New Jersey III, LLC, a Delaware limited liability company in which SunPower Corporation, Systems is the sole member;
58. Solar Star New Jersey IV, a Delaware limited liability company in which SunPower Corporation, Systems is the sole member;
59. Solar Star New Jersey V, a Delaware limited liability company in which SunPower Corporation, Systems is the sole member;
60. Solar Star New Jersey VI, a Delaware limited liability company in which SunPower Corporation, Systems is the sole member;
61. Solar Star North Carolina I, LLC, a Delaware limited liability company in which SunPower Corporation, Systems is the sole member;
62. Solar Star Ohio I, LLC, a Delaware limited liability company in which SunPower Corporation, Systems is the sole member;
63. Solar Star Rancho CWD I, LLC, a Delaware limited liability company in which SunPower Corporation, Systems is the sole member;
64. SPWR Galaxy Holdco 2007 LLC, a Delaware limited liability company in which EFS Solar Star Holdings LLC (99%) and SunPower Corporation, Systems (1%) are the only members;
65. Solar Star TJX I, LLC, a Delaware limited liability company in which SunPower Corporation, Systems is the sole member;
66. SSSA, LLC, a Delaware limited liability company in which SunPower Corporation, Systems is the sole member;

67. SunPower Solar Singapore Pte Ltd., a private company organized under the laws of the Republic of Singapore and a wholly owned subsidiary of SunPower Systems SA*; and
68. Helios Solar Star A-2 Company, an unlimited liability corporation incorporated under the laws of Nova Scotia and a wholly owned subsidiary of SunPower Energy Systems Canada Corporation.

* Borrower anticipates that the completion of transfer of ownership to the relevant subsidiary of Borrower will be completed the week of April 20, 2009.

Schedule 3.16(b) – Special Purpose Entities

1. Solar Star TO, LLC, a Delaware limited liability company in which SunPower Corporation, Systems is the sole member;
2. Solar Star YC, LLC, a Delaware limited liability company in which SunPower Corporation, Systems is the sole member;
3. Solar Star I, LLC, a Delaware limited liability company in which SunPower Corporation, Systems is the sole member;
4. Solar Star II, LLC, a Delaware limited liability company in which SunPower Corporation, Systems is the sole member;
5. Greater Sandhill I, LLC, a Delaware limited liability company in which SunPower Corporation, Systems is the sole member;
6. Helios Solar Star A-1 Company, an unlimited liability corporation incorporated under the laws of Nova Scotia and a wholly-owned subsidiary of SunPower Energy Systems Canada Corporation;
7. Helios Solar Star A-1, LP, a limited partnership organized under the laws of Nova Scotia in which SunPower Energy Systems Canada Corporation and Helios Solar Star A-1 Company are the only partners;
8. Helios Solar Star A-2 Company, an unlimited liability corporation incorporated under the laws of Nova Scotia and a wholly owned subsidiary of SunPower Energy Systems Canada Corporation;
9. High Plains Ranch I, LLC, a Delaware limited liability company in which SunPower Corporation, Systems is the sole member;
10. High Plains Ranch II, LLC, a Delaware limited liability company in which SunPower Corporation, Systems is the sole member;
11. Morgan Stanley SunPower Solar 2007 LLC, a Delaware limited liability company in which MS Solar I, LLC (95%) and SunPower Corporation, Systems (5%) are the only members;
12. MS Solar Star I, LLC, a Delaware limited liability company in which SunPower Corporation, Systems is the sole member;
13. Parrey, LLC, a Delaware limited liability company in which SunPower Corporation, Systems is the sole member;
14. Solar Star Arizona I, LLC, a Delaware limited liability company in which SunPower Corporation, Systems is the sole member;
15. Solar Star BBY CA I, LLC, a Delaware limited liability company in which SunPower Corporation, Systems is the sole member;
16. Solar Star BBY HI I, LLC, a Delaware limited liability company in which SunPower Corporation, Systems is the sole member;
17. Solar Star BBY NJ I, LLC, a Delaware limited liability company in which SunPower Corporation, Systems is the sole member;
18. Solar Star California I, LLC, a Delaware limited liability company in which SunPower Corporation, Systems is the sole member;
19. Solar Star California IV, LLC, a Delaware limited liability company in which SunPower Corporation, Systems is the sole member;

20. Solar Star California VII, LLC, a Delaware limited liability company in which SunPower Corporation, Systems is the sole member;
21. Solar Star California VIII, LLC, a Delaware limited liability company in which SunPower Corporation, Systems is the sole member;
22. Solar Star California XI, LLC, a Delaware limited liability company in which SunPower Corporation, Systems is the sole member;
23. Solar Star California XII, LLC, a Delaware limited liability company in which SunPower Corporation, Systems is the sole member;
24. Solar Star California XIII, a Delaware limited liability company in which SunPower Corporation, Systems is the sole member;
25. Solar Star California XIV, a Delaware limited liability company in which SunPower Corporation, Systems is the sole member;
26. Solar Star California XV, a Delaware limited liability company in which SunPower Corporation, Systems is the sole member;
27. Solar Star Connecticut I, LLC, a Delaware limited liability company in which SunPower Corporation, Systems is the sole member;
28. Solar Star Estancia I, LLC, a Delaware limited liability company in which SunPower Corporation, Systems is the sole member;
29. Solar Star Hawaii I, LLC, a Delaware limited liability company in which SunPower Corporation, Systems is the sole member;
30. Solar Star Hawaii II, LLC, a Delaware limited liability company in which SunPower Corporation, Systems is the sole member;
31. Solar Star Hawaii III, LLC, a Delaware limited liability company in which SunPower Corporation, Systems is the sole member;
32. Solar Star HI Air, LLC, a Delaware limited liability company in which SunPower Corporation, Systems is the sole member;
33. Solar Star Koyo I, LLC, a Delaware limited liability company in which SunPower Corporation, Systems is the sole member;
34. Solar Star Mervyns I, LLC, a Delaware limited liability company in which SunPower Corporation, Systems is the sole member;
35. Solar Star MWHI I, LLC, a Delaware limited liability company in which SunPower Corporation, Systems is the sole member;
36. Solar Star New Jersey II, LLC, a Delaware limited liability company in which SunPower Corporation, Systems is the sole member;
37. Solar Star New Jersey III, LLC, a Delaware limited liability company in which SunPower Corporation, Systems is the sole member;
38. Solar Star New Jersey IV, a Delaware limited liability company in which SunPower Corporation, Systems is the sole member;
39. Solar Star New Jersey V, a Delaware limited liability company in which SunPower Corporation, Systems is the sole member;
40. Solar Star New Jersey VI, a Delaware limited liability company in which SunPower Corporation, Systems is the sole member;
41. Solar Star North Carolina I, LLC, a Delaware limited liability company in which SunPower Corporation, Systems is the sole member;
42. Solar Star Ohio I, LLC, a Delaware limited liability company in which SunPower Corporation, Systems is the sole member;

43. Solar Star Rancho CWD I, LLC, a Delaware limited liability company in which SunPower Corporation, Systems is the sole member;
44. SPWR Galaxy Holdco 2007 LLC, a Delaware limited liability company in which EFS Solar Star Holdings LLC (99%) and SunPower Corporation, Systems (1%) are the only members;
45. Solar Star TJX I, LLC, a Delaware limited liability company in which SunPower Corporation, Systems is the sole member; and
46. SSSA, LLC, a Delaware limited liability company in which SunPower Corporation, Systems is the sole member.

CONFIDENTIAL TREATMENT REQUESTED

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



SECURITY AGREEMENT

This Security Agreement (this “**Agreement**”) is executed at San Jose, California on April 17, 2009 by SUNPOWER CORPORATION, a Delaware corporation (herein called “**Debtor**”) for the benefit of UNION BANK, N.A. (herein called “**Bank**”).

As security for the payment and performance of all of the “Obligations”, as that term is defined in the Loan Agreement (as defined below), relating to the Term Loan, as that term is defined in the Loan Agreement, irrespective of the manner in which or the time at which such Obligations arose or shall arise, and whether direct or indirect, alone or with others, absolute or contingent, Debtor does hereby grant, subject to and effective upon the occurrence of the Trigger Event (as defined below), a continuing security interest in, and assign and transfer to Bank, the following personal property, whether or not delivered to or in the possession or control of Bank or its agents, and whether now or hereafter owned or in existence, and all proceeds thereof (hereinafter called “**Collateral**”):

The following deposit accounts maintained with Bank: account numbers *** and ***, in the name of Debtor, together with and any sums or other property now or hereafter on deposit in such accounts and any renewals, extensions, or replacements of the accounts.

Notwithstanding the foregoing, the Bank’s security interest granted under this Agreement shall be deemed effective and shall automatically attach, without any further consent or required action by Debtor or any other person, on April 1, 2010, if, on such date, all of Debtor’s 0.75% Senior Convertible Debentures due 2027 outstanding as of the Closing Date have not been converted or exchanged in their entirety into Permitted Exchange Consideration (the “**Trigger Event**”). As used herein, “**Permitted Exchange Consideration**” means cash, equity securities of Debtor or Permitted Refinancing Indebtedness limited to and consisting exclusively of: (A) payment of cash in an aggregate amount not greater than \$50,000,000, (B) distribution of auction-rate securities by Debtor with an aggregate face value not greater than \$20,000,000; and (C) Permitted Refinancing Indebtedness in an aggregate amount not to exceed the outstanding principal amount of the debentures being converted or exchanged.

This security interest is granted in conjunction with that certain Loan Agreement, dated as of the date hereof, by and between Debtor and Bank, as the same may be amended, renewed, extended, supplemented, restated, replaced or otherwise modified or in effect from time to time (the “**Loan Agreement**”). Capitalized terms not otherwise defined herein have the meanings given to such terms in the Loan Agreement.

AGREEMENT

1. The term “credit” or “indebtedness” is used in this Agreement in its broadest and most comprehensive sense. Collateral shall be security for all Obligations of Debtor to Bank in accordance with the terms and conditions herein.

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

2. Debtor covenants and agrees that Debtor will: (a) pay when due all Obligations relating to the Term Loan; (b) at all times following the occurrence of the Trigger Event, (i) execute and deliver such other documents and do such other acts as Bank may from time to time require to create, establish and maintain a valid first-priority security interest in Collateral, including payment of all costs and fees in connection with any of the foregoing when deemed necessary by Bank; and (ii) cooperate with Bank in perfecting all security interests granted herein and in obtaining such agreements from third parties as Bank deems necessary, proper or convenient in connection with the preservation, perfection or enforcement of any of its rights hereunder; (b) furnish Bank such information concerning Debtor and Collateral as Bank may from time to time reasonably request, including but not limited to current financial statements as required pursuant to the Loan Agreement; (c) not create or permit to exist any Lien on or security interest in Collateral in favor of anyone other than Bank, and at Debtor's expense upon Bank's request remove any unauthorized Lien or security interest and defend any claim affecting the Collateral; (d) pay all charges against Collateral prior to delinquency including but not limited to taxes, assessments, encumbrances, insurance and diverse claims, and upon Debtor's failure to do so Bank may pay any such charge as it deems necessary and add the amount paid to the indebtedness of Debtor hereunder; (e) protect, defend and maintain the Collateral and, following the occurrence of the Trigger Event, the security interest of Bank and initiate, commence and maintain any action or proceeding to protect the Collateral; (f) pay and reimburse Bank for any expenses including but not limited to reasonable attorneys' fees and expenses incurred by Bank in the perfection of its security interest, the preservation, protection or collection of the Collateral or Bank's interest therein and/or the realization, enforcement and exercise of Bank's rights, powers and remedies; (g) perform all of the obligations of the Debtor under the Collateral and save Bank harmless from the consequence of any failure to do so; (h) permit Bank to exercise its rights and powers hereunder; and (i) not to permit the value of Collateral to be less than the Minimum Balance, as and to the extent required pursuant to Section 4.11 of the Loan Agreement. Debtor covenants and agrees that at all times (whether prior to or after the Trigger Event), the Collateral shall remain subject to Bank's rights of setoff under applicable law, and, so long as Debtor is subject to the Minimum Balance requirement of the Loan Agreement, Bank is hereby authorized to decline to honor any drafts thereon or any requests, instructions or orders by Debtor or any other Person with respect to the withdrawal or disposition of any of the funds contained in the accounts included in the Collateral or with respect to the payment or any other transfer of any part of such balances if doing so would result in a violation of the Minimum Balance requirements under the Loan Agreement.

3. Debtor represents and warrants to Bank that: (a) Debtor is a corporation, duly incorporated and validly existing under the laws of the State of Delaware, Debtor's legal name is exactly as set forth on the first page of this Agreement, Debtor's chief executive office is located at 3939 N. First Street, San Jose, CA 95134, and all of Debtor's organizational documents or agreements previously delivered to Bank are complete and accurate in every respect; (b) Debtor is the lawful owner and has possession or control of the Collateral; (c) Debtor has, and at all times hereafter will have and maintain, the capacity and exclusive right to grant a security interest in the Collateral; (d) the execution, delivery and performance hereof are within its powers and have been duly authorized; (e) all Collateral is genuine, free from liens, adverse claims, setoffs, default, prepayment, defenses and conditions precedent of any kind or character, except the lien created hereby or as otherwise agreed to by Bank; (f) all statements contained herein and, where applicable, in the Collateral are true and complete in all material respects; and (g) no financing statement covering any of the Collateral, and naming any secured party other than Bank, is on file in any public office.

4. Debtor appoints Bank its true attorney in fact to perform any of the following powers, which are coupled with an interest, are irrevocable until termination of this Agreement and may be exercised from time to time by Bank's officers and employees, or any of them, whether or not Debtor is in default: (a) to perform any obligation of Debtor hereunder in Debtor's name or otherwise following Debtor's failure to do so; (b) to exercise all rights, powers and remedies which Debtor would have, but for this Agreement, with respect to all Collateral subject hereto; (c) to do all acts and things and execute all documents in the name of Debtor or otherwise, deemed by Bank as necessary, proper and convenient in connection with the preservation, protection, perfection of Collateral or its value or Bank's security interest therein or, after default, enforcement of its rights hereunder, including transferring any Collateral into its own name and receiving the income thereon as additional security hereunder. Bank does not assume any of the obligations arising under the Collateral. Debtor agrees in general to indemnify Bank against, and hold Bank harmless from, any and all losses, claims, demands, liabilities and expenses of every kind caused by property subject hereto.

5. (a) The term "default" as used herein, shall mean the occurrence of: (i) any defined event of default, under the Loan Agreement; (ii) any representation or warranty made by Debtor herein shall prove to be incorrect, false or misleading in any material respect when made; (iii) Debtor shall fail to observe or perform any obligation or agreement contained herein; or (iv) any impairment of the rights of Bank in any Collateral, or any attachment or like levy on any Collateral.

(b) Whenever a default exists, Bank, at its option, without notice or demand, do any one or more or all of the following: (i) without notice accelerate the maturity of any part or all of the Obligations and terminate any agreement for the granting of further credit to Debtor; (ii) sell, lease or otherwise dispose of Collateral at public or private sale; (iii) transfer any Collateral into its own name or that of its nominee; (iv) retain Collateral in satisfaction of obligations secured hereby, with notice of such retention sent to Debtor as required by law; (v) notify any parties obligated on any Collateral to make payment to Bank and enforce collection of any Collateral; (vi) file any action or proceeding which Bank deems necessary or appropriate to protect and preserve the right, title and interest of Bank in the Collateral; (vii) apply all sums received or collected from or on account of Collateral, including the proceeds of any sales thereof, to the payment of the costs and expenses incurred in preserving and enforcing rights of Bank including reasonable attorneys' fees (including the allocated costs of Bank's in-house counsel and legal staff), and indebtedness secured hereby in such order and manner as Bank in its sole discretion determines; Bank shall account to Debtor for any surplus remaining thereafter, and shall pay such surplus to the party entitled thereto; in like manner, Debtor agrees to pay to Bank without demand any deficiency after any Collateral has been disposed of and proceeds applied as aforesaid; (viii) place a "hold" on any account maintained with Bank; (ix) exercise its banker's lien or right of setoff in the same manner as though the credit were unsecured; and (x) liquidate any time deposits pledged to Bank hereunder and apply the proceeds thereof to payment of the indebtedness, whether or not said time deposits have matured and notwithstanding the fact that such liquidation may give rise to penalties for early withdrawal of funds. In addition, Bank shall have all the rights and remedies of a secured party under the Uniform Commercial Code of California in any jurisdiction where enforcement is sought, whether in said state or elsewhere. All rights, powers and remedies of Bank hereunder shall be cumulative and not alternative. No delay on the part of Bank in the exercise of any right or remedy shall constitute a waiver thereof and no exercise by Bank of any right or remedy shall preclude the exercise of any other right or remedy or further exercise of the same remedy.

6. Debtor waives: (a) all right to require Bank to proceed against any other person including any other Debtor hereunder or to apply any Collateral Bank may hold at any time or to pursue any other remedy, Collateral, endorsers or guarantors may be released, substituted or added without affecting the liability of Debtor hereunder; (b) the defense of the Statute of Limitations in any action upon any obligations of Debtor secured hereby; (c) any right of subrogation and any right to participate in Collateral until all obligations secured hereby have been paid in full, and (d) to the fullest extent permitted by law, any right to oppose the appointment of a receiver or similar official to operate Debtor's business.

7. The rights and remedies of Bank with respect to the security interest granted hereby are in addition to those set forth in the Loan Agreement and the other Loan Documents, and those which are now or hereafter available to Bank as a matter of law or equity. Each right, power and remedy of Bank provided for herein or in the other Loan Documents, or now or hereafter existing at law or in equity shall be cumulative and concurrent and shall be in addition to every right, power or remedy provided for herein and the exercise by Bank of any one or more of the rights, powers or remedies provided for in this Agreement, the Loan Agreement or any of the other Loan Documents, or now or hereafter existing at law or in equity, shall not preclude the simultaneous or later exercise by any person, including Bank, of any or all other rights, powers or remedies.

8. The security interest granted herein is irrevocable and shall remain in full force and effect until such time as the Obligations have been fully and indefeasibly paid, satisfied and performed and Bank no longer has any commitment to extend credit to Debtor.

9. If the Trigger Event occurs giving rise to a security interest hereunder, Bank shall release such security interest, at Debtor's sole cost and expense, after the indefeasible payment and performance in full of the Obligations. This Agreement shall become effective on the Closing Date and shall continue in full force and effect until all Obligations have been irrevocably and indefeasibly repaid in full. The obligations of Debtor to indemnify Bank shall survive until all applicable statute of limitations periods with respect to actions that may be brought against Bank have run.

10. If more than one Debtor executes this Agreement, the obligations hereunder are joint and several. All words used herein in the singular shall be deemed to have been used in the plural when the context and construction so require. Any married person who signs this Agreement expressly agrees that recourse may be had against his/her separate property for all of his/her obligations to Bank.

11. This Agreement shall be for the benefit of and bind Bank, its successors and assigns and each of the undersigned, their respective heirs, executors, administrators and successors in interest. Upon transfer by Bank of any part of the obligations secured hereby, Bank shall be fully discharged from any liability with respect to Collateral transferred therewith.

12. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but, if any provision of this Agreement shall be prohibited or invalid under applicable law, such provisions shall be ineffective to the extent of such prohibition or invalidity without invalidating the remainder of such or the remaining provisions of this Agreement.

13. The grant of a security interest in proceeds does not imply the right of Debtor to sell or dispose of any Collateral without the express consent in writing by Bank.

14. Debtor hereby agrees to give Bank prompt written notice of any change to its state of organization, chief executive office or name, as identified below.

[Remainder of Page Left Blank]

IN WITNESS WHEREOF, intending to be legally bound, the Debtor has caused this Agreement to be duly executed as of the date first above written.

SUNPOWER CORPORATION

/s/ Dennis V. Arriola

By: Dennis V. Arriola

Title: CFO & SVP

CONTINUING GUARANTY

1. **Obligations Guaranteed.** For consideration, the adequacy and sufficiency of which is acknowledged, each of the undersigned (each a "**Guarantor**" and collectively, the "**Guarantors**"), for the purpose of seeking to induce UNION BANK, N.A. ("**Bank**") to extend credit or otherwise provide financial accommodations to SUNPOWER CORPORATION, a Delaware corporation ("**Borrower**"), under or in connection with, among other things, that certain Loan Agreement dated as of the date hereof (as amended, modified, supplemented, restated or renewed from time to time, the "**Loan Agreement**") by and between Borrower and Bank, which extensions of credit and provision of financial accommodations will be to the direct and indirect interest, advantage and benefit of each Guarantor, hereby unconditionally guaranties and promises (a) to pay to Bank on demand, in lawful United States money, all Obligations of Borrower to Bank, (b) to perform all undertakings of Borrower in connection with the Obligations, and (c) to hold Bank harmless from any damage or liability Bank may incur in connection with Bank's providing of Automated Clearing House (ACH) services for or to Borrower. "**Obligations**" is used in its most comprehensive sense and includes any and all debts, liabilities, rental obligations, and other obligations and liabilities of every kind of Borrower to Bank, whether made, incurred or created previously, concurrently or in the future, whether voluntary or involuntary and however arising, whether incurred directly or acquired by Bank by assignment or succession, whether due or not due, absolute or contingent, liquidated or unliquidated, legal or equitable, whether Borrower is liable individually or jointly or with others, whether incurred before, during or after any bankruptcy, reorganization, insolvency, receivership or similar proceeding ("**Insolvency Proceeding**"), and whether recovery thereof is or becomes barred by a statute of limitations or is or becomes otherwise unenforceable, together with all expenses of, for and incidental to collection, including reasonable attorneys' fees. As used herein, the term Obligations includes all "**Obligations**" as that term is defined in the Loan Agreement.

2. **Limitation on Guarantor's Liability.** Although this Continuing Guaranty (this "**Guaranty**") covers all Obligations, each Guarantor's liability under this Guaranty for Borrower's Obligations shall not exceed at any one time the sum of the following (the "**Guaranteed Liability Amount**"): (a) Thirty Million Dollars (\$30,000,000) for Obligations representing principal owing in connection with the Term Loan ("**Principal Amount**"), (b) interest, fees and like charges owing and allocable to the Principal Amount as determined by Bank, (c) all amounts owing to Bank under any interest rate swap or similar agreement heretofore or hereafter entered into between Borrower and Bank relating to the Term Loan, and (d) without allocation in respect of the Principal Amount all costs, reasonable attorneys' fees, and expenses of Bank relating to or arising out of the enforcement of the Obligations and all indemnity liabilities of each Guarantor under this Guaranty. The foregoing limitation applies only to Guarantors' liability under this particular Guaranty. Unless Bank otherwise agrees in writing, every other guaranty of any Obligations previously, concurrently, or hereafter given to Bank by any Guarantor is independent of this Guaranty and of every other such guaranty. Without notice to any Guarantor, Bank may permit the Obligations to exceed the Principal Amount and may apply or reapply any amounts received in respect of the Obligations from any source other than from a Guarantor to that portion of the Obligations not included within the Guaranteed Liability Amount.

3. **Continuing Nature/Revocation/Reinstatement.** This Guaranty is an absolute guaranty of payment and performance and not of collection and shall remain effective during the term of the Loan Documents. This Guaranty is in addition to any other guaranties of the Obligations, is continuing and covers all Obligations, including those arising under successive transactions which continue or increase the Obligations from time to time, renew all or part of the Obligations after they have been satisfied, or create new Obligations. Revocation by one or more signers of this Guaranty or any other guarantors of the Obligations shall not (a) affect the obligations under this Guaranty of a non-revoking Guarantor, (b) apply to Obligations outstanding when Bank receives written notice of revocation, or to

any extensions, renewals, readvances, modifications, amendments or replacements of such Obligations, or (c) apply to Obligations, arising after Bank receives such notice of revocation, which are created pursuant to a commitment existing at the time of the revocation, whether or not there exists an unsatisfied condition to such commitment or Bank has another defense to its performance. All of Bank's rights pursuant to this Guaranty continue with respect to amounts previously paid to Bank on account of any Obligations which are thereafter restored or returned by Bank, whether in an Insolvency Proceeding of Borrower or for any other reason, all as though such amounts had not been paid to Bank; and each Guarantor's liability under this Guaranty (and all its terms and provisions) shall be reinstated and revived, notwithstanding any surrender or cancellation of this Guaranty. Bank, at its sole discretion, may determine whether any amount paid to it must be restored or returned; provided, however, that if Bank elects to contest any claim for return or restoration, each Guarantor agrees to indemnify and hold Bank harmless from and against all costs and expenses, including reasonable attorneys' fees, expended or incurred by Bank in connection with such contest. No payment by any Guarantor shall reduce the Guaranteed Liability Amount hereunder unless, at or prior to the time of such payment, Bank receives such Guarantor's written notice to that effect. If any Insolvency Proceeding is commenced by or against Borrower or any Guarantor, at Bank's election, each Guarantor's obligations under this Guaranty shall immediately and without notice or demand become due and payable, whether or not then otherwise due and payable.

4. Authorization. Each Guarantor authorizes Bank, without notice and without affecting Guarantor's liability under this Guaranty, from time to time, whether before or after any revocation of this Guaranty, to (a) renew, compromise, extend, accelerate, release, subordinate, waive, amend and restate, or otherwise amend or change, the interest rate, time or place for payment or any other terms of all or any part of the Obligations; (b) accept delinquent or partial payments on the Obligations; (c) take or not take security or other credit support for this Guaranty or for all or any part of the Obligations, and exchange, enforce, waive, release, subordinate, fail to enforce or perfect, sell, or otherwise dispose of any such security or credit support; (d) apply proceeds of any such security or credit support and direct the order or manner of its sale or enforcement as Bank, at its sole discretion, may determine; and (e) release or substitute Borrower or any guarantor or other person or entity liable on the Obligations.

5. Waivers. To the maximum extent permitted by law, each Guarantor waives (a) all rights to require Bank to proceed against Borrower, or any other guarantor, or proceed against, enforce or exhaust any security for the Obligations or to marshal assets or to pursue any other remedy in Bank's power whatsoever; (b) all defenses arising by reason of any disability or other defense of Borrower, the cessation for any reason of the liability of Borrower, any defense that any other indemnity, guaranty or security was to be obtained, any claim that Bank has made any Guarantor's obligations more burdensome or more burdensome than Borrower's obligations, and the use of any proceeds of the Obligations other than as intended or understood by Bank or Guarantors; (c) all presentments, demands for performance, notices of nonperformance, protests, notices of dishonor, notices of acceptance of this Guaranty and of the existence or creation of new or additional Obligations, and all other notices or demands to which any Guarantor might otherwise be entitled; (d) all conditions precedent to the effectiveness of this Guaranty; (e) all rights to file a claim in connection with the Obligations in an Insolvency Proceeding filed by or against Borrower; (f) all rights to require Bank to enforce any of its remedies; (g) any setoff, defense or counterclaim against Bank, (h) the benefit of any act or omission by Bank which directly or indirectly results in or aids the discharge of Borrower from any of the Obligations by operation of law or otherwise; (i) the benefit of California Civil Code Section 2815 permitting the revocation of this Guaranty as to future transactions and the benefit of California Civil Code Sections 2809, 2810, 2819, 2839, 2845, 2848, 2849, 2850, 2899 and 1432 with respect to certain suretyship defenses; and (j) until the Obligations are fully and indefeasibly satisfied and paid, in cash, with such payment not subject to return: (i) all rights of subrogation, contribution,

indemnification or reimbursement, (ii) all rights of recourse to any assets or property of Borrower, or to any collateral or credit support for the Obligations, (iii) all rights to participate in or benefit from any security or credit support Bank may have or acquire, and (iv) all rights, remedies and defenses any Guarantor may have or acquire against Borrower.

6. Guarantors to Keep Informed. Each Guarantor warrants having established with Borrower adequate means of obtaining, on an ongoing basis, such information as such Guarantor may require concerning all matters bearing on the risk of nonpayment or nonperformance of the Obligations. Each Guarantor assumes sole, continuing responsibility for obtaining such information from sources other than from Bank. Bank has no duty to provide any information to any Guarantor until Bank receives such Guarantor's written request for specific information in Bank's possession and Borrower has authorized Bank to disclose such information to such Guarantor.

7. Subordination. All obligations of Borrower to each Guarantor which presently or in the future may exist ("**Guarantor's Claims**") are hereby subordinated to the Obligations. At Bank's request, each Guarantor's Claims will be enforced and performance thereon received by such Guarantor only as a trustee for Bank, and each Guarantor will promptly pay over to Bank all proceeds recovered for application to the Obligations without reducing or affecting such Guarantor's liability under other provisions of this Guaranty. Any lien or charge on the property securing the obligations, and on the revenue and income to be realized therefrom, which any Guarantor may have or obtain shall be, and such lien or charge hereby is, subordinated to the lien or charge in favor of Bank, if any, securing the Obligations on such property. Each Guarantor agrees that it shall file any and all claims against Borrower in any Insolvency Proceeding in which the filing of claims is required by law on any indebtedness of Borrower to such Guarantor, and will assign to Bank all rights of such Guarantor. If a Guarantor does not file such claim, Bank, as attorney-in-fact for such Guarantor, is authorized to do so in the name of Guarantor or, in Bank's sole discretion, to assign the claim and to file a proof of claim in the name of Bank or Bank's nominee. In all such cases, whether in bankruptcy or otherwise, the person or persons authorized to pay such claim shall pay to Bank the full amount of any such claim, and, to the full extent necessary for that purpose, each Guarantor assigns to Bank all of such Guarantor's rights to any such payments or distributions to which such Guarantor would otherwise be entitled. Each Guarantor also agrees that Bank's books and records showing the account between Bank and Borrower or any other guarantor shall be admissible in any action or proceeding and shall be binding upon each Guarantor for the purpose of establishing the terms set forth therein and shall constitute prima facie proof thereof.

8. Indemnity. Guarantors shall, jointly and severally, indemnify and hold Bank and each of its employees, attorneys, consultants, representatives and agents and their respective successors and assigns (each an "**Indemnified Person**"), harmless, from and against any and all: (i) suits, actions, or proceedings in any court or forum, at law, in equity or otherwise; (ii) costs, fines, deficiencies, or penalties; (iii) asserted claims or demands by any Person; (iv) arbitration demands, proceedings or awards; (v) damages, losses, liabilities and expenses (including reasonable attorneys' fees and disbursements and other costs of collection, defense or appeal); (vi) enforcement of rights and remedies; and (vii) criminal, civil or regulatory investigations (each a "**Claim**") that may be instituted or asserted against or incurred by any such Indemnified Person as the result of credit having been extended or not extended under the Loan Agreement and the other Loan Documents or otherwise in connection with or arising out of the transactions contemplated hereunder or thereunder, including any Claim for environmental liabilities and legal costs and expenses of disputes between any Loan Party and Bank; provided, that Guarantors shall not be liable for indemnification of an Indemnified Person to the extent that any such Claim is finally determined by a court of competent jurisdiction to have resulted solely from such Indemnified Person's gross negligence or willful misconduct. This Section 8 shall survive the termination of this Guaranty.

9. **Authorization.** Where Borrower is a corporation, partnership or other entity, Bank need not inquire into or verify the powers of Borrower or authority of those acting or purporting to act on behalf of Borrower, and this Guaranty shall be enforceable with respect to any Obligations Bank grants or creates in reliance on the purported exercise of such powers or authority.
10. **Assignments.** Without notice to any Guarantor, Bank may assign the Obligations and this Guaranty, in whole or in part, and may (subject to Section 7.16 of the Loan Agreement) disclose to any prospective or actual purchaser of all or part of the Obligations any and all information Bank has or acquires concerning each Guarantor, this Guaranty and any security for this Guaranty.
11. **Counsel Fees and Costs.** The prevailing party shall be entitled to attorneys' fees (including a reasonable allocation for Bank's internal counsel) and all other costs and expenses which it may incur in connection with the enforcement or preservation of its rights under, or defense of, this Guaranty or in connection with any other dispute or proceeding relating to this Guaranty, whether or not incurred in any Insolvency Proceeding, arbitration, litigation or other proceeding.
12. **Multiple Guarantors/Borrowers.** When there is more than one Borrower named herein or when this Guaranty is executed by more than one Guarantor, then the words "Borrower" and "Guarantor", respectively, shall mean all and any one or more of them, and their respective successors and assigns, including debtors-in-possession and bankruptcy trustees; words used herein in the singular shall be considered to have been used in the plural where the context and construction so require in order to refer to more than one Borrower or Guarantor, as the case may be.
13. **Integration/Severability/Amendments.** This Guaranty is intended by each Guarantor and Bank as the complete, final expression of their agreement concerning its subject matter. It supersedes all prior understandings or agreements with respect thereto and may be changed only by a writing signed by Guarantors and Bank. No course of dealing, or parole or extrinsic evidence shall be used to modify or supplement the express terms of this Guaranty. If any provision of this Guaranty is found to be illegal, invalid or unenforceable, such provision shall be enforced to the maximum extent permitted, but if fully unenforceable, such provision shall be severable, and this Guaranty shall be construed as if such provision had never been a part of this Guaranty, and the remaining provisions shall continue in full force and effect.
14. **Joint and Several.** If more than one Guarantor signs this Guaranty, the obligations of each under this Guaranty are joint and several, and independent of the Obligations and of the obligations of any other person or entity. A separate action or actions may be brought and prosecuted against any one or more guarantors, whether action is brought against Borrower or other guarantors of the Obligations, and whether Borrower or others are joined in any such action.
15. **Notice.** Any notice, including notice of revocation, given by any party under this Guaranty shall be effective only upon its receipt by the other party and only if (a) given in writing and (b) personally delivered or sent by United States mail, postage prepaid, and addressed to Bank or Guarantors at their respective addresses for notices indicated below. Guarantors and Bank may change the place to which notices, requests, and other communications are to be sent to them by giving written notice of such change to the other.
16. **Governing Law.** This Guaranty shall be governed by and construed according to the laws of the State of California, and, except as provided in any addendum hereto, each Guarantor submits to the non-exclusive jurisdiction of the state or federal courts in said state.

16. Disputes. To the extent permitted by law, in connection with any claim, cause of action, proceeding or other dispute concerning this Guaranty (each a "**Claim**"), the parties to this Guaranty expressly, intentionally, and deliberately waive any right each may otherwise have to trial by jury. In the event that the waiver of jury trial set forth in the previous sentence is not enforceable under the law applicable to this Guaranty, the parties to this Guaranty agree that any Claim, including any question of law or fact relating thereto, shall, at the written request of any party, be determined by judicial reference pursuant to the state law applicable to this Guaranty. The parties shall select a single neutral referee, who shall be a retired state or federal judge. In the event that the parties cannot agree upon a referee, the court shall appoint the referee. The referee shall report a statement of decision to the court. Nothing in this paragraph shall limit the right of any party at any time to exercise self-help remedies, foreclose against collateral or obtain provisional remedies. The parties shall bear the fees and expenses of the referee equally, unless the referee orders otherwise. The referee shall also determine all issues relating to the applicability, interpretation, and enforceability of this paragraph. The parties acknowledge that if a referee is selected to determine the Claims, then the Claims will not be decided by a jury.

17. Tax; Awards; Service of Process; Other Awards.

(a) Guarantors shall make all payments due Bank under this Guaranty free and clear of any present or future taxes, levies, assessments, imposts, fees, charges, restrictions, and conditions whatsoever ("**Tax**") now or hereafter imposed by any applicable treaty, law or regulation. However, if a Guarantor is legally required to deduct any Tax from payments otherwise due under this Guaranty, then Guarantor shall: (i) on demand pay Bank in United States Dollars such additional amount as may be necessary so that Bank will receive the payment to which Bank would otherwise be entitled if no Tax had been imposed or deducted and (ii) forward to Bank within 90 days of a Tax payment, documentation acceptable to Bank evidencing such Tax payment.

(b) If any judgment or order by any court, governmental agency, arbitration panel, or the like makes an award to Bank under this Guaranty in other than United States Dollars, each Guarantor shall also, in addition to the award, pay Bank in United States Dollars, the amount by which (i) the original United States Dollar amount due Bank exceeds (ii) the award in United States Dollars after conversion from the other currency (at rates then generally used by Bank in calculating such conversions).

(c) Each Guarantor hereby appoints Borrower as Guarantor's agent for service of process in the state designated in Section 16, above. Any service upon such agent will be valid as if each Guarantor had been legally served in the jurisdiction of such Guarantor's principal place of business (or Guarantor's residence if Guarantor is an individual). Nothing herein shall affect Bank's right to serve any Guarantor with legal process in any other manner permitted by applicable law.

(d) If any Guarantor has or acquires any immunity from jurisdiction of any court, or if any Guarantor's property has or acquires immunity from any legal process, such Guarantor hereby irrevocably waives such immunity with respect of its obligations under this Guaranty and, without limiting the generality of the foregoing, such Guarantor agrees that such waiver shall be effective and irrevocable to the fullest extent permitted under applicable law.

(e) Each Guarantor represents and warrants to Bank that all authorizations and approvals (including any exchange control or approval), or other action by, and any notice to or filing with, any governmental authority or regulatory body required for such Guarantor's due execution, delivery and performance of this Guaranty have been duly obtained or made and will continue in full force and effect until the full discharge of each Guarantor's liabilities under this Guaranty.

(f) Each Guarantor represents and warrants to Bank that the following information is true, complete and correct:

SunPower Corporation, Systems, is a corporation duly incorporated and validly existing under and by virtue of the laws of the State of Delaware.

SunPower North America LLC, is a limited liability company duly organized and validly existing under and by virtue of the laws of the State of Delaware.

Both Guarantors have a chief executive office and principal place of business located at:
3939 N. First Street
San Jose, CA 95134
Fax: (408) 240-5400

The name and address of each Guarantor's agent for service of process is:

The Corporation Trust Company,
Corporate Trust Center,
1209 Orange Street,
Wilmington, DE 19801.

[Remainder of Page Left Blank]

Executed as of April 17, 2009. Each Guarantor acknowledges having received a copy of this Guaranty and having made each waiver contained in this Guaranty with full knowledge of its consequences.

SUNPOWER CORPORATION, SYSTEMS

/s/Dennis V. Arriola

By: Dennis V. Arriola

Title CFO

Address for notices to Borrower:

Attn: General Counsel
3939 N. First Street
San Jose, CA 95134
Fax: (408) 240-5400

SUNPOWER NORTH AMERICA, LLC

/s/ Dennis V. Arriola

By Dennis V. Arriola

Title SVP & CFO

Address for notices to Guarantor:

Attn: General Counsel
3939 N. First Street
San Jose, CA 95134
Fax: (408) 240-5400

UNION BANK, N.A.

/s/J. William Bloore

By J. William Bloore

Title Vice President

Address for notices:

601 East Potrero Grande Drive
Monterey Park, California 91754
Attn: Commercial Loan Operations
Fax: (323) 720-2252

East Bay Corporate Banking Group
200 Pringle Avenue, Suite 500
Walnut Creek, CA 94596-3570
Attn: J. William Bloore
Fax: (925) 943-7442

[Signature Page to Continuing Guaranty]

CONFIDENTIAL TREATMENT REQUESTED

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

**PHOTOVOLTAIC EQUIPMENT MASTER
SUPPLY AGREEMENT**

BETWEEN

FPL GROUP, INC.

AND

SUNPOWER CORPORATION, SYSTEMS

Dated as of April 21, 2009

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SCHEDULES

Schedule 1 – Basic Terms of Sale – Solar Panels and BOS Support Structure Equipment

Schedule 1 – Exhibit 1 – Equipment List and SunPower Scope of Supply

Schedule 2 – Form of Purchase Order

Schedule 3 – Warranties

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Schedule 5 – Form of Letter of Credit

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Schedule 7 – Form of Supplier Certificate for Final Waiver of Liens

Schedule 8 – Basic Product Support

Schedule 9 – Acceptance and Degradation Testing

Schedule 10 – Form of Final Acceptance Certificate

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Photovoltaic Equipment Master Supply Agreement

This Photovoltaic Equipment Master Supply Agreement (the "Agreement") is made and entered into as of April 21, 2009 ("Effective Date") by and between SunPower Corporation, Systems, a company formed under the laws of Delaware ("SunPower") and FPL Group, Inc., a company formed under the laws of Florida ("FPL Group").

RECITALS

WHEREAS, SunPower is engaged in the business of manufacturing, importing and selling photovoltaic modules and balance of system photovoltaic support structure equipment;

WHEREAS, FPL Group is interested in the business of designing, constructing and installing solar electric systems utilizing photovoltaic modules and related equipment in the United States, Canada and the Caribbean (collectively, the "Territory"); and

WHEREAS, SunPower desires to sell to FPL Group, and FPL Group and its Affiliates desire to purchase from SunPower, photovoltaic modules and related equipment on the terms and conditions set forth herein.

NOW THEREFORE, for good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Parties agree as follows:

AGREEMENT

1. Product Sales and Purchase.

(a) Product Description. The description and specifications for the photovoltaic modules to be sold and purchased under this Agreement or any Purchase Order are set forth on Schedule 1 (collectively, with any *** provided by SunPower pursuant to Section 34, the "Solar Panels"). The description and specifications for the balance of system equipment to be sold and purchased under this Agreement or any Purchase Order are also set forth on Schedule 1 (the "BOS Support Structure Equipment" and, together with the Solar Panels, the "Products"). At any time prior to issuance of a Purchase Order for particular Products, SunPower may from time to time modify the description or specifications of such Products, upon two (2) months' prior written notice to FPL Group; provided that such modifications shall not result in (i) any price increase or (ii) any material adverse effect in (including but not limited to an increase in any cost associated with) the performance, reliability or efficiency of the Products, in either case, without FPL Group's prior written consent.

(b) Firm Commitment Obligations; Purchase Orders.

(i) SunPower guarantees availability and sale of Products under this Agreement or any Purchase Order on a monthly and annual, firm commitment basis equal to the Base Commitment plus any additional MW (up to 100 MW_{AC} per year not to exceed the

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quantities set forth in Schedule 1) with respect to any of years 2010, 2011 and 2012 requested by FPL Group or any Affiliate of FPL Group pursuant to the terms hereof (“Optional Additional Quantities”). Subject to Section 1(c), FPL Group shall (and/or shall cause its Affiliates to) purchase on a monthly and annual, firm commitment basis an aggregate amount of Products equal to the Base Commitment plus any Optional Additional Quantities requested by FPL Group or any Affiliate of FPL Group pursuant to the terms hereof. ***, any photovoltaic modules and balance of system equipment purchased by FPL Group Parties from SunPower or its Affiliates during the Term pursuant to an agreement (whether an EPC Contract, an amendment or change order to an existing agreement or otherwise) executed after the date of this Agreement shall count towards FPL Group’s satisfaction of the commitment to purchase the Base Commitment and the Optional Additional Quantities. The Projects may be anywhere in the Territory, as determined by FPL Group. The sole and exclusive remedies for failure of SunPower to fulfill such monthly and annual firm commitment obligations are the Liquidated Damages provided for in Section 3 and the remedies and liabilities set forth in Section 14. The sole and exclusive remedies for failure of FPL Group to fulfill such monthly and annual firm commitment obligations are the Termination Payments.

(ii) FPL Group shall provide SunPower with written notice (“Quantity Notice”) of the total quantity of Products per month that FPL Group and/or its Affiliates intend to purchase as Optional Additional Quantities under this Agreement for calendar year 2010, 2011 and 2012 by July 1 of the previous year (each such date, a “Quantity Notice Date”). FPL Group and/or any Affiliate thereof shall be entitled to purchase Products pursuant to this Agreement by issuing to SunPower purchase orders, in minimum order quantities of 10 MW_{AC} (or such lesser quantity as the Parties shall mutually agree in writing), in the form attached as Schedule 2 (the “Purchase Order”) so long as such quantities comply with the quantity limitations described in Schedule 1 and, solely with respect to Optional Additional Quantities, comply with the quantities set forth in the Quantity Notice; provided, however, that FPL Group and/or any Affiliate of FPL Group may purchase the Products from SunPower without a Purchase Order pursuant to a writing executed by SunPower and FPL Group or such Affiliate of FPL Group (including but not limited to any Products purchased by Florida Power & Light Company (“FPLC”) with respect to any exercise of its option to ***, with such changes as are necessary based on the different timing, site and Applicable Law requirements of the ***), but otherwise excluding any photovoltaic construction projects pursuant to agreements executed prior to the date of this Agreement) and such quantities of the Products so purchased for a given month during the Term shall be added to the quantities of the Products purchased by Purchase Order with respect to such Term for purposes of each Party satisfying its quantity commitment obligations under this Agreement, including but not limited to the Base Commitment and any Optional Additional Quantities requested by Purchasing Entities pursuant to the terms hereof.

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(iii) If a Purchase Order is issued by FPL Group or any of its Affiliates to SunPower in compliance with the requirements of Section 1(b)(ii), then (a) subject to the provisions of this clause (iii) below, SunPower agrees that the terms of such Purchase Order shall be valid and binding on SunPower whether or not SunPower acknowledges or accepts such Purchase Order or countersigns such Purchase Order and (b) such Purchase Order shall be binding on the Purchasing Entity and the Purchasing Entity shall be bound by the terms and conditions of this Agreement as incorporated into such Purchase Order. Subject to the provisions of this clause (iii) below, upon SunPower's receipt of a Purchase Order complying with the requirements of Section 1(b)(ii), SunPower shall countersign such Purchase Order and return same to the Purchasing Entity within fifteen (15) days after such receipt. FPL Group is not a party to any Purchase Order (unless it issues the Purchase Order as the Purchasing Entity) and shall not be responsible for the obligations of any Purchasing Entity under this Agreement or any Purchase Order or any obligation stated as an obligation of "FPL Group" under a Purchase Order due to the incorporation of this Agreement into a Purchase Order. A Purchasing Entity is not a party to this Agreement but is a party to the relevant Purchase Order and all Purchase Orders incorporates this Agreement by reference. The foregoing, however, does not limit or waive any provision of Section 31 hereof or any obligation of FPL Group under this Agreement or a Purchase Order to which it is a Party. Notwithstanding the foregoing provisions of this clause (iii), to the extent the terms of any Purchase Order impose obligations upon SunPower in addition to the requirements stated in Section 1(b)(ii), SunPower shall not assume such obligations unless and until it countersigns such Purchase Order. Without limiting the generality of the preceding sentence, SunPower shall confirm the shipping plan and dates for such Purchase Order to the relevant Purchasing Entity by written notice or e-mail transmission delivered to such Purchasing Entity within fifteen (15) calendar days following SunPower's receipt of such Purchase Order. Subject to Section 5, in the event of any conflict between the terms of the Purchase Order and this Agreement, the terms of this Agreement shall prevail.

(iv) Within thirty (30) days after receipt of a Purchase Order, SunPower shall deliver to the relevant Purchasing Entity SunPower's standard manuals that are described in Section 7 of Schedule 8 ("Installation and O&M Manual").

(c) FPL Group Notice of Non-Order.

(i) Notwithstanding Section 1(b), FPL Group or any Purchasing Entity may provide SunPower written notice at any time that it elects to purchase less than, or none of, the quantity of Products otherwise applicable to a given month pursuant to Schedule 1 (such lower quantity being referred to as the "Reduced Monthly Quantity"; the excess of the quantity of Products otherwise applicable to such month pursuant to Schedule 1 over such Reduced Monthly Quantity, being referred to as the "Terminated Monthly Quantity"), subject to the payment of any applicable Termination Payments pursuant to this Section 1(c). In such event, the Parties' monthly and annual firm commitment obligations as set forth on Schedule 1 shall be deemed to be revised to reflect the Reduced Monthly Quantity for the applicable period. Notwithstanding the foregoing, FPL Group may not reduce its firm commitment obligations for a given month pursuant to the previous sentence if FPL Group or any Purchasing Entity purchases (other than Excluded Purchases) photovoltaic modules or photovoltaic support structure equipment from

third parties for delivery during such month. Any such Terminated Monthly Quantity shall first be applied to any incremental Optional Additional Quantities for the applicable calendar year prior to application to the Base Commitment for such calendar year.

(ii) Prior to FPL Group's purchase of photovoltaic modules or photovoltaic support structure equipment from third parties with respect to any month in which FPL Group has purchased the quantity of Products contemplated for such month on Schedule 1, FPL Group shall offer SunPower a right of first offer to provide Products for such month (a) up to the quantity contemplated for purchase from such third parties and (b) for the price and upon the other terms applicable to sales of Products hereunder or under any Purchase Order. FPL Group's obligation to offer SunPower such right of first offer shall only apply to the extent of the aggregate Terminated Monthly Quantities during all prior periods (minus any quantities of Products previously sold by SunPower pursuant to such right of first offer). SunPower shall have fourteen (14) days after receipt of a notice of a right of first offer from FPL Group to accept or reject FPL Group's offer.

(iii) FPL Group's (or, with respect to Products it is purchasing pursuant to a Purchase Order, the relevant Purchasing Entity's) liability for any Terminated Monthly Quantity shall be as follows:

| Termination Schedule for 2010 Deliveries | |
|---|--|
| Milestone (based upon date of notice of termination) | Percentage of Purchase Price of Such Terminated Monthly Quantity ("Termination Liability") |
| More than *** calendar days prior to the Guaranteed Delivery Date for such Products | ***% |
| *** calendar days or less prior to the Guaranteed Delivery Date for such Products but more than *** calendar days prior to the Guaranteed Delivery Date for such Products | ***% |
| *** calendar days or less prior to the Guaranteed Delivery Date for such Products | ***% plus the product of (i) ***% and (ii) the ratio of (A) *** days minus the number of calendar days remaining from the notice of termination date until the Guaranteed Delivery Date over (B) *** calendar days (but no event to exceed 100%) |

| Termination Schedule for 2011 and 2012 Deliveries | |
|--|--|
| Milestone (based upon date of notice of termination) | Termination Liability |
| More than *** calendar days prior to the Scheduled Shipment Date | ***% |
| *** calendar days or less prior to the Scheduled Shipment Date for such Products but more than *** calendar days | ***% for Base Commitment and ***% for Optional Additional Quantities |

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prior to the Scheduled Shipment Date

*** calendar days or less prior to the Scheduled Shipment Date for such ***% plus the product of (i) ***% and (ii) the ratio of (A) *** calendar days minus the number of calendar days remaining from the notice of termination date until the Scheduled Shipment Date over (B) *** calendar days (but no event to exceed 100%)

Notwithstanding any provision in this Agreement or any Purchase Order to the contrary, (I) FPL Group (or, with respect to Products it is purchasing pursuant to a Purchase Order, the relevant Purchasing Entity) may terminate any or all 2010 deliveries on or before ***, 2009 with *** Termination Liability (****%) to SunPower and (II) the aggregate Termination Liability for any Products scheduled for delivery in a given calendar year that are terminated on or after *** of the immediately preceding calendar year will be the greater of (A) the Termination Liability applicable thereto as provided in the tables above and (B) *** percent (****%) of the Purchase Price of such terminated Products. The amount due and payable to SunPower with respect to any Terminated Monthly Quantity (a "Termination Payment") shall be the excess, if any, of the Termination Liability applicable to such Terminated Monthly Quantity pursuant to this Section 1(c) over any payments made by the date of termination to SunPower for such Terminated Monthly Quantity (including the portion of the Deposit(s) described below related thereto, the "Terminated Monthly Quantity Prior Payments"). In the event that the Terminated Monthly Quantity Prior Payments exceeds the Termination Liability applicable to such Terminated Monthly Quantity (the "Terminated Monthly Quantity Refund Amount"), no Termination Payment shall be due and payable by FPL Group or the relevant Purchasing Entity, as applicable, with respect to such Terminated Monthly Quantity and SunPower shall refund to FPL Group or such Purchasing Entity, as applicable, the Terminated Monthly Quantity Refund Amount applicable thereto.

(iv) The Parties agree that the commitment obligations of FPL Group to purchase the Base Commitment plus any Optional Additional Quantities requested by FPL Group or any Affiliate of FPL Group pursuant to the terms hereof, as may be reduced in accordance with this Section 1 shall also be reduced by the Products covered by Purchase Orders terminated pursuant to Sections 14(c) and 14(g).

(d) Additional Capacity. Subject to the availability of capacity and/or adequate prior notice to SunPower, SunPower will supply as Products under this Agreement any photovoltaic modules and balance of system equipment requested by FPL Group or any Affiliate thereof in quantities greater than the Base Commitment and the Optional Additional Quantities under the same pricing and other terms and conditions as the Base Commitment and the Optional Additional Quantities. SunPower and FPL Group shall communicate with each other on a regular, periodic basis to communicate their supply and demand capacities, respectively. SunPower will promptly notify FPL Group if SunPower expects an increase or decrease in its capacity.

(e) Subcontracting. Except as expressly permitted pursuant to Section 18 of this Agreement, no obligation, duty, interest or right under this Agreement or any Purchase Order

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shall be subcontracted, assigned, transferred, delegated or otherwise disposed of by SunPower without FPL Group's prior written approval.

(f) Basic Product Support. SunPower shall provide to each Purchasing Entity, at no additional cost, the basic Product support services described in Schedule 8.

2. Prices; Payment; Taxes.

(a) Prices. Except as otherwise stated in this Section 2 and on Schedule 1, the Purchase Prices for the Products shall be paid under Purchase Orders issued by the relevant Purchasing Entity on a per-Watt_{DC} basis as set forth on Schedule 1, and shall be subject to adjustment as stated on Schedule 1. The Purchase Prices for the Products shall be determined by the year of the Scheduled Shipment Date stated in the Purchase Order, as more fully described on Schedule 1.

(b) Payments.

(i) With respect to calendar years 2010, 2011 and 2012, the relevant Purchasing Entity shall pay the Purchase Price for the applicable quantity of the Products pursuant to the following schedules:

| Deposits for 2010 Base Commitment (100 MW_{AC}) | |
|--|---|
| Payment | Invoice Date |
| Deposit of ***% of Purchase Price on lesser of (i) 100MW _{AC} of Product and (ii) aggregate of Reduced Monthly Quantities of Base Commitment of Product for 2010 (the "2010 Base Commitment Deposit") | January 1, 2010 |
| Milestone Payment Schedule for 2010 Base Commitment (100 MW_{AC}) | |
| Payment | Invoice Date |
| ***% of Purchase Price of specified Product ordered pursuant to a Purchase Order for 2010 | Later of (i) January 1, 2010 and (ii) *** calendar days prior to Scheduled Shipment Date for such Product |
| ***% of Purchase Price of specified Product ordered pursuant to a Purchase Order for 2010 | Later of (i) January 1, 2010 and (ii) *** calendar days prior to Scheduled Shipment Date for such Product |
| ***% of Purchase Price of specified Product ordered pursuant to a Purchase Order for 2010 | Later of (i) January 1, 2010 and (ii) *** calendar days prior to Scheduled Shipment Date for such Product |
| ***% of Purchase Price of specified Product ordered pursuant to a Purchase Order for 2010 | Delivery of such Product |
| ***% of Purchase Price of specified Product ordered pursuant to a Purchase Order for 2010 | *** calendar days following Delivery of such Product |
| ***% of Purchase Price of specified Product ordered pursuant to a Purchase Order for 2010 | Final Acceptance (as defined in Section 3 below) of such Product |

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| Deposits for 2010 Optional Additional Quantities | |
|--|---|
| Payment | Invoice Date |
| Initial deposit of ***% of Purchase Price on total quantity of Product requested by FPL Group above Base Commitment on Quantity Notice Date with respect to 2010 (the “2010 Additional Quantity Deposit”, together with the 2010 Base Commitment Deposit, the “2010 Deposits”) | January 1, 2010 |
| Milestone Payment Schedule for 2010 Optional Additional Quantities | |
| Payment | Invoice Date |
| ***% of Purchase Price of specified Product ordered above Base Commitment pursuant to a Purchase Order for 2010 | Later of (i) January 1, 2010 and (ii) *** calendar days prior to Scheduled Shipment Date for such Product |
| ***% of Purchase Price of specified Product ordered above Base Commitment pursuant to a Purchase Order for 2010 | Later of (i) January 1, 2010 and (ii) *** calendar days prior to Scheduled Shipment Date for such Product |
| ***% of Purchase Price of specified Product ordered above Base Commitment pursuant to a Purchase Order for 2010 | Site delivery date for such Product |
| ***% of Purchase Price of specified Product ordered above Base Commitment pursuant to a Purchase Order for 2010 | *** calendar days following Delivery of such Product |
| ***% of Purchase Price of specified Product ordered above Base Commitment pursuant to a Purchase Order for 2010 | Final Acceptance of such Product |
| Deposits for 2011 and 2012 Base Commitment (100 MW _{AC}) | |
| Payment | Invoice Date |
| Deposit of ***% of Purchase Price on total quantity of Product requested by FPL Group on Quantity Notice Date with respect to applicable year (the “2011/2012 Base Commitment Initial Deposit”) | *** calendar days prior to first Scheduled Shipment Date of Product for an applicable year |
| Additional deposit of ***% of Purchase Price on lesser of (1) 100MW _{AC} and (ii) aggregate of Reduced Monthly Quantities of Base Commitment of Product for the applicable year(the “2011/2012 Base Commitment Additional Deposit”) | *** calendar days prior to the beginning of each applicable year |
| Milestone Payment Schedule for 2011 and 2012 Base Commitment (100 MW _{AC}) | |
| Payment | Invoice Date |
| ***% of Purchase Price of specified Product ordered pursuant to a Purchase Order for the applicable year | *** calendar days prior to Scheduled Shipment Date for such Product |
| ***% of Purchase Price of specified Product ordered pursuant to a Purchase Order for the applicable year | *** calendar days prior to Scheduled Shipment Date for such Product |
| ***% of Purchase Price of specified Product ordered pursuant to a Purchase Order for the applicable year | *** calendar days prior to Scheduled Shipment Date for such Product |
| ***% of Purchase Price of specified Product ordered pursuant to a Purchase Order for the applicable year | Delivery of such Product |

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| | |
|--|---|
| ***% of Purchase Price of specified Product ordered pursuant to a Purchase Order for the applicable year | *** calendar days following Delivery of such Product |
| ***% of Purchase Price of specified Product ordered pursuant to a Purchase Order for the applicable year | Final Acceptance of such Product |
| Deposits for 2011 and 2012 Optional Additional Quantities | |
| Payment | Invoice Date |
| Initial deposit of ***% of Purchase Price on total quantity of Product requested by FPL Group above Base Commitment on Quantity Notice Date with respect to 2011 and 2012 (the “2011/12 Additional Quantity Initial Deposit”, together with the 2011/2012 Base Commitment Initial Deposit and the 2011/2012 Base Commitment Additional Deposit, the “2011/2012 Deposits”, together with the 2010 Deposits, the “Deposits”) | Later of (i) *** calendar days prior to first Scheduled Shipment Date of Product for an applicable year and (ii) or *** calendar days after the applicable Quantity Notice Date |
| Milestone Payment Schedule for 2011 and 2012 Optional Additional Quantities | |
| Payment | Invoice Date |
| ***% of Purchase Price of specified Product ordered above Base Commitment pursuant to a Purchase Order for the applicable year | *** calendar days prior to Scheduled Shipment Date for such Product |
| ***% of Purchase Price of specified Product ordered above Base Commitment pursuant to a Purchase Order for the applicable year | *** calendar days prior to Scheduled Shipment Date for such Product |
| ***% of Purchase Price of specified Product ordered above Base Commitment pursuant to a Purchase Order for the applicable year | Site delivery date for such Product |
| ***% of Purchase Price of specified Product ordered above Base Commitment pursuant to a Purchase Order for the applicable year | *** calendar days following Delivery of such Product |
| ***% of Purchase Price of specified Product ordered above Base Commitment pursuant to a Purchase Order for the applicable year | Final Acceptance of such Product |

(ii) Each of the Deposits shall be calculated assuming that the BOS Support Structure Equipment related thereto shall include SunPower’s Tracker T0 (as more particularly described in Schedule 1). At such time as different BOS Support Structure Equipment is specified (e.g. in a particular Purchase Order), SunPower shall have the right to invoice the relevant Purchasing Entity for an amount equal to the difference between (a) the amount of the Deposits on such date and (b) the amount that the Deposits would have been on such date if such Deposits had been made based on a price including such specified BOS Support Structure Equipment. Such amount will be paid by FPL Group or the Purchasing Entity, as applicable, in accordance with Section 6.

(iii) In the event that FPL Group (or any Affiliate thereof) enters into an engineering, procurement and construction contract (an “EPC Contract”) with SunPower (or any Affiliate thereof) with respect to the Products, the payment terms provided for above shall be superseded by the payment terms set forth in such EPC Contract.

(iv) Any payments due on a day that is a Saturday, Sunday or a legal holiday in the State of Florida shall be due on the next succeeding day that is not a Saturday, Sunday or a legal holiday in the State of Florida.

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(c) Taxes. SunPower is responsible for and shall pay all Taxes, if any, due under this Agreement, any Purchase Order or relating to SunPower's obligations hereunder or under any Purchase Order, including all present or future foreign, federal, state, county, municipal or other excise or similar taxes levied with respect to the sale of the Products, excepting all sales and use taxes (if any) assessed by governmental authorities within United States. On and after the transfer of title to any of the Products, the applicable Purchasing Entity is responsible for and shall pay all future taxes resulting from ownership of such Products. SunPower expressly agrees that FPL Group and its Affiliates shall incur no liability or expense under this Agreement or any Purchase Order due to change in tax or duty requirements, excluding sales and use tax assessed by governmental authorities within United States. Any increase in taxes or duties, excluding sales and use tax assessed by governmental authorities within United States, shall be at the expense of SunPower and not FPL Group or any of its Affiliates. Neither FPL Group nor any Affiliate thereof shall be obligated to pay, and shall be immediately reimbursed by SunPower if FPL Group or any FPL Group Affiliate does pay, any taxes, penalties or interest charges levied or assessed by reason of any failure of SunPower to comply with this Agreement, any Purchase Order, applicable laws or governmental regulations, and SunPower shall indemnify and save FPL Group and its Affiliates harmless from the payment of any and all such taxes, penalties and interest; provided that the foregoing shall not affect the responsibility of FPL Group or its Affiliates to pay their duly owed sales and use taxes assessed by governmental authorities within the United States.

3. Delivery; Acceptance.

(a) Time of delivery or performance of this Agreement is of the essence. SunPower shall give immediate written notice to FPL Group or the applicable Purchasing Entity setting forth the length of and reason for any anticipated delay. SunPower hereby guarantees that, subject to Section 22, it shall supply and deliver each of the Products to the delivery point specified in a given Purchase Order (each, a "Delivery Point") on or prior to the scheduled delivery date therefor specified in such Purchase Order (with respect to such Products and such Delivery Point, a "Guaranteed Delivery Date"). Without the prior written approval of the applicable Purchasing Entity, SunPower shall not deliver any of the Products earlier than 14 days prior to the Guaranteed Delivery Date for such Products.

(b) If SunPower fails to achieve Delivery of a Product by the Guaranteed Delivery Date therefor, SunPower shall pay an amount equal to *** percent (***) of the Purchase Price of such Product, as liquidated damages and not as a penalty, for each and every *** period of delay in Delivery of such Product after the Guaranteed Delivery Date ("Liquidated Damages"); provided, however, that with respect to any given Purchase Order, SunPower shall have no obligation to pay Liquidated Damages aggregating in excess of *** percent (***) of the total Purchase Price of the Products purchased pursuant to such Purchase Order (the "PO LD Cap"); provided, further, however, that at such time that the Liquidated Damages with respect to any Purchase Order equals the PO LD Cap related thereto and the related Products have not been delivered to the Delivery Point, SunPower shall ship such Products as soon as possible to the Delivery Point via air freight at SunPower's sole cost and expense (notwithstanding anything in Section 4 to the contrary). It is understood and agreed between the Parties hereto that the terms,

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conditions and amounts fixed as liquidated damages for a delay in Delivery as described above are reasonable, considering the damages that the applicable Purchasing Entity would sustain in such event, and that these amounts are agreed upon and fixed as liquidated damages, and not as a penalty, because of the difficulty of ascertaining the exact amount of damages that would be sustained as a result of such delays. If any Liquidated Damages are due hereunder or under any Purchase Order, FPL Group or the Purchasing Entity shall have the option to: (i) offset such Liquidated Damages sum against any future payment to be made by FPL Group or such Purchasing Entity hereunder or under any Purchase Order or (ii) require SunPower to pay such Liquidated Damages within thirty (30) days after FPL Group's or such Purchasing Entity's written request therefor.

(c) In the event that, during any *** (***) day period, SunPower fails to deliver Products to the Delivery Point on or prior to the Guaranteed Delivery Date therefor of at least *** percent (***%) of the Products under a Purchase Order having a Guaranteed Delivery Date during such thirty (30) days, FPL Group and any Purchasing Entity shall have the right to demand in writing that SunPower provide to FPL Group and the Purchasing Entities a written recovery plan, within fourteen (14) calendar days of the date of SunPower's receipt of the written demand, that will demonstrate (i) achievement of the Delivery obligations of SunPower hereunder or under any Purchase Order for such missed Guaranteed Delivery Date at the earliest possible date and (ii) Delivery of all Products under such Purchase Order within *** (***) days after the last Guaranteed Delivery Date under such Purchase Order, and SunPower shall promptly implement any such recovery plan. Such recovery plan shall include, without limitation, reasonable evidence of increases in SunPower's work force, increases in the number of shifts, overtime operations, additional days of work per week, additional shipping media and/or vehicles and such other evidence as is reasonably necessary to address the delay(s) to enable the future timely delivery of the Products by the Guaranteed Delivery Dates, except to the extent SunPower reasonably determines that any such steps are not reasonably necessary to address the delay(s), so long as SunPower provides a reasonable explanation of such exclusion in such recovery plan. Approval by FPL Group or any Purchasing Entity of such plan shall not (i) be deemed in any way to have relieved SunPower of its obligations under this Agreement or any Purchase Order relating to the failure to deliver the Products by the Guaranteed Delivery Dates therefor, (ii) be a basis for an increase in the price of the Products; or (iii) limit the rights of FPL Group or any Purchasing Entity to Liquidated Damages to which it may otherwise be entitled under this Agreement or any Purchase Order. Further, SunPower acknowledges that the implementation of any such recovery plan may result in material additional costs and expenditures for SunPower (including by way of overtime, additional crews and/or additional shifts). SunPower agrees that it shall not be entitled to any additional compensation or increase in the purchase price in connection with the implementation of any such recovery plan. Notwithstanding any other provision to the contrary contained herein, neither FPL Group nor any Purchasing Entity shall have any obligation to make payments to SunPower hereunder or under any Purchase Order to such extent as may be necessary in FPL Group's reasonable opinion to protect FPL Group or any Purchasing Entity from loss because of SunPower's failure to deliver a recovery plan reasonably acceptable to FPL Group and such Purchasing Entity or the failure of SunPower to cause the delivery of the Products to conform to any such recovery plan accepted by FPL Group and such Purchasing Entity.

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(d) Each Purchase Order shall contain a schedule for installation and energization of the Products in such Purchase Order. When SunPower determines that all of the requirements for Final Acceptance (as defined below) (other than execution of a certificate issued by the applicable Purchasing Entity indicating that Final Acceptance has been achieved by SunPower (the “Final Acceptance Certificate”)) for all of the Products under a particular Purchase Order scheduled to be installed and energized by such Purchasing Entity in a given calendar month, SunPower shall submit a proposed Final Acceptance Certificate, in substantially the form attached hereto as Schedule 10, to such Purchasing Entity. As soon thereafter as reasonably practicable, a team consisting of representatives of the applicable Purchasing Entity, the Financing Parties (as defined in Section 29 below), if any, any independent engineer retained by such Financing Parties and SunPower shall make a final inspection of the Products. Within fourteen (14) calendar days following such final inspection, the applicable Purchasing Entity, with the consent of the Financing Parties, if applicable, shall notify SunPower in writing whether SunPower has fulfilled the requirements of this Agreement to reach Final Acceptance (other than execution of the Final Acceptance Certificate by the applicable Purchasing Entity). If such requirements have been fulfilled, the applicable Purchasing Entity will execute the proposed Final Acceptance Certificate. If the requirements for Final Acceptance have not been fulfilled, then the applicable Purchasing Entity shall deliver a written notice to such effect to SunPower describing in reasonable detail the deficiencies noted and corrective action recommended, including projected target dates for the completion of such incomplete or remedial work. SunPower shall promptly act to correct any such deficiencies. The procedure set forth in this Section 3(d), shall be repeated as necessary, until the earlier of: (i) the date on which SunPower has fulfilled the requirements for the issuance of the Final Acceptance Certificate and the applicable Purchasing Entity execute such certificate; or (ii) termination of the relevant Purchase Order. For purposes of this Agreement, “Final Acceptance” shall mean that all of the following have occurred with respect to each of the Products: (a) assuming that the Products have been installed in accordance with SunPower’s Installation and O&M Manual, the Products are capable of being operated in a safe, normal, reliable and continuous manner in accordance with Applicable Laws and any applicable permits (excluding for this purpose all variances or waivers of any applicable permits) and this Agreement and the relevant Purchase Order at all operating conditions and modes specified in this Agreement or such Purchase Order; (b) there are no Defects; (c) any and all Liens known or should have been known by SunPower in respect to the Products or any fixtures, personal property or equipment included in SunPower’s obligations under this Agreement or such Purchase Order created by, through or under, or as a result of any act or omission of, SunPower or any subcontractor, vendor or other Person providing labor or materials in connection with such obligations shall have been released or bonded in form reasonably satisfactory to FPL Group; (d) provided that the Purchasing Entity has paid SunPower all undisputed amounts then due and payable to SunPower hereunder or under such Purchase Order, SunPower has delivered to the applicable Purchasing Entity a lien waiver and release, in substantially the form of Schedule 7; (e) SunPower shall have paid all Liquidated Damages due to such Purchasing Entity, if any; (f) (i) the Products have been energized and are delivering electricity to the interconnected high voltage transmission grid or (ii) such energization and delivery is not possible for any reason other than the fault of the Products, SunPower or its Affiliates and at least one hundred and five (105) days have expired since Delivery of such Products to the Delivery Point; (g) all other outstanding obligations of SunPower hereunder or under such Purchase Order with respect to such Products that the

applicable Purchasing Entity has notified SunPower of shall have been satisfied, *** and *** described in Schedule 9; and (h) the applicable Purchasing Entity has approved of and signed the Final Acceptance Certificate pursuant to this paragraph of Section 3.

4. Packaging and Shipping.

SunPower shall bear all costs associated with packaging or storing the Products until shipment to the relevant Purchasing Entity pursuant to the shipping terms below. All Products shall be packaged, marked, and otherwise prepared in accordance with good commercial practices to reduce the risk of damage, to help minimize shipping rates, and in accordance with all applicable federal, state and local packaging and transportation laws and regulations. An itemized packing list shall accompany each shipment. Within fourteen (14) days of shipping, SunPower shall deliver to the relevant Purchasing Entity via e-mail a bill of materials showing unit serial numbers and factory test results. The relevant Purchasing Entity shall bear all costs associated with SunPower's shipment of the Products to the Delivery Point from either (i) the North American (excluding Alaska) manufacturing facility for Products manufactured therein or (ii) the North American (excluding Alaska) port of entry for Products manufactured outside of such region, in an amount equal to SunPower's actual and demonstrable third party, out of pocket shipping cost plus ***%. SunPower shall bear all costs associated with shipping any of the Products manufactured outside of North America (excluding Alaska) to the North American port of entry.

5. Title and Risk of Loss.

Notwithstanding SunPower's obligation to deliver the Products to the Delivery Point pursuant to Section 3, title and risk of loss with respect to the Products shall pass to the relevant Purchasing Entity either (i) with respect to any of the Products that are manufactured in North America (excluding Alaska) and will be shipped to the Delivery Point from North America (excluding Alaska), Ex Works (EXW) (as defined in Incoterms 2000) SunPower's North American (excluding Alaska) manufacturing facility or (ii) with respect to any of the Products that are manufactured outside of North America and will be shipped to the Delivery Point from outside North America, Free Carrier (FCA) (as defined in Incoterms 2000) North American (excluding Alaska) port of entry, unless the Parties mutually agree to other shipping terms on the applicable Purchase Order. Without limiting the generality of the foregoing, FPL Group specifically acknowledges that the relevant Purchasing Entity is solely responsible for providing adequate insurance for the Products after risk of loss transfers pursuant to this Section 5.

6. Invoicing; Payment.

(a) The Parties shall agree on a form of invoice. SunPower's right to receive any payment to be paid to it hereunder or under any Purchase Order is conditioned upon its submitting to FPL Group or the relevant Purchasing Entity (as applicable), in a form reasonably acceptable to FPL Group or such Purchasing Entity (as applicable), (i) an invoice and supporting documentation and (ii) with respect to any final payment with respect to the Products in connection with Final Acceptance, a duly executed written final lien waiver and release from SunPower in the form set forth therefor in Schedule 7. Each payment shall be payable *** (*** days after satisfaction of the foregoing conditions. Invoices shall be dated to reflect the actual transmittal date. Invoices which are not correct or properly documented shall be returned to

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SunPower. Corrected invoices shall be re-dated and retransmitted. Payments owing by SunPower, FPL Group or a Purchasing Entity hereunder or under any Purchase Order not paid by the end of the cure period provided for in Section 14 shall bear interest from the date due until the date paid at a rate per annum equal to the rate published by the *Wall Street Journal* as the “prime rate” on the date on which such interest begins to accrue plus *** percent (***%).

(b) FPL Group and any Purchasing Entity shall be entitled at all times to set-off any amount due from SunPower to FPL Group or such Purchasing Entity against any amount payable by FPL Group or such Purchasing Entity to SunPower, including but not limited to the following: (i) the amount of Liquidated Damages that are due and payable pursuant to this Agreement or any Purchase Order and (ii) amounts as may be necessary in the FPL Group Parties’ reasonable opinion to protect the FPL Group Parties from loss because of (A) Defects that have not been remedied; (B) any indemnifiable claim hereunder or under any Purchase Order filed against the FPL Group Parties (including any Lien); (C) the failure of SunPower to make payments when due to subcontractors or vendors; (D) damage to the FPL Group Parties or another contractor, including damage to the property of the FPL Group Parties but only to the extent SunPower may be liable for such damage pursuant to this Agreement or any Purchase Order; and (E) the occurrence of a SunPower Event of Default. Failure or forbearance on the part of FPL Group or a Purchasing Entity in withholding any amounts due under an invoice shall not be construed as accepting or acquiescing to any disputed claims. In addition, the making of any payment by FPL Group or any Purchasing Entity shall not constitute an admission by it that the Products or the delivery thereof covered by such payment (or any Products previously provided) is satisfactory or timely, and FPL Group and such Purchasing Entity shall have the same right to challenge the satisfactoriness and timeliness thereof as if it had not made such payment. If, after any such payment has been made, it is subsequently determined by FPL Group or a Purchasing Entity, acting reasonably, that SunPower was not entitled to all or a portion of any such payment, SunPower shall promptly refund all or a portion of such payment to FPL Group or such Purchasing Entity, as applicable. SunPower shall not have any rights of termination or suspension as a result of FPL Group’s or a Purchasing Entity’s exercise or attempted exercise of its right to withhold payments from SunPower under this Section 6. After SunPower remedies the cause of withholding identified pursuant to this Section 6, payment shall be made for the amounts withheld within *** (*** days after SunPower’s demand therefor.

(c) Acceptance by SunPower of any payment shall constitute a release by SunPower of FPL Group and its Affiliates from all Liens (whether statutory or otherwise and including mechanics’ or suppliers’ liens), claims and liability hereunder and under any Purchase Order with respect to such payment. No payment by FPL Group or any Affiliate thereof shall be deemed a waiver by FPL Group or its Affiliates of any obligation of SunPower under this Agreement or any Purchase Order.

7. Inspection. All Products may be inspected by FPL Group or a Purchasing Entity on SunPower’s premises during normal business hours, in which case SunPower will provide without additional charge, all reasonable facilities and assistance for such inspections. Any FPL Group or Purchasing Entity employees visiting SunPower facilities for purposes of such inspection shall be qualified to conduct the applicable inspections and shall abide by SunPower’s policies and rules, including confidentiality policies. No inspection, approval, or acceptance of

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the Products shall relieve SunPower from responsibility for any defects in the Products or other failures to satisfy its warranties.

8. Warranties. All of the Products shall be warranted as provided in Schedules 3 and 4.

9. Intellectual Property Protections.

(a) SunPower hereby grants to FPL Group and its Affiliates an irrevocable, perpetual, non-transferable, non-exclusive, royalty-free license to use all patents, copyrighted or uncopyrighted work, secret processes, trade secrets, patented or unpatented inventions, articles or appliances, specifications, designs, drawings, data, technical information and any other intellectual property right or proprietary information (collectively, "Intellectual Property Rights") of SunPower in respect of the Products or such Intellectual Property Rights now or hereafter owned or controlled by SunPower to the extent reasonably necessary for the operation, maintenance, and repair of the Products purchased pursuant to this Agreement or any Purchase Order. Except as provided in this Section 9, no Intellectual Property Rights are either expressly or impliedly licensed under this Agreement or any Purchase Order, and such Intellectual Property Rights are expressly reserved by SunPower.

(b) In recognition of the proprietary technology and confidential information that FPL Group and its Affiliates will receive from SunPower as a result of the transactions contemplated by this Agreement, FPL Group agrees not to (and shall cause its Affiliates, including Purchasing Entities, not to), directly or indirectly, manufacture anywhere in the world, any Solar Panel or any BOS Support Structure Equipment (that includes proprietary trade secrets, confidential information or technology held by SunPower or its Affiliates or is covered by patent rights held by, or for which patent applications are or have been submitted by, SunPower or its Affiliates in the United States or the European Union) other than pursuant to a mutually acceptable written agreement between FPL Group and SunPower; provided that the purchase of any solar panel or any support structure equipment (whether through an engineering, procurement or construction contract or other agreement) shall not be considered a violation of this sentence. The foregoing shall in no way restrict FPL Group Parties' ability to manufacture solar panels that (i) are not the Solar Panels offered by SunPower hereunder and (ii) do not utilize SunPower's proprietary trade secrets or technology embodied in the Solar Panels or confidential information of SunPower or its Affiliates obtained by FPL Group in connection with the transactions contemplated by this Agreement. As used in this Agreement, "Affiliate" means, with respect to a particular Person, any individual, partnership, corporation, limited liability company, or other entity that directly, or indirectly through one or more intermediaries, controls, is controlled by or is under common control with such Person.

10. Confidential or Proprietary Information and Property. SunPower shall (and shall cause its Affiliates to) and, FPL Group shall (and shall cause its Affiliates, including Purchasing Entities, to), keep confidential and otherwise protect from disclosure all information and property ("Confidential Information") obtained from the other Party in connection with this Agreement or any Purchase Order (other than to its Affiliates, contractors (or potential contractors), subcontractors, vendors, consultants, advisors, Financing Parties (or potential Financing Parties), employees, directors, officers, agents or representatives in relation to a Project or to any

purchaser of a Project or a direct or indirect interest in any Purchasing Entity) unless otherwise expressly authorized herein or by the non-disclosing Party in writing or unless otherwise required by applicable law, rule or regulation. Confidential Information shall not include (a) information which is or becomes publicly available other than as a result of a violation of this Agreement; (b) information which is or becomes available on a nonconfidential basis from a source which is not known to the receiving Party to be prohibited from disclosing such information pursuant to a legal, contractual or fiduciary obligation to the disclosing Party; or (c) information which the receiving Party can demonstrate was legally in its possession prior to disclosure by the disclosing Party. SunPower shall (and shall cause its Affiliates to) and, FPL Group shall (and shall cause its Affiliates, including Purchasing Entities, to), use such Confidential Information, and the features thereof, only to the extent required for its performance under this Agreement or in relation to a Project. Upon a Party's request, the other Party shall return all such Confidential Information to the requesting Party or make such other disposition thereof as is directed by the requesting Party, except to the extent retention thereof may be necessary for the completion, operation, maintenance or repair of a Project. SunPower shall (and shall cause its Affiliates to) and, FPL Group shall (and shall cause its Affiliates, including Purchasing Entities, to), shall use reasonable efforts to include, in all lower tier subcontracts and purchase orders issued such Party and involving subcontractor receipt of such information or property, the same rights and protections to the other Party as contained in this Section 10.

11. Territory; Fields of Use; Branding. FPL Group shall not (and shall cause its Affiliates, including Purchasing Entities, not to), without the prior written approval of SunPower, in any manner use, develop, export, install or otherwise make available any of the Products either (a) outside of the Territory or (b) within the Territory for photovoltaic systems less than 10MWac, except with SunPower's written consent, which consent for purposes of clause (b) shall not be unreasonably withheld, delayed or conditioned. In addition, FPL Group shall not (and shall cause its Affiliates, including Purchasing Entities, not to), redistribute, resell or permit other parties (including FPL Group Affiliates) to use any of the Products anywhere in the world, without the prior written approval of SunPower, except for purposes of an FPL Group Party's Project in the Territory. The Parties agree that, unless otherwise agreed to in writing by SunPower, the FPL Group Parties (i) shall use the Solar Panels and BOS Support Structure Equipment together as a single product unit and (ii) shall not install any solar panels other than the Solar Panels sold by SunPower hereunder or under any Purchase Order on any BOS Support Structure Equipment. Nothing in this Agreement shall restrict SunPower's ability to market, sell or otherwise offer Products to third parties anywhere in the world, including but not limited to third parties located in the Territory. FPL Group shall not (and shall cause its Affiliates, including Purchasing Entities, not to), alter the brand and label on the Products, including the logo description set forth on Schedule 1.

12. Infringement. SunPower shall defend, at its own expense, any suit or claim that may be instituted against the FPL Group Parties for alleged infringement of patents, trade secrets, copyrights or other intellectual property rights relating to the Products, and SunPower shall indemnify FPL Group Parties for all costs and damages arising out of such alleged infringement. FPL Group shall give SunPower reasonably prompt notice in writing of any such claim or action and permit SunPower, through its counsel of choice, to answer the charge of infringement and control the defense of such action, and FPL Group shall provide SunPower information,

assistance, and authority (at SunPower's expense for reasonable out of pocket expenses incurred by the FPL Group Parties in connection therewith) to enable SunPower to defend such claim or action. SunPower will have no liability under this Section 12 to the extent that infringement is attributable to (x) the FPL Group Parties' design and/or requirements placed upon SunPower or (y) the FPL Group Parties' modification or combination of one or more Products with designs not supplied by SunPower.

13. Change Orders. With respect to a Purchase Order, SunPower or the relevant Purchasing Entity may, with the prior written approval of the other party to such Purchase Order (determined in the sole and absolute discretion of such other party) at any time prior to the shipping date, by change order, suspend performance of a Purchase Order in whole or in part, make changes in the quantities, shipping dates, method of shipment or packing or time or place of delivery of the Products covered by such Purchase Order. Unless otherwise consented to in writing by the other Party, any change orders shall not affect the obligations of the Party requesting the change order to purchase or provide, on a firm commitment basis to the extent provided in this Agreement, Products up to the aggregate monthly and annual quantities for the specified years set forth on Schedule 1.

14. Term; Events of Default; Termination.

(a) Unless terminated earlier pursuant to this Section 14, the term of this Agreement shall commence as of the Effective Date and continue through and terminate on December 31, 2012 (the "Term").

(b) SunPower Events of Default. Each of the following events shall be an event of default of SunPower (each, an "SunPower Event of Default"): (i) the failure by SunPower to deliver any recovery plan complying with Section 3(c) within ten (10) days after receipt of the written demand therefor by FPL Group or a Purchasing Entity, or following approval of a recovery plan by FPL Group or a Purchasing Entity, the failure of SunPower to meet the schedule set forth in such recovery plan; (ii) a failure by SunPower to make payment of any undisputed amount when due to FPL Group or a Purchasing Entity, and such breach is not cured by SunPower within fifteen (15) days after SunPower's receipt of written notice thereof; (iii) failure of SunPower to perform any other material obligation hereunder or under any Purchase Order (except for a failure by SunPower to deliver the Products by the Guaranteed Delivery Date therefor) and such failure is not cured within thirty (30) days after receipt of written notice of such failure, provided that, if such failure cannot be cured with such thirty (30) day period, then such failure shall not be a SunPower Event of Default unless SunPower fails to (A) commence to cure such failure within such thirty (30) day period, (B) thereafter diligently proceed to cure such failure and (C) cure such failure within ninety (90) days after notice of such failure; (iv) the failure of SunPower to provide and maintain in full force and effect *** (as defined in Section 31) as required pursuant to Section 31 and, in the event that a *** (as defined in Section 30) has occurred, the failure of SunPower to provide and maintain a Letter of Credit (or such other collateral permitted pursuant to such Section 30) in the face amount required in accordance with Section 30; and (v) any of the following occurs: (A) a SunPower or *** consents to the appointment of or taking possession by, a receiver, a trustee, custodian, or liquidator of itself or of a substantial part of its assets, or fails or admits in writing its inability to pay its debts generally as

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they become due, or makes a general assignment for the benefit of creditors; (B) SunPower or *** files a voluntary petition in bankruptcy or a voluntary petition or an answer seeking reorganization in a proceeding under any applicable bankruptcy or insolvency laws or an answer admitting the material allegations of a petition filed against it in any such proceeding, or seeks relief by voluntary petition, answer or consent, under the provisions of any now existing or future bankruptcy, insolvency or other similar law providing for the liquidation, reorganization, or winding up of companies, or providing for an agreement, composition, extension, or adjustment with its creditors; (C) a substantial part of SunPower or *** assets is subject to the appointment of a receiver, trustee, liquidator, or custodian by court order and such order shall remain in effect for more than thirty (30) days; or (D) SunPower or *** is adjudged bankrupt or insolvent, has any property sequestered by court order and such order shall remain in effect for more than thirty (30) days, or has filed against it a petition or claim under any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction, whether now or hereafter in effect, and such petition shall not be dismissed within thirty (30) days of such filing.

(c) Upon the occurrence and during the continuation of any SunPower Event of Default, the relevant Purchasing Entity, in addition to other rights and remedies it may have at law, in equity or under this Agreement or any Purchase Order, shall have the right to terminate any Purchase Order to which such SunPower Event of Default relates by written notice to SunPower without termination charge or penalty. Any SunPower Event of Default described in Section 14(b)(iv) or (v) is deemed to relate to each Purchase Order. In the event of a termination under this Section 14(c), the applicable Purchasing Entity thereof shall have the right to take possession of Products being purchased pursuant to such Purchase Order to which it has title that have not been delivered to the Delivery Point therefor specified in such Purchase Order and may employ any other Person to complete the delivery of the Products by whatever method that the applicable Purchasing Entity may deem necessary. In addition, the applicable Purchasing Entity may make such expenditures as in such Purchasing Entity's sole judgment will accomplish the timely delivery of the Products being purchased pursuant to such Purchase Order (and/or fabrication and delivery of substitute or replacement photovoltaic modules and balance of system equipment) in accordance with the terms of this Agreement and the relevant Purchase Order. In the event of termination under this Section 14(c), SunPower shall not be entitled to receive any further payments respecting such Purchase Order (other than undisputed payments owed and payable to SunPower under such Purchase Order prior to the date of such termination). In the event of termination under this Section 14(c), SunPower shall be responsible for and shall reimburse the FPL Group Parties for the following amounts: ***

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Acceptance of any part of the Products shall not bind the FPL Group Parties to accept future shipment.

(d) In addition to rights under Section 14(c), upon the occurrence and during the continuation of any SunPower Event of Default described in Section 14(b)(iv) or (v) or described in Section 14(b)(iii) relating to obligations in Section 10, FPL Group, in addition to other rights and remedies it may have at law, in equity or under this Agreement, shall have the right to terminate this Agreement by written notice to SunPower without termination charge or penalty. If the Agreement is terminated pursuant to this Section 14(d), this Agreement shall not terminate with respect to any Purchase Order that has not been terminated. In the event of a termination by FPL Group under this Section 14(d), FPL Group may employ any other Person to complete the delivery of the Products required to be purchased pursuant to this Agreement for which a Purchase Order has not been issued ("Non-Purchase Order Products") by whatever method that FPL Group may deem necessary. In addition, the FPL Group Parties may make such expenditures as in FPL Group's sole judgment will accomplish the timely delivery of the Non-Purchase Order Products (and/or fabrication and delivery of substitute or replacement photovoltaic modules and balance of system equipment) in accordance with the terms of this Agreement. In the event of termination by FPL Group under this Section 14(d), SunPower shall not be entitled to receive any further payments respecting such Non-Purchase Order Products (other than undisputed payments owed and payable to SunPower hereunder prior to the date of such termination). In the event of termination by FPL Group under this Section 14(d), SunPower shall be responsible for and shall reimburse the FPL Group Parties for the following amounts: (i) all reasonable costs and expenses incurred by the FPL Group Parties to engage a substitute contractor to complete (or cure deficiencies in) SunPower's obligations relating to the Non-Purchase Order Products, including, without limitation, overhead and legal, engineering and other professional expenses; (ii) all reasonable costs and expenses incurred in connection with the termination of this Agreement; (iii) the amount by which: (A) the cost reasonable to complete (or cure deficiencies in) SunPower's obligations under this Agreement, exceeds (B) the balance of the aggregate of amounts due and payable to SunPower relating to the Non-Purchase Order Products that remain unpaid at the time of the termination; and (iv) all actual damages occasioned by reason of said default. Acceptance of any part of the Products shall not bind the FPL Group Parties to accept future shipment.

(e) Upon the occurrence and during the continuance of a SunPower Event of Default but prior to termination of the relevant Purchase Order and this Agreement, FPL Group and/or the relevant Purchasing Entity may, without prejudice to any of its other rights or remedies: (i) seek performance by any guarantor of SunPower's obligations hereunder or under any Purchase Order; (ii) seek equitable relief to cause SunPower to take action or to refrain from taking action pursuant to this Agreement or the relevant Purchase Order, or to make restitution of amounts improperly received under this Agreement or the relevant Purchase Order; (iii) make such payments or perform such obligations as are required to cure such SunPower Event of Default, and then draw on or make a claim against the Letter of Credit or other security provided pursuant to this Agreement or the relevant Purchase Order for the cost of such payment or performance and/or offset the cost of such payment or performance against payments otherwise due to SunPower under this Agreement or the relevant Purchase Order; provided that no FPL Group Party shall be under any obligation to cure any such SunPower Event of Default; (iv) seek damages as provided in the Sections 14(c) and (d) above, including proceeding against any bond, guarantee, letter of credit, or other security given by or for the benefit of SunPower for its performance under this Agreement or the relevant Purchase Order; (v) require direct payment or

co-payment to subcontractors or vendors and any such payments or co-payments shall be credited against amounts due to SunPower under the Agreement or the relevant Purchase Order; or (vi) assign to FPL Group or the relevant Purchasing Entity any agreement or purchase order with a subcontractor or vendor, provided that: (A) FPL Group or the relevant Purchasing Entity shall assume the obligations under such agreement or purchase order accruing after the date of such assignment; (B) if requested by FPL Group or the relevant Purchasing Entity, SunPower shall remain responsible for administering and managing such agreement or purchase order (including enforcing the warranty obligations thereunder); and (C) in no event shall SunPower be relieved of its obligation to achieve Final Acceptance as a result of such assignment.

(f) Each of the following events shall be an event of default of the defaulting Person (i.e. FPL Group or the relevant Purchasing Entity, referred in this Section 14(f) as the “FPL Defaulting Party”) (each, an “FPL Event of Default”): (i) a failure of the FPL Defaulting Party to make payment of any undisputed amount when due to SunPower, and such breach is not cured within fifteen (15) days after the defaulting Person’s receipt of written notice thereof from the SunPower; (ii) failure of the FPL Defaulting Party to perform any other material obligation hereunder or under any Purchase Order and such failure is not cured within thirty (30) days after receipt from SunPower of written notice of such failure, provided that, if such failure cannot be cured with such thirty (30) day period, then such failure shall not be an FPL Event of Default unless the FPL Defaulting Party fails to (A) commence to cure such failure within such thirty (30) day period, (B) thereafter diligently proceed to cure such failure and (C) cure such failure within ninety (90) days after notice of such failure; and (iii) any of the following occurs: (A) the FPL Defaulting Party consents to the appointment of or taking possession by, a receiver, a trustee, custodian, or liquidator of itself or of a substantial part of its assets, or fails or admits in writing its inability to pay its debts generally as they become due, or makes a general assignment for the benefit of creditors; (B) the FPL Defaulting Party files a voluntary petition in bankruptcy or a voluntary petition or an answer seeking reorganization in a proceeding under any applicable bankruptcy or insolvency laws or an answer admitting the material allegations of a petition filed against it in any such proceeding, or seeks relief by voluntary petition, answer or consent, under the provisions of any now existing or future bankruptcy, insolvency or other similar law providing for the liquidation, reorganization, or winding up of companies, or providing for an agreement, composition, extension, or adjustment with its creditors; (C) a substantial part of the FPL Defaulting Party’s assets is subject to the appointment of a receiver, trustee, liquidator, or custodian by court order and such order shall remain in effect for more than thirty (30) days; or (D) the FPL Defaulting Party is adjudged bankrupt or insolvent, has any property sequestered by court order and such order shall remain in effect for more than thirty (30) days, or has filed against it a petition or claim under any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction, whether now or hereafter in effect, and such petition shall not be dismissed within thirty (30) days of such filing.

(g) Upon the occurrence and during the continuance of an FPL Event of Default of a Purchasing Entity, SunPower shall have the right to terminate the Purchase Order to which such FPL Event of Default relates by written notice to such Purchasing Entity. SunPower shall be entitled to receive an amount equal to the Termination Payment that would be payable by the relevant Purchasing Entity if such Purchasing Entity had terminated all of the Products covered by such Purchase Order for which title had not transferred to such Purchasing Entity as of the date of such termination by SunPower, as SunPower’s sole and exclusive remedy and such Purchasing Entity’s sole and exclusive liability, for such FPL Event of Default and termination. SunPower shall not suspend or delay performance of its obligations under this Agreement or any Purchase

Order because of any default or breach by FPL Group or any Purchasing Entity except to the extent the Agreement or any Purchase Order has been terminated; provided that SunPower shall not suspend or delay performance of its obligations under the Agreement relating to any Purchase Order that has not been terminated.

(h) In addition to rights under Section 14(g), upon the occurrence and during the continuance of an FPL Event of Default of FPL Group described in Section 14(f)(iii) or described in Section 14(f)(ii) relating to obligations in Section 9, 10 or 11, SunPower shall have the right to terminate this Agreement by written notice to FPL Group. If the Agreement is terminated pursuant to this Section 14(h), this Agreement shall not terminate with respect to any Purchase Order that has not been terminated. SunPower shall be entitled to all direct damages caused by such FPL Event of Default, as SunPower's sole and exclusive remedy (without limiting SunPower's right to injunctive relief pursuant to Section 14(k)) and FPL Group's sole and exclusive liability, for such FPL Event of Default and termination and FPL Group shall not be responsible for payment of any Termination Payment relating to Non-Purchase Order Products. SunPower shall not suspend or delay performance of its obligations under this Agreement or any Purchase Order because of any default or breach by FPL Group or any Purchasing Entity except to the extent the Agreement or any Purchase Order has been terminated; provided that SunPower shall not suspend or delay performance of its obligations under the Agreement relating to any Purchase Order that has not been terminated.

(i) If a Purchase Order or this Agreement is terminated by SunPower, FPL Group or the relevant Purchasing Entity, as applicable, shall have the option to take title to any or all Products for which (i) with respect to 2010, has a Guaranteed Delivery Date within *** days after the date of the notice of termination or (ii) with respect to 2011 and 2012, has a Scheduled Shipment Date within *** days after the date of the notice of termination; provided that such title shall not transfer until FPL Group or the relevant Purchasing Entity has paid the unpaid portion of the Purchase Price for the Products for which such option is exercised. No Termination Payment shall be due with respect to such Products for which such option is exercised.

(j) If a Purchase Order or this Agreement is terminated by FPL Group or a Purchasing Entity, FPL Group or the relevant Purchasing Entity, as applicable, shall have the option to take title to any or all Products for which (i) with respect to 2010, has a Guaranteed Delivery Date within *** days after the date of the notice of termination or (ii) with respect to 2011 and 2012, has a Scheduled Shipment Date within *** days after the date of the notice of termination. FPL Group or the relevant Purchasing Entity, as applicable, shall pay the unpaid portion of the Purchase Price for the Products for which such option is exercised.

(k) Each Party agrees and acknowledges that any violation or threatened violation of any of the terms of Sections 9 (Intellectual Property Protections), 10 (Confidential or Proprietary Information and Property) or 11 (Territory; Fields of Use; Branding) of this Agreement will cause irreparable injury to the non-breaching Party and no remedy at law will afford the breaching Party adequate protection against or compensation for such injury. It is accordingly agreed that each Party shall be entitled to an injunction or injunctions to prevent breaches of such Sections of this Agreement and to enforce specifically the terms and provisions thereof in any court of competent jurisdiction, in each case without the requirement of posting a bond or other security, this being in addition to any other remedy (except as may be limited by this Agreement)

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to which such Party is entitled at law or in equity. Each Party hereby waives any claim or defense that there is an adequate remedy at law for any breach or threatened breach of Sections 9, 10 or 11. Should legal action be required to enforce any provision of Sections 9, 10 or 11 and the breaching Party is found to be in breach of these Sections, the breaching Party shall be responsible for reimbursing the non-breaching Party for reasonable attorneys' fees, costs and expenses.

(l) Survival. Sections 1(c)(iii), 2(c), 3(b) (with respect to any accrued but unpaid Liquidated Damages as of the date of termination), 5, 6, 8 through 12, 14 through 26, 28, 29, 36, 37 (d) (with respect to any Purchase Price reduction or accrued but unpaid amount as of the date of termination), 38(d) (with respect to any Purchase Price reduction or accrued but unpaid amount as of the date of termination), and 39 shall survive any termination of this Agreement or any Purchase Order; provided that Section 25 shall survive until five (5) years after termination of this Agreement. Sections 1(b)(iii), 1(b)(iv), 1(c)(i), 1(f), 2(a), 2(b), 3 (except 3(b)), 7, 27, 30, 31, 34, 37 (except 37(d)) and 38 (except 38(d)) shall survive termination of this Agreement solely with respect to any Purchase Order issued prior to termination of the Agreement and, solely with respect to a particular Purchase Order issued prior to termination of the Agreement, shall not survive termination of such Purchase Order.

15. Waiver. The failure of any Party or a Purchaser Entity to insist upon the performance of any provision of this Agreement or any Purchase Order or to exercise any right or privilege granted to such Party or a Purchaser Entity under this Agreement or any Purchase Order shall not be construed as waiving such provision or any other provision of this Agreement or any Purchase Order, and the same shall continue in full force and effect. If any provision of this Agreement or any Purchase Order is found to be illegal or otherwise unenforceable by any court or other judicial or administrative body, the other provisions of this Agreement or the relevant Purchase Order shall not be affected thereby, and shall remain in full force and effect.

16. Applicable Law. The validity, performance, and construction of this Agreement and each Purchase Order shall be governed by the laws of New York without regard to its conflicts of laws principles.

17. Disputes; Jurisdiction & Venue. FPL Group and SunPower shall use their best reasonable efforts to resolve any and all disputes, controversies, claims, or differences between the FPL Group Parties and SunPower, arising out of or relating in any way to this Agreement or any Purchase Order including, but not limited to, any questions regarding the existence, validity or termination hereof or thereof ("Disputes"), through negotiation. Upon failure by the relevant FPL Group Parties and SunPower to resolve the Dispute through such negotiation within thirty (30) days after notice of the Dispute to the relevant FPL Group Party or SunPower, the relevant FPL Group Party or SunPower may institute legal action. Any dispute arising under this Agreement or any Purchase Order shall be submitted to the federal courts located in the Southern District of New York and each of SunPower, FPL Group and the Purchasing Entities submits to the exclusive jurisdiction of that court for such purpose.

18. Assignment. Except as provided herein, neither Party shall assign this Agreement without the prior written consent of the other Party hereto and any purported assignment without such consent shall be deemed null and void. Notwithstanding the foregoing, any Purchasing Entity may assign, directly or through one or more intermediary assignments, it rights, title, and interest in one or more Purchase Orders or the Products covered by those Purchase Orders to an Affiliate of FPL Group. SunPower consents to any such assignments and agrees to render

performance to any such assignee after proper notice, as provided herein. Notwithstanding any such assignment, the relevant Purchasing Entity and, to the extent provided in Section 31, NextEra, fully guarantees the performance by these assignees of all of their obligations to SunPower under the assigned Purchase Order or with respect to the Products covered thereby after the assignment takes effect to the same degree that such Purchasing Entity would be responsible had there been no assignment. SunPower shall be permitted to assign this Agreement or any Purchase Order to its Affiliates or in connection with a merger or sale of all or substantially all of its assets with FPL Group's consent, which consent shall not be unreasonably withheld, delayed or conditioned.

19. Publicity. SunPower shall not (and shall cause its Affiliates not to) and, FPL Group shall not (and shall cause its Affiliates, including Purchasing Entities, not to) make or authorize any news release, advertisement, or other disclosure which shall confirm the existence or convey any aspect of this Agreement or any Purchase Order without the prior written consent of the other Party except as may be required to perform this Agreement or a Purchase Order, or as required by Applicable Law.

20. Complete Agreement; Modifications. This Agreement, including all exhibits, schedules, and annexes hereto, and the Purchase Orders contain the complete and entire agreement among the Parties and the Purchasing Entities as to the subject matter hereof and replaces and supersedes any prior or contemporaneous communications, representations or agreements, whether oral or written, with respect to the subject matter of this Agreement or any Purchase Order. No modification of the Agreement shall be binding unless it is written and signed by both Parties. No modification of any Purchase Order shall be binding unless it is written and signed by SunPower and the relevant Purchasing Entity.

21. Offset. The FPL Group Parties shall be entitled at all times to set-off any amount due from SunPower to any of the FPL Group Parties against any amount payable by the FPL Group Parties to SunPower.

22. Force Majeure. So long as the conditions set forth in this Section 22 are satisfied, neither Party or any Purchasing Entity shall be responsible or liable for, or deemed in breach of this Agreement or any Purchase Order because of, any failure or delay in complying with its obligations under to the extent that such failure has been caused, or contributed to, by one or more Force Majeure Events or its effects or by any combination thereof. For purposes of this Agreement, "Force Majeure Event" shall mean any event or circumstance, or combination of events or circumstances, that arises after the date hereof, is beyond the reasonable control of the Party or Purchasing Entity claiming the Force Majeure Event, is unavoidable or could not be prevented or overcome by the reasonable efforts and due diligence of the Party or Purchasing Entity claiming the Force Majeure Event and has an impact which will actually, demonstrably, adversely and materially affect such Party's or Purchasing Entity's ability to perform its obligations in accordance with the terms of this Agreement or a Purchase Order or has an impact which will actually, demonstrably, adversely and materially affect the critical path of the performance of its obligations in accordance with the terms of this Agreement or the Purchase Order. Without limiting the generality of the foregoing, events that may give rise to a Force Majeure Event include, without limitation:

- (ii) Acts of God;
- (iii) Natural disasters;
- (iv) Fires;
- (v) Earthquakes;
- (vi) Lightning;
- (vii) Floods;
- (viii) Storms;
- (ix) Civil disturbances;
- (x) Terrorism;
- (xi) Riots;
- (xii) War; and
- (xiii) The action of or failure to act on the part of any Government Authority having or asserting jurisdiction that is binding upon the Parties or the relevant Purchasing Entity and has been opposed by all reasonable means;

in each case, that meets the definition of Force Majeure Event as set forth above. Notwithstanding the foregoing, the term “Force Majeure Event” does not include, without limitation:

- (i) Strikes, work stoppages (or deteriorations), slowdowns or other labor actions, unless such strike, work stoppage or other labor action is a result of strike, work stoppage or other labor action originated by employees of the Party or Purchasing Entity not claiming the Force Majeure Event;
- (ii) Any labor or manpower shortages;
- (iii) Unavailability, late delivery, failure, breakage or malfunction of equipment or materials or events that affect the cost of equipment or materials;
- (iv) Economic hardship (including lack of money);
- (v) Perils of sea;
- (vi) Delays in transportation (including delays in clearing customs) other than delays in transportation resulting from accidents or closure of roads or other transportation route by Government Authorities;
- (vii) Changes in any Applicable Laws;
- (viii) Weather conditions normally experienced in the geographic area of a particular project to which a Purchase Order relates, it being the intent of the

Parties and the Purchasing Entities that only when the number of days lost as a result of adverse weather (as reported by the National Weather Service or a similar agency) exceeds the number usually encountered in the geographic area of such project for any given month based on a ten (10) year average (as reported by the National Weather Service or a similar agency) will SunPower be allowed to claim a Force Majeure Event, subject however to the other requirements for an event or occurrence to be Force Majeure Event and the other requirements set forth in this Section 22;

- (ix) Actions of a Governmental Authority with respect to SunPower's compliance with Applicable Laws;
- (x) Any failure by SunPower to obtain and/or maintain any applicable permit it is required to obtain and/or maintain hereunder or under any Purchase Order;
- (xi) Any other act, omission, delay, default or failure (financial or otherwise) of a subcontractor or supplier; or
- (xii) Any surface or subsurface conditions at a Delivery Point.

The Party or Purchasing Entity affected shall promptly provide written notice to the other party indicating the nature, cause, date of commencement thereof, the anticipated extent of such delay and whether it is anticipated that any completion or delivery dates will be affected thereby, and shall exercise due diligence to mitigate the effect of the delay. The Party or Purchasing Entity claiming a Force Majeure Event shall within seven (7) calendar days after it knows or should have known of the occurrence of the Force Majeure Event, give the other party written notice describing the details of the cause and nature of the Force Majeure Event, the anticipated length of delay due to the Force Majeure Event and any other affect on the Party's or Purchasing Entity's performance of its obligations hereunder or under any Purchase Order. Within fourteen (14) calendar days after initial notification, such Party or Purchasing Entity shall provide demonstrable proof of the occurrence and duration of such Force Majeure Event to the other party and shall thereafter provide the other party with periodic supplemental updates to reflect any change in information given to the other party as often as requested by the other party. The Party or Purchasing Entity claiming the Force Majeure Event shall give notice to the other party of: (i) the cessation of the relevant Force Majeure Event; and (ii) the cessation of the effects of such Force Majeure Event on the performance by it of its obligations under this Agreement and the relevant Purchase Order as soon as practicable after becoming aware thereof. No Force Majeure Event shall relieve any Party or Purchasing Entity from performing those of its obligations that are not affected by the Force Majeure Event. Force Majeure Event will not entitle SunPower to an increase in any amount otherwise payable under this Agreement or any Purchase Order and will only entitle SunPower to extensions of time hereunder or any Purchase Order. Such extension of time shall be of no greater scope and of no longer duration than is required by the effects of the Force Majeure Event. The Party or Purchasing Entity claiming the Force Majeure Event shall continually use commercially reasonable efforts to alleviate and mitigate the cause and effect of the Force Majeure Event and remedy its inability to perform. Failure by the Party or Purchasing Entity claiming the Force Majeure Event to comply with the requirements of this Section 22 shall constitute a waiver of any claims as a result of a Force Majeure Event.

23. Notices. All notices shall be delivered by facsimile, nationally recognized overnight courier (such as federal express), or hand delivered to the person below. Notice shall be effective upon the day received, or within twenty-four hours after submission of any of the above methods.

| | |
|-------------------------------|-----------------------------|
| To SunPower: | To FPL Group: |
| SunPower Corporation, Systems | FPL Group, Inc. |
| 1414 Harbour Way South | 700 Universe Blvd |
| Richmond, California 94804 | Juno Beach, Florida 33408 |
| Facsimile: (510) 540-0552 | Facsimile: 561-694-3960 |
| Telephone for confirmation: | Telephone for confirmation: |
| (510) 540-0550 | 561-694-4598 |
| Attn: President | Attn: Manager, ISC |

24. LIMITATION OF LIABILITY. SUNPOWER’S MAXIMUM LIABILITY UNDER THIS AGREEMENT AND THE PURCHASE ORDERS SHALL BE LIMITED TO *** PERCENT (***%) OF THE AGGREGATE AMOUNT PAYABLE TO SUNPOWER UNDER THIS AGREEMENT AND THE PURCHASE ORDERS (AS REDUCED BY FPL GROUP PURSUANT TO SECTION 1(C)); PROVIDED, HOWEVER, THAT (A) SUCH LIMITATION OF LIABILITY SHALL NOT APPLY TO (I) SUNPOWER’S INDEMNIFICATION OBLIGATIONS UNDER THE AGREEMENT OR ANY PURCHASE ORDER RELATED TO CLAIMS OF THIRD PARTIES OR (II) ANY LOSS OR DAMAGE ARISING OUT OF ANY TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY) CONNECTED WITH SUNPOWER’S FRAUD, WILLFUL MISCONDUCT OR ILLEGAL OR UNLAWFUL ACTS AND (B) SUNPOWER’S MAXIMUM LIABILITY UNDER THIS AGREEMENT AND ANY PURCHASE ORDER RELATING TO SECTION 12 SHALL BE \$***. SUNPOWER’S LIMITATIONS OF LIABILITY SHALL NOT BE REDUCED BY THE AMOUNT OF INSURANCE PROCEEDS AVAILABLE TO SUNPOWER. THE FPL GROUP PARTIES’ MAXIMUM LIABILITY UNDER THIS AGREEMENT AND THE PURCHASE ORDERS SHALL BE LIMITED TO *** PERCENT (***%) OF THE AGGREGATE AMOUNT PAYABLE TO SUNPOWER UNDER THIS AGREEMENT AND THE PURCHASE ORDERS (AS REDUCED BY THE FPL GROUP PARTIES PURSUANT TO SECTION 1(C)); PROVIDED HOWEVER, THAT (A) SUCH LIMITATION OF LIABILITY SHALL NOT APPLY TO ANY LOSS OR DAMAGE ARISING OUT OF ANY TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY) CONNECTED WITH THE FPL GROUP PARTIES’ FRAUD, WILLFUL MISCONDUCT OR ILLEGAL OR UNLAWFUL ACTS AND (B) THE FPL GROUP PARTIES’ MAXIMUM LIABILITY UNDER THIS AGREEMENT AND THE PURCHASE ORDERS RELATING TO SECTIONS 9, 10 AND 11 SHALL BE \$***. A PURCHASING ENTITY’S MAXIMUM LIABILITY UNDER A PURCHASE ORDER SHALL BE LIMITED TO *** PERCENT (***%) OF THE AGGREGATE AMOUNT PAYABLE TO SUNPOWER UNDER SUCH PURCHASE ORDER (AS REDUCED BY SUCH PURCHASING ENTITY PURSUANT TO SECTION 1(C)); PROVIDED HOWEVER, THAT SUCH LIMITATION OF LIABILITY SHALL NOT APPLY TO ANY LOSS OR DAMAGE ARISING OUT OF ANY TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY) CONNECTED WITH THE PURCHASING ENTITY’S FRAUD, WILLFUL MISCONDUCT OR ILLEGAL OR UNLAWFUL ACTS. THE FPL GROUP’S LIMITATIONS OF LIABILITY SHALL NOT BE REDUCED BY THE AMOUNT OF INSURANCE PROCEEDS AVAILABLE TO THE FPL GROUP PARTIES. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT OR ANY PURCHASE ORDER, AND NOTWITHSTANDING ANYTHING ELSE IN THIS AGREEMENT OR ANY PURCHASE ORDER TO THE CONTRARY, SUNPOWER, THE PURCHASING ENTITIES AND FPL GROUP

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WAIVE CLAIMS AGAINST EACH OTHER FOR ANY INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY PURCHASE ORDER. THIS MUTUAL WAIVER INCLUDES DAMAGES INCURRED BY THE FPL GROUP PARTIES FOR RENTAL EXPENSES, FOR LOSSES OF USE, INCOME, PROFIT, FINANCING, BUSINESS AND REPUTATION, AND FOR LOSS OF MANAGEMENT OR EMPLOYEE PRODUCTIVITY, OR THE SERVICES OF SUCH PERSONS AND DAMAGES INCURRED BY SUNPOWER FOR PRINCIPAL OFFICE EXPENSES, INCLUDING THE COMPENSATION OF PERSONNEL STATIONED THERE, FOR LOSS OF FINANCING, BUSINESS AND REPUTATION, AND FOR LOSS OF PROFIT. THIS MUTUAL WAIVER IS APPLICABLE, WITHOUT LIMITATION, TO ALL CONSEQUENTIAL DAMAGES DUE TO EITHER PARTY'S OR ANY PURCHASING ENTITY'S TERMINATION OF THE AGREEMENT OR ANY PURCHASE ORDER IN ACCORDANCE WITH SECTION 14. THE FOREGOING WAIVER SHALL NOT PRECLUDE OR LIMIT RECOVERY (I) OF LIQUIDATED DAMAGES, (II) OF DAMAGES PAYABLE BY SUNPOWER TO THE FPL GROUP PARTIES PURSUANT TO SECTION 14(C) OR (D), (III) ANY TERMINATION PAYMENT; OR (IV) UNDER ANY INDEMNITY OR REIMBURSEMENT OBLIGATION HEREUNDER OR UNDER ANY PURCHASE ORDER RELATED TO CLAIMS OF THIRD PARTIES.

25. Export Compliance; FCPA.

(a) Export Compliance. FPL Group shall not (and shall cause its Affiliates, including Purchasing Entities, not to), commit any act or cause or permit any person to commit any act with respect to any Products purchased hereunder or under any Purchase Order which would violate any applicable export control laws, rules or regulations (including but not limited to those of the United States), and FPL Group shall (and shall cause its Affiliates, including Purchasing Entities, to), take any and all actions within its ability to assure compliance with all such laws, rules or regulations. FPL Group shall not (and shall cause its Affiliates, including Purchasing Entities, not to), directly or indirectly, export, re-export or transship any Products purchased hereunder or under any Purchase Order or any technical data relating to such Products in violation of Section 11 or any applicable export control laws promulgated and administrated by the government of any country having jurisdiction over the Parties or the transactions contemplated herein.

(b) FCPA Compliance. Each Party and the Purchasing Entities acknowledge that it has reviewed a copy of the U.S. Foreign Corrupt Practices Act (the "FCPA") and confirms its understanding that the FCPA prohibits the payment or giving of anything of value either directly or indirectly, to an official of a foreign government, foreign political party or official thereof, or any candidate for foreign political office, for the purpose of influencing an act or decision in his official capacity, or inducing him to use his influence with the foreign government, to assist in obtaining or retaining business for or with, or directing business to, any person. SunPower shall (and shall cause its Affiliates to) and, FPL Group shall (and shall cause its Affiliates, including Purchasing Entities, to), comply with the FCPA and will take no action that would cause any Party or Purchasing Entity to be in violation of the FCPA. SunPower shall (and shall cause its Affiliates to) and, FPL Group shall (and shall cause its Affiliates, including Purchasing Entities, to), notify immediately the other party of any request the Party and Purchasing Entity receives to take any action that might constitute, or be construed as, a violation of the FCPA. The Parties and the Purchasing Entities agree that each is authorized to take all appropriate actions that such Party and Purchasing Entity reasonably deems is necessary to avoid a violation of the FCPA.

26. **Liens.** If FPL Group or an applicable Purchasing Entity has paid all undisputed amounts due and owing under this Agreement or the relevant Purchase Order, as applicable, SunPower shall, at SunPower's sole expense, discharge and cause to be released, whether by payment or posting of an appropriate surety bond in accordance with applicable law, within ten (10) days after receipt of a written demand from FPL Group or such Purchasing Entity, any Lien against the Products or other property of FPL Group or any FPL Group Affiliate (whether or not any such Lien is valid or enforceable) created by, through or under, or as a result of any act or omission (or alleged act or omission) of, SunPower or any subcontractor, vendor or other Person providing services, labor, equipment or materials on behalf of SunPower in the performance of its scope of work under this Agreement or any Purchase Order. The expense of discharging or satisfying by bond any such Lien shall be paid by SunPower at its sole cost and expense and shall not be a part of any amount payable to SunPower under this Agreement or any Purchase Order. SunPower shall indemnify, defend and hold harmless FPL Group and the FPL Group Affiliates from and against any Lien claimed against the Products or other property of FPL Group or any FPL Group Affiliate by any subcontractor, vendor or other Person providing services, labor, equipment or materials on behalf of SunPower in the performance of its scope of work under this Agreement or any Purchase Order. FPL Group and each Purchasing Entity shall have the right to retain and withhold amounts otherwise payable to SunPower under this Agreement or any Purchase Order or draw against the Letter of Credit in an amount sufficient to indemnify FPL Group and the Purchasing Entities against any such Lien until such time as FPL Group or the Purchasing Entity, as applicable, becomes satisfied that such Lien is discharged or satisfied by bond. This Article 26 shall survive the expiration or termination of this Agreement or any Purchase Order.

27. **Insurance.** SunPower shall procure and maintain the following minimum insurance covering all operations required to complete the work in forms and with insurance companies acceptable to the Purchasing Entity:

(a) All insurance requirements required by law, which shall include without limitation, workers' compensation insurance for statutory requirements imposed by workers' compensation laws and comprehensive automobile liability insurance.

(b) General Liability Insurance, including Broad Form Contractual Liability Coverage and Products/Completed Operations Liability Coverage with minimum limits of One Million Dollars (\$1,000,000.00) combined single limit per occurrence for Bodily Injury and Property Damage Liability, which shall insure the performance of the contractual obligations assumed by SunPower under this Agreement and the Purchase Orders. FPL Group and any Purchasing Entity shall be designated as an additional insured on SunPower's General Liability Insurance policy, and such policy shall be endorsed to be primary to any insurance that may be maintained by or on behalf of FPL Group and such Purchasing Entity.

(c) SunPower shall provide evidence of the minimum coverage by providing an ACORD or other certificate of insurance acceptable to FPL Group. Neither SunPower's failure to provide evidence of minimum coverage of insurance following FPL Group's or any the Purchasing Entity's request, nor FPL Group's or any the Purchasing Entity's decision not to make such request, shall release SunPower from its obligation to maintain the minimum coverage provided for in this Section 27.

(d) Insurance specified in this Section 27 shall not be canceled or materially changed without ten (10) calendar days advance written notice to FPL Group's Risk Management Department.

(e) SunPower shall be responsible for the payment of any deductible of any insurance coverage required pursuant to this Section 27.

28. Indemnity.

(a) SunPower agrees to reimburse, indemnify, defend and hold the FPL Group Parties, the Financing Parties and their Affiliates and each of their respective directors, officers, employees, representatives, agents, advisors, consultants, counsel and assigns harmless from and against, on an After-Tax Basis, any and all losses, claims, obligations, demands, assessments, penalties, liabilities, costs, damages and expenses (including reasonable attorneys' fees and expenses) (collectively, "Damages") asserted against or incurred by such indemnitees by reason of or resulting from any and all of the following: (i) any bodily injury, death or physical damage to property caused by any act or omission (including strict liability) or willful misconduct relating to or arising out of the performance of SunPower's obligations under this Agreement or any Purchase Order or any curative action under any warranty, of SunPower or any Affiliate thereof, any subcontractor or vendor, or anyone directly or indirectly employed by any of them, or anyone for whose acts such person may be liable; (ii) any third party claims resulting in bodily or property damage arising out of defective and/or nonconforming performance by SunPower of its obligations under this Agreement or any Purchase Order; (iii) claims by any Government Authority for any SunPower taxes; (iv) any pollution or contamination which originates from sources in SunPower's or its SunPower's subcontractors' or vendors' possession, use or control or caused by the release by SunPower or its SunPower's subcontractors' or vendors; (v) to the extent the relevant FPL Group Party has paid all undisputed amounts due pursuant to this Agreement or its Purchase Order, any Lien, created by, through or under, or as a result of any act or omission (or alleged act or omission) of, SunPower or any SunPower subcontractor or vendor or other Person providing labor or materials in connection with SunPower's obligations under this Agreement or any Purchase Order; (vi) any claim, action or proceeding by any Person for unauthorized disclosure, use, infringement or misappropriation of any Intellectual Property Right arising from: (A) SunPower's performance (or that of its Affiliates, subcontractors or vendors) under this Agreement or any Purchase Order or other items and services provided by SunPower or any SunPower subcontractor or vendor hereunder or under any Purchase Order; (B) the use or ownership of any SunPower deliverable; (C) any license granted hereunder or under any Purchase Order; or (D) the design, engineering, installation, use, operation or ownership of the Products or any portion thereof (without limiting the provisions of Section 9 if any of the FPL Group Parties is enjoined from completing the installation of the Products, or from the use, operation or enjoyment of the Products or any part thereof, as a result of such claim or legal action or any litigation based thereon, SunPower shall promptly use its best efforts to have such injunction removed at no cost to the FPL Group Parties); (vii) any vitiation of any insurance policy procured under Section 27 as a result of SunPower's failure to comply with any of the requirements set forth in such policy or any other act by SunPower or any SunPower subcontractor or vendor; (viii) any failure of the Products, as designed and manufactured by SunPower, to comply with, or be capable of operating in compliance with, Applicable Laws or the conditions or provisions of any applicable permits; (ix) any failure of SunPower to comply with Applicable Laws or the conditions or provisions of any applicable permits; and (x) any claims with respect to employer's liability or worker's compensation filed by any employee of

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

(b) FPL Group agrees to reimburse, indemnify, defend and hold SunPower and its Affiliates and each of their respective directors, officers, employees, representatives, agents, advisors, consultants and counsel harmless from and against, on an After-Tax Basis, any and all Damages asserted against or incurred by such indemnitees by reason of or resulting from any and all of the following: (i) any bodily injury, death or physical damage to property caused by (A) any act or omission (including strict liability) or willful misconduct of any FPL Group Party or its agents or employees or others under an FPL Group Party’s direct control or (B) a breach by an FPL Group Party of its obligations hereunder or under any Purchase Order; (ii) claims by any Government Authority for any FPL Group taxes; and (iii) any claims with respect to employer’s liability or worker’s compensation filed by any employee of the FPL Group Parties.

(c) If the joint, concurring, comparative or contributory fault, negligence or willful misconduct of the Parties or any Purchasing Entity gives rise to Damages for which a Party or any Purchasing Entity is entitled to indemnification under this Section 28, then such Damages shall be allocated between the Parties and the Purchasing Entities in proportion to their respective degrees of fault, negligence or willful misconduct contributing to such Damages. This Section 28 shall survive the expiration or termination of this Agreement or any Purchase Order.

29. Financings. SunPower shall provide such assistance as the FPL Group Parties may reasonably request in connection with current, or obtaining future, debt or equity financing to or for any projects in which the Products will be installed by FPL Group or any FPL Group Affiliate. SunPower agrees that it shall make available to the FPL Group Parties and the Person providing such financing (“Financing Parties”), on a confidential basis, any information reasonably requested relating to the Products and SunPower’s obligations under this Agreement or any Purchase Order. SunPower shall furnish such consents to assignment, estoppel certificates, certifications, lien waivers, amendments and representations as may be reasonably requested by such Financing Parties. At any FPL Group Parties’ request, SunPower shall cooperate with the independent engineer and technical advisors, if any, of any Financing Parties. In the event that such cooperation requires the expenditure by SunPower of an amount in excess of \$20,000, the relevant FPL Group Party shall reimburse SunPower by the amount of such excess attributable to reasonable out of pocket costs and expenses (including but not limited to reasonable attorneys’ fees and expenses).

30. Letter of Credit.

(a) Upon the occurrence of a ***, SunPower shall, at its own expense, obtain and maintain, by renewal or replacement, until the end of the Warranty Period for all Products purchased (or required to be purchased) pursuant to this Agreement or any Purchase Order, an irrevocable, unconditional, transferable, standby, letter of credit in favor of FPL Group meeting the requirements of this Section 30 and in form and substance as set forth on Schedule 5 (the "Letter of Credit") attached hereto. The Letter of Credit shall be delivered to FPL Group within seven (7) calendar days after the occurrence of the ***. The Letter of Credit shall constitute security for SunPower's obligations hereunder and under the Purchase Orders. FPL Group may, in its sole discretion, assign the Letter of Credit to any Financing Party or their assignees or designees without the consent of SunPower. All fees and charges, including, without limitation, issuing, commitment and operation fees and charges, relating to the Letter of Credit shall be borne by SunPower. The Letter of Credit shall comply with and be subject to the following terms and conditions:

(i) Upon the date of issuance, the Letter of Credit shall have a face amount equal to ***. If, at the end of any fiscal quarter of *** occurring after issuance of the Letter of Credit, no *** is occurring, then FPL Group shall return the Letter of Credit to the issuing bank. SunPower's obligation to obtain and maintain a Letter of Credit upon a *** shall continue at all times until the end of the Warranty Period for all Products purchased (or required to be purchased) pursuant to this Agreement or any Purchase Order even if one or more Letters of Credit have been issued and then returned to the issuing bank pursuant to the previous sentence. For purposes of this Agreement, "Contract Value" shall mean an amount equal to ***.

(ii) The Letter of Credit shall be issued by a bank reasonably acceptable to FPL Group and must be able to be drawn upon in the United States.

(iii) FPL Group shall have the right to draw upon the Letter of Credit by presenting to the issuing bank a draw certificate in the form attached to Schedule 5. FPL Group may draw upon the Letter of Credit to cure or protect FPL Group and/or Purchasing Entities from loss due to any breach or default under this Agreement or any Purchase Order, for payment of ***. The Letter of Credit shall allow FPL Group to immediately draw up to the full amount then available for drawing thereunder in the event of any delay or failure by SunPower to renew the Letter of Credit within sixty (60) days prior to the expiration thereof if the Letter of Credit (irrespective of the expiration date on the face of the Letter of Credit) is required to be maintained pursuant to this Section 30.

(b) For purposes of this Section 30, "****" shall be deemed to occur if, ***.

31. Corporate Guarantees. ***. Within thirty (30) days following the Effective Date, the Parties shall mutually agree upon a form of guaranty to be provided by NextEra Energy Resources, LLC ("NextEra"), which guaranty shall provide to SunPower an irrevocable, unconditional guarantee in a form reasonably agreeable to the Parties and under which NextEra's maximum liability shall be capped at the aggregate Purchase Price for all Products under the relevant Purchase Order and which liability shall decrement dollar for dollar by payments of such

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aggregate Purchase Price (the “NextEra Guaranty”). The NextEra Guaranty shall be delivered concurrently with each Purchase Order and shall guaranty the performance of the obligations of those Purchasing Entities which are Affiliates of NextEra (other than FPL Group and Florida Power & Light Company).

32. Conditions to Purchase. The obligations of FPL Group and the Purchasing Entities to purchase the Products under this Agreement and any Purchase Order are conditioned upon the State of Florida promulgating laws and the State of Florida Public Service Commission promulgating regulations, by no later than September 30, 2009 (or such later date as may be mutually agreed by the Parties hereto) (“Purchase Condition Date”), that allow FPLC to build, own and operate, and receive cost recovery for, photovoltaic solar electric generation facilities that would enable FPL Group to satisfy the Base Commitment for each year. If such condition is not satisfied by the Purchase Condition Date, then FPL Group shall have the right, exercisable in its sole discretion, to reduce or eliminate the Base Commitment (including a reduction to 0MW) by reducing or eliminating any or all of the Monthly Shipment Quantities in Schedule 1 for the Base Commitment. FPL Group shall notify SunPower of such reduction or elimination within seventy (70) days after the Purchase Condition Date.

33. Conversion Factor. For purposes of this Agreement, it shall be assumed that 1 MW_{AC} shall be equivalent to $***\text{MW}_{\text{DC}}$ for Solar Panels on a “T20” tracker, $***\text{MW}_{\text{DC}}$ for Solar Panels on a “T0” tracker, and $***\text{MW}_{\text{DC}}$ for Solar Panels on a fixed support structure; provided, however that the Parties may mutually agree upon a different conversion factor in the Purchase Order respecting any given project.

34. ***

35. ***

36. Third Party Beneficiaries. Except with respect to the rights of the Financing Parties, permitted successors and assigns and the rights of indemnitees under this Agreement or any Purchase Order, (a) no Person that is not a Party or a Purchasing Entity shall have any rights or interest, direct or indirect, in the Agreement or any Purchase Order and (b) this Agreement and the Purchase Orders are intended solely for the benefit of the Parties and the Purchasing Entities, and the Parties and the Purchasing Entities expressly disclaim any intent to create any rights in any third party as a third-party beneficiary to this Agreement or any Purchase Order.

37. ***

38. ***

39. Defined Terms. As used in this Agreement, including the appendices, exhibits and other attachments hereto, or any Purchase Order each of the following terms shall have the meaning assigned to such term as set forth below:

“2010 Base Commitment Deposit” has the meaning set forth in Section 2(b).

“2010 Additional Quantity Deposit” has the meaning set forth in Section 2(b).

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“2010 Deposits” has the meaning set forth in Section 2(b).

“2011/2012 Base Commitment Initial Deposit” has the meaning set forth in Section 2(b).

“2011/2012 Base Commitment Additional Deposit” has the meaning set forth in Section 2(b).

“2011/12 Additional Quantity Initial Deposit” has the meaning set forth in Section 2(b).

“2011/2012 Deposits” has the meaning set forth in Section 2(b).

“Affiliate” has the meaning set forth in Section 9.

“After-Tax Basis” has the meaning set forth in Section 28.

“Agreement” has the meaning set forth in the first paragraph hereof, and all exhibits, schedules, and annexes hereto, as same may be amended, supplemented or modified from time to time in accordance with the terms hereof.

“Applicable Laws” means any act, statute, law, regulation, permit, license, ordinance, rule, judgment, order, decree, directive, guideline or policy (to the extent mandatory) or any similar form of decision or determination by, or any interpretation or administration of, any of the foregoing by any Government Authority with jurisdiction over the Project, the Parties, the relevant Purchasing Entity or the obligations of the Parties or the relevant Purchasing Entity hereunder or under a Purchase Order.

“Base Commitment” has the meaning set forth in Schedule 1.

“***” has the meaning set forth in Section 34.

“BOS Support Structure Equipment” has the meaning set forth in Section 1(a).

“Contract Value” has the meaning set forth in Section 30(a).

“***” has the meaning set forth in Section 30(a).

“***” has the meaning set forth in Section 30(b).

“Damages” has the meaning set forth in Section 28(a).

“Defect” has the meaning set forth in Schedule 3.

“Delivery” means delivery of the Product to the Delivery Point.

“Delivery Point” has the meaning set forth in Section 3(a).

“Deposits” has the meaning set forth in Section 2(b).

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“***” has the meaning set forth in Section 1(b).

“Disputes” has the meaning set forth in Section 17.

“Effective Date” has the meaning set forth in the opening paragraph hereof.

“EPC Contract” has the meaning set forth in Section 2(b).

“***” has the meaning set forth in Schedule 3.

“Excluded Purchases” means the purchase of photovoltaic modules or support structures: (A) in replacement of pieces of equipment purchased pursuant to an agreement with a third party, (B) pursuant to an agreement entered into by an Person that is, after execution of such agreement, acquired by an FPL Group Party, (C) pursuant to an agreement respecting a project that is, after execution of such agreement, acquired by an FPL Group Party and (D) in connection with any demonstration, experiment, research and development or educational projects, roof-top applications, academic institutions or charitable organizations.

“FCPA” has the meaning set forth in Section 25(b).

“Final Acceptance” has the meaning set forth in Section 3(d).

“Final Acceptance Certificate” has the meaning set forth in Section 3(d).

“Financing Parties” has the meaning set forth in Section 29.

“Force Majeure Event” has the meaning set forth in Section 22.

“FPLC” has the meaning set forth in Section 1(b).

“FPL Defaulting Party” has the meaning set forth in Section 14(f).

“FPL Event of Default” has the meaning set forth in Section 14(f).

“FPL Group” means FPL Group, Inc., a Florida corporation (as referenced in the opening paragraph hereof) and it includes its legal successors and those assignees as may be designated by FPL Group, in writing, pursuant to the terms of this Agreement.

“FPL Group Parties” means FPL Group and its Affiliates, including Purchasing Entities.

“GAAP” has the meaning set forth in Section 30(b).

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

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entities or taxing authorities or any department, municipality or other political subdivision thereof.

“Guaranteed Delivery Date” has the meaning set forth in Section 3(a).

“Initial Warranty Period” has the meaning set forth in Schedule 3.

“***” has the meaning set forth in Section 30(b).

“Intellectual Property Rights” has the meaning set forth in Section 9.

“Letter of Credit” has the meaning set forth in Section 30(a).

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

“Liquidated Damages” has the meaning set forth in Section 3(b).

“Module Warranty Period” has the meaning set forth in Schedule 3.

“Non-Purchase Order Products” has the meaning set forth in Section 14(d).

“***” has the meaning set forth in Schedule 3.

“Optional Additional Quantities” has the meaning set forth in Section 1(b).

“Parties” means collectively, FPL Group and SunPower.

“Party” means individually, FPL Group or SunPower.

“Person” means an individual, partnership, corporation, limited liability company, company, business trust, joint stock company, trust, unincorporated association, joint venture, Government Authority or other entity of whatever nature

“PO LD Cap” has the meaning set forth in Section 3(b).

“Products” has the meaning set forth in Section 1(a).

“Product Warranty Period” has the meaning set forth in Schedule 3.

“Project” means the particular photovoltaic electrical generating facility into which a Product is or will be installed.

“Prudent Industry Practices” has the meaning set forth in Schedule 3.

“Purchase Order” has the meaning set forth in Section 1(b).

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“Purchase Price” means the price for a particular Product as set forth in Schedule 1.

“Purchasing Entity” means FPL Group or its relevant Affiliate purchasing Products under this Agreement or a Purchase Order.

“Quantity Notice Date” has the meaning set forth in Section 1(b).

“Reduced Monthly Quantity” has the meaning set forth in Section 1(c).

“Scheduled Shipment Date” shall mean, with respect to a particular Product, the date that is *** (***) days prior to the Guaranteed Delivery Date for such Product.

“Solar Panels” has the meaning set forth in Section 1(a).

“***” has the meaning set forth in Section 34.

“SunPower” means SunPower Corporation, Systems, a Delaware corporation (as referenced in the opening paragraph hereof), and includes its legal successors and permitted assignees as may be accepted by FPL Group, in writing, pursuant to the terms of this Agreement.

“***” has the meaning set forth in Section 34.

“SunPower Event of Default” has the meaning set forth in Section 14(b).

“***” has the meaning set forth in Section 30(b).

“T0” has the meaning set forth in Section 33.

“T20” has the meaning set forth in Section 33.

“***” has the meaning set forth in Section 30(b).

“Tax” or “Taxes” means all fees, taxes, including sales taxes, use taxes, stamp taxes, value-added taxes, ad valorem taxes and property taxes (personal and real, tangible and intangible), customs, duties, tariffs, levies, assessments, withholdings and other charges and impositions of any nature, plus all related interest, penalties, fines and additions to tax, now or hereafter imposed by any Applicable Law or Government Authority (including penalties or other amounts payable pursuant to subtitle B of Title I of ERISA).

“Term” has the meaning set forth in Section 14(a).

“Terminated Monthly Quantity” has the meaning set forth in Section 1(c).

“Terminated Monthly Quantity Prior Payments” has the meaning set forth in Section 1(c).

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“Terminated Monthly Quantity Refund Amount” has the meaning set forth in Section 1(c).

“Termination Liability” has the meaning set forth in Section 1(c).

“Termination Payment” has the meaning set forth in Section 1(c).

“Territory” has the meaning set forth in the Recitals to this Agreement.

“Warranty Period” has the meaning set forth in Schedule 3.

IN WITNESS WHEREOF, the Parties hereto have signed this Agreement as of the date and year first above written.

SunPower:

SunPower Corporation, Systems

By: /s/ Howard Wenger
Name: Howard Wenger
Title: Executive Vice President

FPL Group:

FPL Group, Inc.

By: /s/ Robert L. McGrath
Name: Robert L. McGrath
Title: Vice President

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SCHEDULE 1 – BASIC TERMS OF SALE – SOLAR PANELS AND BOS SUPPORT STRUCTURE EQUIPMENT

Schedule 1 Basic Terms of Sale -- Solar Panels and BOS Support Structure Equipment (Sold as a single Product unit)

I. Pricing and Base Commitment

Pricing:

| 2010 Product Pricing | | |
|--|--------------------|---------|
| | Location | |
| Product type | Outside of Florida | Florida |
| Solar Panel and T-20 tracker price (\$/watt _{DC}) | *** | *** * |
| Solar Panel and T-0 tracker price (\$/watt _{DC}) | *** | *** ** |
| Solar Panel and fixed support structure price (\$/watt _{DC}) | *** | *** |

*T-20 tracker is not qualified for use in Florida due to hurricane wind loading

\$* to qualify for hurricane wind loads

| 2011 Product Pricing | | |
|--|--------------------|---------|
| | Location | |
| Product type | Outside of Florida | Florida |
| Solar Panel and T-20 tracker price (\$/watt _{DC}) | *** | *** * |
| Solar Panel and T-0 tracker price (\$/watt _{DC}) | *** | *** ** |
| Solar Panel and fixed support structure price (\$/watt _{DC}) | *** | *** |

*T-20 tracker is not qualified for use in Florida due to hurricane wind loading

\$* to qualify for hurricane wind loads

| 2012 Product Pricing | | |
|--|--------------------|---------|
| | Location | |
| Product type | Outside of Florida | Florida |
| Solar Panel and T-20 tracker price (\$/watt _{DC}) | *** | *** * |
| Solar Panel and T-0 tracker price (\$/watt _{DC}) | *** | *** ** |
| Solar Panel and fixed support structure price (\$/watt _{DC}) | *** | *** |

*T-20 tracker is not qualified for use in Florida due to hurricane wind loading

\$* to qualify for hurricane wind loads

Base Commitment:

The following quantities comprise SunPower's base commitment to supply the Products and FPL Group's base commitment to purchase the Products (the "Base Commitment"):

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Schedule1

| Monthly Shipment Quantities* (MW _{AC}) | | | |
|---|---------------|---------------|---------------|
| | 2010 | 2011 | 2012 |
| January | *** ** | *** MW | *** MW |
| February | *** ** | *** MW | *** MW |
| March | *** ** | *** MW | *** MW |
| April | *** ** | *** MW | *** MW |
| May | *** ** | *** MW | *** MW |
| June | *** ** | *** MW | *** MW |
| July | *** ** | *** MW | *** MW |
| August | *** ** | *** MW | *** MW |
| September | *** ** | *** MW | *** MW |
| October | *** MW | *** MW | *** MW |
| November | *** MW | *** MW | *** MW |
| December | *** MW | *** MW | *** MW |
| Total | 100 MW | 100 MW | 100 MW |

* FPL Group may adjust monthly shipment quantities within calendar year 2010 up to +***% or -***% and/or within any given calendar year 2011 or 2012 up to +/-***%, in each case upon written notice delivered to SunPower no less than *** months prior to the Scheduled Shipment Date for such quantities, so long as the annual amount for such calendar year remains the same. In addition, FPL Group may adjust monthly shipment quantities within any given calendar year 2011 or 2012 up to +/-***MW_{AC} upon written notice delivered to SunPower no less than *** months' prior to the Scheduled Shipment Date for such quantities, so long as the annual amount for such calendar year remains the same.

** First ***MW_{AC} of Base Commitment may be shipped as part of the ***

Optional Additional Quantities:

The following quantities may be purchased by FPL Group and its Affiliates in addition to the Base Commitment.

| Monthly Shipment Quantities* (MW _{AC}) | | | |
|---|--------|--------|--------|
| | 2010 | 2011 | 2012 |
| January | *** MW | *** MW | *** MW |
| February | *** MW | *** MW | *** MW |
| March | *** MW | *** MW | *** MW |
| April | *** MW | *** MW | *** MW |
| May | *** MW | *** MW | *** MW |
| June | *** MW | *** MW | *** MW |
| July | *** MW | *** MW | *** MW |

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| | | | |
|-----------|--------|--------|--------|
| August | *** MW | *** MW | *** MW |
| September | *** MW | *** MW | *** MW |
| October | *** MW | *** MW | *** MW |
| November | *** MW | *** MW | *** MW |
| December | *** MW | *** MW | *** MW |
| Total | 100 MW | 100 MW | 100 MW |

* FPL Group may adjust monthly shipment quantities within any calendar year 2010 up to +***% or -***% and/or within any given calendar year 2011 or 2012 up to +/-***%, in each case upon written notice delivered to SunPower no less than *** months prior to the Scheduled Shipment Date for such quantities. In addition, FPL Group may adjust monthly shipment quantities within any given calendar year 2011 or 2012 up to +/-***MW_{AC} upon written notice delivered to SunPower no less than *** months’ prior to the Scheduled Shipment Date for such quantities.

Quantity Adjustments: SunPower may deliver up to +/- ***% of a given scheduled monthly quantity (such month being a “Scheduled Month”) of the Products purchased under a particular Purchase Order without incurring Liquidated Damages, so long as (i) SunPower provides written notice thereof *** (***) calendar days prior to the Scheduled Shipment Date for such Products and (ii) the aggregate of the scheduled monthly quantities of such Products for the Scheduled Month and the next two (2) calendar months (“Maximum Delay Period”) are delivered to the Delivery Point within the earlier of (a) the expiration of the Maximum Delay Period or (b) the last Guaranteed Delivery Date under such Purchase Order.

II. Product Specifications:

III. Logo/Branding Requirements:

SUNPOWER PRIMARY LOGO (PURSUANT TO SECTION 11 OF THE AGREEMENT):

[Missing Graphic Reference]

SunPower shall provide the Products to the Purchasing Entity with all Product labels affixed. The Purchasing Entity shall have no obligation to affix labels to the Products.

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LOGO CLEAR SPACE

There must be a certain amount of clear space around the SunPower logo in which no other elements of type or marks appear. (*Excerpts from SunPower Corporate Style Guide - The Logo p.5*)

Logo dimension on the box: 595 mm x 190 mm

Schedule 1

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SCHEDULE 1
EXHIBIT 1 – EQUIPMENT LIST AND SCOPE OF SUPPLY

Table of Contents

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| · Detailed list of BOM Support Structure Equipment | 2 |
| · SunPower™ Tracker T0 scope of supply | 3 |
| · SunPower™ Tracker T20 scope of supply | 4 |
| · SunPower™ Fixed Tilt scope of supply | 5 |
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| · SunPower™ Tracker T20 drive support design and scope of supply | 8 |

SCHEDULE 1
EXHIBIT 1 – EQUIPMENT LIST AND SCOPE OF SUPPLY

Detailed list of BOM Support Structure Equipment

The specific materials, components and other items to be provided by SunPower for each of the four categories of BOS Support Structure Equipment consist of the following:

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Exhibit 1 to Schedule 1

Page 2 of 8

SCHEDULE 1
EXHIBIT 1 – EQUIPMENT LIST AND SCOPE OF SUPPLY

SunPower™ Tracker T0 scope of supply.

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Exhibit 1 to Schedule 1

Page 3 of 8

SCHEDULE 1
EXHIBIT 1 – EQUIPMENT LIST AND SCOPE OF SUPPLY

SunPower™ Tracker T20 scope of supply.

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Exhibit 1 to Schedule 1

Page 4 of 8

SCHEDULE 1
EXHIBIT 1 – EQUIPMENT LIST AND SCOPE OF SUPPLY

SunPower™ Fixed Tilt scope of supply

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Exhibit 1 to Schedule 1

SCHEDULE 1
EXHIBIT 1 – EQUIPMENT LIST AND SCOPE OF SUPPLY

SunPower™ Tracker T20 foundation design and scope of supply.

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Exhibit 1 to Schedule 1

Page 6 of 8

SCHEDULE 1
EXHIBIT 1 – EQUIPMENT LIST AND SCOPE OF SUPPLY

SunPower™ Tracker T0 drive support design and scope of supply.

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Exhibit 1 to Schedule 1

Page 7 of 8

SCHEDULE 1
EXHIBIT 1 – EQUIPMENT LIST AND SCOPE OF SUPPLY

SunPower™ Tracker T20 drive support design and scope of supply.

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SCHEDULE 2 – FORM OF PURCHASE ORDER

This Purchase Order (“PO”) Number: [] is issued this [] day of [] by [], a [] (hereafter, the “Purchasing Entity”) pursuant to that certain Photovoltaic Equipment Master Supply Agreement (“MSA”) dated April 21, 2009 between FPL Group, Inc. and SunPower Corporation, Systems (“SunPower”).

1. Purchasing Entity. By issuing this PO, Purchasing Entity acknowledges and agrees that it is bound by the terms of the MSA.
2. Products. Purchasing Entity hereby orders and agrees to purchase from SunPower the Products set out in Schedule 2-1 attached hereto. (The minimum order quantity is 10 MW_{AC} except as otherwise mutually agreed in writing with SunPower).
3. Purchase Price. The aggregate Purchase Price and price breakdown for the Products ordered pursuant to this PO is as set forth in Schedule 2-2 attached hereto (“PO Price”). Purchasing Entity shall pay the PO Price on a per-Watt_{DC} basis in accordance with the terms of the MSA and Schedule 1 attached thereto, and in accordance with the following:
 - (a) prior to execution of this PO, FPL Group or Purchasing Entity, as the case may be, shall have paid the applicable Deposit pursuant to Section 2 (b) of the MSA; and
 - (b) the remainder of the PO Price shall be paid by Purchasing Entity in installments described in the Payment Schedule set forth in Section 2 (b) of the MSA; and
 - (c) the remainder of the PO Price shall be paid in accordance with the terms set forth in Section 6 of the MSA.
4. Guaranteed Delivery Date. The Guaranteed Delivery Date(s) by which SunPower shall complete Delivery of the Products in accordance with the terms of the MSA are as set forth in Schedule 2-3 attached hereto.
5. Delivery Point. This Delivery Point for the Products shall be as set forth in Schedule 2-3 attached hereto.
6. Representations, Warranties and Covenants of Purchasing Entity. If Purchasing Entity is an FPL Group Affiliate, Purchasing Entity hereby represents to SunPower that (a) it is duly organized, validly existing and in good standing in the jurisdiction of its organization, with full power and authority to issue and perform its obligations under this PO and (b) it has validly executed this PO and, upon delivery, this PO shall be a binding obligation of Purchasing Entity and enforceable against Purchasing Entity in accordance with its terms and the terms of the MSA.
7. Notice. Any notice in relation to this PO or the MSA shall be given in accordance with Section 23 of the MSA; provided that a notice from SunPower to Purchasing Entity shall be sent to:

[Insert Purchasing Entity name]

700 Universe Boulevard

Juno Beach, FL 33408-2683

Attention: [_____]

Facsimile: (561) XXX-XXXX

Phone: (561) XXX-XXXX

8. Further Assurances. SunPower and Purchasing Entity agree to provide such information, execute and deliver any instruments and documents and to take such other actions as may be necessary or reasonably requested by the other Party which are not inconsistent with the provisions of this PO and the MSA and which do not involve the assumptions of obligations other than those provided for in this PO and the MSA, in order to give full effect to this PO and the MSA and to carry out the intent of this PO and the MSA.
9. Incorporation of MSA. This PO incorporates by reference all of the terms and conditions of the MSA (including Schedules to the MSA) and survives the termination of the MSA. The terms and conditions of the MSA (including Schedules to the MSA) incorporated into this PO by reference shall survive the termination of the MSA. All capitalized terms in this PO shall have the meaning assigned to such term in the MSA, unless otherwise stated herein.

[REMAINDER OF PAGE IS BLANK]

Schedule 2

Page 2 of 6

SCHEDULE 2 – FORM OF PURCHASE ORDER

This PO is hereby issued pursuant to the MSA by the Purchasing Entity as of the date first above written.

[Insert Purchasing Entity name]

By:_____

Name:_____

Title:_____

ACKNOWLEDGED AND ACCEPTED:

If this PO complies with the requirements of Section 1(b)(ii) of the MSA, this PO is valid and SunPower is bound by the terms of this PO whether or not SunPower acknowledges or accepts this PO by countersigning this PO below.

SunPower Corporation, Systems

By:_____

Name:_____

Title:_____

Date: _____

SCHEDULE 2 – FORM OF PURCHASE ORDER

SCHEDULE 2-1

PRODUCTS ORDERED

| The Solar Panels and BOS Support Structure Equipment (ordered as a single Product unit pursuant to the terms of the MSA) to be delivered by SunPower pursuant to this PO are: | |
|---|-----------------|
| Product type | Quantity (MWac) |
| Solar Panel and reinforced T-0 tracker | |
| Solar Panel and T-20 tracker | |
| Solar Panel and T-0 tracker | |
| Solar Panel and fixed support structure | |

Schedule 2

Page 4of 6

SCHEDULE 2-2

TOTAL PO PRICE

Total PO Price: \$ _____

Less Deposit already paid: \$ _____

Amount of PO Price Outstanding: \$ _____

| Purchase Price Breakdown: (Prices in MWdc x \$/wattDC as per Schedule 1 to the MSA) | | |
|---|-----------------|-------|
| Product Unit | Quantity (MWac) | Price |
| Solar Panel and reinforced T-0 tracker | | |
| Solar Panel and T-20 tracker | | |
| Solar Panel and T-0 tracker | | |
| Solar Panel and fixed support structure | | |

| Milestone Payment Schedule for Purchase Order (In accordance with the terms of the MSA) | | |
|--|----------------|--------------|
| Payment (%) | Payment Amount | Payment Date |
| | | |
| | | |
| | | |
| | | |
| | | |

SCHEDULE 2 – FORM OF PURCHASE ORDER

SCHEDULE 2-3

DELIVERY INSTRUCTIONS

- 1) Delivery Point: _____
- 2) Attn: Purchasing Entity Project contact: _____
- 3) Guaranteed Delivery Date(s):
 - a. _____ MWac, by _____ (date)
 - b. _____ MWac, by _____ (date)

SCHEDULE 3 – WARRANTIES

1 SunPower Warranties

1.1 SunPower warrants to the Purchasing Entities that all Products shall:

- (a) Be new and of good quality;
- (b) Be free from improper workmanship and Defects (as defined below);
- (c) Comply with all applicable requirements of all Applicable Laws and all permits applicable thereto; and
- (d) Be fit for the applicable Purchasing Entity's use in photovoltaic solar power generation facilities.

SunPower's warranty above expressly excludes (i) photovoltaic modules that have been subjected to misuse, abuse, neglect, alteration or improper application or improper removal by any party other than SunPower, (ii) cosmetic defects stemming from normal wear and tear of photovoltaic module materials, and (iii) Defects caused by the applicable Purchasing Entity's failure to comply with the Installation and O&M Manual applicable to the Products.

"Defect" means, any designs, engineering, software, drawings, components, tools, Products, Other Warranted Work, manufacturing or workmanship that, in the applicable Purchasing Entity's reasonable judgment:

- 1. Do not conform to the terms or requirements of this Agreement or the relevant Purchase Order;
- 2. Are not of uniform good quality, free from defects or deficiencies in design, application, manufacture or workmanship, or that contain improper or inferior workmanship; or
- 3. Would adversely affect the:
 - a. Performance of the Products under anticipated operating conditions;
 - b. Continuous safe operation of the Products during the Products' design life;
 - c. Structural integrity of the Products;
 - d. Economic value of the applicable Purchasing Entity's investment in the Products, all as determined by reference to prudent utility practices.

Anything to the contrary notwithstanding, the Parties agree that a Product or Other Warranted Work shall be considered to be defective if it does not conform to Prudent Industry Practices: "Prudent Industry Practices" mean those sound and prudent practices, acts, methods, specifications, codes and standards of design, engineering, assembly, safety and workmanship prudently and generally engaged in or observed by the majority of the professional engineering and manufacturing contractors performing engineering and manufacturing services for major, grid-connected solar electric generating facilities in the United States that, in the exercise of good judgment, would have been expected to accomplish the desired result in a manner consistent with Applicable Laws, any applicable permits, reliability, safety, environmental protection, local conditions,

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economy and efficiency.

1.2 SunPower warrants to the FPL Group Parties and Purchasing Entities that all services (and items, documentation or other work provided pursuant to such services) (collectively, “Other Warranted Work”) provided by SunPower under this Agreement or any Purchase Order shall be free from Defects and shall be sufficient, in the applicable Purchasing Entity’s reasonable judgment, to permit the Products to be fit for the applicable Purchasing Entity’s use in photovoltaic solar power generation facilities.

1.3 SunPower warrants to the Purchasing Entities that:

All of the foregoing warranties provided for in this Section 1.3 expressly exclude (i) photovoltaic modules that have been subjected to misuse, abuse, neglect, alteration, improper application or improper removal by any party other than SunPower and (ii) Defects caused by the applicable Purchasing Entity’s failure to comply with the Installation and O&M Manual applicable to the Products. Furthermore, the warranty provided for in clause (b) of this Section 1.3 shall also expressly exclude cosmetic defects stemming from normal wear and tear of photovoltaic module materials.

1.4 Except as expressly stated herein to the contrary, SunPower warrants that it shall remedy, in accordance with Section 2 of this Schedule 3, any Defects or breaches of warranty which appear prior to the expiration of: (a) *** with respect to the warranties set forth in Sections 1.1 and 1.2, as such period may be extended in accordance with the terms hereof, except with respect to (i) controllers, which shall expire ***, (ii) gearmotors, which shall expire *** (but the exclusive remedy for any Defects or breaches of warranty in Sections 1.1 and 1.2 relating to the gearmotors between *** shall be the supply of replacement parts) and (iii) drives, which shall expire *** (but the exclusive remedy for any Defects or breaches of warranty in Sections 1.1 and 1.2 relating to the drives between *** shall be the supply of replacement parts) (the “Initial Warranty Period”), (b) the period commencing on *** and ending on *** (the “Product Warranty Period”) with respect to the warranties set forth in Section 1.3(a) and (c) the period commencing on *** and ending on *** (the “Module Warranty Period”) with respect to the warranties set forth in Section 1.3(b) (each of the Initial Warranty Period, the Product Warranty Period and the Module Warranty Period, a “Warranty Period”, and collectively, the “Warranty Periods”).

The provisions of this Schedule apply to Products and Other Warranted Work performed by subcontractors and vendors, including Substitute Panels. If and in the event FPL Group or a Purchasing Entity notifies SunPower of a Defect or breach of warranty, as applicable, within the given Warranty Period, SunPower, at SunPower’s expense, shall immediately respond to the notification and commence to remedy the Defect or breach of warranty. Any repair or replacement performed by SunPower to accomplish to remedy a Defect or breach of warranty set forth in Sections 1.1 or 1.2 of this Schedule 3 shall be subject to ***. SunPower’s obligations to remedy any Defects or breaches of warranty, as applicable, surfacing after the given Warranty Period shall be limited to the proceeds, if any, of any applicable insurance policy. SunPower agrees to reasonably cooperate with the Purchasing Entities to effect the collection of any such insurance proceeds.

1.6 If, prior to or during the given Warranty Period for any warranty provided hereunder (as the same may be extended hereunder), *** or more of any type of component of the Products under a particular Purchase Order fails (for purposes hereof, a component shall

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be deemed to have failed if it contains a Defect or is in breach of other warranty set forth in this Section 1, as applicable), then SunPower shall perform or cause to be performed a root-cause analysis with respect to such extensive component failure and, unless SunPower proves to the applicable Purchasing Entity's sole satisfaction that the failure is not due to a design fault in such component, such component or components shall be re-designed and retrofitted, subject fully in each case to the warranties set forth in this Section 1, for a period of *** beginning on each date of the completion of the re-installation of such new component. If SunPower proves to the applicable Purchasing Entity's sole satisfaction that the failure is not due to a design fault in such component, then the given Warranty Period applicable for all such component or components shall be automatically extended for (a) an additional *** commencing on the date, in the case of each such component, when the failure occurred that caused the percentage of failures of components of that type to equal or exceed *** if such failure occurred at any time prior to *** and or (b) an additional *** commencing on the date, in the case of each such component, when the failure occurred that caused the percentage of failures of components of that type to equal or exceed *** if such failure occurred at any time on or after ***.

- 1.7 THE WARRANTIES OF SUNPOWER SET FORTH IN THIS AGREEMENT ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER STATUTORY, EXPRESS OR IMPLIED (INCLUDING ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND ALL WARRANTIES ARISING FROM COURSE OF DEALING AND USAGE OF TRADE). The foregoing sentence is not intended to disclaim any other obligations of SunPower set forth herein.

2 Repair of Nonconforming Work.

- 2.1 If, during the given Warranty Period for any warranty provided hereunder, the Products are found to contain Defects or SunPower is otherwise in breach of any of the warranties set forth in Section 1 of this Schedule 3, as applicable, SunPower shall at its expense correct, repair or replace such Defect or otherwise cure such breach as promptly as practicable upon being given notice thereof. The applicable Purchasing Entity shall provide SunPower with reasonable access to the Products in order to perform its obligation hereunder and SunPower and the applicable Purchasing Entity shall schedule such corrections or replacements as necessary so as to minimize disruptions to the applicable Purchasing Entity. SunPower shall bear all costs and expenses associated with correcting any Defect or breach of warranty, including, without limitation, necessary disassembly, transportation, disposal (including disposal of defective Products), reassembly and retesting, as well as reworking, repair or replacement of such Products, disassembly and reassembly of piping, ducts, machinery, or other Products as necessary to give access to improper, defective or non-conforming Products and correction, removal or repair of any damage to other work or property that arises from the Defect or breach of warranty. If SunPower is obligated to repair, replace or renew any Products, or any item or portion of the Products hereunder, SunPower will undertake a technical analysis of the problem and correct the "root cause" unless SunPower can demonstrate to the applicable Purchasing Entity's reasonable satisfaction that there is not a risk of the reoccurrence of such problem. SunPower's obligations under this Section shall not be impaired or otherwise adversely affected by any actual or possible legal obligation or

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duty of any vendor or subcontractor to SunPower or the applicable Purchasing Entity concerning any Defect or breach of warranty. No such correction or cure, as the case may be, shall be considered complete until the applicable Purchasing Entity has reviewed and accepted such Product repair or replacement.

- 2.2 If SunPower fails to commence to complete the correction of any Defect or cure of any breach of warranty as required herein within five (5) days after receipt of notice from the applicable FPL Group or the applicable Purchasing Entity to perform such obligations or thereafter fails to diligently continue to complete such corrections or cure, then the FPL Group or the applicable Purchasing Entity may correct (or cause to be corrected) such Defect or cure (or cause to be cured) such breach of warranty and Sunpower shall be liable for all reasonable costs, charges, and expenses incurred by FPL Group or the applicable Purchasing Entity in connection therewith (including attorneys' and other consultants' fees), and SunPower shall, within fifteen (15) days after request therefor, pay to FPL Group or the applicable Purchasing Entity an amount equal to such costs, charges, and expenses. Any such request by FPL Group or the applicable Purchasing Entity shall be accompanied by proper documentation evidencing such costs, charges and expenses. Such correction of a Defect or cure of a breach of warranty by FPL Group or the applicable Purchasing Entity (or caused by FPL Group or the applicable Purchasing Entity) shall be deemed performed by SunPower and the Warranty Period applicable thereto for such repaired or replaced Products shall be extended in accordance with Section 1.4 of this Schedule 3.
- 2.3 If, during the a given Warranty Period, SunPower shall change, repair or replace any Product or component, the applicable Purchasing Entity, in its reasonable discretion, may require SunPower to conduct and satisfactorily complete any test required by the applicable Purchasing Entity with respect to the affected Products; provided, however, in connection with any performance of a test pursuant to this Section 2.3, appropriate allowance with respect to the performance of such Products shall be made for the fact that such Products may have operated prior thereto. If after running such test pursuant to this Section, the results indicate a degradation in the performance of the Products (as measured against the test results used to satisfy the requirements of Section 1.3), then SunPower shall repair, correct or replace such affected Products and re-run such test until the Products perform at a level consistent with the performance of the Products immediately prior to the change, repair or replacement of such Products.

3 Proprietary Rights

Without limiting any of the provisions of this Agreement or any Purchase Order, if any Purchasing Entity or SunPower is prevented from completing its obligations under this Agreement or any Purchase Order or any part thereof, or from the use, operation, or enjoyment of the Products or any part thereof as a result of a claim, action or proceeding by any Person for unauthorized disclosure, use, infringement or misappropriation of any Intellectual Property Right arising from SunPower's performance (or that of its subcontractors or vendors) under this Agreement or any Purchase Order, including, without limitation, any Products, Other Warranted Work, SunPower deliverables or other items and services provided by SunPower or any subcontractor or vendor hereunder, SunPower shall promptly, but in no event later than thirty (30) days from the date of any action or proceeding, take all actions necessary (all at SunPower's sole expense, but subject to all the requirements of this Agreement) to remove such impediment, including:

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- 3.1 Secure termination of the injunction and procure for the applicable Purchasing Entity or its assigns, as applicable, the right to use such materials, Products, Other Warranted Work or SunPower deliverables in connection with the operation and maintenance of the Products, without obligation or liability; or
- 3.2 Replace such materials, Products or SunPower deliverables, with a non-infringing equivalent, or modify same to become non-infringing,

4 Repairs and Testing by the FPL Group Parties.

- 4.1 During the Warranty Period, without prior notice to SunPower and without affecting the warranties of SunPower hereunder, the Purchasing Entities shall be permitted to:
 - (a) Make repairs or replacements on Products so long as the repair or replacement involves the correct installation of spare parts and is otherwise conducted in accordance with the applicable Installation and O&M Manual applicable to the Products; and
 - (b) Adjust or test Products as outlined in the instruction manuals provided by SunPower or any subcontractor or vendor.
- 4.2 In the event of an emergency and if, in the reasonable judgment of the applicable Purchasing Entity, the delay that would result from giving notice to SunPower could cause serious loss or damage which could be prevented by immediate action, any action (including correction of Defects) may be taken by the applicable Purchasing Entity or a third party chosen by the applicable Purchasing Entity, without giving prior notice to SunPower, and in the case of a Defect, the reasonable cost of correction shall be paid by SunPower. In the event such action is taken by the applicable Purchasing Entity, SunPower shall be promptly notified within five (5) Business Days after correction efforts are implemented, and shall assist whenever and wherever possible in making the necessary corrections.

5 Survival of Warranties

The provisions of this Schedule 3 shall survive the expiration or termination of this Agreement or the relevant Purchase Order.

SCHEDULE 4 – PANEL WARRANTY

Schedule 4 – Panel Warranty

[Missing Graphic Reference]

SUNPOWER LIMITED WARRANTY FOR PV MODULES

1. Limited Product Warranty – Ten (10) Year Repair, Replacement or Refund Remedy

SunPower Corporation with offices at 3939 North First Street, San Jose, CA 95134 (“SunPower”) warrants that for ten (10) years from the date of delivery, its Photovoltaic modules (“PV modules”) shall be free from defects in materials and workmanship under normal application, installation, use and service conditions. If the PV modules fail to conform to this warranty, then for a period ending ten (10) years from date of delivery to the original end-customer (“the Customer”), SunPower will, at its option, either repair or replace the product, or refund the purchase price as paid by the Customer (“Purchase Price”). The repair, replacement or refund remedy shall be the sole and exclusive remedy provided under the Limited Product Warranty and shall not extend beyond the ten (10) year period set forth herein. This Limited Product Warranty does not warrant a specific power output, which shall be exclusively covered under clause 2 hereinafter (Limited Power Warranty).

2. Limited Power Warranty

- a) SunPower additionally warrants: If, within twelve (12) years from date of delivery to the Customer any PV module(s) exhibits a power output less than 90% of the Minimum Peak Power¹ as specified at the date of delivery in SunPower's Product datasheet, provided that such loss in power is determined by SunPower (at its sole and absolute discretion) to be due to defects in material or workmanship SunPower will replace such loss in power by either providing to the Customer additional PV modules to make up such loss in power or by providing monetary compensation equivalent to the cost of additional PV modules required to make up such loss in power or by repairing or replacing the defective PV modules, at the option of SunPower
- b) SunPower additionally warrants: If, within twenty five (25) years from date of delivery to the Customer any PV module(s) exhibits a power output less than 80% of the Minimum Peak Power¹ as specified at the date of delivery in SunPower's Product datasheet, provided that such loss in power is determined by SunPower (at its sole and absolute discretion) to be due to defects in material or workmanship SunPower will replace such loss in power by either providing to the Customer additional PV modules to make up such loss in power or by providing monetary compensation equivalent to the cost of additional PV modules required to make up such loss in power or by repairing or replacing the defective PV modules, at the option of SunPower.

3. Exclusions and limitations

- a) Warranty claims must in any event be filed within the applicable Warranty period.
- b) Warranty claims may only be made by, or on the behalf of, the original end customer or a person to whom title has been transferred for the PV Modules.
- c) The Limited Warranties do not apply to any of the following:

¹“Minimum Peak Power” = Peak power minus the Peak power tolerance (as specified in SunPower’s Product datasheet). “Peak power” is the power in peak watts that a PV module generates at STC (Standard Test conditions: Irradiance of 1000 W/m², light spectrum AM 1.5g and a cell temperature of 25 degrees C)

1. PV modules which in SunPower's absolute judgment have been subjected to: misuse, abuse, neglect or accident; alteration, improper installation, improper application or improper removal; non-observance of the Instruction and O&M Manual applicable to the PV Modules; repair or modifications by someone other than an approved service technician of SunPower; power failure surges, lightning, flood, fire, accidental breakage or other events outside SunPower's control.
 2. Cosmetic defects stemming from normal wear and tear of PV module materials.
 3. PV modules installed in locations, which in SunPower's absolute judgment may be subject to direct contact with salt water.
- d) The Limited Warranties do not cover any transportation costs for return of the PV modules, or for reshipment of any repaired or replaced PV modules, or cost associated with installation, removal or reinstallation of the PV modules.
 - e) When used on a mobile platform of any type, the Limited Power Warranty, applying to any of the PV modules shall be limited to twelve (12) years as per the provisions of clause 2(a) hereof.
 - f) Warranty claims will not apply if the type or serial number of the PV modules is altered, removed or made illegible.

4. Limitation of Warranty Scope

SUBJECT TO THE LIMITATIONS UNDER APPLICABLE LAW, THE LIMITED WARRANTIES SET FORTH HEREIN ARE EXPRESSLY IN LIEU OF AND EXCLUDE ALL OTHER EXPRESS OR IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY AND OF FITNESS FOR PARTICULAR PURPOSE, USE, OR APPLICATION, AND ALL OTHER OBLIGATIONS OR LIABILITIES ON THE PART OF SUNPOWER, UNLESS SUCH OTHER WARRANTIES, OBLIGATIONS OR LIABILITIES ARE EXPRESSLY AGREED TO IN WRITING SIGNED AND APPROVED BY SUNPOWER. SUNPOWER SHALL HAVE NO RESPONSIBILITY OR LIABILITY WHATSOEVER FOR DAMAGE OR INJURY TO PERSONS OR PROPERTY OR FOR OTHER LOSS OR INJURY RESULTING FROM ANY CAUSE WHATSOEVER ARISING OUT OF OR RELATED TO THE PRODUCT, INCLUDING, WITHOUT LIMITATION, ANY DEFECTS IN THE MODULE, OR FROM USE OR INSTALLATION. UNDER NO CIRCUMSTANCES SHALL SUNPOWER BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES, HOWSOEVER CAUSED. LOSS OF USE, LOSS OF PROFITS, LOSS OF PRODUCTION, LOSS OF REVENUES ARE THEREFORE SPECIFICALLY BUT WITHOUT LIMITATION EXCLUDED.

SUNPOWER'S AGGREGATE LIABILITY, IF ANY, IN DAMAGES OR OTHERWISE, SHALL NOT EXCEED THE PURCHASE PRICE PAID TO SUNPOWER BY THE CUSTOMER, FOR THE UNIT OF PRODUCT OR SERVICE FURNISHED OR TO BE FURNISHED, AS THE CASE MAY BE, WHICH GAVE RISE TO THE WARRANTY CLAIM.

SOME STATES DO NOT ALLOW LIMITATIONS ON IMPLIED WARRANTIES OR THE EXCLUSION OF DAMAGES SO THE ABOVE LIMITATIONS OR EXCLUSIONS MAY NOT APPLY TO YOU.

5. Obtaining Warranty Performance

If you feel you have a justified claim covered by this Limited Warranty, immediately notify the (a) Installer, who sold the PV-modules, or (b) any authorized SunPower distributor, of the claim in writing, or (c) send such notification to SunPower Corporation, 3939 North First Street, San Jose, CA 95134, directly. In addition, please enclose evidence of the date of delivery of the PV module. If applicable, your installer or distributor will give advice on handling the claim. If further assistance is required, please write to SunPower for instructions. The return of any PV-modules will not be accepted unless prior written authorization has been given by SunPower.

SCHEDULE 5 – FORM OF LETTER OF CREDIT

Attention: Project General Manager

Re: Irrevocable Standby Letter of Credit No.

Gentlemen:

We hereby establish in your favor this Irrevocable Standby Letter of Credit No. _____ (the “Letter of Credit”) for the account of SunPower Corporation, Systems, a Delaware corporation (“SunPower”), effective immediately and expiring on the date set forth in numbered paragraphs 5 and 6 hereof.

This Letter of Credit is issued pursuant to the terms of that certain Photovoltaic Equipment Master Supply Agreement, dated as of April 21, 2009, between FPL Group, Inc. (“Beneficiary”), and SunPower, as the same may be amended (the “Agreement”).

1. Stated Amount. The amount of funds available at any time under this Letter of _____ United States Dollars) (the Credit shall be U.S. \$ _____ “Stated Amount”).
2. Drawings. A drawing hereunder may be made by you on any Business Day on or prior to the date this Letter of Credit expires by delivering to [L.C. issuing bank], at any time during its business hours on such Business Day, at [_____] a copy of this Letter of Credit together with (i) a Draw Certificate executed by an authorized person substantially in the form of Attachment A hereto (the “Draw Certificate”), appropriately completed and purportedly signed by your authorized officer and (ii) your draft substantially in the form of Attachment B hereto (the “Draft”), appropriately completed and purportedly signed by your authorized officer. Partial drawings and multiple presentations may be made under this Letter of Credit. Draw Certificates and Drafts under this Letter of Credit may be presented by the Beneficiary by means of facsimile or original documents sent by overnight delivery or courier to [L.C. issuing bank], at its address set forth above Attention: Standby Letter of Credit Unit. In the event of a presentation by facsimile transmission, the original of such documents shall be sent to address set forth in the preceding sentence, as aforesaid, by overnight courier for receipt by us within one (1) Business Day of the date of such facsimile transmission.
3. Time and Method for Payment. We hereby agree to honor a drawing hereunder made in compliance with this Letter of Credit by transferring in immediately available funds the amount specified in the Draft delivered to us in connection with such drawing to such account at such bank in the United States as you may specify in your Draw Certificate. If the Draw Certificate is presented to us at such address by 10:00 a.m., PST on any Business Day, payment will be made not later than 3:00 p.m., PST of such day and if such Draw Certificate is so presented to us after 10:00 a.m., PST on any Business Day, payment will be made on the following Business Day. In clarification, we agree to honor the Draw Certificate upon receipt thereof, without regard to the truth or falsity of the assertions made therein.

4. Non-Conforming Demands. If a demand for payment made by you hereunder does not, in any instance, conform to the terms and conditions of this Letter of Credit, we shall give you prompt notice that the demand for payment was not effected in accordance with the terms and conditions of this Letter of Credit, stating the reasons therefore and that we will upon your instructions hold any documents at your disposal or return the same to you. Upon being notified that the demand for payment was not effected in conformity with this Letter of Credit, you may correct any such non-conforming demand.
5. Expiration. This Letter of Credit shall automatically expire at the close of business on the earlier of a) _____, 201__; or b) the date on which we receive a Cancellation Certificate in the form of Attachment C hereto purportedly executed by your authorized officer upon which this Letter of Credit shall be cancelled.
6. Business Day. As used herein, "Business Day" shall mean any day on which commercial banks are not authorized or required to close in the State of California.
7. Governing Law. Except as far as otherwise expressly stated herein, this Letter of Credit is subject to the International Standby Practices ("ISP98"), except for Rule 3:14(a), International Chamber of Commerce Publication No. 590. As to matters not addressed by the ISP98, this Letter of Credit shall be governed by and construed in accordance with the laws of the State of California and applicable U.S. federal law.
8. Notices. All communications to you in respect of this Letter of Credit shall be in writing and shall be delivered to the address shown for you herein before or such other address as may from time to time be designated by you in a written notice to us. All documents to be presented to us hereunder and all other communications to us in respect of this Letter of Credit, which other communications shall be in writing, shall be delivered to the address for us indicated on the signature page hereof, or such other address as may from time to time be designated by us in a written notice to you.
9. Irrevocability. This Letter of Credit is irrevocable.
10. Transferability. We shall not authorize any transfer of this Letter of Credit until a transfer certificate, substantially in the form of Attachment D hereto, is completed to our satisfaction and received by us. All transfer charges shall be for the account of the Beneficiary. This Letter of Credit may not be transferred to any person with whom U.S. persons are prohibited from doing business under U.S. Foreign Asset Control Regulations or other applicable U.S. laws and regulations.
11. Complete Agreement. This Letter of Credit sets forth in full our undertaking, and such undertaking shall not in any way be modified, amended, amplified or limited by reference to any document, instrument or agreement referred to herein, except for the ISP-98 and Attachments A, B, C, and D hereto and the notices referred to herein and any such reference shall not be deemed to incorporate herein by reference any document, instrument or agreement except as set forth above.

SINCERELY,

[L.C. ISSUING BANK]

Address:

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SCHEDULE 5 – FORM OF LETTER OF CREDIT

ATTACHMENT A

FORM OF DRAW CERTIFICATE

The undersigned hereby certifies to [L.C. issuing bank] (the “Issuer”), with reference to Irrevocable Letter of Credit No. _____ (the “Letter of Credit”) issued by Issuer in favor of the undersigned (“Beneficiary”) (capitalized terms used herein and not defined herein shall have the respective meanings set forth in the Letter of Credit), as follows:

- (1) The undersigned is the _____ of Beneficiary and is duly authorized by Beneficiary to execute and deliver this Certificate on behalf of Beneficiary.
- (2) Beneficiary hereby makes demand against the Letter of Credit by Beneficiary’s presentation of the draft accompanying this Certificate, for payment of _____ dollars (U.S.\$_____), such amount, when aggregated together with any amount not drawn down, is not in excess of the Stated Amount (as in effect of the date hereof).

- (3) Beneficiary is entitled to draw the amount set forth in paragraph 2 hereof because:

[Check applicable provision(s)]

☐ The conditions for a drawing pursuant to the Agreement or a Purchase Order (as defined in the Agreement) issued pursuant to the Agreement have been met.

☐ The rating of the outstanding unsecured indebtedness of the bank or trust company that issued the Letter of Credit has fallen below a rating of A-, as determined by Standard and Poor’s Corporation, or a rating of A-3, as determined by Moody’s Investors Services, Inc., and SunPower has failed, within ten (10) days after receipt of written notice (copy attached) thereof by the Beneficiary to replace such Letter of Credit with another Letter of Credit issued by a financial institution acceptable to Beneficiary on the same terms as the Letter of Credit being replaced.

☐ SunPower has failed to renew the Letter of Credit within sixty (60) Business Days prior to the expiration thereof.

- (4) You are hereby directed to make payment of the requested drawing to: (insert wire instructions)

Beneficiary Name and Address .

By: _____
Title: _____
Date: _____

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ATTACHMENT B

DRAWING UNDER IRREVOCABLE LETTER OF CREDIT NO. -----

Date:

ON: If the Draw Certificate is presented by 10:00 a.m., PST on any Business Day, payment will be made not later than 3:00 p.m., PST of such day and if such Draw Certificate is so presented to us after 10:00 a.m., PST on any Business Day, payment will be made on the following Business Day.

PAY TO: Beneficiary Name

\$ U.S.

FOR VALUE RECEIVED AND CHARGE TO THE ACCOUNT OF LETTER OF CREDIT NO. _____.

Beneficiary Name

By: _____

Title: _____

Date: _____

ATTACHMENT C

CANCELLATION CERTIFICATE

Irrevocable Letter of Credit No. _____

The undersigned, being authorized by the undersigned (“Beneficiary”), on behalf of Beneficiary hereby certifies to [L.C. issuing bank] (“Issuer”), with reference to Irrevocable Letter of Credit No. _____ -- issued by Issuer to Beneficiary (the “Letter of Credit”; capitalized terms used herein and not defined herein shall have the respective meanings set forth or referenced in the Letter of Credit), that either (i) thirty (30) days have passed since the expiration of the Warranty Period (as defined in the Agreement) and SunPower has satisfied all obligations under the Agreement and all Purchase Orders (as defined in the Agreement) issued pursuant to the Agreement or (ii) the Agreement and all Purchase Orders (as defined in the Agreement) issued pursuant to the Agreement have been terminated and SunPower has performed all obligations and paid all amounts remaining due by SunPower following such termination. Pursuant to Section 5 thereof, the Letter of Credit shall expire upon Issuer’s receipt of this certificate. Attached hereto is the Letter of Credit marked “Canceled”.

Beneficiary Name.

By: _____

Title: _____

Date: _____

SCHEDULE 5 – FORM OF LETTER OF CREDIT

ATTACHMENT D

TRANSFER CERTIFICATE

Irrevocable Letter of Credit No. _____

The undersigned Beneficiary hereby certifies to [L.C. issuing bank] (“Issuer”), with reference to Irrevocable Standby Letter of Credit No. _____ (the “Letter of Credit”; capitalized terms used herein and not defined herein shall have the respective meanings set forth in the Letter of Credit), that for value received Beneficiary hereby irrevocably transfers to _____ (the “Transferee”) all rights of the undersigned under the Letter of Credit, including all rights of the undersigned to draw under the Letter of Credit and to execute and deliver drafts and draw certificates with respect hereto.

Beneficiary hereby certifies that the Transferee has agreed in writing for SunPower’s benefit to be bound by the provisions set forth herein.

By this transfer, all rights of Beneficiary under the Letter of Credit are transferred to Transferee and Transferee shall have sole rights with respect to the Letter of Credit relating to any amendments thereof and any notices thereunder; and all references to “Beneficiary” or “Owner” in the Letter of Credit, any drawing certificate in the form of Attachment A or the other Attachments to the Letter of Credit shall be deemed to mean the Transferee. All amendments are to be advised directly to the Transferee without necessity of any consent of or notice to the undersigned. Simultaneous with delivery of this notice to Issuer, a copy of this notice is being transmitted to Transferee.

The Letter of Credit is returned herewith and Issuer is requested to endorse the transfer on the reverse thereof and forward it with your customary notice of transfer directly to the Transferee at the following address:

Beneficiary Name.
(or its permitted transferee in interest)

By: _____

Title: _____

Date: _____

SIGNATURE GUARANTEED

The First Beneficiary’s signature(s) with title(s) conforms with that on file with us and such is/are authorized for the execution of this instrument.

(Name of Bank)

(Bank Address)

(City, State, Zip Code)

(Telephone Number)

(Authorized Name and Title)

(Authorized Signature)

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FORM OF SUNPOWER'S FULL LIEN WAIVER AND RELEASE

THIS SUNPOWER'S FULL LIEN WAIVER AND RELEASE ("SunPower's Full Lien Waiver and Release") is made by SunPower Corporation, Systems, a Delaware Company ("SunPower"), on behalf of itself, its successors and assigns, and those acting by or through any of the foregoing, for and in consideration of [AMOUNT OF FINAL PAYMENT REQUEST] DOLLARS (\$[____]) ("Final Payment") and other good and valuable consideration, in hand paid, the receipt and sufficiency of which are hereby acknowledged, as full and final payment (i) on account of the following Products (as defined in the Contract Documents) and all labor, materials, equipment, services and other work relating to such Products ("Work"), including but not limited to those provided pursuant to that certain Purchase Order No. [____] dated [____], as amended ("Purchase Order"), issued by [_PURCHASING ENTITY_] ("Owner") pursuant to that certain PHOTOVOLTAIC EQUIPMENT MASTER SUPPLY AGREEMENT, dated as of April 21, 2009, between FPL Group, Inc. ("FPL Group") and SunPower, as the same may be amended from time to time (the "Agreement" and together with the Purchase Order, the "Contract Documents") and (ii) under or relating to the Purchase Order (or under the Agreement with respect to the Purchase Order) if this SunPower's Full Lien Waiver and Release relates to Final Acceptance (as defined in the Contract Documents) of the last Products to be supplied pursuant to the Purchase Order:

Products: [DESCRIBE BY SERIAL NUMBERS]

Upon receipt of the undisputed portion of the Final Payment, SunPower does hereby unconditionally and irrevocably waive, release, remise, relinquish and quit-claim all actions, claims, demands, liens, lien rights and claims of lien, of any kind whatsoever with respect to payment for the above-noted Products and Work (and/or as described in items (i) and (ii) of the first paragraph hereof) which SunPower ever had, now has, or may have in the future, known or unknown, against the Project (as defined in the Contract Documents), or any property on which the Project is located or against FPL Group, Owner, its parents, subsidiaries and affiliates, at all tiers, and its and their insurers, sureties, employees, officers, directors, representatives, shareholders, agents, and all parties acting for any of them (collectively, the "Released Entities"), including, without limitation, all such claims related to, in connection with, or arising out of, all facts, acts, events, circumstances, changes or extra work, constructive or actual delays or accelerations, interferences and the like, which have occurred or may be claimed to have occurred, excluding any claim for payment of the disputed portion of the Final Payment.

SunPower warrants and represents that (a) SunPower has not assigned or pledged any rights or claims in any amount due or to become due from Owner; (b) payment has been or will be made to all subcontractors, laborers and material suppliers, at all tiers, for all labor, services, materials and equipment furnished by or through SunPower pursuant to the Contract Documents, including all payroll taxes and contributions required to be made; (c) no claims from subcontractors, vendors, mechanics or materialmen against the Released Entities have been submitted to SunPower with respect to the Contract Documents, Products or the Work that remain unsatisfied as of the date hereof; (d) no mechanics' or materialmen's liens have been filed with respect to the Contract Documents, the Project or any property on which the Project is located that have not been discharged or for which a bond has not been posted in accordance with the Contract Documents; (e) payment of all amounts due has been made to all consultants, employees, subcontractors, laborers and material suppliers, at all tiers, and all other entities, for

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all labor, services, materials and equipment furnished by or through SunPower with respect to the Contract Documents, Products or the Work, including, without limitation, all payroll taxes and contributions required to be made and all wages, overtime pay, premium pay, holiday pay, sick pay, personal leave pay, severance pay, fees, fringe benefits, commissions and reimbursable expenses required to be paid and all deductions for dues, fees or contributions required to be made in connection with all collective bargaining agreements in existence, if any, which affect any worker(s) providing services under the Contract Documents; and (f) all contracts with consultants and subcontractors employed, used or engaged by SunPower in connection with the Contract Documents, Products or the Work have been completed or have been terminated.

SunPower agrees to defend, indemnify and hold the Released Entities harmless from and against any and all actions, causes of action, losses or damages of whatever kind, including, without limitation, reasonable attorneys' fees and costs in arbitration and at the pre-trial, trial and appellate levels, which the Released Entities may suffer by reason of (a) any claim made against the Project or any property on which the Project is located or any of the Released Entities relating to labor, services, materials or equipment furnished by or through SunPower, or (b) any breach of any representation or warranty made by the SunPower to Owner, including the representations and warranties included herein, any false statement made in this SunPower's Full Lien Waiver and Release or any misrepresentation or omission made to Owner by SunPower.

SunPower acknowledges and agrees that (a) Owner is relying upon the representations and warranties made herein as a material inducement for Owner to make payment to the SunPower; (b) this SunPower's Full Lien Waiver and Release is freely and voluntarily given by the SunPower, and SunPower has had the advice of counsel in connection herewith and is fully informed as to the legal effects of this SunPower's Full Lien Waiver and Release, and SunPower has voluntarily accepted the terms herein for the consideration recited above; and (c) the tendering of payment by Owner and the receipt of payment and the execution of this SunPower's Full Lien Waiver and Release by SunPower shall not, in any manner whatsoever, release SunPower from (i) its continuing obligations with respect to the completion of any obligations under the Contract Documents that remain incomplete, including any warranty or guarantee, or the correction of defective or non-conforming Products; (ii) any contractual, statutory or common law obligations of SunPower with respect to the Released Entities; or (iii) any other obligations of SunPower with respect to Released Entities.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK;
SIGNATURES APPEAR ON FOLLOWING PAGE.]**

Dated this ____ day of _____, 20__.

SunPower Corporation, Systems:

WITNESSES:

Name: _____

Name: _____

By: _____

Name: _____

Title: _____

Address: _____

[CONSULT NOTARIAL REQUIREMENTS OF THE RELEVANT STATE AND AMEND ACKNOWLEDGMENT AS NECESSARY PRIOR TO SIGNING]

NOTARIAL ACKNOWLEDGMENT

STATE OF _____)

) ss:

COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 200__, by _____, the _____ of [_____], a [_____], who executed the foregoing instrument on behalf of said corporation, and who is personally known to me or who produced _____ as identification.

Name: _____

Notary Public, State of _____.

Commission No. _____

My Commission expires: _____

(Seal)

SCHEDULE 8 – BASIC PRODUCT SUPPORT

*** CONFIDENTIAL MATERIAL REDACTED AND SEPARATELY FILED WITH THE SECURITIES AND EXCHANGE COMMISSION.
Schedule 8

SCHEDULE 9 – ACCEPTANCE AND DEGRADATION TESTING

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

SCHEDULE 10 – FORM OF FINAL ACCEPTANCE CERTIFICATE

Form of Final Acceptance Certificate
(Page 1 of 2)

Date: _____

1. Unless otherwise defined herein, the capitalized terms used throughout this certificate shall have the meanings ascribed to same in the Photovoltaic Equipment Master Supply Agreement dated as of April 21, 2009 (as the same may be amended, modified and supplemented from time to time, the “Agreement”) by and between FPL Group, Inc, a Florida corporation (“FPL Group”) and SunPower Corporation, Systems, a Delaware Corporation (“Supplier”).
2. This Certificate is executed in connection with Purchase Order No. [] dated [], 2009 (“Purchase Order”) issued by [] (“Purchasing Entity”) pursuant to the Agreement.
3. Supplier certifies and represents to the Purchasing Entity that the following statements are true as of the date of delivery hereof:
 - a) The Supplier has satisfied all of the requirements for the achievement of Final Acceptance in accordance with the Agreement and the Purchase Order.
 - b) Supplier has delivered this form, completed except for signature by the Purchasing Entity, to the Purchasing Entity’s duly authorized representative referred to in Section 3 of the Agreement on the above date.
4. The person signing below is authorized to submit this form to the Purchasing Entity for and on behalf of Supplier.

SunPower Corporation, Systems,
as Supplier

By: _____
Name: _____
Title: _____

SCHEDULE 10 – FORM OF FINAL ACCEPTANCE CERTIFICATE

Form of Final Acceptance Certificate
(Page 2 of 2)

The Purchasing Entity to cross through one (1) of the following statements:

- A. The Purchasing Entity agrees that Final Acceptance has been achieved. This Certificate was received by FPL on the date first written above and is effective as of that date.
- B. The Purchasing Entity does not agree that Final Acceptance has been achieved by the Supplier due to the following:

Purchasing Entity:

The person signing below is authorized to sign the Final Acceptance Certificate for and on behalf of the Purchasing Entity.

By:

Name:

Title:

Date:

CERTIFICATIONS

I, Thomas H. Werner, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of SunPower Corporation;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: July 31, 2009

/S/ THOMAS H. WERNER

Thomas H. Werner
Chief Executive Officer
(Principal Executive Officer)

CERTIFICATIONS

I, Dennis V. Arriola, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of SunPower Corporation;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: July 31, 2009

/s/ DENNIS V. ARRIOLA

Dennis V. Arriola
Senior Vice President and Chief Financial Officer
(Principal Financial and Accounting Officer)

**CERTIFICATION OF CHIEF EXECUTIVE OFFICER AND
CHIEF FINANCIAL OFFICER PURSUANT TO
18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Quarterly Report of SunPower Corporation (the "Company") on Form 10-Q for the period ended June 28, 2009 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), Thomas H. Werner and Dennis V. Arriola certifies, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to the best of his knowledge and belief:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and result of operations of the Company.

Dated: July 31, 2009

/S/ THOMAS H. WERNER

Thomas H. Werner
Chief Executive Officer
(Principal Executive Officer)

/s/ DENNIS V. ARRIOLA

Dennis V. Arriola
Senior Vice President and Chief Financial Officer
(Principal Financial and Accounting Officer)

The foregoing certification is being furnished solely pursuant to 18 U.S.C. Section 1350 and is not being filed as part of the Report or as a separate disclosure statement.
