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 July 4, 2010

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 o

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 x 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 x	Accelerated Filer o	Non-accelerated filer o (Do not check if a smaller reporting company)	Smaller reporting company o

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

The total number of outstanding shares of the registrant's class A common stock as of August 6, 2010 was 55,663,828.
The total number of outstanding shares of the registrant's class B common stock as of August 6, 2010 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)

	July 4, 2010	January 3, 2010 (1)
Assets		
Current assets:		
Cash and cash equivalents	$ 382,968	$ 615,879
Restricted cash and cash equivalents, current portion	58,320	61,868
Short-term investments	172	172
Accounts receivable, net	199,603	248,833
Costs and estimated earnings in excess of billings	57,587	26,062
Inventories	266,756	202,301
Advances to suppliers, current portion	33,218	22,785
Project assets – plants and land, current portion	53,826	6,010
Prepaid expenses and other current assets	278,683	98,521
Assets of discontinued operations	204,950	—
Total current assets	1,536,083	1,282,431
Restricted cash and cash equivalents, net of current portion	295,566	248,790
Property, plant and equipment, net	815,147	682,344
Project assets – plants and land, net of current portion	30,766	9,607
Goodwill	353,895	198,163
Other intangible assets, net	88,654	24,974
Advances to suppliers, net of current portion	153,648	167,843
Other long-term assets	152,881	82,743
Total assets	$ 3,426,640	$ 2,696,895
Liabilities and Stockholders' Equity		
Current liabilities:		
Accounts payable	$ 329,310	$ 234,692
Accrued liabilities	190,209	114,008
Billings in excess of costs and estimated earnings	9,276	17,346
Short-term debt and current portion of long-term debt	33,646	11,250
Convertible debt, current portion	143,034	137,968
Customer advances, current portion	23,494	19,832
Liabilities of discontinued operations	166,432	—
Total current liabilities	895,401	535,096
Long-term debt	237,945	237,703
Convertible debt, net of current portion	578,496	398,606
Customer advances, net of current portion	68,127	72,288
Long-term deferred tax liability	23,319	6,777
Other long-term liabilities	158,398	70,045
Total liabilities	1,961,686	1,320,515
Commitments and contingencies (Note 10)		
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; 56,109,852 and 55,394,612 shares of class A common stock issued; 55,647,803 and 55,039,193 shares of class A common stock outstanding, at July 4, 2010 and January 3, 2010, respectively	98	97
Additional paid-in capital	1,548,390	1,520,933
Accumulated deficit	(107,952)	(114,309)
Accumulated other comprehensive income (loss)	39,380	(17,357)
Treasury stock, at cost; 462,049 and 355,419 shares of class A common stock at July 4, 2010 and January 3, 2010, respectively	(14,962)	(12,984)
Total stockholders' equity	1,464,954	1,376,380
Total liabilities and stockholders' equity	$ 3,426,640	$ 2,696,895

(1) As adjusted to reflect the adoption of new accounting guidance for share lending arrangements that were executed in connection with the Company's convertible debt offerings in fiscal 2007 (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	
	July 4, 2010	June 28, 2009 (1)	July 4, 2010	June 28, 2009 (1)
Revenue:				
Utility and power plants	$ 119,999	$ 124,295	$ 264,093	$ 233,551
Residential and commercial	264,239	175,046	467,419	277,433
Total revenue	384,238	299,341	731,512	510,984
Cost of revenue:				
Utility and power plants	97,224	114,968	208,652	210,612
Residential and commercial	199,163	143,695	363,266	227,459
Total cost of revenue	296,387	258,663	571,918	438,071
Gross margin	87,851	40,678	159,594	72,913
Operating expenses:				
Research and development	11,206	6,937	21,613	14,817
Selling, general and administrative	78,376	42,775	142,656	85,179
Total operating expenses	89,582	49,712	164,269	99,996
Operating loss	(1,731)	(9,034)	(4,675)	(27,083)
Other income (expense):				
Interest income	279	765	552	1,949
Interest expense	(19,310)	(9,763)	(30,250)	(16,034)
Gain on change in equity interest in unconsolidated investee	28,348	—	28,348	—
Gain on mark-to-market derivatives	34,070	21,193	31,852	21,193
Other, net	(10,806)	2,807	(16,397)	(4,350)
Other income (expense), net	32,581	15,002	14,105	2,758
Income (loss) from continuing operations before income taxes and equity in earnings of unconsolidated investees	30,850	5,968	9,430	(24,325)
Benefit from (provision for) income taxes	(46,992)	5,223	(16,117)	24,419
Equity in earnings of unconsolidated investees	2,030	3,133	5,148	4,378
Income (loss) from continuing operations	(14,112)	14,324	(1,539)	4,472
Income from discontinued operations, net of taxes	7,896	—	7,896	—
Net income (loss)	$ (6,216)	$ 14,324	$ 6,357	$ 4,472
Net income (loss) per share of class A and class B common stock:				
Net income (loss) per share – basic:				
Continuing operations	$ (0.15)	$ 0.16	$ (0.01)	$ 0.05
Discontinued operations	0.08	—	0.08	—
Net income (loss) per share – basic	$ (0.07)	$ 0.16	$ 0.07	$ 0.05
Net income (loss) per share – diluted:				
Continuing operations	$ (0.15)	$ 0.15	$ (0.01)	$ 0.05
Discontinued operations	0.08	—	0.08	—
Net income (loss) per share – diluted	$ (0.07)	$ 0.15	$ 0.07	$ 0.05
Weighted-average shares:				
Basic	95,564	90,873	95,359	87,311
Diluted	95,564	92,640	96,644	89,110

(1) The Condensed Consolidated Statements of Operations for the three and six months ended June 28, 2009 has been adjusted to reflect the adoption of new accounting guidance for share lending arrangements that were executed in connection with the Company's convertible debt offerings in fiscal 2007 (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	
	July 4, 2010	June 28, 2009 (1)
Cash flows from operating activities:		
Net income	$ 6,357	$ 4,472
Less: Income from discontinued operations, net of taxes	7,896	—
Income (loss) from continuing operations	(1,539)	4,472
Adjustments to reconcile income (loss) from continuing operations to net cash used in operating activities of continuing operations:		
Stock-based compensation	22,399	21,130
Depreciation	49,273	38,934
Amortization of other intangible assets	16,461	8,150
Impairment (gain on sale) of investments	(1,572)	1,807
Gain on mark-to-market derivatives	(31,852)	(21,193)
Non-cash interest expense	15,768	11,321
Amortization of debt issuance costs	1,790	1,721
Amortization of promissory notes	2,919	—
Gain on change in equity interest in unconsolidated investee	(28,348)	—
Equity in earnings of unconsolidated investees	(5,148)	(4,378)
Excess tax benefits from stock-based award activity	(3,828)	—
Deferred income taxes and other tax liabilities	12,219	(29,785)
Changes in operating assets and liabilities, net of effect of acquisition and divestiture:		
Accounts receivable	41,662	(24,491)
Costs and estimated earnings in excess of billings	(32,564)	18,079
Inventories	(72,248)	6,081
Project assets	(47,906)	—
Prepaid expenses and other assets	(107,315)	(22,080)
Advances to suppliers	3,757	21,739
Accounts payable and other accrued liabilities	120,782	(105,638)
Billings in excess of costs and estimated earnings	(5,288)	34,528
Customer advances	951	(8,086)
Net cash used in operating activities of continuing operations	(49,627)	(47,689)
Net cash provided by operating activities of discontinued operations	649	—
Net cash used in operating activities	(48,978)	(47,689)
Cash flows from investing activities:		
Increase in restricted cash and cash equivalents	(8,253)	(42,336)
Purchase of property, plant and equipment	(100,292)	(111,667)
Proceeds from sale of equipment to third-party	2,875	7,902
Proceeds from sales or maturities of available-for-sale securities	1,572	19,678
Cash paid for acquisition, net of cash acquired	(272,699)	—
Cash paid for investments in other non-public companies	(1,618)	—
Net cash used in investing activities of continuing operations	(378,415)	(126,423)
Net cash used in investing activities of discontinued operations	(17,708)	—
Net cash used in investing activities	(396,123)	(126,423)
Cash flows from financing activities:		
Proceeds from issuance of long-term debt, net of issuance costs	5,134	82,150
Proceeds from issuance of convertible debt, net of issuance costs	244,241	225,018
Proceeds from offering of class A common stock, net of offering expenses	—	218,895
Repayment of bank loans	(30,000)	—
Cash paid for repurchased convertible debt	—	(67,949)
Cash paid for bond hedge	(75,200)	—
Cash paid for purchased options	—	(97,336)
Proceeds from warrant transactions	61,450	71,001
Excess tax benefits from stock-based award activity	3,828	—
Proceeds from exercise of stock options	346	838
Purchases of stock for tax withholding obligations on vested restricted stock	(1,977)	(3,122)
Net cash provided by financing activities from continuing operations	207,822	429,495
Net cash provided by financing activities of discontinued operations	17,059	—
Net cash provided by financing activities	224,881	429,495
Effect of exchange rate changes on cash and cash equivalents	(12,691)	(879)
Net increase (decrease) in cash and cash equivalents	(232,911)	254,504
Cash and cash equivalents at beginning of period	615,879	202,331
Cash and cash equivalents at end of period	382,968	456,835
Less: Cash and cash equivalents of discontinued operations	—	—
Cash and cash equivalents of continuing operations, end of period	$ 382,968	$ 456,835
Non-cash transactions:		
Additions to property, plant and equipment included in accounts payable and other accrued liabilities	$ 84,094	$ —
Non-cash interest expense capitalized and added to the cost of qualified assets	1,095	3,583
Issuance of common stock for purchase acquisition	—	1,471

(1) The Condensed Consolidated Statements of Cash Flows for the three and six months ended June 28, 2009 has been adjusted to reflect the adoption of new accounting guidance for share lending arrangements that were executed in connection with the Company's convertible debt offerings in fiscal 2007 (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") is a vertically integrated solar products and services company that designs, manufactures and delivers high-performance solar electric systems worldwide for residential, commercial and utility-scale power plant customers.

In the second quarter of fiscal 2010, the Company changed its segment reporting from its Components Segment and Systems Segment to its Utility and Power Plants ("UPP") Segment and Residential and Commercial ("R&C") Segment. Historically, Components Segment sales were generally solar cells and solar panels sold to a third-party dealer or original equipment manufacturer ("OEM") who would re-sell the product to the eventual customer, while Systems Segment sales were generally complete turn-key offerings sold directly to the end customer. Under the new segmentation, the Company's UPP Segment refers to its large-scale solar products and systems business, which includes power plant project development and project sales, turn-key engineering, procurement and construction ("EPC") services for power plant construction, and power plant operations and maintenance ("O&M") services. The UPP Segment also has responsibility for the Company's components business, which includes large volume sales of solar panels to third parties, often on a multi-year, firm commitment basis, and is a reflection of the growing demand of its utilities and other large-scale industrial solar equipment customers. The Company's R&C Segment focuses on solar equipment sales into the residential and small commercial market through its third-party global dealer network, as well as direct sales and EPC and O&M services for the commercial and public sectors installing rooftop and ground-mounted solar systems. The Company's President and Chief Executive Officer, as the chief operating decision maker ("CODM"), has organized the Company and manages resource allocations and measures performance of the Company's activities among these two segments.

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 2010 consists of 52 weeks while fiscal year 2009 consists of 53 weeks. The second quarter of fiscal 2010 ended on July 4, 2010 and the second quarter of fiscal 2009 ended on June 28, 2009.

Basis of Presentation

The accompanying condensed consolidated interim financial statements have been prepared under 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 the new share lending guidance discussed below.

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, investments in joint ventures, certain accrued liabilities including accrued warranty reserves, valuation of debt without the conversion feature, valuation of share lending arrang ements, income taxes and tax valuation allowances. Actual results could materially differ from those estimates.

In connection with the Company's continued efforts to remediate internal controls in the Philippines operations, it has identified certain out-of-period and incorrectly recorded adjustments that had the net effect of increasing income from continuing operations before income taxes and equity in earnings of unconsolidated investees by $1.1 million for the three months ended July 4, 2010 and decreasing income from continuing operations before income taxes and equity in earnings of unconsolidated investees by $0.1 million for the six months ended July 4, 2010. Those adjustments are primarily related to accounts payable, accrued liabilities, inventories and prepaid expenses and related to the first quarter ended April 4, 2010, and the years ended Januar y 3, 2010 and December 28, 2008. The effect of these items is not material to current and prior period income from continuing operations before income taxes and equity in earnings of unconsolidated investees and net income (loss).

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 July 4, 2010 and its results of operations for the three and six months ended July 4, 2010 and June 28, 2009, and cash flows for the six months ended July 4, 2010 and June 28, 2009. These condensed consolidated interim financial statements are not necessarily indicative of the results to be expected for the entire year.

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

Restatement of Previously Issued Condensed Consolidated Financial Statements

On November 16, 2009, the Company announced that its Audit Committee commenced an independent investigation into certain accounting and financial reporting matters at its Philippines operations ("SPML"). The Audit Committee retained independent counsel, forensic accountants and other experts to assist it in conducting the investigation.

As a result of the investigation, the Audit Committee concluded that certain unsubstantiated accounting entries were made at the direction of the Philippines-based finance personnel in order to report results for manufacturing operations that would be consistent with internal expense projections. The entries generally resulted in an understatement of the Company's cost of goods sold (referred to as "Cost of revenue" in its Condensed Consolidated Statements of Operations). The Audit Committee concluded that the efforts were not directed at achieving the Company's overall financial results or financial analysts' projections of the Company's financial results. The Audit Committee also determined that these accounting issues were confined to the accounting function in the Philippines. Finally, the Audit Co mmittee concluded that executive management neither directed nor encouraged, nor was aware of, these activities and was not provided with accurate information concerning the unsubstantiated entries. In addition to the unsubstantiated entries, during the Audit Committee investigation various accounting errors were discovered by the investigation and by management.

The nature and effect of the restatements resulting from the Audit Committee's independent investigation, including the impact to the previously issued interim condensed consolidated financial statements, were provided in the Company's Annual Report on Form 10-K for the year ended January 3, 2010. Prior year reports on Form 10-Q were restated and filed on May 3, 2010 by submission of Forms 10-Q/A. The amounts presented in this Form 10-Q reflect the restatements filed in these amendments. For additional information regarding the Company's disclosure controls and procedures see *Part I — "Item 4: Controls and Procedures*" in the Company's Quarterly Report on Form 10-Q for the quarter ended July 4, 2010.

Summary of Significant Accounting Policies

These condensed consolidated financial statements and accompanying notes should be read in conjunction with the Company's annual consolidated financial statements and notes thereto for the year ended January 3, 2010 included in its Annual Report on Form 10-K filed with the Securities and Exchange Commission ("SEC").

Revenue Recognition of Power Plants

In connection with the Company's acquisition of SunRay Malta Holdings Limited ("SunRay"), the Company began to develop and sell power plants which generally include sale or lease of related real estate (see Note 2). Revenue recognition for these power plants require adherence to specific guidance for real estate sales, which provides that if the Company held control over land or land rights prior to the execution of an EPC contract, the Company would recognize revenue and the corresponding costs once the sale is consummated, the buyer's initial and any continuing investments are adequate, the resulting receivables are not subject to su bordination and the Company has transferred the customary risk and rewards of ownership to the buyer. In general, the sale is consummated upon the execution of an agreement documenting the terms of the sale and a minimum initial payment by the buyer to substantiate the transfer of risk to the buyer. This may result in the Company deferring revenue during construction, even if a sale was consummated, until the buyer's initial investment payment is received by the Company, at which time revenue would be recognized on a percentage of completion basis as work is completed. Revenue recognition methods for the Company's power plants not involving real estate remain subject to the Company's historical practice using the percentage-of-completion method.

Recently Adopted Accounting Guidance

Share Lending Arrangements

In June 2009, the Financial Accounting Standards Board ("FASB") issued new accounting guidance that changed how companies account for share lending arrangements that were executed in connection with convertible debt offerings or other financings. The new accounting guidance requires all such share lending arrangements to be valued and amortized as interest expense in the same manner as debt issuance costs. As a result of the new accounting guidance, existing share lending arrangements relating to the Company's class A common stock are required to be measured at fair value and amortized as interest expense in its Condensed Consolidated Financial Statements. In addition, in the event that counterparty default under the share lending arrangement becomes probable, the Company is required to recognize an expense in its Conde nsed Consolidated Statement of Operations equal to the then fair value of the unreturned loaned shares, net of any probable recoveries. The Company adopted the new accounting guidance effective January 4, 2010, the start of its fiscal year, and applied it retrospectively to all prior periods as required by the guidance.

The Company has two historical share lending arrangements subject to the new guidance. In connection with the issuance of its 1.25% senior convertible debentures ("1.25% debentures") and 0.75% senior convertible debentures ("0.75% debentures"), the Company loaned 2.9 million shares of its class A common stock to Lehman Brothers International (Europe) Limited ("LBIE") and 1.8 million shares of its class A common stock to Credit Suisse International ("CSI") under share lending arrangements. Application of the new accounting guidance resulted in higher non-cash amortization of imputed share lending costs in the current and prior periods, as well as a significant non-cash loss resulting from Lehman Brothers Holding Inc. ("Lehman") filing of 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. The then fair value of the 2.9 million shares of the Company's class A common stock loaned and unreturned by LBIE is $213.4 million, which was expensed retrospectively in the third quarter of fiscal 2008. In addition, on a cumulative basis from the respective issuance dates of the share lending arrangements through January 3, 2010, the Company has recognized $1.6 million in additional non-cash interest expense (see Note 12).

As a result of the Company's adoption of the new accounting guidance for share lending arrangements, the Company's Condensed Consolidated Balance Sheet as of January 3, 2010 has been adjusted as follows:

(In thousands)	As Adjusted in this Quarterly Report on Form 10-Q	As Previously Reported in the 2009 Annual Report on Form 10-K (1)
Assets		
Prepaid expenses and other current assets	$ 104,531	$ 104,442
Other long-term assets	82,743	81,973
Total assets	2,696,895	2,696,036
Stockholders' Equity		
Additional paid-in capital	1,520,933	1,305,032
Retained earnings (accumulated deficit)	(114,309)	100,733
Total stockholders' equity	1,376,380	1,375,521

(1) The prior period balance of "Other long-term assets" has been reclassified to conform to the current period presentation in the Company's Condensed Consolidated Balance Sheets which separately discloses "Project assets – plants and land, net of current portion."

As a result of the Company's adoption of the new accounting guidance for share lending arrangements, the Company's Condensed Consolidated Statement of Operations for the three and six months ended June 28, 2009 has been adjusted as follows:

(In thousands, except per share data)	Three Months Ended June 28, 2009		Six Months Ended June 28, 2009	
	As Adjusted in this Quarterly Report on Form 10-Q	As Previously Reported in Quarterly Report on Form 10-Q/A	As Adjusted in this Quarterly Report on Form 10-Q	As Previously Reported in Quarterly Report on Form 10-Q/A
Interest expense	$ (9,763)	$ (9,528)	$ (16,034)	$ (15,649)
Income (loss) before income taxes and equity in earnings of unconsolidated investees	5,968	6,203	(24,325)	(23,940)
Net income	14,324	14,559	4,472	4,857
Net income per share of class A and class B common stock:				
Basic	$ 0.16	$ 0.16	$ 0.05	$ 0.06
Diluted	$ 0.15	$ 0.16	$ 0.05	$ 0.05

As a result of the Company's adoption of the new accounting guidance for share lending arrangements, the Company's Condensed Consolidated Statement of Cash Flows for the six months ended June 28, 2009 has been adjusted as follows:

(In thousands)	Six Months Ended June 28, 2009	
	As Adjusted in this Quarterly Report on Form 10-Q	As Previously Reported in Quarterly Report on Form 10-Q/A
Cash flows from operating activities:		
Net income	$ 4,472	$ 4,857
Non-cash interest expense	11,321	10,936
Net cash used in operating activities	(47,689)	(47,689)

Variable Interest Entities ("VIEs")

In June 2009, the FASB issued new accounting guidance regarding consolidation of VIEs to eliminate the exemption for qualifying special purpose entities, provide a new approach for determining which entity should consolidate a VIE, 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 VIE. The new accounting guidance became effective for fiscal years beginning after November 15, 2009. The Company's adoption of the new accounting guidance in the first quarter of fiscal 2010 had no impact on its Condensed Consolidated Financial Statements (see Note 11).

Revenue Arrangements with Multiple Deliverables

In October 2009, the FASB issued new accounting guidance for revenue arrangements with multiple deliverables. Specifically, the new guidance requires an entity to allocate arrangement consideration at the inception of an arrangement to all of its deliverables based on their relative selling prices. In addition, the new guidance eliminates the use of the residual method of allocation and requires the relative-selling-price method in all circumstances in which an entity recognizes revenue for an arrangement with multiple deliverables. The new accounting guidance is effective in the fiscal year beginning on or after June 15, 2010. Early adoption is permitted. The Company adopted the new accounting guidance in the first quarter of fiscal 2010 and applied the prospective application for new or materially modified arrangements with multiple de liverables. The Company's adoption of the new accounting guidance did not have a material impact on its Condensed Consolidated Financial Statements.

Fair Value of Assets and Liabilities

In January 2010, the FASB issued updated guidance related to fair value measurements and disclosures, which will require the Company to disclose separately the amounts of significant transfers in and out of Level 1 and Level 2 fair value measurements and to describe the reasons for the transfers. In addition, in the reconciliation for fair value measurements using significant unobservable inputs, or Level 3, the Company will disclose separately information about purchases, sales, issuances and settlements on a gross basis rather than on a net basis. The updated guidance also requires that the Company provide fair value measurement disclosures for each class of assets and liabilities and disclosures about the valuation techniques and inputs used to measure fair value for both recurring and non-recurring fair value measurements for Level 2 and Level 3 fair value measurements. The updated guidance is effective for interim or annual financial reporting periods beginning after December 15, 2009, except for the disclosures about purchases, sales, issuances and settlements in the roll forward activity in Level 3 fair value measurements, which are effective for fiscal years beginning after December 15, 2010 and for interim periods within those fiscal years. The Company's adoption of the updated guidance had no impact on its financial position, results of operations, or cash flows and only required additional financial statements disclosures as set forth in Notes 7, 12 and 14.

Issued Accounting Guidance Not Yet Adopted

There has been no issued accounting guidance not yet adopted by the Company that it believes is material, or is potentially material to the Company's Condensed Consolidated Financial Statements.

Note 2. *BUSINESS COMBINATIONS*

SunRay

On March 26, 2010, the Company completed its acquisition of SunRay, a European solar power plant developer company organized under the laws of Malta, under which the Company purchased all the issued share capital of SunRay for $296.1 million. As a result, SunRay became a wholly-owned subsidiary of the Company and the results of operations of SunRay have been included in the Condensed Consolidated Statement of Operations of the Company since March 26, 2010. As part of the acquisition, the Company acquired SunRay's project pipeline of solar photovoltaic projects in Italy, France, Israel, Spain, the United Kingdom and Greece. The pipeline consists of projects in various stages of development. SunRay's power plant development and project finance team consists of approximately 70 employees.

Purchase Price Consideration

The total consideration for the acquisition was $296.1 million, including: (i) $263.4 million paid in cash to SunRay's class A shareholders, class B shareholders and class C shareholders; (ii) $18.7 million paid in cash to repay outstanding debt of SunRay; and (iii) $14.0 million in promissory notes issued by SunPower North America, LLC, a wholly-owned subsidiary of the Company, and guaranteed by SunPower. A portion of the purchase price allocated to SunRay's class A shareholders, class B shareholders and certain non-management class C shareholders ($244.4 million in total) was paid by the Company in cash and the remaining portion of the purchase price allocated to SunRay's class C management shareholders was paid with a combination of $19.0 million in cash and $14.0 million in promissory notes.

The $14.0 million in promissory notes issued to SunRay's management shareholders have been structured to provide a retention incentive. Since the vesting and payment of the promissory notes are contingent on future employment, the promissory notes are considered deferred compensation and therefore are not included in the purchase price allocated to the net assets acquired.

A total of $32.3 million of the purchase price paid and promissory notes payable to certain principal shareholders of SunRay will be held in escrow for two years following March 26, 2010, and be subject to potential indemnification claims that may be made by the Company during that period. The escrow fund consists of $28.7 million paid in cash and $3.6 million in promissory notes issued by SunPower North America, LLC. The escrow is generally tied to compliance with the representations and warranties made as part of the acquisition. Therefore, the $28.7 million in cash of the $263.4 million cash consideration is considered a part of the purchase price allocated to the net assets acquired. The funds in escrow, less any amounts relating to paid or pending claims, will be released two years following March 26, 2010.

Preliminary Purchase Price Allocation

The Company accounted for this acquisition using the acquisition method. The Company preliminarily allocated the purchase price to the acquired assets and liabilities based on their estimated fair values at the acquisition date as summarized in the following table. The allocation of the purchase price on March 26, 2010 was adjusted in this report as follows:

(In thousands)	As Adjusted	As Previously Reported
Net tangible assets acquired	$ 44,686	$ 48,999
Project assets	79,160	98,784
Purchased technology	1,120	1,120
Goodwill	157,124	133,187
Total purchase consideration	$ 282,090	$ 282,090

The fair value of net tangible assets acquired on March 26, 2010 was adjusted in this report as follows:

(In thousands)	As Adjusted	As Previously Reported
Cash and cash equivalents	$ 9,391	$ 9,391
Restricted cash and cash equivalents	36,701	46,917
Accounts receivable, net	1,958	5,891
Prepaid expenses and other assets	7,933	54,584
Project assets – plants and land	19,624	—
Property, plant and equipment, net	452	455
Assets of discontinued operations	186,674	175,439
Total assets acquired	262,733	292,677
Accounts payable	(4,324)	(16,479)
Other accrued expenses and liabilities	(11,688)	(52,984)
Debt (see Note 12)	(42,707)	(174,215)
Liabilities of discontinued operations	(159,328)	—
Total liabilities acquired	(218,047)	(243,678)
Net assets acquired	$ 44,686	$ 48,999

Since the Company's purchase price allocation was not fully complete as of the first quarter ended April 4, 2010, the Company recorded adjustments to the fair value of certain assets and liabilities as additional information became available in the second quarter of fiscal 2010. These fair value adjustments were retrospectively applied to the acquisition date of March 26, 2010 as required by current accounting guidance. We are still in the process of reviewing the fair value of certain assets and liabilities acquired as additional information becomes available in the third quarter of fiscal 2010.

In the Company's determination of the fair value of the project assets and purchased technology acquired, it considered, among other factors, three generally accepted valuation approaches: the income approach, the market approach and the cost approach. The Company selected the approaches that it believed to be most indicative of the fair value of the assets acquired.

Project Assets

The project assets totaling $79.2 million represent intangible assets that consist of: (i) projects and EPC pipeline, which relate to the development of power plants; and (ii) O&M pipeline, which relate to maintenance contracts that are established after the developed plants are sold. The Company applied the income approach using the Multi-Period Excess Earnings Method based on estimates and assumptions of future performance of these project assets provided by SunRay's and the Company's management to determine the fair value of the project assets. SunRay's and the Company's estimates and assumptions regarding the fair value of the project assets is derived from probability adjusted cash flows of certain project assets acquired based on the varying development stages of each project asset on the acquisition dat e. The Company is amortizing the project assets to "Selling, general and administrative" expense based on the pattern of economic benefit provided using the same probability adjusted cash flows from the sale of solar power plants over estimated lives of 4 years from the date of acquisition.

Purchased Technology

The Company applied the cost approach to calculate the fair value of internally developed technologies related to the project development business. The Company determined the fair value of the purchased technology totaling $1.1 million based on estimates and assumptions for the cost of reproducing or replacing the asset based on third party charges, salaries of employees and other internal development costs incurred. The Company is amortizing the purchased technology to "Cost of revenue" within the UPP Segment on a straight-line basis over estimated lives of 5 years.

Goodwill

Of the total estimated purchase price paid at the time of acquisition, $133.2 million had been initially allocated to goodwill within the UPP Segment during the first quarter ended April 4, 2010. During the second quarter ended July 4, 2010, the Company recorded adjustments aggregating $23.9 million to increase goodwill related to the acquisition of SunRay on March 26, 2010 to $157.1 million. These adjustments were based upon the Company obtaining additional information on the acquired assets and liabilities as additional information became available in the second quarter of fiscal 2010. The adjustments included: (i) the elimination of a non-current tax receivable and a related non-current tax liability; (ii) changes to the value of certain assets and liabilities acquired in "Assets of discontinued operations" and "Liab ilities of discontinued operations," respectively; as well as (iii) changes to the value of certain acquired prepaid expenses, other current assets, accounts payable, other accrued liabilities and debt. These fair value adjustments were retrospectively applied to the acquisition date of March 26, 2010 as required by current accounting guidance. Goodwill represents the excess of the purchase price of an acquired business over the fair value of the underlying net tangible and other intangible assets and is not deductible for tax purposes. Among the factors that contributed to a purchase price in excess of the fair value of the net tangible and other intangible assets was the acquisition of an assembled workforce, synergies in technologies, skill sets, operations, customer base and organizational cultures.

Acquisition Related Costs

Acquisition-related costs of $0.1 million and $6.5 million recognized in the three and six months ended July 4, 2010, respectively, include transaction costs such as legal, accounting, valuation and other professional services, which the Company has classified in "Selling, general and administrative" expense in its Condensed Consolidated Statement of Operations.

Pro Forma Financial Information

Supplemental information on an unaudited pro forma basis, as if the acquisition of SunRay was completed at the beginning of the first quarter in fiscal 2010 and 2009, is as follows:

	Three Months Ended		Six Months Ended	
(In thousands, except per share amounts)	**July 4, 2010**	**June 28, 2009**	**July 4, 2010**	**June 28, 2009**
Revenue	$ 384,238	$ 299,341	$ 731,095	$ 510,984
Net income (loss)	(6,216)	2,989	(14,277)	(20,683)
Basic net income (loss) per share	$ (0.07)	$ 0.03	$ (0.15)	$ (0.24)
Diluted net income (loss) per share	$ (0.07)	$ 0.03	$ (0.15)	$ (0.24)

The unaudited pro forma supplemental information is based on estimates and assumptions, which the Company believes are reasonable. The unaudited pro forma supplemental information prepared by management is not necessarily indicative of the consolidated financial position or results of operations in future periods or the results that actually would have been realized had the Company and SunRay been a combined company during the specified periods.

Note 3. ***DISCONTINUED OPERATIONS***

In connection with the Company's acquisition of SunRay on March 26, 2010, it acquired a SunRay project company, Cassiopea PV S.r.l ("Cassiopea"), operating a previously completed 20 megawatt ("MWac") solar power plant in Montalto di Castro, Italy. In the period in which a component of the Company is classified as held-for-sale, it is required to present the related assets, liabilities and results of operations as discontinued operations. As of July 4, 2010, the Company had not sold Cassiopea and its assets and liabilities are classified as discontinued operations on the Condensed Consolidated Balance Sheet. In addition, Cassiopea's results of operations for the three and six months ended July 4, 2010 were classified as "Income from discontinued operations, net of taxes" in the Condensed Consolidated Statements of Operations. On August 5, 2010, the Company entered into an agreement providing for the sale of Cassiopea (see Note 19).

As of July 4, 2010, the assets and liabilities of Cassiopea are as follows:

(In thousands)	**July 4, 2010**
Assets of discontinued operations	
Restricted cash and cash equivalents	$ 27,697
Accounts receivable, net	5,517
Prepaid expenses and other assets	13,344
Property, plant and equipment, net	158,392
	$ 204,950
Liabilities of discontinued operations	
Accounts payable and other accrued liabilities	$ 19,900
Bank loans	146,532
	$ 166,432

In both the three and six months ended July 4, 2010, condensed results of operations relating to Cassiopea are as follows:

(In thousands)	**July 4, 2010**
Utility and power plants revenue	$ 7,905
Income before income taxes	11,510
Income from discontinued operations, net of taxes	7,896

Cassiopea Project Loan

In connection with its acquisition of SunRay, the Company consolidated the project debt of Cassiopea, which was provided by a consortium of lenders ("Cassiopea Lenders"). As of July 4, 2010, Cassiopea had outstanding Euro 116.4 million ($146.5 million based on the exchange rate as of July 4, 2010) under the credit agreement. Concurrent with entering into the credit agreement, Cassiopea entered into interest rate swaps with the Cassiopea Lenders to mitigate the interest rate risk on the debt. For additional details regarding the terms of the credit agreement and valuation of the interest rate swaps see Note 12 below.

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

Goodwill

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

(In thousands)	**UPP**	**R&C**	**Total**
As of January 3, 2010	$ 78,634	$ 119,529	$ 198,163
Goodwill arising from business combination	157,124	—	157,124
Translation adjustment	—	(1,392)	(1,392)
As of July 4, 2010	$ 235,758	$ 118,137	$ 353,895

The balance of goodwill within the UPP Segment increased $157.1 million in the first half of fiscal 2010 due to the Company's acquisition of SunRay. This amount represents the excess of the purchase price over the fair value of the underlying net tangible and other intangible assets of SunRay (see Note 2). The translation adjustment for the revaluation of the Company's subsidiaries' goodwill into U.S. dollar equivalents decreased the balance of goodwill within the R&C Segment by $1.4 million during the first half of fiscal 2010.

In the second quarter of fiscal 2010, the Company changed its segment reporting structure to present the UPP Segment and R&C Segment to better align its sales, construction, engineering and customer service teams based on end-customer segments rather than by sales channel. Management evaluated all the facts and circumstances relating to the change in its segment reporting structure and concluded that no impairment indicator exists as of July 4, 2010 that would require impairment testing of its new reporting units.

Intangible Assets

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

(In thousands)	Gross	Accumulated Amortization	Net
As of July 4, 2010			
Project assets	$ 79,160	$ (8,032)	$ 71,128
Patents and purchased technology	52,519	(47,457)	5,062
Purchased in-process research and development	1,000	-	1,000
Trade names	2,530	(2,366)	164
Customer relationships and other	28,215	(16,915)	11,300
	$ 163,424	$ (74,770)	$ 88,654
As of January 3, 2010			
Patents and purchased technology	$ 51,398	$ (42,014)	$ 9,384
Purchased in-process research and development	1,000	—	1,000
Trade names	2,623	(2,212)	411
Customer relationships and other	28,616	(14,437)	14,179
	$ 83,637	$ (58,663)	$ 24,974

In connection with the acquisition of SunRay on March 26, 2010, the Company recorded $80.2 million of other intangible assets. All of the Company's acquired other intangible assets are subject to amortization. Aggregate amortization expense for other intangible assets totaled $11.7 million and $16.5 million in the three and six months ended July 4, 2010, respectively, and $4.1 million and $8.2 million in the three and six months ended June 28, 2009, respectively. As of July 4, 2010, the estimated future amortization expense related to other intangible assets is as follows (in thousands):

Year	Amount
2010 (remaining six months)	$ 22,143
2011	27,423
2012	22,830
2013	16,153
2014	86
Thereafter	19
	$ 88,654

Note 5. ***BALANCE SHEET COMPONENTS***

(In thousands)	July 4, 2010	January 3, 2010
Accounts receivable, net:		
Accounts receivable, gross	$ 205,258	$ 253,039
Less: allowance for doubtful accounts	(3,831)	(2,298)
Less: allowance for sales returns	(1,824)	(1,908)
	$ 199,603	$ 248,833
Inventories:		
Raw materials	$ 67,669	$ 76,423
Work-in-process	26,340	20,777
Finished goods	172,747	105,101
	$ 266,756	$ 202,301
Costs and estimated earnings in excess of billings as compared to billings in excess of costs and estimated earnings for all contracts in progress:		
Costs and estimated earnings in excess of billings on contracts in progress	$ 57,587	$ 26,062
Billings in excess of costs and estimated earnings on contracts in progress	(9,276)	(17,346)
	$ 48,311	$ 8,716
Contracts in progress at quarter end:		
Costs incurred to date	$ 948,664	$ 1,473,464
Estimated earnings to date	259,148	314,892
Contract revenue earned to date	1,207,812	1,788,356
Less: Billings to date, including earned incentive rebates	(1,159,501)	(1,779,640)
	$ 48,311	$ 8,716
Prepaid expenses and other current assets:		
VAT receivables, current portion	$ 41,188	$ 27,054
Short-term deferred tax assets	4,973	5,920
Foreign currency derivatives	90,236	5,000
Income tax receivable	12,605	3,171
Note receivable (1)	10,000	—
Other receivables (2)	60,660	43,531
Other prepaid expenses	59,021	13,845
	$ 278,683	$ 98,521
Other long-term assets:		
Investments in joint ventures	$ 73,316	$ 39,820
Bond hedge derivative	40,693	—
Note receivable (1)	—	10,000
Investments in non-public companies	6,178	4,560
VAT receivables, net of current portion	6,459	7,357
Long-term debt issuance costs	12,521	6,942
Other	13,714	14,064
	$ 152,881	$ 82,743

(1) In June 2008, the Company loaned $10.0 million to a third-party private company under a three-year note receivable that is convertible into equity at the Company's option.
(2) Includes tolling agreements with suppliers in which the Company provides polysilicon required for silicon ingot manufacturing and procures the manufactured silicon ingots from the suppliers (see Notes 10 and 11).

(In thousands)	July 4, 2010	January 3, 2010
Accrued liabilities:		
VAT payables	$ 22,236	$ 15,219
Foreign currency derivatives	11,125	27,354
Short-term warranty reserves	7,838	9,693
Employee compensation and employee benefits	25,285	18,161
Property, plant and equipment	84,155	2,777
Other	39,570	40,804
	$ 190,209	$ 114,008
Other long-term liabilities:		
Embedded conversion option derivative	$ 40,693	$ —
Warrants derivatives	34,477	—
Long-term warranty reserves	44,153	36,782
Uncertain tax positions	17,567	14,478
Other	21,508	18,785
	$ 158,398	$ 70,045
Accumulated other comprehensive income (loss):		
Cumulative translation adjustment	$ (2,130)	$ (3,864)
Net unrealized income (loss) on derivatives, net of tax provision of $6.1 million and $2.3 million as of July 4, 2010 and January 3, 2010, respectively	41,510	(13,493)
	$ 39,380	$ (17,357)

Note 6. ***PROPERTY, PLANT AND EQUIPMENT, NET***

(In thousands)	July 4, 2010	January 3, 2010
Land and buildings	$ 18,421	$ 17,409
Leasehold improvements	201,460	197,524
Manufacturing equipment (1)	546,494	547,968
Computer equipment	37,942	34,835
Solar power systems	9,417	8,708
Furniture and fixtures	5,019	4,540
Construction-in-process	231,776	57,305
	1,050,529	868,289
Less: accumulated depreciation (2)	(235,382)	(185,945)
	$ 815,147	$ 682,344

(1) Certain manufacturing equipment associated with solar cell manufacturing lines located at one of the Company's facilities in the Philippines is collateralized in favor of a third party lender. The Company provided security for advance payments received from a third party in fiscal 2008 totaling $40.0 million in the form of collateralized manufacturing equipment with a net book value of $32.1 million and $35.8 million as of July 4, 2010 and January 3, 2010, respectively (see Note 9).

(2) Total depreciation expense was $24.6 million and $49.3 million in the three and six months ended July 4, 2010, respectively, and $20.5 million and $38.9 million in the three and six months ended June 28, 2009, respectively.

Note 7. ***INVESTMENTS***

The Company's investments in money market funds and bank notes are carried at fair value. Fair values are determined based on a hierarchy that prioritizes the inputs to valuation techniques by assigning 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 investments in available-for-sale debt and equity securities 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. Information about the Company's interest rate swaps derivatives, bond hedge derivative, embedded conversion option derivative and over-allotment option derivative measured at fair value on a recurring basis is disclosed in Note 12. Information about the Company's foreign currency derivatives measured at fair value on a recurring basis is disclosed in Note 14. The Company does not have any nonfinancial assets or liabilities that are recognized or disclosed at fair value on a recurring basis in its condensed consolidated financial s tatements.

(In thousands)	July 4, 2010 Level 1	Level 2	Level 3	Total
Assets				
Money market funds	$ 414,796	$ —	$ 172	$ 414,968
Bank notes	—	143	—	143
	$ 414,796	$ 143	$ 172	$ 415,111

(In thousands)	January 3, 2010 Level 1	Level 2	Level 3	Total
Assets				
Money market funds	$ 418,372	$ —	$ 172	$ 418,544
Bank notes	—	101,085	—	101,085
	$ 418,372	$ 101,085	$ 172	$ 519,629

There have been no transfers between Level 1, Level 2 and Level 3 measurements during the first half of fiscal 2010. Available-for-sale securities utilizing Level 2 inputs to determine fair value are comprised of investments in bank notes totaling $0.1 million and $101.1 million as of July 4, 2010 and January 3, 2010, respectively. Available-for-sale securities utilizing Level 3 inputs to determine fair value are comprised of investments in money market funds totaling $0.2 million as of both July 4, 2010 and January 3, 2010.

Money Market Funds

The Company's 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. Investments in money market funds utilizing Level 3 inputs consist of the Company's investment in the Reserve International Liquidity Fund which amounted to $0.2 million as of both July 4, 2010 and January 3, 2010. The Company has estimated the value of its investment in the Reserve International Liquidity Fund to be $0.2 million based on information publicly disclosed by the Reserve International Liquidity Fund relative to its holdings and remaining obligations.

Bank Notes

Investments in bank notes utilizing Level 2 inputs consist of short-term certificates of deposit and select interest bearing bank accounts. Such investments are not traded on an open market and reside with the bank. Bank notes are highly liquid with maturities of zero to ninety days. Due to the short-term maturities, the Company has determined that the fair value of these investments should be at face value. Bank notes totaled $0.1 million and $101.1 million as of July 4, 2010 and January 3, 2010, respectively.

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

	July 4, 2010				January 3, 2010			
		Unrealized				Unrealized		
(In thousands)	Cost	Gross Gains	Gross Losses	Fair Value	Cost	Gross Gains	Gross Losses	Fair Value
Money market funds	$ 414,968	$ —	$ —	$ 414,968	$ 418,544	$ —	$ —	$ 418,544
Bank notes	143	—	—	143	101,085	—	—	101,085
	$ 415,111	$ —	$ —	$ 415,111	$ 519,629	$ —	$ —	$ 519,629

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

	July 4, 2010			January 3, 2010		
(In thousands)	Available-For-Sale	Cash Deposits	Total	Available-For-Sale	Cash Deposits	Total
Cash and cash equivalents	$ 220,649	$ 162,319	$ 382,968	$ 325,906	$ 289,973	$ 615,879
Short-term restricted cash and cash equivalents (1)	23,306	35,014	58,320	61,868	—	61,868
Short-term investments	172	—	172	172	—	172
Long-term restricted cash and cash equivalents (1, 2)	170,984	124,582	295,566	131,683	117,107	248,790
	$ 415,111	$ 321,915	$ 737,026	$ 519,629	$ 407,080	$ 926,709

(1) Includes cash collateralized bank standby letters of credit the Company provided to support advance payments received from customers, cash held in an escrow account for future advance payments by the Company, as well as cash obtained under loans acquired between SunRay and multiple banks required for pre-construction costs in Greece and Italy.

(2) Includes cash obtained under the Company's facility agreement with the Malaysian Government to finance the construction of its third solar cell manufacturing facility ("FAB3") in Malaysia.

The contractual maturities of available-for-sale securities, including money market funds, are as follows:

(In thousands)	July 4, 2010	January 3, 2010
Due in less than one year	$ 415,111	$ 519,629

Assets Measured at Fair Value on a Non-Recurring Basis

The Company holds minority investments comprised of common and preferred stock in joint ventures and other non-public companies. The Company monitors these minority investments for impairment, which are included in "Other long-term assets" in its Condensed Consolidated Balance Sheets 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 July 4, 2010 and January 3, 2010, the Company had $73.3 million and $39.8 million, respectively, in investments in joint ventures accounted for under the equity method and $6.2 million and $4.6 million, respectively, in investments accounted for under the cost method (see Note 11).

On June 30, 2010, Woongjin Energy Co., Ltd ("Woongjin Energy"), a joint venture in which the Company has a direct equity investment, completed its initial public offering ("IPO"). In connection with the IPO, the Company recognized a gain of $28.3 million as a result of its equity interest in Woongjin Energy being diluted because Woongjin Energy issued additional equity in its IPO (see Note 11).

The following table provides a summary of changes in fair value of the Company's investments in joint ventures and other non-public companies during the first half of fiscal 2010 and 2009, all of which utilize Level 3 inputs under the fair value hierarchy:

	Common and Preferred Stock	
(In thousands)	July 4, 2010	June 28, 2009
Balance at the beginning of the period	$ 44,380	$ 32,066
Gain on change in equity interest in unconsolidated investee	28,348	—
Additional investments	1,618	—
Payments	—	(19)
Equity in earnings of unconsolidated investees	5,148	4,378
Balance at the end of the period	$ 79,494	$ 36,425

Note 8. *ADVANCES TO SUPPLIERS*

The Company has entered into agreements with various polysilicon, ingot, wafer and solar panel vendors that specify future quantities and pricing of products to be supplied by the vendors for periods up to 11 years. Certain agreements also provide for penalties or forfeiture of advanced deposits in the event the Company terminates the arrangements (see Note 10). Under certain agreements, the Company is required to make prepayments to the vendors over the terms of the arrangements. In each of the first half of fiscal 2010 and 2009, the Company paid advances totaling $5.6 million in accordance with the terms of existing supply agreements. As of July 4, 2010 and January 3, 2010, advances to suppliers totaled $186.9 million and $190.6 million, respectively, the current portion of which is $33.2 million and $22.8 million, respectively. Two su ppliers accounted for 75% and 12% of total advances to suppliers as of July 4, 2010, and 76% and 15% as of January 3, 2010.

The Company's future prepayment obligations related to these agreements as of July 4, 2010 are as follows (in thousands):

Year	Amount
2010 (remaining six months)	$ 115,322
2011	109,772
2012	72,695
	$ 297,789

Note 9. ***CUSTOMER ADVANCES***

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. Beginning in the first quarter of fiscal 2010 and continuing through 2019, these advance payments are applied as a credit against the third party's polysilicon purchases from the Company. Such polysilicon is used by the third party to manufacture ingots, and potentially wafers, which are sold to the Company under an ingot supply agreement. As of July 4, 2010, the outstanding advance was $76.4 million of which $8.4 million had been classified in short-term customer advances and $68.0 million in long-term customer advances in the accompanying Condensed Consolidated Balance Sheet, based on projected product shipment dates. As of January 3, 2010, the outstanding advance was $80.0 million of which $8.0 million and $72.0 million had been classified in short-term customer advances and long-term customer advances, respectively. The Company provided security for the advances in the form of collateralized manufacturing equipment with a net book value of $32.1 million and $35.8 million as of July 4, 2010 and January 3, 2010, respectively. The Company also had $40.0 million of letters of credit issued by Deutsche Bank AG New York Branch ("Deutsche Bank") as of July 4, 2010 and by Wells Fargo Bank, N.A. ("Wells Fargo") as of January 3, 2010, and $4.3 million and $4.2 million held in an escrow account as of July 4, 2010 and January 3, 2010, respectively (see Notes 6 and 12).

The Company has also entered into other agreements with customers who have made advance payments for solar power products. These advances will be applied as shipments of product occur. As of July 4, 2010 and January 3, 2010, such customers had made advances of $15.2 million and $12.1 million, respectively, in the aggregate.

The estimated utilization of advances from customers as of July 4, 2010 is as follows (in thousands):

Year	Amount
2010 (remaining six months)	$ 11,747
2011	15,874
2012	8,000
2013	8,000
2014	8,000
Thereafter	40,000
	$ 91,621

Note 10. ***COMMITMENTS AND CONTINGENCIES***

Operating Lease Commitments

On June 29, 2009, the Company signed a commercial project financing agreement with Wells Fargo to fund up to $100 million of commercial-scale solar system projects through May 31, 2010. Under the financing agreement, the Company designed and built the systems, and upon completion of each system, sold the systems to Wells Fargo, who in turn, leased back the systems to the Company. Separately, the Company entered into power purchase agreements with end customers, who host the systems and buy the electricity directly from the Company.

In December 2009, the Company sold two solar system projects to Wells Fargo. Concurrent with the sale, the Company entered into agreements to lease the systems back from Wells Fargo over minimum lease terms of up to 20 years. Each system has a separate lease and was separately evaluated under lease accounting guidance. The leases call for an initial term of up to 20 years, and at the end of the lease term, the Company has the option to purchase the system at fair value or remove the system. The Company classified the two systems as operating leases in accordance with accounting guidance and considers the leases as normal leasebacks. The deferred profit on the sale of the systems is being recognized over the minimum term of the leases as a reduction of rent expense.

In addition, the Company leases its San Jose, California facility under a non-cancelable operating lease from Cypress Semiconductor Corporation ("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, Oregon, Australia, England, France, Germany, Greece, Israel, Italy, Malta, Spain and South Korea, all of which are leased from unaffiliated third parties. In addition, the Company acquired a lease arrangement in London, England, which is le ased from an affiliated party to SunRay.

Future minimum obligations under all non-cancelable operating leases as of July 4, 2010 are as follows (in thousands):

Year	Amount
2010 (remaining six months)	$ 4,874
2011	7,435
2012	6,229
2013	5,651
2014	4,991
Thereafter	20,546
	$ 49,726

Purchase Commitments

The Company purchases raw materials for inventory, construction 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 on specifications defined by the Company, or that establish parameters defining the Company's requirements. In certain instances, these agreements allow the Company the option to cancel, reschedule or adjust the Company's requirements based on its business needs prior to firm orders being placed. Consequently, only a portion of the Company's disclosed purchase commitments arising from these agreements are firm, non-cancelable and unconditional comm itments.

The Company also has agreements with several suppliers, including joint ventures, for the procurement of polysilicon, ingots, wafers and solar panels which specify future quantities and pricing of products to be supplied by the vendors for periods up to 11 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 8).

As of July 4, 2010, total obligations related to non-cancelable purchase orders totaled $251.4 million and long-term supply agreements totaled $5,471.8 million. Future purchase obligations under non-cancelable purchase orders and long-term supply agreements as of July 4, 2010 are as follows (in thousands):

Year	Amount
2010 (remaining six months)	$ 723,026
2011	673,182
2012	586,013
2013	583,647
2014	680,974
Thereafter	2,476,316
	$ 5,723,158

Total future purchase commitments of $5,723.2 million as of July 4, 2010 included 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 July 4, 2010 would be reduced by $1,781.1 million to $3,942.1 million had the Company's obligations under such tolling agreements been disclosed using net cash outflows.

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

Total future purchase commitments related to non-cancellable purchase orders for construction services of $241.0 million are due to the construction in progress at the Company's FAB3 in Malaysia. However, a material portion of these commitments will no longer be direct obligations of the Company or its wholly-owned subsidiaries since, as further described in Note 11, the Company's interest in FAB3 is, as of the third quarter of fiscal 2010, contained in an unconsolidated joint venture. The joint venture was formed between SunPower Technology, Ltd. ("SPTL"), an indirect subsidiary of the Company, AUO SunPower Sdn. Bhd. (formerly SunPower Malaysia Manufacturing Sdn. Bhd.), formerly a wholly-owned subsidiary of SPTL ("AUOSP"), AU Optronics Singapore Pte. Ltd. ("AUO"), and AU Optronics Corporat ion, the ultimate parent company of AUO ("AUO Taiwan"). The joint venture closed July 5, 2010 (the first day of the third quarter of fiscal 2010), and SPTL and AUO now jointly own FAB3 through each party's 50% equity ownership interest in AUOSP (see Note 11).

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 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 2, 5 or 10 years. The Company maintains reserves to cover the expected costs that could result from these warranties. The Company's expected costs are generally in the form of product replacement or repair. Warranty reserves are based on the Company's best estimate of such costs and are recognized as a cost of revenue. The Company continuously monitors product returns for warranty failures and maintains a reserve for the related warranty expenses based on various factors including historical warranty claims, results of accelerated lab testing, field monitoring, vendor reliability estimates, and data on industry averages for similar products. Historically, warranty costs have been within management's expectations.

Provisions for warranty reserves charged to cost of revenue were $4.6 million and $9.7 million during the three and six months ended July 4, 2010, respectively, and $5.3 million and $9.0 million during the three and six months ended June 28, 2009, respectively. Activity within accrued warranty for the three and six months ended July 4, 2010 and June 28, 2009 are summarized as follows (in thousands):

	Three Months Ended		Six Months Ended	
(In thousands)	**July 4, 2010**	**June 28, 2009**	**July 4, 2010**	**June 28, 2009**
Balance at the beginning of the period	$ 49,424	$ 30,566	$ 46,475	$ 28,062
Accruals for warranties issued during the period	4,646	5,316	9,705	8,993
Payments made during the period	(2,079)	(1,774)	(4,189)	(2,947)
Balance at the end of the period	$ 51,991	$ 34,108	$ 51,991	$ 34,108

System Put-Rights

EPC projects often require the Company to undertake customer obligations including: (i) system output performance guarantees; (ii) system maintenance; (iii) penalty payments or customer termination rights if the system the Company is constructing is not commissioned within specified timeframes or other construction milestones are not achieved; (iv) guarantees of certain minimum residual value of the system at specified future dates; and (v) system put-rights whereby the Company could be required to buy-back a customer's system at fair value on specified future dates if certain minimum performance thresholds are not met. To date, no such repurchases have been triggered.

Tax Sharing Agreement

The Company has a tax sharing agreement with its former parent, Cypress Semiconductor Corporation ("Cypress"), providing for each of the party's obligations concerning various tax liabilities while it was a wholly-owned subsidiary of Cypress. To the extent that the Company becomes entitled to utilize the Company's separate tax returns portions of any tax credit or loss carryforwards existing as of such date, the Company will distribute to Cypress the tax effect, estimated to be 40% for federal and state income tax purposes, of the amount of such tax loss carryforwards so utilized, and the amount of any credit carryforwards so utilized. The Company will distribute these amounts to Cypress in cash or in the Company's shares, at Cypress's option. As of January 3, 2010, the Company had $27.6 million of Cal ifornia net operating loss carryforwards, $2.6 million of federal credit carryforwards and $1.4 million of California credit carryforwards, meaning that such potential future payments to Cypress, which would be made over a period of several years, would therefore aggregate $2.2 million. These amounts do not reflect potential adjustments for the effect of the restatement of the Company's consolidated financial statements in fiscal 2009 and 2008. In fiscal 2009, the Company paid $16.5 million in cash to Cypress, of which $15.1 million represents the federal component and $1.4 million represents the state component.

The Internal Revenue Service ("IRS") is currently conducting audits of Cypress's federal income tax returns for fiscal 2006, 2007 and 2008. As of July 4, 2010, no adjustments to the tax liabilities have been proposed by the IRS. However, the IRS has not completed their examination and there can be no assurance that there will be no material adjustments upon completion of their review. Additionally, while years prior to fiscal 2006 for Cypress's U.S. corporate tax return are not open for assessment, the IRS can adjust net operating loss and research and development carryovers that were generated in prior years and carried forward to fiscal 2006 and subsequent years. If the IRS sustains tax assessments against Cypress for years in which SunPower was included in Cypress's consolidated federal tax return, SunPower may be obligate d to indemnify Cypress under the terms of the tax sharing agreement.

Uncertain Tax Positions

Total liabilities associated with uncertain tax positions were $17.6 million and $14.5 million as of July 4, 2010 and January 3, 2010, 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 (see Note 15).

Indemnifications

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

For up to two years (or possibly longer) after the date of Cypress's distribution of the Company's class B common stock on September 29, 2008, the Company cannot issue 85.8 million or more shares of its class A common stock or participate in one or more transactions (excluding the distribution itself) in which 42 million or more shares of its then-existing class A common stock were acquired, if any such transaction(s) are in connection with a plan or series of related transactions that includes the distribution. If the Company were to participate in such a transaction, and thereby triggered tax to Cypress on the distribution, then assuming that Cypress distributed 42 million shares, Cypress's top marginal income tax rate was 40% for federal and state income tax purposes, the fair market value of the class B common stock was $60.00 per share, and Cypress's tax basis in such stock was $5.00 per share on the date of the distribution, the Company's liability under its indemnification obligation to Cypress would be $924.0 million.

Legal Matters

Audit Committee Investigation and Related Litigation

In November 2009, the Audit Committee of the Company's Board of Directors initiated an independent investigation regarding certain unsubstantiated accounting entries. See Note 1 for information regarding the Audit Committee's investigation. The Audit Committee announced the results of its investigation in March 2010.

Three securities class action lawsuits were filed against the Company and certain of its current and former officers and directors in the United States District Court for the Northern District of California on behalf of a class consisting of those who acquired the Company's securities from April 17, 2008 through November 16, 2009. The cases were consolidated as Plichta v. SunPower Corp. et al., Case No. CV-09-5473-RS (N.D. Cal.), and lead plaintiffs and lead counsel were appointed on March 5, 2010. Lead plaintiffs filed a consolidated complaint on May 28, 2010. The actions arise from the Audit Committee's investigation announcement on November 16, 2009. The consolidated complaint alleges that the defendants made material misstatements and omissions concerning the Company's financial results for 2008 and 2009, seeks an unspeci fied amount of damages, and alleges violations of Sections 10(b) and 20(a) of the Securities Exchange Act of 1934, and Sections 11 and 15 of the Securities Act of 1933. The Company believes it has meritorious defenses to these allegations and will vigorously defend itself in these matters. Defendants filed motions to dismiss the consolidated complaint on August 5, 2010, which are scheduled to be heard on November 4, 2010. The Company is currently unable to determine if the resolution of these matters will have an adverse effect on the Company's financial position, liquidity or results of operations.

Derivative actions purporting to be brought on the Company's behalf have also been filed in state and federal courts against several of the Company's current and former officers and directors based on the same events alleged in the securities class action lawsuits described above. The California state derivative cases were consolidated as In re SunPower Corp. S'holder Derivative Litig., Lead Case No. 1-09-CV-158522 (Santa Clara Sup. Ct.), and co-lead counsel for plaintiffs have been appointed. The complaints assert state-law claims for breach of fiduciary duty, abuse of control, unjust enrichment, gross mismanagement, and waste of corporate assets. Plaintiffs are scheduled to file a consolidated complaint on or before September 15, 2010. The federal derivative complaints were consolidated as In re SunPower Corp. S' ;holder Derivative Litig., Master File No. CV-09-05731-RS (N.D. Cal.), and lead plaintiffs and co-lead counsel were appointed on January 4, 2010. The complaints assert state-law claims for breach of fiduciary duty, waste of corporate assets, and unjust enrichment, and seek an unspecified amount of damages. The Company intends to oppose the derivative plaintiffs' efforts to pursue this litigation on the Company's behalf. The Company is currently unable to determine if the resolution of these matters will have an adverse effect on the Company's financial position, liquidity or results of operations.

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

Note 11. ***JOINT VENTURES***

Joint Venture with Woongjin Energy

The Company and Woongjin Holdings Co., Ltd. ("Woongjin") formed Woongjin Energy in fiscal 2006, a joint venture to manufacture monocrystalline silicon ingots in Korea. The Company and Woongjin have funded the joint venture through capital investments. In addition, Woongjin Energy obtained a $33.0 million loan originally guaranteed by Woongjin. The Company supplies polysilicon, services and technical support required for silicon ingot manufacturing to the joint venture. Once manufactured, the Company purchases the silicon ingots from the joint venture under a nine-year agreement through 2016. As of July 4, 2010 and January 3, 2010, $19.7 million and $19.3 million, respectively, remained due and receivable from Woongjin Energy related to the polysilicon the Company supplied to the joint venture for silicon ingot manufacturing. Payments to Woongjin Energy for manufacturing silicon ingots totaled $42.3 million and $89.3 million during the three and six months ended July 4, 2010, respectively, and $42.5 million and $74.8 million during the three and six months ended June 28, 2009, respectively. As of July 4, 2010 and January 3, 2010, $33.2 million and $29.2 million, respectively, remained due and payable to Woongjin Energy.

On June 30, 2010, Woongjin Energy completed its IPO and the sale of 15.9 million new shares of common stock. Shares of Woongjin Energy's common stock are now traded publicly on the Korean Exchange. The Company did not participate in this common stock issuance by Woongjin Energy. The Company continues to hold 19.4 million shares of Woongjin Energy's common stock. As a result of the new common stock issuance by Woongjin Energy in the IPO, the Company's percentage equity interest in Woongjin Energy decreased from 42.1% to 31.3% of Woongjin Energy's issued and outstanding shares of common stock. In connection with the IPO, the Company recognized a gain of $28.3 million as a result of its equity interest in Woongjin Energy being diluted because Woongjin Energy issued additional equity in its IPO. In connection with Woo ngjin Energy's IPO, the Company entered into an agreement to, among other things, restrict its selling or transferring such shares for a period of six months following June 30, 2010. There is no obligation or expectation for the Company to provide additional funding to Woongjin Energy.

As of July 4, 2010 and January 3, 2010, the Company had a $67.0 million and $33.8 million, respectively, investment in the joint venture in its Condensed Consolidated Balance Sheets which represented a 31.3% and 42.1% equity investment, respectively. 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 $1.7 million and $4.8 million for the three and six months ended July 4, 2010, respectively, and $3.2 million and $4.5 million for the three and six months ended June 28, 2009, respectively, is included in "Equity in earnings of unconsolidated investees" in the Condensed Consolidated Statemen ts of Operations. The Company's maximum exposure to loss as a result of its involvement with Woongjin Energy is limited to the carrying value of its investment.

The Company recognized $0.3 million in revenue during each of the three and six months ended July 4, 2010 related to the sale of solar panels to Woongjin Energy. As of July 4, 2010 no amounts remained due and receivable from Woongjin Energy related to the sale of these 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 10-01(b)(1) during the six months ended July 4, 2010 and June 28, 2009 is as follows:

Statement of Operations

(In thousands)	July 4, 2010	June 28, 2009
Revenues	$ 55,754	$ 43,701
Cost of sales	27,983	17,708
Gross profit	27,771	25,993
Operating income	24,923	23,817
Net income	15,159	12,339

In the past, the Company concluded that it was not the primary beneficiary of the joint venture since, although the Company and Woongjin were both obligated to absorb losses or had the right to receive benefits from Woongjin Energy that were significant to Woongjin Energy, such variable interests held by the Company did not empower it to direct the activities that most significantly impacted Woongjin Energy's economic performance. In reaching this determination, the Company considered the significant control exercised by Woongjin over the venture's Board of Directors, management and daily operations, Woongjin's guarantee of the venture's debt, as well as the relative strategic importance of the venture to both parties. Furthermore, as a result of Woongjin Energy completing its IPO and the sale of 15.9 million new shares of co mmon stock on June 30, 2010, the Company has concluded that Woongjin Energy is no longer a VIE.

Joint Venture with 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. The Company supplies to the joint venture silicon ingots and technology required for slicing silicon. Once manufactured, the Company purchases the completed silicon wafers from the joint venture under a five-year wafering supply and sales agreement through 2013. As of July 4, 2010 and January 3, 2010, $2.8 million and $1.3 million, respectively, remained due and receivable from First Philec Solar related to the silicon ingots the Company supplied to the joint venture for wafer slicing. Payments to First Philec Solar for wafer slicing services of silicon ingots totaled $22.7 million and $38.2 million during the three and six months ended July 4, 2010, respectively, and $9.0 million and $15.8 million during the three and six months ended June 28, 2009, respectively. As of July 4, 2010 and January 3, 2010, $6.3 million and $3.1 million, respectively, remained due and payable to First Philec Solar related to the purchase of silicon wafers.

As of July 4, 2010 and January 3, 2010, the Company had a $6.3 million and $6.0 million, respectively, investment in the joint venture in its Condensed Consolidated Balance Sheets which represented a 20% equity investment. The Company accounts for its investment in First Philec Solar using the equity method of accounting since the Company is able to exercise significant influence over the joint venture 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 income of $0.3 million in each of the three and six months ended July 4, 2010, and losses totaling $0.1 million in each of the three and six months ended June 28, 2009, is included in “Equity in earnings of unconsolidat ed investees” in the Condensed Consolidated Statements of Operations. The amount of equity in earnings increased in the first half of fiscal 2010 as compared to the same period in 2009 due to increases in production since First Philec Solar became operational in the second quarter of fiscal 2008.The Company’s maximum exposure to loss as a result of its involvement with First Philec Solar is limited to the carrying value of its investment.

The Company has concluded that it is not the primary beneficiary of the joint venture since, although the Company and First Philec are both obligated to absorb losses or have the right to receive benefits from First Philec Solar that are significant to First Philec Solar, such variable interests held by the Company do not empower it to direct the activities that most significantly impact First Philec Solar’s economic performance. In reaching this determination, the Company considered the significant control exercised by First Philec over the venture's Board of Directors, management and daily operations, as well as the relative strategic importance of the venture to both parties.

Equity Option Agreement with NorSun

In January 2008, the Company entered into an Option Agreement with NorSun, a manufacturer of silicon ingots and wafers, under which the Company would deliver cash advance payments to NorSun for the purchase of polysilicon under a long-term polysilicon supply agreement. The Company paid a cash advance totaling $16.0 million to an escrow account as security for NorSun’s right to future advance payments. This $16.0 million cash advance was reflected as restricted cash on the Condensed Consolidated Balance Sheet as of both July 4, 2010 and January 3, 2010. In addition, the Company paid a cash advance of $5.0 million to NorSun during the fourth quarter of fiscal 2009 that was reflected as advances to suppliers on the Condensed Consolidated Balance Sheet as of both July 4, 2010 and January 3, 2010. Under the terms of the Option Agreement , the Company could exercise a call option and apply the advance payments to purchase 23.3%, subject to certain adjustments, of an equity interest in a joint venture from NorSun that is being constructed to manufacture polysilicon in Saudi Arabia. The Company could exercise its option at any time until six months following the commercial operation of the Saudi Arabian polysilicon manufacturing facility. The Option Agreement also provided NorSun an option to put 23.3%, subject to certain adjustments, of an equity interest in the joint venture from NorSun to the Company. NorSun’s option was exercisable through the six months following commercial operation of the polysilicon manufacturing facility. The Company accounted for the put and call options as one instrument, which were measured at fair value at each reporting period. The changes in the fair value of the combined option were recorded in “Other, net” in the Condensed Consolidated Statements of Operations and have not been material.

On July 2, 2010, NorSun exercised its option to put 23.3% of an equity interest in the joint venture from NorSun to the Company at a price of $5.0 million cash advance paid to NorSun by the Company during the fourth quarter of fiscal 2009. The Company and NorSun anticipate that the share transfer will occur in the third quarter of fiscal 2010. Beginning on the date the shares are transferred, the Company will account for its investment in the joint venture using the equity method of accounting.

The Company has concluded that it is not the primary beneficiary of the joint venture since, although the Company, NorSun and other private equity and principal investment firms that own equity in the joint venture are each obligated to absorb losses or have the right to receive benefits from the joint venture that are significant to the venture, such variable interests held by the Company do not empower it to direct the activities that most significantly impacts the joint venture’s economic performance. In reaching this determination, the Company considered the significant control exercised by NorSun and other private equity and principal investment firms over the venture's Board of Directors, management and daily operations, as well as the relative strategic importance of the venture to all parties.

Joint Venture with AUO

On May 27, 2010, the Company, through its subsidiaries SPTL and AUOSP, entered into a joint venture agreement with AUO and AUO Taiwan. Under the terms of the agreement, the Company, through SPTL, and AUO will each own 50% of the joint venture AUOSP. The joint venture will own FAB3 and deploy the Company's solar cell technology and process know-how and AUO's manufacturing expertise. The joint venture will manufacture and sell solar cells on a "cost-plus" basis to the Company and AUO.

The transaction closed on July 5, 2010, the first day of the third quarter in fiscal 2010, and each of SPTL and AUO now hold a 50% ownership interest in AUOSP. On July 5, 2010, the parties also entered into a licensing and joint development, supply, and other ancillary transaction agreements.

On July 5, 2010, the Company and AUO also entered into a seven-year supply agreement with AUOSP, renewable by the Company for one-year periods thereafter, committing to the purchase of the solar cells manufactured by AUOSP. Under the terms of the supply agreement, the percentage of AUOSP's total annual output allocated on a monthly basis to the Company ranges from 95% in fiscal year 2010 to 80% in fiscal year 2013 and thereafter. The Company and AUO have the right to reallocate supplies from time to time under a written agreement. The supply agreement also specifies that in the event that either AUO or SPTL sells its shares in AUOSP, certain terms and conditions customary for a third-party vendor arrangements will apply to such party's supply arrangement with AUOSP. The joint venture agreement also requires that AUOSP either assumes a portion of certain existing polysilicon purchase obligations of the Company or enter into a commercial arrangement with the Company to purchase a portion of its existing purchase obligations on the same terms.

The joint venture agreement provides for both equity and debt financing components. The shareholders will not be permitted to transfer any of AUOSP's shares held by them, except to each other and to their direct or indirect, wholly-owned subsidiaries. On July 5, 2010, the Company, through SPTL, and AUO each subscribed for shares in AUOSP with a par value of $350 million. The shareholders contributed some of those funds on July 5, 2010 and will contribute additional amounts over time so that the total cash contributions made by each shareholder equals $350 million in the aggregate, or such lesser amount as the parties may mutually agree. In addition, if AUOSP, SPTL or AUO requests additional equity financing to AUOSP, then each of SPTL and AUO will each be required to make additional cash contributions of up to a $50 million aggrega te.

AUOSP will retain the existing debt facility agreement with the Malaysian Government for FAB3 of Malaysian Ringgit 1.0 billion ($310.4 million based on the exchange rate as of July 4, 2010) and AUO has agreed to arrange for additional third-party debt financing for AUOSP. If such third-party debt financing is not so obtained, then AUO has agreed to procure or provide to AUOSP, on an interim basis, the debt financing reasonably necessary to fund in a timely manner AUOSP's business plan, until such time as third-party financing is procured and replaces such interim financing.

Under the terms of the joint venture agreement, AUOSP will have an eight-person board of directors, with each of SPTL and AUO having the right to nominate four director representatives. AUO will also have the right to nominate the Chief Executive Officer and SPTL will have the right to nominate the Chief Financial Officer of AUOSP. Certain actions of AUOSP require the approval of a majority of the directors of AUOSP, including at least one director nominated by each shareholder and certain other fundamental actions are proscribed without prior approval or written consent of shareholders holding at least 75% of AUOSP shares outstanding. In addition, the joint venture agreement provides a mechanism for resolving any "deadlock," and specified remedies upon any events of default arising from, among other things, material breaches of the joint venture agreement.

The joint venture agreement imposes certain geographic restrictions on AUO with respect to sales of any of its allocated supply of AUOSP's solar cells from FAB3 and specifically provides that AUO will not, directly or indirectly, sell any of its allocated supply of AUOSP's FAB3 solar cells other than in Asia, excluding Japan and Australia, except that starting in 2013, AUO may sell a portion of its allocated supply of AUOSP's solar cells in Europe and Australia for use in power plant projects that are owned or developed by direct or indirect subsidiaries of AUO. In addition, for ten years after July 5, 2010, if AUO desires to pursue production of or investment in any crystalline cell production with cell efficiency greater than 20%, the parties will first consider pursuing such production or investment through AUOSP.

As of July 4, 2010, AUOSP was a wholly-owned subsidiary of the Company, therefore, its results are consolidated into the Company's financial statements. Beginning on July 5, 2010, the first day of the third quarter in fiscal 2010, the Company will deconsolidate its investment in AUOSP and account for such investment using the equity method of accounting.

Note 12. ***DEBT AND CREDIT SOURCES***

The following table summarizes the Company's outstanding debt as of July 4, 2010 and their related maturity dates:

		Payment Due by Period					
(In thousands)	Face Value	2010 (remaining six months)	2011	2012	2013	2014	Beyond 2014
Convertible debt:							
4.50% debentures	$ 250,000	$ —	$ —	$ —	$ —	$ —	$ 250,000
4.75% debentures	230,000	—	—	—	—	230,000	—
1.25% debentures	198,608	—	—	198,608	—	—	—
0.75% debentures	143,883	143,883	—	—	—	—	—
Debt facility agreement	232,811	—	—	—	—	—	232,811
Cassiopea project loan	146,532	251	3,785	4,102	18,885	5,505	114,004
Centauro project loan	5,134	—	132	177	167	1,301	3,357
Piraeus Bank loan	33,646	33,646	—	—	—	—	—
	$ 1,240,614	$ 177,780	$ 3,917	$ 202,887	$ 19,052	$ 236,806	$ 600,172

Convertible Debt

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

	July 4, 2010			January 3, 2010		
(In thousands)	Carrying Value	Face Value	Fair Value (1)	Carrying Value	Face Value	Fair Value (1)
4.50% debentures	$ 173,333	$ 250,000	$ 201,756	$ —	$ —	$ —
4.75% debentures	230,000	230,000	188,888	230,000	230,000	270,250
1.25% debentures	175,163	198,608	170,803	168,606	198,608	172,789
0.75% debentures	143,034	143,883	143,254	137,968	143,883	139,746
	$ 721,530	$ 822,491	$ 704,701	$ 536,574	$ 572,491	$ 582,785

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

4.50% Debentures

On April 1, 2010, the Company issued $220.0 million in principal amount of its 4.50% senior cash convertible debentures ("4.50% debentures") and received net proceeds of $214.9 million, before payment of the cost of the bond hedge and warrant transactions described below. On April 5, 2010, the initial purchasers of the 4.50% debentures exercised the $30.0 million over-allotment option in full and the Company received net proceeds of $29.3 million. Interest on the 4.50% debentures is payable on March 15 and September 15 of each year, which will commence September 15, 2010. The 4.50% debentures mature on March 15, 2015. The 4.50% debentures are convertible only into cash, and not into shares of the Company's class A common stock (or any other securities). Prior to December 15, 2014, the 4.50% debentures are convertible on ly upon specified events and, thereafter, they will be convertible at any time, based on an initial conversion price of $22.53 per share of the Company's class A common stock. The conversion price will be subject to adjustment in certain events, such as distributions of dividends or stock splits. Upon conversion, the Company will deliver an amount of cash calculated by reference to the price of its class A common stock over the applicable observation period. The 4.50% debentures will not be convertible, in accordance with the provisions of the debenture agreement, until the first quarter of fiscal 2011. The Company may not redeem the 4.50% debentures prior to maturity. Holders may also require the Company to repurchase all or a portion of their 4.50% debentures upon a fundamental change, as defined in the debenture agreement, at a cash repurchase price equal to 100% of the principal amount plus accrued and unpaid interest. In the event of certain events of default, such as the Company's failure t o make certain payments or perform or observe certain obligations there-under, Wells Fargo, the trustee, or holders of a specified amount of then-outstanding 4.50% debentures will have the right to declare all amounts then outstanding due and payable.

The 4.50% debentures are senior, unsecured obligations of the Company, ranking equally with all existing and future senior unsecured indebtedness of the Company. The 4.50% debentures are effectively subordinated to the Company's secured indebtedness to the extent of the value of the related collateral and structurally subordinated to indebtedness and other liabilities of the Company's subsidiaries. The 4.50% debentures do not contain any sinking fund requirements.

The embedded cash conversion option within the 4.50% debentures and the over-allotment option related to the 4.50% debentures are derivative instruments that are required to be separated from the 4.50% debentures and accounted for separately as derivative instruments (derivative liabilities) with changes in fair value reported in the Company's Condensed Consolidated Statements of Operations until such transactions settle or expire. The initial fair value liabilities of the embedded cash conversion option and over-allotment option of $71.3 million and $0.5 million, respectively, were classified within " Other long-term liabilities" and simultaneously reduced the carrying value of "Convertible debt, net of current portion" (effectively an original issuance discount on the 4.50% debentures of $71.8 million) in the Company's Condensed Consolidated Balance Sheet.

In the three and six months ended July 4, 2010, the Company recognized a $1.1 million and $1.4 million non-cash charge, respectively, recorded in “Gain on mark-to-market derivatives” in the Company’s Condensed Consolidated Statements of Operations related to the change in fair value of the over-allotment option. The ending fair value liability of the over-allotment option on April 5, 2010, the date the initial purchasers of the 4.50% debentures exercised the $30.0 million over-allotment option in full, of $1.9 million was reclassified to the original issuance discount of the 4.50% debentures. In addition, the initial $10.0 million fair value liability of the embedded cash conversion option within the $30.0 million of additional principal of the Company’s 4.50% debentures purchased upon exercise of the over-allotme nt option was classified within “Other long-term liabilities” and simultaneously reduced the carrying value of “Convertible debt, net of current portion” (the total original issuance discount on the 4.50% debentures was $79.9 million) in the Company’s Condensed Consolidated Balance Sheet. In each of the three and six months ended July 4, 2010, the Company recognized a $40.3 million non-cash gain recorded in “Gain on mark-to-market derivatives” in the Company’s Condensed Consolidated Statements of Operations related to the change in fair value of the embedded cash conversion option. The fair value liability of the embedded cash conversion option as of July 4, 2010 totaled $41.0 million and is classified within “Other long-term liabilities” in the Company’s Condensed Consolidated Balance Sheet.

The embedded cash conversion option and the over-allotment option derivative instruments are fair valued utilizing Level 2 inputs consisting of the exercise price of the instruments, the Company’s class A common stock price, the risk free interest rate, the contractual term and the Company’s class A common stock volatility. Such derivative instruments are not traded on an open market as the banks are the counterparties to the instruments.

The over-allotment option was exercised during the second quarter of fiscal 2010 and the final value of the over-allotment option represented the difference between the value of the embedded cash conversion option at the original trade date of the initial $220.0 million in principal amount of the 4.50% debentures and the trade date of the over-allotment option. This final value was adjusted against the original issuance discount of the cash convertible bond.

Significant inputs for the valuation of the embedded cash conversion option as of July 4, 2010 are as follows:

	Embedded option (1)
Stock price	$ 12.81
Exercise price	$ 22.53
Interest rate	1.76%
Stock volatility	51.92%
Maturity date	February 18, 2015

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

The Company recognized $3.1 million and $3.2 million in non-cash interest expense during the three and six months ended July 4, 2010, respectively, related to the amortization of the debt discount on the 4.50% debentures. The principal amount of the outstanding 4.50% debentures, the unamortized discount and the net carrying value as of July 4, 2010 was $250.0 million, $76.7 million and $173.3 million, respectively. As of July 4, 2010, the remaining weighted average period over which the unamortized debt discount associated with the 4.50% debentures will be recognized is as follows (in thousands):

	Debt Discount
2010 (remaining six months)	$ 6,624
2011	13,368
2012	15,225
2013	17,340
2014	19,748
Thereafter	4,362
	$ 76,667

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

Concurrent with the issuance of the 4.50% debentures, the Company entered into privately negotiated convertible debenture hedge transactions (collectively, the "Bond Hedge") and warrant transactions (collectively, the "Warrants" and together with the Bond Hedge, the "CSO2015"), with certain of the initial purchasers of the 4.50% cash convertible debentures or their affiliates. The CSO2015 is meant to reduce the Company's exposure to potential cash payments upon conversion of the 4.50% debentures. The net cost of the CSO2015 was $12.1 million and $1.6 million in the first and second quarter of fiscal 2010, respectively.

Under the terms of the Bond Hedge, the Company bought from affiliates of certain of the initial purchasers' options to acquire, at an exercise price of $22.53 per share, subject to anti-dilution adjustments, cash in an amount equal to the market value of up to 9.8 million shares of the Company's class A common stock. Each Bond Hedge is a separate transaction, entered into by the Company with each option counterparty, and is not part of the terms of the 4.50% debentures. The Company paid aggregate consideration of $66.2 million and $9.0 million for the Bond Hedge on March 25, 2010 and April 5, 2010, respectively.

Under the terms of the Warrants, the Company sold to affiliates of certain of the initial purchasers of the 4.50% cash convertible debentures warrants to acquire, at an exercise price of $27.03 per share, subject to anti-dilution adjustments, cash in an amount equal to the market value of up to 9.8 million shares of the Company's class A common stock. Each Warrant Transaction is a separate transaction, entered into by the Company with each option counterparty, and is not part of the terms of the 4.50% debentures. The Warrants were sold for aggregate cash consideration of $54.1 million and $7.4 million on March 25, 2010 and April 5, 2010, respectively.

The CSO2015, which are indexed to the Company's class A common stock, are derivative instruments that require mark-to-market accounting treatment due to their cash settlement features until such transactions settle or expire. The initial fair value of the Bond Hedge of $75.2 million was classified as "Other long-term assets" and the initial fair value of the Warrants of $61.5 million was classified as "Other long-term liabilities" in the Company's Condensed Consolidated Balance Sheets. As of July 4, 2010, the fair value of the Bond Hedge is $40.7 million, a decrease of $34.5 million, and the fair value of the Warrants is $34.2 million, a decrease of $27.3 million. The change in fair value of these two derivative instruments resulted in a $5.1 million and $7.0 million mark-to-market non-cash net loss in "Gain on mark-to-market derivatives" in the Company's Condensed Consolidated Statements of Operations during the three and six months ended July 4, 2010, respectively.

The Bond Hedge and Warrants derivative instruments are fair valued utilizing Level 2 inputs consisting of the exercise price of the instruments, the Company's class A stock price, the risk free interest rate, the contractual term and the Company's class A common stock volatility. Such derivative instruments are not traded on an open market with the banks as the counterparties to the instruments. Valuation techniques utilize the inputs described above in addition to liquidity and institutional credit risk inputs.

The Bond Hedge and Warrants described above represent a call spread overlay with respect to the 4.50% debentures. Assuming full performance by the counterparties, the transactions effectively reduce the Company's potential payout over the principal amount on the 4.50% debentures upon conversion of the 4.50% debentures into cash.

Significant inputs into the valuation of the Bond Hedge and Warrants at the July 4, 2010 measurement date are as follows:

	Bond hedge (1)	Warrants (1)
Stock price	$ 12.81	$ 12.81
Exercise price	$ 22.53	$ 27.03
Interest rate	1.76%	1.76%
Stock volatility	51.92%	49.27%
Credit risk adjustment	1.43%	Not applicable
Maturity date	February 18, 2015	July 7, 2015

(1) The valuation model utilizes these inputs to value the right but not the obligation to purchase one share at $22.53 and $27.03 for the Bond Hedge and Warrants, respectively. The Company utilized a Black-Scholes model to value the Bond Hedge and Warrants. The underlying input assumptions were determined as follows:
(i) Stock price. The closing price of the Company's class A common stock on the last trading day of the quarter.
(ii) Exercise price. The exercise price of the Bond Hedge and Warrants.
(iii) Interest rate. The treasury strip rate associated with the life of the Bond Hedge and Warrants.
(iv) Stock volatility. The volatility of the Company's class A common stock over the life of the Bond Hedge and Warrants.
(v) Credit risk adjustment. Represents the average of the credit default swap rate of the counterparties.

4.75% Debentures

In May 2009, the Company issued $230.0 million in principal amount of its 4.75% senior convertible debentures (4.75% debentures") and received net proceeds of $225.0 million, before payment of the net cost of the call spread overlay described below. Interest on the 4.75% debentures is payable on April 15 and October 15 of each year, which commenced 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 share. The applicable conversion rate may adjust in certain circumstances, including upon a fundamental change, as defined in the indenture governing the 4.75% debentures. If not earlier converted, the 4.75% debentures mature on April 15, 2014. Holders may also require 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 there-under, 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.

The 4.75% 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 are effectively subordinated to the Company's secured indebtedness to the extent of the value of the related collateral and structurally subordinated to indebtedness and other liabilities of the Company's subsidiaries.

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

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 underwriters of the 4.75% debentures. The Purchased Options allow the Company to purchase up to 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 counterparty, and is not part of the terms of th e 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.

The Purchased Options, which are indexed to the Company's class A common stock, were deemed to be mark-to-market derivatives during the period in which the over-allotment option in favor of the 4.75% debenture underwriters was 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 both 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 to acquire up to 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 counterparty, and is not part of the terms of the 4.75% debentures. Holders of the 4.75% debentures do not have any rights with respect to the warrants. The warrants were sold for aggregate cash consideration of $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.

Other than the initial period before the exercise of the 4.75% debenture underwriters' over-allotment option, as described above, the CSO2014 are not subject to mark-to-market accounting treatment since they may only be settled by issuance of the Company's class A common stock. The Purchased Options and sale of warrants described above represent a call spread overlay with respect to the 4.75% debentures. Assuming full performance by the counterparties, 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 CSO2014 was $26.3 million.

1.25% Debentures and 0.75% Debentures

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. During the fourth quarter of fiscal 2008, the Company received notices for the conversion of $1.4 million in principal amount of the 1.25% debentures which it settled for $1.2 million in cash and 1,000 shares of 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 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 in denture 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 $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. In fiscal 2009, the Company repurchased $81.1 million in principal amount of the 0.75% debentures for $75.6 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 could require the Company to repurchase all or a portion of their 0.75% debentures on each of August 2, 2010, August 1, 2015, August 1, 2020 and August 1, 2025, or if the Company was 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 could redeem some or all of the 0.75% d ebentures on or after August 2, 2010. The 0.75% debentures were classified as short-term liabilities in the Company's Condensed Consolidated Balance Sheets as of both July 4, 2010 and January 3, 2010 due to the ability of the holders to require the Company to repurchase its 0.75% debentures commencing on August 2, 2010. 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 $82.24 per share and is subject to customary adjustments in certain circumstances. On August 2, 2010, holders required the Company to repurchase $143.3 million in principal amount of their 0.75% debentures at a cash price of 100% of the principal amount plus accrued and unpaid interest. An aggregate principal amount of $0.6 million of the 0.75% debentures remain issued and outstanding after the repurchase.

The 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 1.25% debentures and 0.75% debentures are effectively subordinated to the Company's secured indebtedness to the extent of the value of the related collateral and structurally subordinated to indebtedness and other liabilities of the Company's subsidiaries. The 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 equals or exceeds 125% of the initial effective conversion price governing the 1.25% debentures for 20 out of 30 consecutive trading days in the last month of the fiscal quarter then holders of the 1.25% debentures have the right to convert the debentures any day in the following fiscal quarter. 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 July 4, 2010 and January 3, 2010 did not equal or exceed $70.94, or 125% of the applicable conversion price for its 1.25% debentures, holders of the 1.25% debentures are unable to exercise their right to convert the debentures, based on the market price conversion trigger, on any day in the first and third quarters of fiscal 2010. Accordi ngly, the Company classified its 1.25% debentures as long-term in its Condensed Consolidated Balance Sheets as of both July 4, 2010 and January 3, 2010. This test is repeated each fiscal quarter, therefore, if the market price conversion trigger is satisfied in a subsequent quarter, the 1.25% debentures may again be reclassified as short-term.

The 1.25% debentures and 0.75% debentures are subject to accounting guidance for convertible debt instruments that may be settled in cash upon conversion since the debentures must be settled at least partly in cash upon conversion. 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 July 4, 2010 was $342.5 million, $24.3 million and $318.2 million, respectively, and as of January 3, 2010 was $342.5 million, $35.9 million and $306.6 million, respectively.

The Company recognized $6.3 million and $11.6 million in non-cash interest expense during the three and six months ended July 4, 2010, respectively, as compared to $5.9 million and $10.9 million in the three and six months ended June 28, 2009, respectively, related to the 1.25% debentures and 0.75% debentures. As of July 4, 2010, the remaining weighted average period over which the unamortized debt discount associated with the 1.25% debentures and 0.75% debentures will be recognized is as follows (in thousands):

	Debt Discount
2010 (remaining six months)	$ 7,709
2011	14,687
2012	1,898
	$ 24,294

February 2007 Amended and Restated Share Lending Arrangement and July 2007 Share Lending Arrangement

Concurrent with the offering of the 1.25% debentures, the Company lent 2.9 million shares of its class A common stock to LBIE, an affiliate of Lehman Brothers, one of the underwriters of the 1.25% debentures. Concurrent with the offering of the 0.75% debentures, the Company also lent 1.8 million shares of its class A common stock to CSI, an affiliate of Credit Suisse, one of the underwriters of the 0.75% debentures. The loaned shares are to be used to facilitate the establishment by investors in the 1.25% debentures and 0.75% debentures of hedged positions in the Company's class A common stock. Under the share lending agreement, LBIE had the ability to offer the shares that remain in LBIE's possession to facilitate hedging arrangements for subsequent purchasers of both the 1.25% debentures and 0.75% debentures and, with the C ompany's consent, purchasers of securities the Company may issue in the future. The Company did not receive any proceeds from these offerings of class A common stock, but received a nominal lending fee of $0.001 per share for each share of common stock that is loaned under the share lending agreements described below.

Share loans under the share lending agreement terminate and the borrowed shares must be returned to the Company under the following circumstances: (i) LBIE and CSI may terminate all or any portion of a loan at any time; (ii) the Company may terminate any or all of the outstanding loans upon a default by LBIE and CSI under the share lending agreement, including a breach by LBIE and CSI of any of its representations and warranties, covenants or agreements under the share lending agreement, or the bankruptcy or administrative proceeding of LBIE and CSI; or (iii) if the Company enters into a merger or similar business combination transaction with an unaffiliated third party (as defined in the agreement). In addition, CSI has agreed to return to the Company any borrowed shares in its possession on the date anticipated to be five business days before the closing of certain merger or similar business combinations described in the share lending agreement. Except in limited circumstances, any such shares returned to the Company cannot be re-borrowed.

Any shares loaned to LBIE and CSI are considered issued and outstanding for corporate law purposes and, accordingly, the holders of the borrowed shares have all of the rights of a holder of the Company's outstanding shares, including the right to vote the shares on all matters submitted to a vote of the Company's stockholders and the right to receive any dividends or other distributions that the Company may pay or make on its outstanding shares of class A common stock. However, LBIE and CSI agreed to pay to the Company an amount equal to any dividends or other distributions that the Company pays on the borrowed shares. The shares are listed for trading on the Nasdaq Global Select Market.

While the share lending agreement does not require cash payment upon return of the shares, physical settlement is required (i.e., the loaned shares must be returned at the end of the arrangement). In view of this share return provision and other contractual undertakings of LBIE and CSI in the share lending agreement, which have the effect of substantially eliminating the economic dilution that otherwise would result from the issuance of the borrowed shares, historically the loaned shares were not considered issued and outstanding for the purpose of computing and reporting the Company's basic and diluted weighted average shares or earnings per share. However, on September 15, 2008, Lehman filed a petition for protection under Chapter 11 of the U.S. bankruptcy code, and LBIE commenced administration proceedings (analogous to bankrupt cy) in the United Kingdom. After reviewing the circumstances of the Lehman bankruptcy and LBIE administration proceedings, the Company began to reflect the 2.9 million shares lent to LBIE as issued and outstanding starting on September 15, 2008, the date on which LBIE commenced administration proceedings, for the purpose of computing and reporting the Company's basic and diluted weighted average shares and earnings per share. The Company filed a claim in the LBIE proceeding for $240.9 million and a corresponding claim in the Lehman Chapter 11 proceeding under Lehman's guaranty of LBIE's obligations.

The shares lent to CSI will continue to be excluded for the purpose of computing and reporting the Company's basic and diluted weighted average shares or earnings per share. If Credit Suisse or its affiliates, including CSI, were to file bankruptcy or commence similar administrative, liquidating, restructuring or other proceedings, the Company may have to consider 1.8 million shares lent to CSI as issued and outstanding for purposes of calculating earnings per share.

In the first quarter of fiscal 2010, the Company adopted new accounting guidance that requires its February 2007 amended and restated share lending arrangement and July 2007 share lending arrangement to be valued and amortized as interest expense in its Condensed Consolidated Statements of Operations in the same manner as debt issuance costs. In addition, in the event that counterparty default under the share lending arrangement becomes probable, the Company is required to recognize an expense in its Condensed Consolidated Statement of Operations equal to the then fair value of the unreturned loaned shares, net of any probable recoveries. The Company estimated that the imputed share lending costs (also known as issuance costs) associated with the 2.9 million shares and 1.8 million shares loaned to LBIE and CSI, respectively, totaled $1.8 million and $0.7 million, respectively. The new accounting guidance resulted in a significant non-cash loss resulting from 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. The then fair value of the 2.9 million shares of the Company's class A common stock loaned and unreturned by LBIE is $213.4 million, which was expensed retrospectively in the third quarter of fiscal 2008 (see Note 1).

The Company recognized $0.2 million and $0.3 million in non-cash interest expense during the three and six months ended July 4, 2010, respectively, as compared to $0.2 million and $0.4 million in the three and six months ended June 28, 2009, respectively, related to the share lending arrangements. As of July 4, 2010, the remaining weighted average period over which the unamortized issuance costs will be recognized is as follows (in thousands):

	Issuance Costs
2010 (remaining six months)	$ 194
2011	362
2012	45
	$ 601

Debt Facility Agreement with the Malaysian Government

On December 18, 2008, AUOSP, then a wholly-owned subsidiary of the Company, entered into a facility agreement with the Malaysian Government. In connection with the facility agreement, AUOSP 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 AUOSP to collateralize its obligations under the facility agreement.

Under the terms of the facility agreement, AUOSP may borrow up to Malaysian Ringgit 1.0 billion ($310.4 million based on the exchange rate as of July 4, 2010) to finance the construction of FAB3 in Malaysia. The loans within the facility agreement are divided into two tranches that may be drawn through September 2010. Principal is to be repaid in six quarterly payments starting in July 2015, and a non-weighted average interest rate of 4.4% per annum accrues and is payable starting in July 2015. AUOSP 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, including a material adverse effect clause. As of both July 4, 2010 and January 3, 2010, the Company had outstanding Malaysian Ringgit 750.0 million ($232.8 million and $219.0 million based on the exchange rates as of July 4, 2010 and January 3, 2010, respectively) under the facility agreement.

On July 5, 2010, the Company entered into a joint venture with AUO. Under the terms of the joint venture agreement, the Company, through SPTL, and AUO each own 50% of the AUOSP joint venture.

Project Loans

In connection with its acquisition of SunRay, the Company consolidated the project debt of Cassiopea from the Cassiopea Lenders. Under the terms of the credit agreement, Cassiopea may borrow up to Euro 120.0 million ($151.1 million based on the exchange rate as of July 4, 2010) to finance the construction and operations of the 20 MWac solar power plant in Montalto di Castro, Italy. Borrowings under the credit agreement are divided into two tranches that may be drawn through August 2010. Principal and interest are to be repaid in various installment payments starting in September 2010 and ending June 2028. Interest is charged at the floating rate of EURIBOR plus 2.75% to 3% and is paid semi-annually. In connection with the credit agreement, Cassiopea executed various deeds of assignment in favor of the Cassiopea Lenders, granting them a s ecurity interest in substantially all assets and future cash flows of Cassiopea. 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. As of July 4, 2010, Cassiopea had outstanding Euro 116.4 million ($146.5 million based on the exchange rate as of July 4, 2010) under the credit agreement. On August 5, 2010, the Company entered into an agreement providing for the sale of Cassiopea (see Notes 3 and 19).

On May 20, 2010, Centauro PV S.r.l. (“Centauro”), a wholly-owned subsidiary of SunRay, entered into a credit facility agreement with Barclays Bank PLC (“Barclays”). Under the terms of the credit agreement, Centauro may borrow up to Euro 44.5 million ($56.0 million based on the exchange rate as of July 4, 2010) to finance the construction and operations of the 8 MWac Centauro Photovoltaic Park being constructed in Montalto di Castro, Italy. Borrowings under the credit agreement are divided into two tranches that may be drawn through February 2011. Principal and interest are to be repaid in various installment payments starting in March 2011 and ending September 2028. Interest is charged at the floating rate of EURIBOR plus 2.5% to 2.7% and is paid semi-annually. In connection with the credit facility agreement, Cen tauro executed various deeds of assignment in favor of Barclays, granting it a security interest in substantially all assets and future cash flows of Centauro. 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. As of July 4, 2010, Centauro had outstanding Euro 4.1 million ($5.1 million based on the exchange rate as of July 4, 2010) under the credit facility agreement.

Concurrent with entering into the agreements above, Cassiopea and Centauro entered into interest rate swaps with the Cassiopea Lenders and Barclays, respectively, to mitigate the interest rate risk on the debt. The interest rate swaps are derivative instruments which are fair valued utilizing Level 2 inputs because valuations are based on quoted prices in markets that are not active and for which all significant inputs are observable, directly or indirectly. Valuation techniques utilize a variety of inputs, including contractual terms, market prices, yield curves, credit curves and measures of volatility. Such inputs can generally be verified and selections do not involve significant management judgment. As of July 4, 2010, the Company had not designated the interest rate swap as a hedging instrument. For derivative instruments not desig nated as hedging instruments, the Company recognizes changes in the fair value in earnings in the period of change. The fair value of the interest rate swaps as of July 4, 2010 was Euro 9.7 million ($12.2 million based on the exchange rate as of July 4, 2010). The Company recognized losses of $5.5 million and $5.7 million in the three and six months ended July 4, 2010, respectively, on the interest rate swaps associated with the Cassiopea Project Loan, which is included in “Income from discontinued operations, net of taxes” in the Company’s Condensed Consolidated Statements of Operations. In addition, the Company recognized a loss of $1.0 million for the three and six months ended July 4, 2010 on the interest rate swaps associated with the Centauro Project Loan, which is included in “Interest expense” in the Company’s Condensed Consolidated Statements of Operations.

Significant observable assumptions utilized in the valuation of the interest rate swaps as of July 4, 2010 are as follows:

	Interest Rate Swap Derivative (1)
Currency rate (U.S. dollar / Euro)	1.2589
Interest rates (utilizing the Euribor curve)	
Cash rates: one week to three months	0.45% - 0.79%
Futures rates: three months to two years	0.79% - 1.42%
Swap rates: two years to fifteen years	1.42% - 3.26%
Swap reset period	6 months
Credit risk	Not significant

(1) The Company uses an income approach, specifically a present value technique based on inputs market participants would use to arrive at the fair value of each interest rate swap. The present value technique converts future cash flows to a single denominated discounted present amount. The Company uses a third-party pricing model to derive the yield curve based on the active market inputs collected from an independent pricing source. The valuation model utilizes the following inputs:
(i) Currency and interest rates. Obtained from a third-party source.
(ii) Swap reset period. This represents the period stated in the contract.

Piraeus Bank Loan

On March 26, 2010, the Company closed its acquisition of SunRay and its wholly-owned subsidiaries, including Energy Ray Anonymi Energeiaki Etaireia ("Energy Ray"). On October 22, 2008, Energy Ray entered into a current account overdraft agreement with Piraeus Bank. In connection with the agreement, Energy Ray and its subsidiaries executed various account pledge agreements in favor of Piraeus Bank, granting them a security interest in cash deposit accounts where the proceeds of the loan are on deposit. The agreement's obligations are those of Energy Ray and its subsidiaries only and are non-recourse to the Company.

Under the terms of the current account overdraft agreement, Energy Ray may borrow up to Euro 26.7 million ($33.6 million based on the exchange rate as of July 4, 2010) to obtain the funds necessary for pre-construction activities in Greece. Borrowings under the agreement mature every three months at which time it becomes automatically renewable at the combined option of both Energy Ray and Piraeus Bank. As of July 4, 2010, Energy Ray had outstanding principal of Euro 26.7 million ($33.6 million based on the exchange rate as of July 4, 2010) which has been classified as "Short-term debt" in the Company's Condensed Consolidated Balance Sheet. Borrowings under the agreement bear interest of EURIBOR plus 1.4% per annum and are collateralized with short-term restricted cash on the Condensed Consolidated Balance Sheet.

On August 12, 2010, Energy Ray repaid its current account overdraft balance in full with Piraeus Bank which eliminated the need to provide cash collateral (see Note 19).

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%. As of January 3, 2010, the outstanding loan balance was $30.0 million of which $11.3 million and $18.7 million had been classified as "current portion of long-term debt" and "Long-term debt," respectively, in the Company's Condensed Consolidated Balance Sheet, based on projected quarterly installments commencing June 30, 2010. On April 9, 2010 the Company repaid all principal and interest outstanding under the term loan with Union Bank.

Mortgage Loan Agreement with International Finance Corporation ("IFC")

On May 6, 2010, SPML and SPML Land, Inc. ("SPML Land"), both wholly-owned subsidiaries of the Company, entered into a mortgage loan agreement with IFC. Under the loan agreement, SPML may borrow up to $75.0 million from IFC, after satisfying certain conditions to disbursement, and SPML and SPML Land pledged certain assets as collateral supporting SPML's repayment obligations. The Company guaranteed SPML's obligations to IFC. As of July 4, 2010, SPML had not borrowed any funds under the mortgage loan agreement.

Under the loan agreement, SPML may borrow up to $75.0 million during the first two years, and SPML shall repay the amount borrowed, starting 2 years after the date of borrowing, in 10 equal semiannual installments over the following 5 years. SPML shall pay interest of LIBOR plus 3% per annum on outstanding borrowings, and a front-end fee of 1% on the principal amount of borrowings at the time of borrowing, and a commitment fee of 0.5% per annum on funds available for borrowing and not borrowed. SPML may prepay all or a part of the outstanding principal, subject to a 1% prepayment premium. The loan agreement includes conditions to disbursements, representations, covenants, and events of default customary for financing transactions of this type. Covenants in the loan agreement include, but are not limited to, restrictions on SPML's a bility to issue dividends, incur indebtedness, create or incur liens on assets, and make loans to or investments in third parties.

Letter of Credit Facility with Deutsche Bank

On April 12, 2010, the Company and certain subsidiaries of the Company entered into a letter of credit facility agreement with Deutsche Bank, as issuing bank and as administrative agent, and the financial institutions parties thereto from time to time. The letter of credit facility provides for the issuance, upon request by the Company, of letters of credit by the issuing bank in order to support obligations of the Company, in an aggregate amount not to exceed $350.0 million (or up to $400.0 million upon the agreement of the parties). Each letter of credit issued under the letter of credit facility must have an expiration date no later than the earlier of the second anniversary of the issuance of that letter of credit and April 12, 2013, except that: (i) a letter of credit may provide for automatic renewal in one-year periods, not to ext end later than April 12, 2013; and (ii) up to $100.0 million in aggregate amount of letters of credit, if cash-collateralized, may have expiration dates no later than the fifth anniversary of the closing of the letter of credit facility. For outstanding letters of credit under the letter of credit facility the Company pays a fee of 0.50% plus any applicable issuances fees charged by its issuing and correspondent banks. The Company also pays a commitment fee of 0.20% on the unused portion of the facility.

In connection with the entry into the letter of credit facility, the Company entered into a cash security agreement with Deutsche Bank, granting a security interest in a collateral account to collateralize its obligations in connection with any letters of credit that might be issued under the letter of credit facility. The Company is required to maintain in the collateral account cash and securities equal to at least 50% of the dollar-denominated obligations under the issued letters of credit, and 55% of the non-dollar-denominated obligations under the issued letters of credit. The obligations of the Company are also guaranteed by SunPower North America, LLC and SunPower Corporation, Systems, both wholly-owned subsidiaries of the Company, who, together with the Company, have granted a security interest, in certain of their accounts recei vable and inventory to Deutsche Bank to collateralize the Company's obligations. The letter of credit facility includes representations, covenants, and events of default customary for financing transactions of this type.

As of July 4, 2010, letters of credit issued under the letter of credit facility totaled $179.6 million and were collateralized by short-term and long-term restricted cash of $4.9 million and $89.2 million, respectively, on the Condensed Consolidated Balance Sheet.

Amended Credit Agreement with Wells Fargo

On April 12, 2010, the Company entered into an amendment of its credit agreement with Wells Fargo. Under the amended credit agreement, letters of credit outstanding under the collateralized letter of credit facility will remain outstanding through October 12, 2010. On April 26, 2010, the uncollateralized letter of credit subfeature expired and as of July 4, 2010 all outstanding letters of credit on the subfeature had been moved to either the Deutsche Bank letter of credit facility or the Wells Fargo collateralized letter of credit facility. Letters of credit totaling $61.7 million were issued by Wells Fargo under the collateralized letter of credit facility as of July 4, 2010 and were collateralized by short-term and long-term restricted cash of $2.4 million and $64.8 million, respectively, on the Condensed Consolidated Balance Sheet. Le tters of credit totaling $150.7 million were issued by Wells Fargo under the collateralized letter of credit facility as of January 3, 2010 and were collateralized by short-term and long-term restricted cash of $61.9 million and $99.7 million, respectively, on the Condensed Consolidated Balance Sheet. The Company pays a fee of 0.2% to 0.4% depending on maturity for outstanding letters of credit under the collateralized letter of credit facility.

In connection with the amended 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 collateralize 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, both wholly-owned subsidiaries of the Company, also entered into an associated continuing guaranty with Wells Fargo. The terms of the amended credit agreement include certain conditions to borrowings, representations and covenants, and events of default customary for financing transactions of this type.

Note 13. *COMPREHENSIVE INCOME (LOSS)*

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

	Three Months Ended		Six Months Ended	
(In thousands)	**July 4, 2010**	**June 28, 2009**	**July 4, 2010**	**June 28, 2009**
Net income (loss)	$ (6,216)	$ 14,324	$ 6,357	$ 4,472
Other comprehensive income (loss):				
Translation adjustment	1,563	2,550	1,734	(14,058)
Unrealized gain (loss) on derivatives	36,216	(21,627)	62,279	3,939
Unrealized gain on investments	—	—	—	8
Estimated provision for income taxes	(4,248)	2,659	(7,276)	(373)
Net change in accumulated other comprehensive income (loss)	33,531	(16,418)	56,737	(10,484)
Total comprehensive income (loss)	$ 27,315	$ (2,094)	$ 63,094	$ (6,012)

Note 14. ***FOREIGN CURRENCY DERIVATIVES***

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

The Company is required to recognize derivative instruments as either assets or liabilities at fair value in its Condensed Consolidated Balance Sheets. The Company utilizes the income approach to calculate the fair value of its option and forward contracts based on market volatilities, spot rates, interest differentials and credit default swaps rates from published sources. The following table presents information about the Company's hedge instruments measured at fair value on a recurring basis as of July 4, 2010 and January 3, 2010, all of which utilize Level 2 inputs under the fair value hierarchy:

(In thousands)	Balance Sheet Classification	July 4, 2010	January 3, 2010
Assets	Prepaid expenses and other current assets		
Derivatives designated as hedging instruments:			
Foreign currency option contracts		$ 54,139	$ —
Foreign currency forward exchange contracts		1,780	—
		$ 55,919	$ —
Derivatives not designated as hedging instruments:			
Foreign currency option contracts		$ 7,380	$ 4,936
Foreign currency forward exchange contracts		26,937	64
		$ 34,317	$ 5,000
Liabilities	Accrued liabilities		
Derivatives designated as hedging instruments:			
Foreign currency option contracts		$ 2,100	$ —
Foreign currency forward exchange contracts		450	—
		$ 2,550	$ —
Derivatives not designated as hedging instruments:			
Foreign currency option contracts		$ 7,381	$ —
Foreign currency forward exchange contracts		1,194	27,354
		$ 8,575	$ 27,354

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

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

	Unrealized Gain (Loss) Recognized in OCI (Effective Portion)	
(In thousands)	As of July 4, 2010	As of January 3, 2010
Derivatives designated as cash flow hedges:	$ 63,414	$ (41,902)

	Three Months Ended			
	Gain (Loss) Reclassified from OCI to Revenue (Effective Portion)		Gain (Loss) Recognized in Other, Net on Derivatives (Ineffective Portion and Amount Excluded from Effectiveness Testing)	
(In thousands)	July 4, 2010	June 28, 2009	July 4, 2010	June 28, 2009
Derivatives designated as cash flow hedges:	$ 9,670	$ —	$ (6,265)	$ —

	Six Months Ended			
	Gain (Loss) Reclassified from OCI to Revenue (Effective Portion)		Gain (Loss) Recognized in Other, Net on Derivatives (Ineffective Portion and Amount Excluded from Effectiveness Testing)	
(In thousands)	July 4, 2010	June 28, 2009	July 4, 2010	June 28, 2009
Derivatives designated as cash flow hedges:	$ 13,780	$ —	$ (8,267)	$ —

	Three Months Ended			
	Gain (Loss) Reclassified from OCI to Cost of Revenue (Effective Portion)		Gain (Loss) Recognized in Other, Net on Derivatives (Ineffective Portion and Amount Excluded from Effectiveness Testing)	
(In thousands)	July 4, 2010	June 28, 2009	July 4, 2010	June 28, 2009
Derivatives designated as cash flow hedges:	$ —	$ —	$ —	$ (571)

	Six Months Ended			
	Gain (Loss) Reclassified from OCI to Cost of Revenue (Effective Portion)		Gain (Loss) Recognized in Other, Net on Derivatives (Ineffective Portion and Amount Excluded from Effectiveness Testing)	
(In thousands)	July 4, 2010	June 28, 2009	July 4, 2010	June 28, 2009
Derivatives designated as cash flow hedges:	$ (12,478)	$ (125)	$ —	$ (2,534)

The following table summarizes the amount of gain (loss) recognized in “Other, net” in the Condensed Consolidated Statement of Operations in the three and six months ended July 4, 2010 and July 28, 2009:

	Three Months Ended		Six Months Ended	
(In thousands)	July 4, 2010	June 28, 2009	July 4, 2010	June 28, 2009
Derivatives not designated as hedging instruments:	$ 22,000	$ (2,148)	$ 37,390	$ (3,986)

Foreign Currency Exchange Risk

Designated Derivates Hedging Cash Flow Exposure

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

As of July 4, 2010, the Company had designated outstanding hedge option contracts and forward contracts with an aggregate notional value of $528.4 million and $311.2 million, respectively. The maturity dates of the outstanding contracts as of July 4, 2010 range from July 2010 to September 2011. During the second quarter of fiscal 2010 the Company entered into additional designated cash flow hedges to protect certain portions of its anticipated non-functional currency cash flows related to foreign denominated revenues. The Company designates gross revenue or intercompany revenue up to its net economic exposure. These derivatives have a maturity of one year or less and consist or foreign currency option and forward contracts. The effective portion of these cash flow hedges are reclassified into revenue when third party revenue is recognize d in the Condensed Consolidated Statements of Operations.

The Company expects to reclassify substantially all of its net gains related to these option and forward contracts that are included in accumulated other comprehensive income as of July 4, 2010 to revenue in fiscal 2010 and 2011. Cash flow hedges are tested for effectiveness each period based on changes in the spot rate applicable to the hedge contracts against the present value period to period change in spot rates applicable to the hedged item 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 pur chase 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.

Non-Designated Derivates Hedging Cash Flow Exposure

As of January 3, 2010, the Company had non-designated outstanding cash flow hedge option contracts and forward contracts with an aggregate notional value of $228.1 million and $23.8 million, respectively. Prior to November 20, 2009, changes in fair value of the effective portion of hedge contracts were recorded in "Accumulated other comprehensive income (loss)" in "Stockholders' equity" in the Condensed Consolidated Balance Sheets. Amounts deferred in accumulated other comprehensive (income) loss were reclassified to "Cost of revenue" in the Condensed Consolidated Statements of Operations in the periods in which the hedged exposure impacted earnings. The Company discontinued hedge accounting for its cash flow hedges as of November 20, 2009 when it had outstanding cash flow hedge option contracts and forward contracts with an aggregate notional value of $108.4 million and $23.8 million, respectively. The Company reclassified all of its net losses related to these option and forward contracts that were included in "Accumulated other comprehensive loss" as of January 3, 2010 to "Cost of revenue" in the first quarter of fiscal 2010. As of July 4, 2010, the Company had no non-designated outstanding hedge option contracts and forward contracts that were hedging the cash flow exposure.

Non-Designated Derivates Hedging Transaction Exposure

Other derivatives not designated as hedging instruments consist of forward contracts used to hedge remeasurement of foreign currency denominated monetary 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, which are originally designated as cash flow hedges, and de-designates them upon recognition of the anticipated transaction to protect resulting non-functional currency monetary assets. These forward c ontracts as well as additional forward contracts are entered into to hedge foreign currency denominated monetary assets and liabilities against the short-term effects of currency exchange rate fluctuations. The Company records its derivative contracts that are not designated as hedging instruments at fair value with the related gains or losses recorded in "Other, net" in the Condensed Consolidated Statements of Operations. The gains or losses on these contracts are substantially offset by transaction gains or losses on the underlying balances being hedged. As of July 4, 2010 and January 3, 2010, the Company held forward contracts with an aggregate notional value of $271.9 million and $442.6 million, respectively, to hedge balance sheet exposure. These forward contracts have maturities of three 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 counterparties of its option and forward contracts. The Company enters into derivative contracts with high-quality financial institutions and limits the amount of credit exposure to any one single counterparty. In addition, the derivative contracts are limited to a time period of less than one year and the Company continuously evaluates the credit standing of its counterparties.

Note 15. *INCOME TAXES*

In the three and six months ended July 4, 2010, the Company's income tax provision of $47.0 million and $16.1 million, respectively, on income from continuing operations before income taxes and equity in earnings of unconsolidated investees of $30.9 million and $9.4 million, respectively, was primarily due to domestic and foreign income in certain jurisdictions, nondeductible amortization of purchased intangible assets, non deductible equity compensation, amortization of debt discount from convertible debentures, gain on change in equity interest in Woongjin Energy, mark-to-market fair value adjustments, changes in the valuation allowance on deferred tax assets and discrete stock option deductions. In the three and six months ended June 28, 2009, the Company's income tax benefit of $5.2 million and $24.4 million, respect ively, on income of $6.0 million and a loss of $24.3 million before income taxes and equity in earnings of unconsolidated investees, 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 interim period tax provision or benefit is estimated based on the expected annual worldwide tax rate and takes into account the tax effect of discrete items.

Note 16. ***NET INCOME (LOSS) PER SHARE OF CLASS A AND CLASS B COMMON STOCK***

The Company calculates net income per share under the two-class method. 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 net loss per share.

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 dilu tive 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:

	As of	
(In thousands)	**July 4, 2010**	**June 28, 2009**
Stock options	350	407
Restricted stock units	1,900	2,014

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

	Three Months Ended		Six Months Ended	
(In thousands, except per share data)	**July 4, 2010**	**June 28, 2009**	**July 4, 2010**	**June 28, 2009**
Basic net income (loss) per share:				
Net income (loss)	$ (6,216)	$ 14,324	$ 6,357	$ 4,472
Less: Undistributed earnings allocated to unvested restricted stock awards (1)	—	(52)	(13)	(19)
Net income (loss) available to common stockholders	$ (6,216)	$ 14,272	$ 6,344	$ 4,453
Basic weighted-average common shares	95,564	90,873	95,359	87,311
Basic net income (loss) per share	$ (0.07)	$ 0.16	$ 0.07	$ 0.05
Diluted net income (loss) per share:				
Net income (loss)	$ (6,216)	$ 14,324	$ 6,357	$ 4,472
Less: Undistributed earnings allocated to unvested restricted stock awards (1)	—	(51)	(12)	(19)
Diluted net income (loss)	$ (6,216)	$ 14,273	$ 6,345	$ 4,453
Basic weighted-average common shares	95,564	90,873	95,359	87,311
Effect of dilutive securities:				
Stock options	—	1,625	1,124	1,700
Restricted stock units	—	142	161	99
Diluted weighted-average common shares	95,564	92,640	96,644	89,110
Diluted net income (loss) per share	$ (0.07)	$ 0.15	$ 0.07	$ 0.05

(1) Losses are not allocated to unvested restricted stock awards because such awards do not contain an obligation to participate in losses.

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 12). 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. There were no dilutive potential common shares under the 4.75% debentures in each of the three and six months ended July 4, 2010 and June 28, 2009.

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 12). The 1.25% debentures and 0.75% debentures are included in the calculation of diluted net income per share if their inclusion is dilutive under the treasury-stock-type method. The Company's average stock price during the first half of fiscal 2010 and 2009 did not exceed the conversion price for the 1.25% debentures and 0.75% debentures. Under the treasury-stock-type method, the Company's 1.25% debentures and 0.75% debentures will generally have a dilutive impact on net income per share if the Company's average stock p rice for the period exceeds the conversion price for the debentures.

Note 17. ***STOCK-BASED COMPENSATION***

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

	Three Months Ended		Six Months Ended	
(In thousands)	**July 4, 2010**	**June 28, 2009**	**July 4, 2010**	**June 28, 2009**
Cost of revenue:				
Utility and power plants	$ 1,632	$ 2,053	$ 2,823	$ 2,560
Residential and commercial	2,327	2,504	3,818	2,893
Research and development	2,253	1,566	3,936	2,913
Sales, general and administrative	5,379	5,953	11,822	12,764
Total stock-based compensation expense	$ 11,591	$ 12,076	$ 22,399	$ 21,130

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

	Three Months Ended		Six Months Ended	
(In thousands)	**July 4, 2010**	**June 28, 2009**	**July 4, 2010**	**June 28, 2009**
Employee stock options	$ 25	$ 1,270	$ 902	$ 2,298
Restricted stock awards and units	11,566	9,431	22,381	19,515
Shares and options released from re-vesting restrictions	—	—	—	168
Change in stock-based compensation capitalized in inventory	—	1,375	(884)	(851)
Total stock-based compensation expense	$ 11,591	$ 12,076	$ 22,399	$ 21,130

Note 18. ***SEGMENT AND GEOGRAPHICAL INFORMATION***

In the second quarter of fiscal 2010, the Company changed its segment reporting from the Components Segment and Systems Segment to the UPP Segment and R&C Segment. The CODMs assess the performance of the UPP Segment and R&C Segment using information about their revenue and gross margin after adding back certain non-cash expenses such as amortization of intangible assets, stock-based compensation expense and interest expense. In addition, the CODMs assess the performance of the UPP Segment and R&C Segment after adding back the results of discontinued operations to revenue and gross margin. The following tables present revenue by segment, cost of revenue by segment and gross margin by segment, revenue by geography and revenue by significant customer. Revenue is based on the destination of the shipments. Historical results have been recast under the new re-segmentation.

(As a percentage of total revenue)	Three Months Ended July 4, 2010	Three Months Ended June 28, 2009	Six Months Ended July 4, 2010	Six Months Ended June 28, 2009
Revenue by geography:				
United States	34%	49%	32%	55%
Europe:				
Germany	20%	21%	19%	17%
Italy	21%	16%	19%	15%
Other	15%	8%	20%	7%
Rest of world	10%	6%	10%	6%
	100%	100%	100%	100%
Revenue by segment (in thousands):				
Utility and power plants (as reviewed by CODMs)	$ 127,904	$ 124,295	$ 271,998	$ 233,551
Revenue earned by discontinued operations	(7,905)	—	(7,905)	—
Utility and power plants	$ 119,999	$ 124,295	$ 264,093	$ 233,551
Residential and commercial	$ 264,239	$ 175,046	$ 467,419	$ 277,433
Cost of revenue by segment (in thousands):				
Utility and power plants (as reviewed by CODMs)	$ 94,543	$ 111,671	$ 203,690	$ 205,842
Amortization of intangible assets	774	683	1,463	1,366
Stock-based compensation expense	1,632	2,053	2,823	2,560
Non-cash interest expense	275	561	676	844
Utility and power plants	$ 97,224	$ 114,968	$ 208,652	$ 210,612
Residential and commercial (as reviewed by CODMs)	$ 194,318	$ 138,400	$ 354,304	$ 219,448
Amortization of intangible assets	2,125	2,112	4,249	4,222
Stock-based compensation expense	2,327	2,504	3,818	2,893
Non-cash interest expense	393	679	895	896
Residential and commercial	$ 199,163	$ 143,695	$ 363,266	$ 227,459
Gross margin by segment:				
Utility and power plants (as reviewed by CODMs)	26%	10%	25%	12%
Residential and commercial (as reviewed by CODMs)	26%	21%	24%	21%
Utility and power plants	19%	8%	21%	10%
Residential and commercial	25%	18%	22%	18%

(As a percentage of total revenue)		Three Months Ended July 4, 2010	Three Months Ended June 28, 2009	Six Months Ended July 4, 2010	Six Months Ended June 28, 2009
Significant Customers:	**Business Segment**				
Florida Power & Light Company	Utility and power plants	*	19%	*	22%

* denotes less than 10% during the period

Note 19. *SUBSEQUENT EVENTS*

On July 5, 2010, the joint venture closed between the Company, through SPTL, AUOSP, and AUO. Under the terms of the joint venture agreement, the Company, through SPTL, and AUO each own 50% of the AUOSP joint venture (see Note 11).

On August 2, 2010, holders required the Company to repurchase $143.3 million in principal amount of their 0.75% debentures at a cash price of 100% of the principal amount plus accrued and unpaid interest (see Note 12).

On August 5, 2010, the Company entered into a Euro 48 million definitive sale and purchase agreement to sell the equity in the first two phases of the solar power park in Montalto di Castro, Italy, including the Cassiopea project company (see Note 3).

On August 12, 2010, Energy Ray repaid its current account overdraft balance in full with Piraeus Bank which eliminated the need to provide cash collateral (see Note 12).

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," "plan," "anticipate," "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, mana gement's plans and objectives for future operations, the success of our joint ventures, liquidity and our ability to obtain financing, capital expenditures, outcome of litigation, our exposure to foreign exchange, interest and credit risk, 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 January 3, 2010, 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 unde r 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. The following information reflects the impact of the restatement of our previously issued condensed consolidated financial statements for the three and six months ended June 28, 2009. 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.

Adjustment to Previously Announced Preliminary Quarterly Results

The net loss per share for the three months ended July 4, 2010 reported in this quarterly report on Form 10-Q differs from our previously announced preliminary results by $0.01 since we incorrectly allocated losses of $10,000 to unvested restricted stock awards, which amount changed the rounding from a loss of $0.06 to $0.07 per share for the three months ended July 4, 2010. Net income per share for the six months ended July 4, 2010 was not affected. For additional details regarding how we calculate net income (loss) per share under the two-class method see Note 16 of Notes to our Consolidated Financial Statements.

General Overview

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

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

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

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

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 customer service and systems performance delivered using best-in-class monitoring, reporting and maintenance management systems;
- 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 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 KWac. Worldwide, we have more than 600 MWac of SunPower solar power plant systems operating or under contract. We sell distributed rooftop and ground-mounted solar power systems as well as central-station power plants around the globe. In the United States, distributed solar power systems are typically: (i) rated at more than 500 KWac of capacity to provide a supplemental, distributed source of electricity for a customer's facility; as well as (ii) ground mount systems reaching up to 250 MWac for regulated utilities. In the United States, many customers choose to purchase solar electricity under a power purchase agreement ("PPA") with a financing company that buys the system from us. In Europe, our products and systems are typically purchased by a financing company and operated as central-station solar power plants. These power plants are rated with capacities of approximately one to thirty MWac, and generate electricity for sale under tariff to private and public utilities. These markets are subject to industry-specific seasonal fluctuations.

Unit of Power

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

Discontinued Operations

In connection with our acquisition of SunRay Malta Holdings Limited ("SunRay") on March 26, 2010, we acquired a SunRay project company, Cassiopea PV S.r.l ("Cassiopea"), operating a previously completed 20 MWac solar power plant in Montalto di Castro, Italy. In the period in which a component of our Company is classified as held-for-sale, we are required to present the related assets, liabilities and results of operations as discontinued operations. As of July 4, 2010, we had not sold Cassiopea and its assets and liabilities are classified as discontinued operations on our Condensed Consolidated Balance Sheet. In addition, Cassiopea's results of operations for the three and six months ended July 4, 2010 were classified as "Income from discontinued operations, net of taxes" in our Condensed Consol idated Statements of Operations. On August 5, 2010, we entered into an agreement providing for the sale of Cassiopea. Unless otherwise stated, the discussion below pertains to our continuing operations. See Notes 3 and 19 of Notes to our Condensed Consolidated Financial Statements.

Business Segments Overview

On January 25, 2010, we announced that we planned to establish a profit and loss organizational structure to better align our sales, construction, engineering and customer service teams based on end-customer segments rather than by sales channel. In the second quarter of fiscal 2010, we changed our segment reporting from our Components Segment and Systems Segment to our Utility and Power Plants ("UPP") Segment and Residential and Commercial ("R&C") Segment. Historically, Components Segment sales were generally solar cells and solar panels sold to a third-party dealer or original equipment manufacturer ("OEM") who would re-sell the product to the eventual customer, while Systems Segment sales were generally complete turn-key offerings sold directly to the end customer. Under the new segme ntation, our UPP Segment refers to our large-scale solar products and systems business, which includes power plant project development and project sales, turn-key engineering, procurement and construction ("EPC") services for power plant construction, and power plant operations and maintenance ("O&M") services. The UPP Segment also has responsibility for our components business, which includes large volume sales of solar panels to third parties, often on a multi-year, firm commitment basis, and is a reflection of the growing demand of our utilities and other large-scale industrial solar equipment customers. Our R&C Segment focuses on solar equipment sales into the residential and small commercial market through our third-party global dealer network, as well as direct sales and EPC and O&M services for the commercial and public sectors installing rooftop and ground-mounted solar systems. Our President and Chief Executive Officer, as the chief operating decision maker-(0;CODM"), has organized our Company and manages resource allocations and measures performance of our Company's activities among these two segments.

Restatement of Previously Issued Condensed Consolidated Financial Statements

On November 16, 2009, our Company announced that its Audit Committee commenced an independent investigation into certain accounting and financial reporting matters at our Philippines operations ("SPML"). The Audit Committee retained independent counsel, forensic accountants and other experts to assist it in conducting the investigation.

As a result of the investigation, the Audit Committee concluded that certain unsubstantiated accounting entries were made at the direction of the Philippines-based finance personnel in order to report results for manufacturing operations that would be consistent with internal expense projections. The entries generally resulted in an understatement of our Company's cost of goods sold (referred to as "Cost of revenue" in our Condensed Consolidated Statements of Operations). The Audit Committee concluded that the efforts were not directed at achieving our Company's overall financial results or financial analysts' projections of our Company's financial results. The Audit Committee also determined that these accounting issues were confined to the accounting function in the Philippines. Finally, the Audit Co mmittee concluded that executive management neither directed nor encouraged, nor was aware of, these activities and was not provided with accurate information concerning the unsubstantiated entries. In addition to the unsubstantiated entries, during the Audit Committee investigation various accounting errors were discovered by the investigation and by management.

The nature and effect of the restatements resulting from the Audit Committee's independent investigation, including the impact to the previously issued interim condensed consolidated financial statements, were provided in our Company's Annual Report on Form 10-K for the year ended January 3, 2010. Prior year reports on Form 10-Q were restated and filed on May 3, 2010 by submission of Forms 10-Q/A. The amounts presented in this Form 10-Q reflect the restatements filed in these amendments. For additional information regarding our Company's disclosure controls and procedures see *Part I — "Item 4: Controls and Procedures*" in our Company's Quarterly Report on Form 10-Q for the quarter ended July 4, 2010.

Critical Accounting Policies and Estimates

For a description of the critical accounting policies that affect our more significant judgments and estimates used in the preparation of our Condensed Consolidated Financial Statements, refer to our Annual Report on Form 10-K for the year ended January 3, 2010 filed with the Securities and Exchange Commission ("SEC").

Recently Adopted Accounting Guidance and Issued Accounting Guidance Not Yet Adopted

For a description of accounting changes and issued accounting guidance not yet adopted, 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 July 4, 2010 and June 28, 2009

Revenue

	Three Months Ended		Six Months Ended	
(Dollars in thousands)	**July 4, 2010**	**June 28, 2009**	**July 4, 2010**	**June 28, 2009**
Utility and power plants	$ 119,999	$ 124,295	$ 264,093	$ 233,551
Residential and commercial	264,239	175,046	467,419	277,433
Total revenue	$ 384,238	$ 299,341	$ 731,512	$ 510,984

Total Revenue: During the three and six months ended July 4, 2010, our total revenue of $384.2 million and $731.5 million, respectively, represented an increase of 28% and 43%, respectively, from total revenue reported in each of the comparable periods of fiscal 2009. The increase in our total revenue during the three and six months ended July 4, 2010 compared to the same periods in fiscal 2009 is attributable to growing demand for our solar power products in the residential and commercial markets, particularly in the United States, Germany and Italy, partially offset by deferred revenue recognition experienced by our UPP Segment. Revenue in our UPP Segment is susceptible to large fluctuations from quarter to quarter. Our UPP Segment is dependent on large scale projects and often a single project can account for a material por tion of our total revenue in a given quarter. In some cases, a delayed sale of a project could require us to recognize a gain on the sale of assets instead of recognizing revenue.

Sales outside the United States represented 66% and 68% of our total revenue for the three and six months ended July 4, 2010, respectively, as compared to 51% and 45% of our total revenue for the three and six months ended June 28, 2009, respectively, representing a shift in the revenue by geography due to: (i) the then ongoing construction of a 25 MWac solar power plant in Desoto County, Florida for Florida Power & Light Company (“FPL”) in the first half of fiscal 2009 that was completed in the third quarter of fiscal 2009; and (ii) the continuous growth of our third-party global dealer network.

Concentrations: No customer accounted for 10 percent or more of our total revenue in the three and six months ended July 4, 2010. We had one customer that accounted for 10 percent or more of our total revenue in the three and six months ended June 28, 2009 as follows:

		Three Months Ended		Six Months Ended	
(As a percentage of total revenue)		**July 4, 2010**	**June 28, 2009**	**July 4, 2010**	**June 28, 2009**
Significant Customer:	**Business Segment**				
FPL	Utility and power plants	*	19%	*	22%

* denotes less than 10% during the period

UPP Revenue: Our UPP revenue for the three and six months ended July 4, 2010 was $120.0 million and $264.1 million, respectively, which accounted for 31% and 36%, respectively, of our total revenue. Our UPP revenue for the three and six months ended June 28, 2009 was $124.3 million and $233.6 million, respectively, which accounted for 42% and 46%, respectively, of our total revenue. During the three and six months ended July 4, 2010, our UPP revenue decreased 3% and increased 13%, respectively, as compared to revenue earned in the three and six months ended June 28, 2009, respectively, due to increased sales through our components business, offset by decreased revenue related to utility scale projects as a result of the deferral of revenue recognition on projects under construction.

FPL was a significant customer to the UPP Segment during the three and six months ended June 28, 2009 due to the then ongoing construction of a 25 MWac solar power plant in Desoto County, Florida.

R&C Revenue: Our R&C revenue for the three and six months ended July 4, 2010 was $264.2 million and $467.4 million, respectively, or 69% and 64%, respectively, of our total revenue. R&C revenue for the three and six months ended June 28, 2009 was $175.0 million and $277.4 million, respectively, or 58% and 54%, respectively, of our total revenue. During the three and six months ended July 4, 2010, our R&C revenue increased 51% and 68%, respectively, as compared to revenue earned in the three and six months ended June 28, 2009, respectively, primarily due to growing demand for our solar power products in the United States, Germany and Italy due to the growth of our third-party global dealer network.

Cost of Revenue

Details to cost of revenue by segment:

	Three Months Ended					
	Utility and Power Plants		**Residential and Commercial**		**Consolidated**	
(Dollars in thousands)	**July 4, 2010**	**June 28, 2009**	**July 4, 2010**	**June 28, 2009**	**July 4, 2010**	**June 28, 2009**
Amortization of other intangible assets	$ 774	$ 683	$ 2,125	$ 2,112	$ 2,899	$ 2,795
Stock-based compensation	1,632	2,053	2,327	2,504	3,959	4,557
Non-cash interest expense	275	561	393	679	668	1,240
Materials and other cost of revenue	94,543	111,671	194,318	138,400	288,861	250,071
Total cost of revenue	$ 97,224	$ 114,968	$ 199,163	$ 143,695	$ 296,387	$ 258,663
Total cost of revenue as a percentage of revenue	81 %	92 %	75 %	82 %	77 %	86 %
Total gross margin percentage	19%	8%	25%	18%	23%	14%

(Dollars in thousands)	Six Months Ended					
	Utility and Power Plants		Residential and Commercial		Consolidated	
	July 4, 2010	June 28, 2009	July 4, 2010	June 2, 2009	July 4, 2010	June 28, 2009
Amortization of other intangible assets	$ 1,463	$ 1,366	$ 4,249	$ 4,222	$ 5,712	$ 5,588
Stock-based compensation	2,823	2,560	3,818	2,893	6,641	5,453
Non-cash interest expense	676	844	895	896	1,571	1,740
Materials and other cost of revenue	203,690	205,842	354,304	219,448	557,994	425,290
Total cost of revenue	$ 208,652	$ 210,612	$ 363,266	$ 227,459	$ 571,918	$ 438,071
Total cost of revenue as a percentage of revenue	79 %	90 %	78 %	82 %	78 %	86 %
Total gross margin percentage	21%	10%	22%	18%	22%	14%

Total Cost of Revenue: We had 16 and 14 solar cell manufacturing lines in our two facilities as of July 4, 2010 and June 28, 2009, respectively, with a total rated annual solar cell manufacturing capacity of 574 MWdc and 494 MWdc, respectively. In each of the three and six months ended July 4, 2010, our two solar cell manufacturing facilities operated at 85% capacity, producing 137.9 MWdc and 273.3 MWdc, respectively. During the three and six months ended June 28, 2009, our two solar cell manufacturing facilities operated at 45% and 59% capacity, respectively, producing 63.6 megawatts and 157.3 megawatts, respectively. During the three and six months ended July 4, 2010, our total cost of revenue was $296.4 million and $571.9 million, respectively, which represented increases of 15% and 31%, respectively, compared to the total cost of revenue reported in the comparable periods of fiscal 2009. The increase in total cost of revenue corresponds with the increase of 28% and 43% in total revenue during the three and six months ended July 4, 2010, respectively, compared to the same periods in fiscal 2009. As a percentage of total revenue, our total cost of revenue decreased to 77% and 78% in the three and six months ended July 4, 2010, respectively, compared to 86% in each of the three and six months ended June 28, 2009. This decrease in total cost of revenue as a percentage of total revenue is reflective of (i) decreased costs of polysilicon; (ii) improved manufacturing economies of scale associated with markedly higher production volume; and (iii) reduced charges for inventory write-downs related to declining average selling prices of third-party solar panels of zero and $0.6 million in the three and six months ended July 4, 2010, respectively, as compared to $3.8 million and $4.2 million in the three and six months ended June 28, 200 9.

UPP Gross Margin: Gross margin was $22.8 million and $55.4 million for the three and six months ended July 4, 2010, respectively, or 19% and 21%, respectively, of UPP revenue. Gross margin was $9.3 million and $22.9 million for the three and six months ended June 28, 2009, respectively, or 8% and 10%, respectively, of UPP revenue. Gross margin increased due to a greater proportion of sales through our components business which typically have a higher gross margin percentage than our utility projects. This greater proportion of component sales is due to deferred revenue recognition on projects under construction in Italy until the projects are financed and sold to third parties.

R&C Gross Margin: Gross margin was $65.1 million and $104.2 million for the three and six months ended July 4, 2010, respectively, or 25% and 22%, respectively, of R&C revenue. Gross margin was $31.3 million and $50.0 million for the three and six months ended June 28, 2009, respectively, or 18% each of R&C revenue. Gross margin increased primarily due to better silicon utilization, and continued reduction in silicon costs and higher volume, resulting in increased economies of scale in production. In addition, inventory written-down in fiscal 2009 that were sold in the first half of fiscal 2010 improved our gross margin by an immaterial amount in the three and six months ended July 4, 2010.

Research and Development

(Dollars in thousands)	Three Months Ended		Six Months Ended	
	July 4, 2010	June 28, 2009	July 4, 2010	June 28, 2009
Stock-based compensation	$ 2,253	$ 1,566	$ 3,936	$ 2,913
Other research and development	8,953	5,371	17,677	11,904
Total research and development	$ 11,206	$ 6,937	$ 21,613	$ 14,817
Total research and development as a percentage of revenue	3%	2%	3%	3%

During the three and six months ended July 4, 2010, our research and development expense was $11.2 million and $21.6 million, respectively, which represents increases of 62% and 46%, respectively, from research and development expense reported in the comparable periods of fiscal 2009. The increase in spending during the three and six months ended July 4, 2010 as compared to the same periods in fiscal 2009 resulted primarily from: (i) personnel costs as a result of an increase in headcount; and (ii) 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 of $2.1 million and $3.9 million in the three and six months ended July 4, 2010, respectively, compared to $0.5 million and $2.3 million in the three and six months ended June 28, 2009, respectively.

Sales, General and Administrative

	Three Months Ended		Six Months Ended	
(Dollars in thousands)	**July 4, 2010**	**June 28, 2009**	**July 4, 2010**	**June 28, 2009**
Amortization of other intangible assets	$ 8,803	$ 1,303	$ 10,749	$ 2,562
Stock-based compensation	5,379	5,953	11,822	12,764
Other sales, general and administrative	64,194	35,519	120,085	69,853
Total sales, general and administrative	$ 78,376	$ 42,775	$ 142,656	$ 85,179
Total sales, general and administrative as a percentage of revenue	20%	14%	20%	17%

During the three and six months ended July 4, 2010, our sales, general and administrative ("SG&A") expense was $78.4 million and $142.7 million, respectively, which represents increases of 83% and 67%, respectively, from SG&A expense reported in the comparable periods of fiscal 2009. The increase in our SG&A expense during the three and six months ended July 4, 2010 as compared to the same periods in fiscal 2009 resulted primarily from: (i) SunRay's operating and development expenses being consolidated into our financial results from March 26, 2010 through July 4, 2010; (ii) higher amortization of other intangible assets related to project assets acquired from SunRay; (iii) sales and marketing spending to expand our third-party global dealer network and global branding initiatives; (iv) $4.4 million of expenses incurred in the first quarter of fiscal 2010 associated with our Audit Committee independent investigation of certain accounting entries primarily related to cost of goods sold by our Philippines operations; and (v) $6.5 million incurred in the first half of fiscal 2010 of SunRay acquisition-related costs such as legal, accounting, valuation and other professional services.

Other Income (Expense), Net

	Three Months Ended		Six Months Ended	
(Dollars in thousands)	**July 4, 2010**	**June 28, 2009**	**July 4, 2010**	**June 28, 2009**
Interest income	$ 279	$ 765	$ 552	$ 1,949
Total interest income as a percentage of revenue	—%	—%	—%	—%
Non-cash interest expense	$ (8,710)	$ (4,910)	$ (14,197)	$ (9,581)
Other interest expense	(10,600)	(4,853)	(16,053)	(6,453)
Total interest expense	$ (19,310)	$ (9,763)	$ (30,250)	$ (16,034)
Total interest expense as a percentage of revenue	5%	3%	4%	3%
Gain on change in equity interest in unconsolidated investee	$ 28,348	$ —	$ 28,348	$ —
Total gain on change in equity interest in unconsolidated investee as a percentage of revenue	7%	—%	4%	—%
Gain on mark-to-market derivatives	$ 34,070	$ 21,193	$ 31,852	$ 21,193
Total gain on mark-to-market derivatives as a percentage of revenue	9%	7%	4%	4%
Other, net	$ (10,806)	$ 2,807	$ (16,397)	$ (4,350)
Total other, net as a percentage of revenue	3%	1%	2%	1%

Interest income represents interest income earned on our cash, cash equivalents, restricted cash, restricted cash equivalents and available-for-sale securities. The decrease in interest income of 64% and 72% in the three and six months ended July 4, 2010, respectively, as compared to the same periods in fiscal 2009 resulted from lower interest rates earned on cash holdings.

Interest expense during the three and six months ended July 4, 2010 relates to borrowings under our senior convertible debentures, the facility agreement with the Malaysian Government and fees for our outstanding letters of credit with Deutsche Bank AG New York Branch (“Deutsche Bank”). 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. (“Union Bank”) and customer advance payments. The increase in interest expense of 98% and 89% in the three and six months ended July 4, 2010, respectively, as compared to the same periods in fiscal 2009 is due to: (i) additional indebtedness related to our $250.0 million in principal amount of 4.50% senior cash co nvertible debentures (“4.50% debentures”) issued in April 2010; (ii) additional borrowings under the facility agreement with the Malaysian Government since June 28, 2009; and (iii) fees for our outstanding letters of credit with Deutsche Bank. This increase in interest expense was partially offset by the repayment of the term loan with Union Bank on April 9, 2010.

In June 2009, the Financial Accounting Standards Board (“FASB”) issued new accounting guidance that changed how companies account for share lending arrangements that were executed in connection with convertible debt offerings or other financings. The new accounting guidance requires all such share lending arrangements to be valued and amortized as interest expense in the same manner as debt issuance costs. As a result of the new accounting guidance, existing share lending arrangements relating to our class A common stock are required to be measured at fair value and amortized as interest expense in our Condensed Consolidated Financial Statements. In addition, in the event that counterparty default under the share lending arrangement becomes probable, we are required to recognize an expense in our Condensed Consolidated Statem ent of Operations equal to the then fair value of the unreturned loaned shares, net of any probable recoveries. We adopted the new accounting guidance effective January 4, 2010, the start of our fiscal year, and applied it retrospectively to all prior periods as required by the guidance.

We have two historical share lending arrangements subject to the new guidance. In connection with the issuance of our 1.25% senior convertible debentures (“1.25% debentures”) and 0.75% senior convertible debentures (“0.75% debentures”), we loaned 2.9 million shares of our class A common stock to Lehman Brothers International (Europe) Limited (“LBIE”) and 1.8 million shares of our class A common stock to Credit Suisse International (“CSI”) under share lending arrangements. Application of the new accounting guidance resulted in higher non-cash amortization of imputed share lending costs in the current and prior periods, as well as a significant non-cash loss resulting from Lehman Brothers Holding Inc. (“Lehman”) filing of a petition for protection under Chapter 11 of the U.S. bank ruptcy code on September 15, 2008, and LBIE commencing administration proceedings (analogous to bankruptcy) in the United Kingdom. The then fair value of the 2.9 million shares of the our class A common stock loaned and unreturned by LBIE is $213.4 million, which was expensed retrospectively in the third quarter of fiscal 2008. See Notes 1 and 12 of Notes to our Condensed Consolidated Financial Statements.

On June 30, 2010, Woongjin Energy Co., Ltd’s (“Woongjin Energy”) completed its initial public offering (“IPO”) and the sale of 15.9 million new shares of common stock. We did not participate in this common stock issuance by Woongjin Energy. As a result of the new common stock issuance by Woongjin Energy in the IPO, our percentage equity interest in Woongjin Energy decreased from 42.1% to 31.3% of Woongjin Energy’s issued and outstanding shares of common stock. In connection with the IPO, we recognized a gain of $28.3 million as a result of our equity interest in Woongjin Energy being diluted because Woongjin Energy issued additional equity in its IPO. For additional details see Note 11 of Notes to our Consolidated Financial Statements.

The gain on mark-to-market derivatives during the three and six months ended July 4, 2010 of $34.1 million and $31.9 million, respectively, relates to the change in fair value of the following derivative instruments associated with the 4.50% debentures: (i) the embedded cash conversion option; (ii) over-allotment option; (iii) bond hedge transaction; and (iv) warrant transaction. The changes in fair value of these derivatives are reported in our Condensed Consolidated Statement of Operations until such transactions settle or expire. The over-allotment option derivative settled on April 5, 2010 when the initial purchasers of the 4.50% debentures exercised the $30.0 million over-allotment option in full. The bond hedge and warrant transactions are meant to reduce our exposure to potential cash payments associated with the embedded cash con version option. For additional details see Note 12 of Notes to our Consolidated Financial Statements.

The $21.2 million gain on mark-to-market derivatives during both the three and six months ended June 28, 2009 relates to the change in fair value of certain convertible debenture hedge transactions (the “Purchased Options”) associated with the issuance of our 4.75% senior convertible debentures (“4.75% debentures”) intended to reduce the potential dilution that would occur upon conversion of the debentures. The Purchased Options, which are indexed to our class A common stock, were deemed to be mark-to-market derivatives during the period in which the over-allotment option in favor of the 4.75% debenture underwriters was 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 on e-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 during both the three and six months ended June 28, 2009 in our Condensed Consolidated Statement of Operations. For additional details see Note 12 of Notes to our Consolidated Financial Statements.

The following table summarizes the components of other, net:

(Dollars in thousands)	Three Months Ended July 4, 2010	Three Months Ended June 28, 2009	Six Months Ended July 4, 2010	Six Months Ended June 28, 2009
Gain (loss) on foreign currency derivatives and foreign exchange	$ (10,556)	$ 3,230	$ (17,614)	$ (2,548)
Impairment (gain on sale) of investments	—	(489)	1,572	(1,807)
Other income (expense), net	(250)	66	(355)	5
Total other, net	$ (10,806)	$ 2,807	$ (16,397)	$ (4,350)

Other, net was comprised of expenses totaling $10.8 million and $16.4 million during the three and six months ended July 4, 2010, respectively, consisting primarily of: (i) losses totaling $6.7 million and $9.6 million, respectively, from expensing the time value of option contracts and forward points on forward exchange contracts; (ii) losses totaling $3.9 million and $8.0 million, respectively, on foreign currency derivatives and foreign exchange largely due to the volatility in the current markets. These expenses during the three and six months ended July 4, 2010 were partially offset by a gain on distributions from the Reserve Primary Fund in the first quarter of fiscal 2010. 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 pr imarily of $3.2 million of gains and $2.5 million of losses, respectively, on foreign currency derivatives and changes in foreign exchange rates largely due to the volatility in the currency markets as well as impairment charges of $0.5 million and $1.8 million, respectively, for certain money market funds and auction rate securities.

Income Taxes

(Dollars in thousands)	Three Months Ended July 4, 2010	Three Months Ended June 28, 2009	Six Months Ended July 4, 2010	Six Months Ended June 28, 2009
Benefit from (provision for) income taxes	$ (46,992)	$ 5,223	$ (16,117)	$ 24,419
As a percentage of revenue	12%	2%	2%	5%

In the three and six months ended July 4, 2010, our income tax provision of $47.0 million and $16.1 million, respectively, on income from continuing operations before income taxes and equity in earnings of unconsolidated investees of $30.9 million and $9.4 million, respectively, was primarily due to domestic and foreign income in certain jurisdictions, nondeductible amortization of purchased intangible assets, non deductible equity compensation, amortization of debt discount from convertible debentures, gain on change in equity interest in Woongjin Energy, mark-to-market fair value adjustments, changes in the valuation allowance on deferred tax assets, and discrete stock option deductions. In the three and six months ended June 28, 2009, our income tax benefit of $5.2 million and $24.4 million, respectively, on income of $6.0 millio n and a loss of $24.3 million before income taxes and equity in earnings of unconsolidated investees, respectively, was primarily attributable 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.

A significant amount of our total revenue is generated from customers located outside the United States, and a substantial portion of our assets and employees are located outside the United States. United States income taxes and foreign withholding taxes have not been provided on the undistributed earnings of our non-United States subsidiaries as such earnings are intended to be indefinitely reinvested in operations outside the United States to extent that such earnings have not been currently or previously subjected to taxation in the United States. The federal government recently announced several proposals pertaining to the taxation of non-Unites States 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, th ese proposals could potentially require those earnings to be taxed at the U.S. federal income tax rate. Our future reported financial results may be materially 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 July 4, 2010	Three Months Ended June 28, 2009	Six Months Ended July 4, 2010	Six Months Ended June 28, 2009
Equity in earnings of unconsolidated investees	$ 2,030	$ 3,133	$ 5,148	$ 4,378
As a percentage of revenue	1%	1%	1%	1%

During the three and six months ended July 4, 2010, our equity in earnings of unconsolidated investees were gains of $2.0 million and $5.1 million, respectively, as compared to $3.1 million and $4.4 million in the three and six months ended June 28, 2009, respectively. Our share of Woongjin Energy's income totaled $1.7 million and $4.8 million in the three and six months ended July 4, 2010, respectively, as compared to $3.2 million and $4.5 million in the three and six months ended June 28, 2009, respectively. Our share of First Philec Solar Corporation's ("First Philec Solar") income totaled $0.3 million in each of the three and six months ended July 4, 2010, respectively, as compared to losses totaling $0.1 million in each of the three and six months ended June 28, 2009, primarily due to increases in production since First Philec Solar became operational in the second quarter of fiscal 2008.

Beginning on July 5, 2010, the first day of the third quarter in fiscal 2010, we will deconsolidate our investment in AUO SunPower Sdn. Bhd. (formerly SunPower Malaysia Manufacturing Sdn. Bhd.) ("AUOSP"), and account for such investment using the equity method of accounting. For additional details see Note 11 of Notes to our Consolidated Financial Statements.

Income from discontinued operations, net of taxes

	Three Months Ended		Six Months Ended	
(Dollars in thousands)	**July 4, 2010**	**June 28, 2009**	**July 4, 2010**	**June 28, 2009**
Income from discontinued operations, net of taxes	$ 7,896	$ —	$ 7,896	$ —
As a percentage of revenue	2%	—%	1%	—%

In connection with our acquisition of SunRay on March 26, 2010, we acquired a SunRay project company, Cassiopea, operating a previously completed 20 MWac solar power plant in Montalto di Castro, Italy. In the period in which a component of our Company is classified as held-for-sale, we are required to present the related assets, liabilities and results of operations as discontinued operations. As of July 4, 2010, we had not sold Cassiopea and its assets and liabilities are classified as discontinued operations on our Condensed Consolidated Balance Sheet. In addition, Cassiopea's results of operations for the three and six months ended July 4, 2010 were classified as "Income from discontinued operations, net of taxes" in our Condensed Consolidated Statements of Operations. On August 5, 2010, we entered into an agreement providing for the sale of Cassiopea. Cassiopea is the first of two phases of the solar power park being built in Montalto di Castro, Italy. Future delayed dispositions of projects could require us to recognize similar gains on the sale of assets instead of recognizing revenue. For additional details see Notes 3 and 19 of Notes to our Consolidated Financial Statements.

Liquidity and Capital Resources

Cash Flows

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

	Six Months Ended	
(In thousands)	**July 4, 2010**	**June 28, 2009**
Net cash used in operating activities of continuing operations	$ (49,627)	$ (47,689)
Net cash used in investing activities of continuing operations	(378,415)	(126,423)
Net cash provided by financing activities of continuing operations	207,822	429,495

Operating Activities

Net cash used in operating activities of continuing operations of $49.6 million in the six months ended July 4, 2010 was primarily the result of the loss from continuing operations of $1.5 million, plus a $1.6 million gain on distributions from the Reserve Primary Fund and non-cash income of $65.3 million related to our equity share in earnings of joint ventures, gain on change in equity interest in a joint venture and a net gain on mark-to-market derivatives, partially offset by non-cash charges totaling $108.6 million for depreciation, amortization, stock-based compensation and non-cash interest expense. In addition, net cash used in operating activities of continuing operations primarily related to: (i) increases in inventories and project assets of $72.2 million and $47.9 million, respectively, for construction of future and current projects in Italy; (ii) increases in costs and estimated earnings in excess of billings of $32.6 million related to contractual timing of system project billings; as well as (iii) other changes in operating assets and liabilities of $57.9 million, partially offset by an increase in accounts payable and other accrued liabilities of $120.8 million.

Net cash used in operating activities of continuing operations of $47.7 million in the six months ended June 28, 2009 was primarily the result of a decrease in accounts payable and other accrued liabilities of $105.6 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 income from continuing operations of $4.5 million, plus non-cash charges totaling $83.1 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 $20.4 million.

Investing Activities

Net cash used in investing activities of continuing operations in the six months ended July 4, 2010 was $378.4 million, of which: (i) $100.3 million relates to capital expenditures primarily associated with the continued construction of our third solar cell manufacturing facility ("FAB3") in Malaysia; (ii) $272.7 million in cash was paid for the acquisition of SunRay, net of cash acquired; (iii) $8.3 million relates to increases in restricted cash and cash equivalents for advanced payments received from customers that we provided security in the form of cash collateralized bank standby letters of credit; and (iv) $1.6 million relates to cash paid for an investment in a non-public company. Cash used in investing activities was partially offset by $2.9 million in proceeds received from the sale of equipment to a third-party sub contractor and $1.6 million on distributions from the Reserve Primary Fund.

Net cash used in investing activities of continuing operations during the six months ended June 28, 2009 was $126.4 million, of which $111.7 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. Cash used in investing activities was partially offset by $19.7 million in proceeds received from the sales or maturities of available-for-sale securities and $7.9 million in proceeds received from the sale of equipment to a third-party subcontractor.

Financing Activities

Net cash provided by financing activities of continuing operations in the six months ended July 4, 2010 was $207.8 million and reflects cash received of: (i) $230.5 million in net proceeds from the issuance of $250.0 million in principal amount of our 4.50% debentures, after reflecting the payment of the net cost of the bond hedge and warrant transactions; (ii) $5.1 million in proceeds from a drawdown under the Centauro Project Loan; (iii) $3.8 million in excess tax benefits from stock-based award activity; and (iv) $0.3 million from stock option exercises. Cash received in the six months ended July 4, 2010 was partially offset by cash paid of $30.0 million to Union Bank to terminate our $30.0 million term loan and $2.0 million for treasury stock purchases that were used to pay withholding taxes on vested restricted stock.

Net cash provided by financing activities of continuing operations 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 our 4.75% debentures, after reflecting the payment of the net cost of the convertible debenture hedge transactions; (iii) Malaysian Ringgit 185.0 million ($52.4 million based on the exchange rate as of June 28, 2009) from the Malaysian Government under AUOSP's facility agreement; (iv) $29.8 million in net proceeds from Union Bank under our $30.0 million term loan; and (v) $0.8 million from stock option exercises. Cash received during the six months ended June 28, 2009 was partially offset by ca sh paid of $67.9 million to repurchase $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.

Debt and Credit Sources

Convertible Debentures

On April 1, 2010, we issued $220.0 million in principal amount of our 4.50% debentures and received net proceeds of $214.9 million, before payment of the cost of the bond hedge and warrant transactions of $12.1 million. On April 5, 2010, the initial purchasers of the 4.50% debentures exercised the $30.0 million over-allotment option in full and we received net proceeds of $29.3 million, before payment of the cost of the bond hedge and warrant transactions of $1.6 million. Interest on the 4.50% debentures is payable on March 15 and September 15 of each year, which will commence September 15, 2010. The 4.50% debentures mature on March 15, 2015. The 4.50% debentures are convertible only into cash, and not into shares of our class A common stock (or any other securities). Prior to December 15, 2014, the 4.50% debentures are convertible only upon specified events and, thereafter, they will be convertible at any time, based on an initial conversion price of $22.53 per share of our class A common stock. The conversion price will be subject to adjustment in certain events, such as distributions of dividends or stock splits. Upon conversion, we will deliver an amount of cash calculated by reference to the price of our class A common stock over the applicable observation period. The 4.50% debentures will not be convertible, in accordance with the provisions of the debenture agreement, until the first quarter of fiscal 2011. We may not redeem the 4.50% debentures prior to maturity. Holders may also require us to repurchase all or a portion of their 4.50% debentures upon a fundamental change, as defined in the debenture agreement, at a cash repurchase price equal to 100% of the principal amount plus accrued and unpaid interest. In the event of certain events of default, such as our failure to make certain payments or perform or observe certain obligati ons there-under, Wells Fargo Bank, N.A. ("Wells Fargo"), the trustee, or holders of a specified amount of then-outstanding 4.50% debentures will have the right to declare all amounts then outstanding due and payable. For additional details see Note 12 of Notes to our Condensed Consolidated Financial Statements.

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 call spread overlay of $26.3 million. Interest on the 4.75% debentures is payable on April 15 and October 15 of each year, which commenced 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 share. The applicable conversion rate may adjust in certain circumstances, including upon a fundamental change, as defined in the indenture governing the 4.75% debentures. If not earlier converted, the 4.75% debentures mature on April 15, 2014. Holders may also require us to repurchase all or a portion of their 4.75% debentures upon a funda mental 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 there-under, 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 12 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 fiscal 2008, we received notices for the conversion of $1.4 million in principal amount of the 1.25% debentures which we settled for $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 und er 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 12 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 fiscal 2009, we repurchased $81.1 million in principal amount of the 0.75% debentures for $75.6 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 could require us to repurchase all or a portion of their 0.75% debentures on each of August 2, 2010, August 1, 2015, August 1, 2020 and August 1, 2025, or if we experienced certain types of corporate transactions constituting a fundamental change, as defined in the indenture governing the 0.75% debentures. The 0.75% debentures were classified as short-term liabilities in our Condensed Consolidated Balance Sheets as of July 4, 2 010 and January 3, 2010 due to the ability of the holders to require us to repurchase our 0.75% debentures commencing on August 2, 2010. Any repurchase of the 0.75% debentures under 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 could redeem some or all of the 0.75% debentures on or after August 2, 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. On August 2, 2010, holders required us to repurchase $143.3 million in principal amount of their 0.75% debentures at a cash price of 100% of the principal amount plus accrued and unpaid interest. An aggregate principal amount of $0.6 million of the 0.75% debentures remain issued and outstanding after the repurchase. For additional details see Note 12 of Notes to our Condensed Consolidated Financial Statements.

Debt Facility Agreement with the Malaysian Government

In December 2008, AUOSP entered into a facility agreement with the Malaysian Government. As of both July 4, 2010 and January 3, 2010, the amount outstanding in Malaysian Ringgit was 750.0 million, or $232.8 million and $219.0 million based on the exchange rate as of July 4, 2010 and January 3, 2010, respectively, under the facility agreement with the Malaysian Government to finance the construction of FAB3 in Malaysia. An additional Malaysian Ringgit 250.0 million, or $77.6 million based on the exchange rate as of July 4, 2010, could be drawn through September 2010. Principal is to be repaid in six quarterly payments starting in July 2015, and a non-weighted average interest rate of 4.4% per annum accrues and is payable starting in July 2015. AUOSP has 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 12 of Notes to our Condensed Consolidated Financial Statements.

On July 5, 2010, the joint venture closed between our Company, through SunPower Technology, Ltd. (“SPTL”), an indirect subsidiary of our Company, AUOSP, AU Optronics Singapore Pte. Ltd. (“AUO”), and AU Optronics Corporation, the ultimate parent company of AUO (“AUO Taiwan”). Under the terms of the joint venture agreement, our Company, through SPTL, and AUO each own 50% of the AUOSP joint venture. For additional details see Note 11 of Notes to our Condensed Consolidated Financial Statements.

Project Loans

As of July 4, 2010, Cassiopea PV S.r.l. (“Cassiopea”), a wholly-owned subsidiary of SunRay, had outstanding Euro 116.4 million ($146.5 million based on the exchange rate as of July 4, 2010) under the credit agreement with Societe General, Milan Branch, WestLB AG, Milan Branch and Banca Infrastrutture Innovazione e Sviluppo SpA (collectively “Cassiopea Lenders”), which has been classified as “Liabilities of discontinued operations” in our Condensed Consolidated Balance Sheet as of July 4, 2010. Under the terms of the credit agreement, Cassiopea may borrow up to Euro 120.0 million ($151.1 million based on the exchange rate as of July 4, 2010) to finance the construction and operations of the 20 MWac solar power plant in Montalto di Castro, Italy. Borrowings under the credit agreement are divided into two tranches that may be drawn through August 2010. Principal and interest are to be repaid in various installment payments starting in September 2010 and ending June 2028. Interest is charged at the floating rate of EURIBOR plus 2.75% to 3% and is paid semi-annually. As of July 4, 2010, Cassiopea had outstanding Euro 116.4 million ($146.5 million based on the exchange rate as of July 4, 2010) under the credit agreement. On August 5, 2010, we entered into an agreement providing for the sale of Cassiopea. For additional details see Notes 3 and 12 of Notes to our Condensed Consolidated Financial Statements.

On May 20, 2010, Centauro PV S.r.l. (“Centauro”), a wholly-owned subsidiary of SunRay, entered into a credit facility agreement with Barclays Bank PLC (“Barclays”). Under the terms of the credit agreement, Centauro may borrow up to Euro 44.5 million ($56.0 million based on the exchange rate as of July 4, 2010) to finance the construction and operations of the 8 MWac Centauro Photovoltaic Park being constructed in Montalto di Castro, Italy. Borrowings under the credit agreement are divided into two tranches that may be drawn through February 2011. Principal and interest are to be repaid in various installment payments starting in March 2011 and ending September 2028. Interest is charged at the floating rate of EURIBOR plus 2.5% to 2.7% and is paid semi-annually. As of July 4, 2010, Centauro had outstanding Euro 4.1 million ($5.1 million based on the exchange rate as of July 4, 2010) under the credit facility agreement. On August 12, 2010, Energy Ray repaid its current account overdraft balance in full with Piraeus Bank which eliminated the need to provide cash collateral. For additional details see Notes 12 and 19 of Notes to our Condensed Consolidated Financial Statements.

Piraeus Bank Loan

As of July 4, 2010, Energy Ray Anonymi Energeiaki Etaireia (“Energy Ray”), a wholly-owned subsidiary of SunRay, had outstanding principal of Euro 26.7 million ($33.6 million based on the exchange rate as of July 4, 2010) under the current account overdraft agreement with Piraeus Bank to obtain the funds necessary for pre-construction activities in Greece. The outstanding loan balance as of July 4, 2010 has been classified as “Short-term debt” in our Condensed Consolidated Balance Sheet. Borrowings under the agreement bear interest of EURIBOR plus 1.4% per annum and are collateralized with short-term restricted cash on our Condensed Consolidated Balance Sheet. On August 12, 2010, Energy Ray repaid its current account overdraft balance in full with Piraeus Bank which eliminated the need to provide cash collateral. F or additional details see Notes 12 and 9 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%. As of January 3, 2010, the outstanding loan balance was $30.0 million of which $11.3 million and $18.7 million had been classified as “current portion of long-term debt” and “Long-term debt,” respectively, in our Condensed Consolidated Balance Sheet, based on projected quarterly installments commencing June 30, 2010. On April 9, 2010 we repaid all principal and interest outstanding under the term loan with Union Bank. For additional details see Note 12 of Notes to our Condensed Consolidated Financial Statements.

Mortgage Loan Agreement with International Finance Corporation (“IFC”)

On May 6, 2010, SPML and SPML Land, Inc. (“SPML Land”), both wholly-owned subsidiaries, entered into a mortgage loan agreement with IFC. Under the loan agreement, SPML may borrow up to $75.0 million during the first two years, and SPML shall repay the amount borrowed, starting 2 years after the date of borrowing, in 10 equal semiannual installments over the following 5 years. SPML shall pay interest of LIBOR plus 3% per annum on outstanding borrowings, and a front-end fee of 1% on the principal amount of borrowings at the time of borrowing, and a commitment fee of 0.5% per annum on funds available for borrowing and not borrowed. SPML may prepay all or a part of the outstanding principal, subject to a 1% prepayment premium. As of July 4, 2010, SPML had not borrowed any funds under the mortgage loan agreement. For additional de tails see Note 12 of Notes to our Condensed Consolidated Financial Statements.

Letter of Credit Facility with Deutsche Bank

On April 12, 2010, we entered into a letter of credit facility agreement with Deutsche Bank, as issuing bank and as administrative agent, and the financial institutions parties thereto from time to time. The letter of credit facility provides for the issuance, upon our request, of letters of credit by the issuing bank in order to support our obligations, in an aggregate amount not to exceed $350.0 million (or up to $400.0 million upon the agreement of the parties). Each letter of credit issued under the letter of credit facility must have an expiration date no later than the earlier of the second anniversary of the issuance of that letter of credit and April 12, 2013, except that: (i) a letter of credit may provide for automatic renewal in one-year periods, not to extend later than April 12, 2013; and (ii) up to $100.0 million in aggrega te amount of letters of credit, if cash-collateralized, may have expiration dates no later than the fifth anniversary of the closing of the letter of credit facility. For outstanding letters of credit under the letter of credit facility we pay a fee of 0.50% plus any applicable issuances fees charged by its issuing and correspondent banks. We also pay a commitment fee of 0.20% on the unused portion of the facility. As of July 4, 2010, letters of credit issued under the letter of credit facility totaled $179.6 million and were collateralized by restricted cash on our Condensed Consolidated Balance Sheet. For additional details see Note 12 of Notes to our Condensed Consolidated Financial Statements.

Amended Credit Agreement with Wells Fargo

On April 12, 2010, we entered into an amendment of our credit agreement with Wells Fargo. Under the amended credit agreement, letters of credit outstanding under the collateralized letter of credit facility will remain outstanding through October 12, 2010. On April 26, 2010, the uncollateralized letter of credit subfeature expired and as of July 4, 2010 all outstanding letters of credit on the subfeature had been moved to either the Deutsche Bank letter of credit facility or the Wells Fargo collateralized letter of credit facility. Letters of credit totaling $61.7 million and $150.7 million were issued by Wells Fargo under the collateralized letter of credit facility as of July 4, 2010 and January 3, 2010, respectively, and were collateralized by restricted cash on our Condensed Consolidated Balance Sheets. We pay fees of 0.2% to 0.4% de pending on maturity for outstanding letters of credit under the collateralized letter of credit facility. For additional details see Note 12 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 through May 31, 2010. Under the financing agreement, we designed and built the systems, and upon completion of each system, sold the systems to Wells Fargo, who in turn, leased back the systems to us. Separately, we entered into power purchase agreements with end customers, who host the systems and buy the electricity directly from us.

In December 2009, we sold two solar system projects to Wells Fargo. Concurrent with the sale, we entered into agreements to lease the systems back from Wells Fargo over minimum lease terms of up to 20 years. The deferred profit on the sale of the systems is being recognized over the minimum term of the lease. At the end of the lease term, we have the option of purchasing the system at fair value or removing the system. For additional details see Note 10 of Notes to our Condensed Consolidated Financial Statements.

Liquidity

As of July 4, 2010, we had unrestricted cash and cash equivalents of $383.0 million as compared to $615.9 million as of January 3, 2010. The decrease in the balance of our cash and cash equivalents as of July 4, 2010 as compared to the balance as of January 3, 2010 was primarily due to net cash paid of $272.7 million for the acquisition of SunRay completed on March 26, 2010, partially offset by the receipt of aggregate net proceeds of $230.5 million from the issuance of $250.0 million in principal amount of our 4.50% debentures in April 2010, after deducting the underwriters' discounts and commissions and offering expenses payable by us (including $13.7 million paid as the net cost of the bond hedge and warrant transactions entered into in connection with the 4.50% debenture offering). For additional details see Notes 2 and 12 of N otes to our Condensed Consolidated Financial Statements.

Our cash balances are held in numerous locations throughout the world, including substantial amounts held outside of the United States. The amounts held outside of the United States representing the earnings of our foreign subsidiaries, if repatriated to the United States under current law, would be subject to United States federal and state tax less applicable foreign tax credits. Repatriation of earnings that have not been subjected to U.S. tax and which have been indefinitely reinvested outside the U.S. could result in additional United States federal income tax payments in future years. The federal government recently announced several proposals pertaining to the taxation of non-United States earnings of U.S. multinationals, including proposals that may result in a limitation on U.S. tax payers' ability to defer the U.S. taxati on 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 materially adversely affected if the tax or accounting rules regarding un-repatriated earnings change.

As of July 4, 2010 and January 3, 2010, we had restricted cash and cash equivalents, net of current portion of $295.6 million and $248.8 million, respectively, of which $124.4 million and $117.0 million, respectively, is only available to finance the construction of FAB3 in Malaysia. On July 5, 2010, the joint venture closed between our Company, through SPTL, AUOSP, AUO and AUO Taiwan. Under the terms of the joint venture agreement, our Company, through SPTL, and AUO each own 50% of the AUOSP joint venture. Both SPTL and AUO are obligated to provide additional funding to AUOSP in the future. On July 5, 2010, SPTL and AUO each subscribed for shares in AUOSP with a par value of $350 million. The shareholders contributed some of those funds on July 5, 2010 and will contribute additional amounts over time so that the total cash contributions made by each shareholder equals $350 million in the aggregate, or such lesser amount as the parties may mutually agree. In addition, if AUOSP, SPTL or AUO requests additional equity financing to AUOSP, then each of SPTL and AUO will each be required to make additional cash contributions of up to a $50 million aggregate.

We expect total capital expenditures, excluding cash paid for the construction of solar power systems, in the range of $150 million to $200 million in fiscal 2010. The development of solar power plants can require long periods of time and substantial initial investments. Our efforts in this area may consist of all stages of development, including land acquisition, permitting, financing, construction, operation and the eventual sale of the projects. We will often choose to bear the costs of such efforts prior to our final sale to a customer. This involves significant upfront investments of resources (including, for example, large transmission deposits or other payments, which may be non-refundable), and in some cases the actual costs of constructing a project, in advance of the signing of PPAs and EPC contracts and the receipt of any reve nue, much of which is not recognized for several additional months or years following contract signing. The delayed disposition of such projects could have a negative impact on our liquidity.

Holders of our 0.75% debentures could require us to repurchase all or a portion of their 0.75% debentures on August 2, 2010. Therefore, our 0.75% debentures were classified as short-term liabilities in our Condensed Consolidated Balance Sheets as of both July 4, 2010 and January 3, 2010. Any repurchase of our 0.75% debentures under 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 could redeem some or all of our 0.75% debentures on or after August 2, 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. On August 2, 2010, holders required us to repurchase $143.3 million in principal amount of their 0.75% debentures at a cas h price of 100% of the principal amount plus accrued and unpaid interest. An aggregate principal amount of $0.6 million of the 0.75% debentures remain issued and outstanding after the repurchase. For additional details see Note 12 of Notes to our Condensed Consolidated Financial Statements.

Beginning in the first quarter of fiscal 2011 through the fourth quarter of fiscal 2014, the 4.50% debentures are convertible only upon specified events and, thereafter, they will be convertible at any time, based on an initial conversion price of $22.53 per share of our class A common stock. The 4.50% debentures are convertible only into cash, and not into shares of our class A common stock (or any other securities). Upon conversion, we will deliver an amount of cash calculated by reference to the price of our class A common stock over the applicable observation period. Concurrent with the issuance of the 4.50% debentures, we entered into privately negotiated convertible debenture hedge transactions (collectively, the "Bond Hedge") and warrant transactions (collectively, the "Warrants" and together with the Bond Hedge, the “CSO201 5”), with certain of the initial purchasers of the 4.50% cash convertible debentures or their affiliates. The CSO2015 is meant to reduce our exposure to potential cash payments upon conversion of the 4.50% debentures. For additional details see Note 12 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 for 20 out of 30 consecutive trading days in the last month of the fiscal quarter, then holders of the 1.25% debentures have the right to convert the debentures into cash and shares of class A common stock 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 quarter ending July 4, 2010 and January 3, 2010 did not equal or exceed $70.94, or 125% of the applicable conversion price for our 1.25% debentures, holders of the 1.25% debentures are unable to exercise their right to convert the debentures, based on the market price conversion trigger, on any day in the first and third quarters of fisca l 2010. Accordingly, we classified our 1.25% debentures as long-term in our Condensed Consolidated Balance Sheets as of both July 4, 2010 and January 3, 2010. This test is repeated each fiscal quarter, therefore, if the market price conversion trigger is satisfied in a subsequent quarter, the 1.25% debentures may again be reclassified as short-term. For additional details see Note 12 of Notes to our Condensed Consolidated Financial Statements.

In addition, the holders of our 1.25% 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 is less than 98% of the average closing sale price of a share of class A common stock during the five consecutive trading days, multiplied by the applicable conversion rate.

We have used, and intend to continue to use, the net proceeds from our public offering of 10.35 million shares of our class A common stock and the issuance of our 4.50% debentures and 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.

In fiscal 2009, we used $75.6 million in cash to repurchase $81.1 million in principal amount of our 0.75% debentures. On April 9, 2010 we repaid all principal and interest outstanding under the $30.0 million term loan with Union Bank. On August 2, 2010, holders required us to repurchase $143.3 million in principal amount of their 0.75% debentures at a cash price of 100% of the principal amount plus accrued and unpaid interest. We may use a portion of the net proceeds from our public offering of 10.35 million shares of our class A common stock and the issuance of our 4.50% debentures and 4.75% debentures (or cash on hand) to repurchase more of our outstanding 1.25% debentures. We expect that holders of our outstanding 1.25% debentures from whom we may repurchase such debentures (which holders may include one or more of the underwriters o f such debentures) 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 under our mortgage loan agreement with IFC will be sufficient to meet our working capital and fund our committed capital expenditures over the next 12 months. However, there can be no assurance that our liquidity will be adequate over time. Our capital expenditures may be greater than we expect 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 (“Cypress”) on September 29, 2008, our ability to sell additional equity securities to obtain additional fina ncing is subject to Cypress’s consent in certain circumstances to ensure the tax-free nature of its distribution of our class B common stock. In addition, 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 which may be similar or different than those restrictions contained in the covenants under the amended credit agreement with Wells Fargo, the letter of credit facility with Deutsche Bank, mortgage loan agreement with IFC, the 4.50% debentures, 4.75% debentures and 1.25% 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 as of July 4, 2010:

		Payments Due by Period			
(In thousands)	**Total**	**2010 (remaining 6 months)**	**2011-2012**	**2013-2014**	**Beyond 2014**
Convertible debt, including interest (1)	$ 921,008	$ 156,302	$ 245,751	$ 266,611	$ 252,344
Loan from Malaysian Government (2)	232,811	—	—	—	232,811
Cassiopea project loan, including interest (3)	240,531	3,016	20,225	37,975	179,315
Centauro project loan, including interest (4)	7,133	71	687	1,807	4,568
Piraeus Bank loan, including interest (5)	33,651	33,651	—	—	—
Customer advances (6)	91,621	11,747	23,874	16,000	40,000
Operating lease commitments (7)	49,726	4,874	13,664	10,642	20,546
Utility obligations (8)	750	—	—	—	750
Non-cancelable purchase orders (9)	251,408	251,408	—	—	—
Purchase commitments under agreements (10)	5,471,750	471,618	1,259,195	1,264,621	2,476,316
Total	$ 7,300,389	$ 932,687	$ 1,563,396	$ 1,597,656	$ 3,206,650

(1) Convertible debt and interest on convertible debt relate to the aggregate of $822.5 million in outstanding principal amount of our senior convertible debentures on July 4, 2010. For the purpose of the table above, we assume that all holders of the 4.50% debentures and 4.75% debentures will hold the debentures through the date of maturity in fiscal 2015 and 2014, respectively, and all holders of the 1.25% debentures and 0.75% debentures will require our Company to repurchase the debentures on February 15, 2012 and August 2, 2010, respectively, and upon conversion, the values of the 1.25% debentures and 0.75% debentures will be equal to the aggregate principal amount of $342.5 million with no premiums. On August 2, 2010, holders required us to repurchase $143.3 million in principal amount of their 0.75% debentures at a cash price of 100% of the principal amount plus accrued and unpaid interest. An aggregate principal amount of $0.6 million of the 0.75% debentures remain issued and outstanding after the repurchase (see Note 12 of Notes to our Condensed Consolidated Financial Statements).

(2) The loan from the Malaysian Government relates to $232.8 million borrowed as of July 4, 2010 for the financing and operation of FAB3 which is under construction in Malaysia. On July 5, 2010, the joint venture closed between our Company, through SPTL, AUOSP, AUO and AUO Taiwan. Under the terms of the joint venture agreement, the Company, through SPTL, and AUO each own 50% of the AUOSP joint venture, which owns FAB3 (see Notes 11 and 12 of Notes to our Condensed Consolidated Financial Statements).

(3) The Cassiopea project loan including interest relates to $146.5 million borrowed to finance the construction and operations of the 20 MWac solar power plant in Montalto di Castro, Italy. Principal and interest of EURIBOR plus 2.75% to 3% are to be repaid in various installment payments starting in September 2010 through June 2028. On August 5, 2010, we entered into an agreement providing for the sale of Cassiopea (see Notes 3 and 12 of Notes to our Condensed Consolidated Financial Statements).

(4) The Centauro project loan including interest relates to $5.1 million borrowed to finance the construction and operations of the 8 MWac Centauro Photovoltaic Park being constructed in Montalto di Castro, Italy. Principal and interest of EURIBOR plus 2.5% to 2.7% are to be repaid in various installment payments starting in March 2011 through September 2028 (see Note 12 of Notes to our Condensed Consolidated Financial Statements).

(5) The Piraeus Bank loan including interest relates to $33.6 million borrowed for pre-construction costs in Greece. Principal and interest of EURIBOR plus 1.4% mature every three months at which time the principal balance becomes automatically renewable at the combined option of both Energy Ray and Piraeus Bank. On August 12, 2010, Energy Ray Repaid its current account overdraft balance in full with Piraeus Bank which eliminated the need to provide cash collateral (see Notes 12 and 19 of Notes to our Condensed Consolidated Financial Statements).

(6) Customer advances relate to advance payments received from customers for future purchases of solar power products and future polysilicon purchases by a third party that manufactures ingots which are sold back to us under an ingot supply agreement (see Note 9 of Notes to our Condensed Consolidated Financial Statements).

(7) Operating lease commitments primarily relate to: (i) two solar power systems leased from Wells Fargo over minimum lease terms of up to 20 years; (ii) a 5-year lease agreement with Cypress for our headquarters in San Jose, California; (iii) an 11-year lease agreement with an unaffiliated third party for our administrative, research and development offices in Richmond, California; and (iv) other leases for various office space (see Note 10 of Notes to our Condensed Consolidated Financial Statements).

(8) Utility obligations relate to our 11-year lease agreement with an unaffiliated third party for our administrative, research and development offices in Richmond, California.

(9) Non-cancelable purchase orders relate to purchases of raw materials for inventory, construction services and manufacturing equipment from a variety of vendors. Non-cancellable purchase orders for construction services is due to the construction in progress at FAB3 in Malaysia (see Note 10 of Notes to our Condensed Consolidated Financial Statements).

(10) Purchase commitments under agreements relate to arrangements entered into with suppliers of polysilicon, ingots, wafers 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 eleven 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 (see Note 10 of Notes to our Consolidated Financial Statements).

On July 5, 2010, our Company and AUO also entered into a seven-year supply agreement with AUOSP, renewable by our Company for one-year periods thereafter, committing to the purchase of the solar cells manufactured by AUOSP. Under the terms of the supply agreement, the percentage of AUOSP's total annual output allocated on a monthly basis to us ranges from 95% in fiscal year 2010 to 80% in fiscal year 2013 and thereafter. Our Company and AUO have the right to reallocate supplies from time to time under a written agreement. The supply agreement also specifies that in the event that either AUO or SPTL sells its shares in AUOSP, certain terms and conditions customary for a third-party vendor arrangements will apply to such party's supply arrangement with AUOSP. The joint venture agreement also requires that AUOSP either assume a portion of certain existing polysilicon purchase obligations of our Company or enter into a commercial arrangement with our Company to purchase a portion of our existing purchase obligations on the same terms. These transactions are excluded from the table above because they closed on July 5, 2010, the first day of the third quarter in fiscal 2010.

As of July 4, 2010 and January 3, 2010, total liabilities associated with uncertain tax positions were $17.6 million and $14.5 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 10 of Notes to our Consolidated Financial Statements.

Off-Balance-Sheet Arrangements

As of July 4, 2010, we did not have any significant off-balance-sheet arrangements, as defined in Item 303(a)(4)(ii) of SEC Regulation S-K.

Item 3. Quantitative and Qualitative Disclosure About Market Risk

Foreign Currency Exchange Risk

Our exposure to movements in foreign currency exchange rates is primarily related to sales to European customers that are denominated in Euros. Revenue generated from European customers represented 56% and 58% of our total revenue in the three and six months ended July 4, 2010, respectively, as compare to 45% and 39% in the three and six months ended June 28, 2009, respectively. A 10% change in the Euro exchange rate would have impacted our revenue by $21.5 million and $42.4 million during the three and six months ended July 4, 2010, respectively, as compared to $13.5 million and $19.9 million during the three and six months ended June 28, 2009, 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. Weakening of the Korean Won against the U.S. dollar could result in a foreign currency remeasurement 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 AUOSP's 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, t hus 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 July 4, 2010, we had designated outstanding hedge option contracts and forward contracts with an aggregate notional value of $528.4 million and $583.1 million, respectively. As of January 3, 2010, we held option and forward contracts totaling $228.1 million and $466.3 million, respectively, in notional value.

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, gross margin and profitability as a result of foreign currency fluctuations. For additional details see Note 14 of Notes to our Condensed Consolidated Financial Statements.

Credit Risk

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

We enter into agreements with vendors that specify future quantities and pricing of polysilicon to be supplied for periods up to 11 years. Under certain agreements, we are required to make prepayments to the vendors over the terms of the arrangements. As of July 4, 2010 and January 3, 2010, advances to suppliers totaled $186.9 million and $190.6 million, respectively. Two suppliers accounted for 75% and 12% of total advances to suppliers as of July 4, 2010, and 76% and 15% of total advances to suppliers as of January 3, 2010.

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 counterparty. The foreign currency derivative contracts are limited to a time period of less than one year. Our bond hedge and warrant transactions intended to reduce the potential cash payments upon conversion of the 4.50% debentures expire in 2015. Our class A common stock purchased options to purchase up to 8.7 million shares of our class A common stock (convertible debenture hedge transactions intended to reduce the potential dilution upon conversion of our 4.75% debentures) expire in 2014. We regularly evaluate the credit standing of our counterparty financial institutions.

In fiscal 2007, we entered into share lending arrangements of our class A common stock with high-quality financial institutions for which we received a nominal lending fee of $0.001 per share. We loaned 2.9 million shares and 1.8 million shares of our class A common stock to LBIE and CSI, respectively. Physical settlement of the shares is required when the arrangement is terminated. However, on September 15, 2008, Lehman filed a petition for protection under Chapter 11 of the U.S. bankruptcy code, and LBIE commenced administration proceedings (analogous to bankruptcy) in the United Kingdom. The Company filed a claim in the LBIE proceeding for $240.9 million and a corresponding claim in the Lehman Chapter 11 proceeding under Lehman's guaranty of LBIE's obligations. For additional details see Notes 8, 12 and 14 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 significant to our bus iness because our sales model is highly sensitive to interest rate fluctuations and the availability of credit, and would be adversely affected by increases in interest rates or liquidity constraints.

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 and bank notes. 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 (income) 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 substantially all of this portfolio, we do not expect our operating results or cash flows to be materially affected to any significant degree by a sudden change in market interest rates on our investment portfolio.

Minority Investments in Joint Ventures and Other Non-Public Companies

Our investments held in joint ventures and other non-public companies expose us to equity price risk. As of July 4, 2010 and January 3, 2010, investments of $73.3 million and $39.8 million, respectively, are accounted for using the equity method, and $6.2 million and $4.6 million, respectively, are accounted for using the cost method. These strategic investments in third parties are subject to risk of changes in market value, which if determined to be other-than-temporary, could result in realized impairment losses. We generally do not attempt to reduce or eliminate our market exposure in equity and cost method investments. We monitor these investments for impairment and record reductions in the carrying values when necessary. Circumstances that indicate an other-than-temporary decline include valuation ascribed to the issuing company in subsequent financing rounds, decreases in quoted market price and declines in operations of the issuer. There can be no assurance that our equity and cost method investments will not face risks of loss in the future. For additional details see Notes 7 and 11 of Notes to our Condensed Consolidated Financial Statements.

Convertible Debt

The fair market value of our 0.75%, 1.25%, 4.50% and 4.75% convertible debentures is subject to interest rate risk, market price risk and other factors due to the convertible feature of the debentures. The fair market value of the debentures will generally increase as interest rates fall and decrease as interest rates rise. In addition, the fair market value of the debentures will generally increase as the market price of our 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 except to the extent increases in the value of our class A common stock may provide the holders of our 4.50% debentures, 1.25% debentures and/or 0.75% debentures the right to convert such debentures in certain instances. The aggregate estimated fair value of the 4.75% debentures, 4.50% debentures, 1.25% debentures and 0.75% debentures was $704.7 million as of July 4, 2010 and the aggregate estimated fair value of the 4.75% debentures, 1.25% debentures and 0.75% debentures was $582.8 million as of January 3, 2010, 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 $775.2 million and $641.1 million as of July 4, 2010 and January 3, 2010, respectively, and a 10% decrease in the quoted market prices would decrease the estimated fair value of our then-outstanding debentures to $634.2 million and $524.5 million as of July 4, 2010 and January 3, 2010, respectively. On August 2, 2010, holders required us to repurchase $143.3 million in principal amount of their 0.75% debentures at a cash price of 100% of the principal amount plus accrued and unpaid interest. An aggregate principal amount of $0.6 million of the 0.75% debentures remain issued and outstanding after the repurchase. For additional details see Note 12 of Notes to our Condensed Consolidated Financial Statements.

Item 4. Controls and Procedures

Evaluation of Disclosure Controls and Procedures

Disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act) are designed to ensure that information required to be disclosed in reports filed or submitted under the Securities Exchange Act of 1934 is recorded, processed, summarized, and reported within the time periods specified in SEC rules and forms, and that such information is accumulated and communicated to management, including the Chief Executive Officer and the Chief Financial Officer, as appropriate, to allow timely decisions regarding required disclosures.

Management of the Company, under the supervision and with the participation of the Chief Executive Officer and Chief Financial Officer, conducted an evaluation of the effectiveness of our disclosure controls and procedures as of July 4, 2010.

As previously disclosed under Item 9A, “Controls and Procedures” in our Annual Report on Form 10-K for the fiscal year ended January 3, 2010, we concluded that our disclosure controls and procedures were not effective at that time based on the following material weaknesses identified in our Philippines operations:

- There was not an effective control environment in our Philippines operations. Specifically, certain of the Company’s employees in the Philippines violated the Company’s code of business conduct and ethics. Individuals in the Company's Philippines finance organization intentionally proposed and/or approved journal entries that were not substantiated by actual transactions or costs.
- We did not maintain in the Philippines operations, a sufficient complement of personnel with an appropriate level of accounting knowledge, experience and training to ensure that our controls, and specifically our controls over inventory variance capitalization, were effective.

These material weaknesses led to misstatements which ultimately resulted in the Company restating its financial statements as of and for the year ended December 28, 2008 and financial data for each of the quarterly periods for the year then ended and for the first three quarterly periods in the year ended January 3, 2010. As described below, management is actively engaged in efforts to remediate these material weaknesses. Several actions are complete or are in the process of being implemented. However, management concluded that our disclosure controls and procedures were not effective as of July 4, 2010. Management, the audit committee and the board of directors have made the remediation of these weaknesses a key priority for 2010.

Remedial Effects to Address the Material Weaknesses

To address the two material weaknesses described above, subsequent to January 3, 2010, the following remedial actions have been completed or are in the process of being implemented:

Reinforcement of the Company’s Code of Business Conduct and Ethics:

- During the first and second fiscal quarters of 2010, we developed and implemented additional training programs to increase awareness of our code of business conduct and ethics and “whistle-blower” policies;
- During the first fiscal quarter of 2010, we re-emphasized management’s expectations to all employees regarding adherence to our policies and ethical business standards;
- We continue to reinforce corporate policies as part of all-hands meetings and month-end close meetings;

Resources, Employee Actions and Reporting Relationships

- During the first fiscal quarter of 2010, we appointed a new vice president and controller – Asia region;
- During the first and second fiscal quarters of 2010, we terminated employees involved in unethical activities in compliance with applicable legal requirements;
- During the first and second fiscal quarters of 2010, we hired additional qualified employees in our Philippines finance organization for key leadership positions;
- During the first fiscal quarter of 2010, we added resources to our corporate finance team to support enhancements for enterprise resource planning systems;
- During the first and second fiscal quarters of 2010, we segregated duties between the financial planning and accounting functions;
- During the first and second fiscal quarters of 2010, we reorganized reporting structures so that accounting employees in the Philippines report directly on a centralized basis to the chief financial officer’s organization;
- During the first fiscal quarter of 2010, we increased corporate management’s presence in the Philippines;

Process Improvements in Philippines

- During the first fiscal quarter of 2010, we standardized and documented our process for capitalizing manufacturing variances;

- During the second fiscal quarter of 2010, we trained responsible employees on the proper method to capitalize manufacturing variances;
- During the first and second fiscal quarters of 2010, we established a formal process for certifications and sub-certifications of financial reports; and
- During the first fiscal quarter of 2010, we added specific reviews for required manual journal entries.

In addition, to address the two material weaknesses described above, we plan to implement the following remedial actions:

Process Improvements in Philippines

- We intend to improve our monthly and quarterly closing processes by reducing unnecessary manual journal entries; and
- We intend to standardize and document all key accounting policies.

Our management is committed to maintaining a strong control environment, high ethical standards, and financial reporting integrity in our Philippines operations. We believe that the foregoing actions have improved, and will continue to improve, our disclosure controls and procedures. However, certain of the actions that we expect to complete in fiscal 2010 will require additional time to be implemented fully, or to take full effect. Accordingly, the remediation of the identified material weakness was not complete as of the date of this report. There can be no assurance that the material weaknesses described above will be remediated by January 2, 2011, the date as of which management will next report on internal control over financial reporting under Sarbanes-Oxley Section 404. Prior to the remediation of the material weaknesses, there is a greater risk that material misstatements in our interim or annual financial statements may occur. If the remedial measures described above are insufficient to address the material weaknesses, or any additional deficiency that may arise in the future, material misstatements in our interim or annual financial statements may occur in the future.

Further, any system of controls, no matter how well designed and operated, cannot provide absolute assurance that the objectives of the system of controls are or will be met, and no evaluation of controls can provide absolute assurance that all control issues within a company have been detected or will be detected under all potential future conditions.

Changes in Internal Control over Financial Reporting

As described above, there have been changes in our internal control over financial reporting during the quarter ended July 4, 2010 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

PART II. OTHER INFORMATION

ITEM 1. LEGAL PROCEEDINGS

Audit Committee Investigation and Related Litigation

In November 2009, the Audit Committee of our Board of Directors initiated an independent investigation regarding certain unsubstantiated accounting entries. The Audit Committee announced the results of its investigation in March 2010. For information regarding the Audit Committee's investigation, see *Part I — "Item 1: Notes to Condensed Consolidated Financial Statements — Note 1," "Item 2: Management's Discussion and Analysis of Financial Condition and Results of Operations — Restatement of Previously Issued Condensed Consolidated Financial Statements*" and our Company's Annual Report on Form 10-K for the y ear ended January 3, 2010. For a description of the control deficiencies identified by management as a result of the investigation and our internal reviews, and management's plan to remediate those deficiencies, see *Part I — "Item 4: Controls and Procedures."*

Three securities class action lawsuits were filed against our Company and certain of our current and former officers and directors in the United States District Court for the Northern District of California on behalf of a class consisting of those who acquired our securities from April 17, 2008 through November 16, 2009. The cases were consolidated as Plichta v. SunPower Corp. et al., Case No. CV-09-5473-RS (N.D. Cal.), and lead plaintiffs and lead counsel were appointed on March 5, 2010. Lead plaintiffs filed a consolidated complaint on May 28, 2010. The actions arise from the Audit Committee's investigation announcement on November 16, 2009. The consolidated complaint alleges that the defendants made material misstatements and omissions concerning our Company's financial results for 2008 and 2009, seeks an unspecified amoun t of damages, and alleges violations of Sections 10(b) and 20(a) of the Securities Exchange Act of 1934, and Sections 11 and 15 of the Securities Act of 1933. We believe we have meritorious defenses to these allegations and will vigorously defend our self in these matters. Defendants filed motions to dismiss the consolidated complaint on August 5, 2010, which are scheduled to be heard on November 4, 2010. We are currently unable to determine if the resolution of these matters will have an adverse effect on our financial position, liquidity or results of operations.

Derivative actions purporting to be brought on our behalf have also been filed in state and federal courts against several of our current and former officers and directors based on the same events alleged in the securities class action lawsuits described above. The California state derivative cases were consolidated as In re SunPower Corp. S'holder Derivative Litig., Lead Case No. 1-09-CV-158522 (Santa Clara Sup. Ct.), and co-lead counsel for plaintiffs have been appointed. The complaints assert state-law claims for breach of fiduciary duty, abuse of control, unjust enrichment, gross mismanagement, and waste of corporate assets. Plaintiffs are scheduled to file a consolidated complaint on or before September 15, 2010. The federal derivative complaints were consolidated as In re SunPower Corp. S'holder Derivative Litig., Maste r File No. CV-09-05731-RS (N.D. Cal.), and lead plaintiffs and co-lead counsel were appointed on January 4, 2010. The complaints assert state-law claims for breach of fiduciary duty, waste of corporate assets, and unjust enrichment, and seek an unspecified amount of damages. We intend to oppose the derivative plaintiffs' efforts to pursue this litigation on our behalf. We are currently unable to determine if the resolution of these matters will have an adverse effect on our financial position, liquidity or results of operations.

We are also a party to various other litigation matters and claims that arise from time to time in the ordinary course of our business. While we believe that the ultimate outcome of such matters will not have a material adverse effect on our Company, their outcomes are 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 January 3, 2010, which could materially affect our business, financial condition or future results. The risks described in our Annual Report on Form 10-K and below 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.

In addition to the other risk factors contained in our Annual Report on Form 10-K, we have updated the following risk factors to reflect changes during the six months ended July 4, 2010. Certain of the risk factors from our Annual Report on Form 10-K have been updated below to reflect the change in our reporting segments beginning the quarter ended July 4, 2010. The following risk factors should be read in connection with the risk factors discussed in "PART I. Item 1A: Risk Factors" in our Annual Report on Form 10-K.

Risks Related to Our Supply Chain

If third-party manufacturers become unable or unwilling to sell their solar cells and panels to us , our business and results of operations may be materially negatively affected.

We plan to purchase a portion of our total product mix from third-party manufacturers of solar cells and panels. Such products increase our inventory available for sale to customers in some markets. However, such manufacturers may not be willing to sell solar cells and panels to us at the quantities and on the terms and conditions we require. In addition such manufacturers may be our direct competitors. If they are unable or unwilling to sell to us, we may not have sufficient products available to sell to customers and satisfy our sales commitments, thereby materially and negatively affecting our business and results of operations. In addition, warranty and product liability claims may result from defects or quality issues in connection with third party solar cells and panels that we incorporate into our solar power products. See also &# 8220;*Risks Related to Our Sales Channels—We may incure unexpected warranty and product liability claims that could materially and adversely affect our financial condition and results of operations.*"

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. For example, in the second fiscal quarter of 2010 we experienced a net loss. We may not be profitable on a quarterly basis. Our quarterly revenue and operating results will be difficult to predict and have in the past fluctuated from quarter to quarter. In particular, revenue in our UPP Segment is difficult to forecast and is susceptible to large fluctuations. The amount, timing and mix of sales in our UPP Segment, often for a single medium or large-scale project, may cause large fluctuations in our revenue and other financial results as, at any given time, our UPP Segment is dependent on large scale projects and often a single project can account for a material portion of our total revenue in a given quarter. Further, our revenue mix of high margin materials sales versus lower margin project sales can fluctuate dramatically from quarter to quarter, which may adversely affect our revenue and financial results in any given period. Any decrease in revenue from our large UPP Segment customers, whether due to a loss of projects or an inability to collect, could have a significant negative impact on our business. Our agreements with these customers may be cancelled if we fail to meet certain product specifications or materially breach the agreement. In the event of bankruptcy, our customers may seek to renegotiate the terms of current agreements or renewals. In addition, the failure by any significant customer to pay for orders, whether due to liquidity issues or otherwise, could materially and adversely affect our results of operations. Our inability to execute upon the sale of our projects as planned, or any delay in obtaining the required initial payments to begin recognizi ng revenue under real estate accounting, 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. Finally, a delayed disposition of a project could require us to recognize a gain on the sale of assets instead of recognizing revenue. Any of the foregoing may cause us to miss any current and future revenue or earnings guidance announced by us and negatively impact liquidity.

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 revenue or earnings guidance announced by us.

We may incur unexpected warranty and product liability claims that could materially and adversely affect our financial condition and results of operations.

Our current standard product warranty for our solar panels includes a 10-year warranty period for defects in materials and workmanship and a 25-year warranty period for declines in power performance. We believe our warranty periods are consistent with industry practice. We perform accelerated lifecycle testing that expose our solar panels to extreme stress and climate conditions in both environmental simulation chambers and in actual field deployments in order to highlight potential failures that would occur over the 25-year warranty period. Due to the long warranty period, we bear the risk of extensive warranty claims long after we have shipped product and recognized revenue. Although we conduct accelerated testing of our solar panels and have several years of experience with our all-back-contact solar cell architecture, our solar panel s have not and cannot be tested in an environment that exactly simulates the 25-year warranty period and it is difficult to test for all conditions that may occur in the field. We have sold solar cells since late 2004 and have therefore not tested the full warranty cycle.

In our project installations, our current standard warranty for our solar power systems differs by geography and end-customer application and usually includes a 2, 5 or 10-year comprehensive parts and workmanship warranty, after which the customer may typically extend the period covered by its warranty for an additional fee. Due to the long warranty period, we bear the risk of extensive warranty claims long after we have completed a project and recognized revenues. Warranty and product liability claims may also result from defects or quality issues in certain third party technology and components that our business incorporates into its solar power systems, particularly solar cells and panels, over which we have little or no control. While we generally pass through manufacturer warranties we receive from our suppliers to our customers, we are directly responsible for repairing or replacing any defective parts during our warranty period, often including those covered by manufacturers' warranties. If the manufacturer disputes or otherwise fails to honor its warranty obligations, we may be required to incur substantial costs before we are compensated, if at all, by the manufacturer. Furthermore, our warranties may exceed the period of any warranties from our suppliers covering components, such as third party solar cells, third party panels and third party inverters, included in our systems. In addition, manufacturer warranties may not fully compensate us for losses associated with third-party claims caused by defects or quality issues in their products. For example, most manufacture warranties exclude many losses that may result from a system component's failure or defect, such as the cost of de-installation, re-installation, shipping, lost electricity, lost renewable energy credits or other solar incentives, personal injury, proper ty damage, and other losses. In certain cases our direct warranty coverage provided by SunPower to our customers, and therefore our financial exposure, may exceed our recourse available against cell, panel or other manufacturers for defects in their products. In addition, in the event we seek recourse through warranties, we will also be dependent on the creditworthiness and continued existence of the suppliers to our business.

Any increase in the defect rate of SunPower or third party products would cause us to increase the amount of warranty reserves and have a corresponding negative impact on our results of operations. Further, potential future product failures could cause us to incur substantial expense to repair or replace defective products, and we have agreed to indemnify our customers and our distributors in some circumstances against liability from defects in our solar cells. A successful indemnification claim against us could require us to make significant damage payments. Repair and replacement costs, as well as successful indemnification claims, could materially and negatively impact our financial condition and results of operations.

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

We often do not have long-term agreements with our customers and accordingly could lose customers without warning, which could cause our operating results to fluctuate.

Our product sales to residential dealers and components customers are frequently not accomplished under long-term agreements. We also contract to construct or sell large projects with no assurance of repeat business from the same customers in the future. Although we believe that cancellations on our purchase orders to date have been insignificant, our customers may cancel or reschedule purchase orders with us on relatively short notice. Cancellations or rescheduling of customer orders could result in the delay or loss of anticipated sales without allowing us sufficient time to reduce, or delay the incurrence of, our corresponding inventory and operating expenses. In addition, changes in forecasts or the timing of orders from these or other customers expose us to the risks of inventory shortages or excess inventory. These circumstances, i n addition to the completion and non-repetition of large projects, variations in average selling prices, changes in the relative mix of sales of solar equipment versus solar project installations, and the fact that our supply agreements are generally long-term in nature and many of our other operating costs are fixed, in turn could cause our operating results to fluctuate and may result in a material adverse effect in our business.

Almost all of our construction contracts are fixed price contracts which may be insufficient to cover unanticipated or dramatic changes in costs over the life of the project.

Almost all of our construction contracts in both our UPP Segment and R&C Segment are fixed price contracts. All essential costs are estimated at the time of entering into the construction contract for a particular project, and these are reflected in the overall price that we charge our customers for the project. These cost estimates are preliminary and may or may not be covered by contracts between us or the subcontractors, suppliers and any other parties that may become necessary to complete to the project. Thus, if the cost of materials were to rise dramatically as a result of sudden increased demand, these costs may have to be borne by us.

In addition, we require qualified, licensed subcontractors to install most of our systems. Shortages of such skilled labor could significantly delay a project or otherwise increase our costs. In several instances in the past, we have obtained change orders that reimburse us for additional unexpected costs due to various reasons. Should miscalculations in planning a project or delays in execution occur, there can be no guarantee that we would be successful in obtaining reimbursement and we may not achieve our expected margins or we may be required to record a loss in the relevant fiscal period.

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

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

The competitive environment in which we operate often requires us to undertake customer obligations, which could materially and adversely affect our financial condition and results of operations if our customer obligations are more costly than expected.

We are often required as a condition of financing or at the request of our end customer to undertake certain obligations such as:

- System output performance guarantees;
- System maintenance;
- Penalty payments or customer termination rights if the system we are constructing is not commissioned within specified timeframes or other construction milestones are not achieved;
- Guarantees of certain minimum residual value of the system at specified future dates; and
- System put-rights whereby we could be required to buy-back a customer’s system at fair value on specified future dates if certain minimum performance thresholds are not met.

Such financing arrangements and customer obligations involve complex accounting analyses and judgments regarding the timing of revenue and expense recognition and in certain situations these factors may require us to defer revenue recognition until projects are completed, which could adversely affect revenue and profits in a particular period.

Risks Related to Our Operations

If we are not successful in adding additional production lines through our joint venture in Malaysia, or we experience interruptions in the operation of our solar cell production lines, our revenue and results of operations may be materially and adversely affected.

We currently have 16 solar cell manufacturing lines in production which are located at our manufacturing facilities in the Philippines. If our current or future production lines were to experience any problems or downtime, we would be unable to meet our production targets and our business would suffer. If any equipment were to break down or experience downtime, it could cause our production lines to go down.

In addition, we are constructing another manufacturing facility in Malaysia through a joint venture with AU Optronics Corporation ("AUO"). Under the joint venture agreement, we and AUO will jointly own and manage the manufacturing facility. We plan to deploy our solar cell technology and process know-how and AUO's manufacturing expertise to install and operate the new manufacturing facility. We expect the joint venture to provide a substantial portion of our solar cell supply beginning in 2011.

Our manufacturing activities have required and will continue to require significant management attention, a significant investment of capital and substantial engineering expenditures. The success of our joint venture is subject to significant risks including:

- cost overruns, delays, equipment problems and other operating difficulties;
- difficulties expanding our processes to larger production capacity;
- custom-built equipment may take longer and cost more to engineer than planned and may never operate as designed;
- incorporating first-time equipment designs and technology improvements, which we expect to lower unit capital and operating costs, but this new technology may not be successful;
- problems managing the joint venture with AUO, whom we do not control and whose business objectives are different from ours and may be inconsistent with our best interest;
- AUO's ability to obtain interim financing to fund the joint venture's business plan until such time as third party financing is obtained;
- the joint venture's ability to obtaining third party financing to fund its capital requirements;
- difficulties in maintaining or improving our historical yields and manufacturing efficiencies;
- difficulties in protecting our intellectual property and obtaining rights to intellectual property developed by the joint venture;
- difficulties in hiring key technical, management, sales and other personnel;
- difficulties in integration, implementing IT infrastructure and an effective control environment; and
- potential inability to obtain, or obtain in a timely manner, approvals from governmental authorities for operations.

If we experience any of these or similar difficulties, we may be unable to complete the addition of new production lines on schedule at our joint venture, and our supply from the joint venture may be delayed or be more costly than expected, substantially constraining our supply of solar cells. If we are unable to ramp up our manufacturing capacity at the joint venture as planned, or we experience interruptions in the operation of our existing production lines, our per-unit manufacturing costs would increase, we would be unable to increase sales or gross margins as planned, we would need to increase our supply of third party solar cells, and our results of operations would likely be materially and adversely affected.

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

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

Additionally, products as complex as ours may contain undetected errors or defects, especially when first introduced. For example, our solar cells and solar panels may contain defects that are not detected until after they are shipped or are installed because we cannot test for all possible scenarios. These defects could cause us to incur significant re-engineering costs, divert the attention of our engineering personnel from product development efforts and significantly affect our customer relations and business reputation. If we deliver solar cells or solar panels with errors or defects, including cells or panels of third-party manufacturers, or if there is a perception that such solar cells or solar panels contain errors or defects, our credibility and the market acceptance and sales of our products could be harmed. In addition, some of our arrangements with customers include termination or put rights for non-performance. In certain limited cases, we could be required to buy-back a customer's system at fair value on specified future dates if certain minimum performance thresholds are not met for periods up to two years.

Developing solar power plants may require significant upfront investments prior to our recognizing any revenue, which could adversely affect our business and results of operations.

In March 2010, we acquired SunRay, a European solar power plant developer with offices in Europe and the Middle East, for $282 million. Since the acquisition of SunRay, our project development business has expanded significantly from the then existing project development business in North America. The development of solar power plants can require long periods of time and substantial initial investments, which may never be recovered if a potential project cannot be completed on commercially reasonable terms or at all. Our efforts in this area may consist of all stages of development, including land acquisition, permitting, financing, construction, operation and the eventual sale of the projects. We will often choose to bear the costs of such efforts prior to our final sale to a customer, if any. This involves significant upfront investmen ts of resources (including, for example, large transmission deposits or other payments, which may be non-refundable), and in some cases the actual costs of constructing a project, in advance of the signing of PPAs and EPC contracts and the receipt of any revenue, much of which is not recognized for several additional months or years following contract signing. Our ability to monetize the SunRay solar power plant projects is dependent on successfully executing and selling large scale projects and often a single project can account for a material portion of our total revenue in a given quarter. Since consummation of the acquisition of SunRay, we have deferred revenue on SunRay construction projects until the projects have been financed and sold to independent third parties. Alternatively, we may choose to build, own and operate certain solar power plants for a period of time, after which the project assets may be sold to third parties. In such cases, the delayed disposition of projects could require us to recognize a gain on the sale of assets instead of recognizing revenue. Our potential inability to enter into sales contracts with customers after making such upfront investments could adversely affect our business, liquidity and results of operations. Our inability to execute upon the sale of our projects as planned, or any delay in obtaining the required initial payments to begin recognizing revenue under real estate accounting, and the corresponding revenue impact under the percentage-of-completion method of recognizing revenue, may cause large fluctuations in our revenue and other financial results.

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 relied on Jiawei SolarChina Co., Ltd. ("Jiawei"), 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. ("Jabil") for similar services that are provided in Mexico. In December 2009, we entered into another arrangement with Jabil for similar services provided in Poland beginning in the first quarter of fiscal 2010. We continue to negotiate with and enter into agreements with other third parties to assemble our solar cells or third-party solar cells into panels. In addition, we plan to manufacture up to a quarter of our solar panels in the United States within the next two years, wh ether produced internally or by third-party subcontractors located in states near attractive solar markets. 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, Jabil or other contract manufacturers 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.

We act as the general contractor for some of our customers in connection with the installations of our solar power systems and are subject to risks associated with construction, cost overruns, delays and other contingencies tied to performance bonds and letters of credit, which could have a material adverse effect on our business and results of operations.

We act as the general contractor for some of our customers in connection with the installation of our solar power systems. All essential costs are estimated at the time of entering into the sales contract for a particular project, and these are reflected in the overall price that we charge our customers for the project. These cost estimates are preliminary and may or may not be covered by contracts between us or the other project developers, subcontractors, suppliers and other parties to the project. In addition, we require qualified, licensed subcontractors to install most of our systems. Shortages of such skilled labor could significantly delay a project or otherwise increase our costs. Should miscalculations in planning a project or defective or late execution occur, we may not achieve our expected margins or cover our costs. Also, so me systems customers require performance bonds issued by a bonding agency or letters of credit issued by financial institutions. Due to the general performance risk inherent in construction activities, it has become increasingly difficult recently to secure suitable bonding agencies willing to provide performance bonding, and obtaining letters of credit requires adequate collateral because we have not obtained a credit rating. In the event we are unable to obtain bonding or sufficient letters of credit, we will be unable to bid on, or enter into, sales contracts requiring such bonding.

In addition, the contracts with some of our larger customers require that we would be obligated to pay substantial penalty payments for each day or other period its solar installation is not completed beyond an agreed target date, up to and including the return of the entire project sale price. This is particularly true in Europe, where long-term, fixed feed-in tariffs available to investors are typically set during a prescribed period of project completion, but the fixed amount declines over time for projects completed in subsequent periods. We face material financial penalties in the event we fail to meet the completion deadlines, including but not limited a full refund of the contract price paid by the customers. In certain cases we do not control all of the events which could give rise to these penalties, such as reliance on the loca l utility to timely complete electrical substation construction.

Furthermore, investors often require that the solar power system generate specified levels of electricity in order to maintain their investment returns, allocating substantial risk and financial penalties to us if those levels are not achieved, up to and including the return of the entire project sale price. Also, our customers often require protections in the form of conditional payments, payment retentions or holdbacks, and similar arrangements that condition its future payments on performance. Delays in solar panel or other supply shipments, other construction delays, unexpected performance problems in electricity generation or other events could cause us to fail to meet these performance criteria, resulting in unanticipated and severe revenue and earnings losses and financial penalties. Construction delays are often caused by incleme nt weather, failure to timely receive necessary approvals and permits, or delays in obtaining necessary solar panels, inverters or other materials. Additionally, we sometimes purchase land in connection with project development and assume the risk of project completion. All such risks could have a material adverse effect on our business and results of operations.

Acquisitions of other companies or investments in joint ventures with other companies could materially and adversely affect our financial condition and results of operations, and dilute our stockholders' equity.

To increase our business and maintain our competitive position, we may acquire other companies or engage in joint ventures in the future. For example, in March 2010, we completed our acquisition of SunRay for $282 million. In July 2010, we formed a joint venture with AUO to jointly own and operate our third solar cell manufacturing factory to be located in Malaysia. See also "*If we are not successful in adding additional production lines through our joint venture in Malaysia, or we experience interruptions in the operation of our solar cell production lines, our revenue and results of operations may be materially and adversely affected.*"

Acquisitions and joint ventures involve a number of risks that could harm our business and result in the acquired business or joint venture not performing as expected, including:

- insufficient experience with technologies and markets in which the acquired business or joint venture is involved, which may be necessary to successfully operate and/or integrate the business or the joint venture;
- problems integrating the acquired operations, personnel, IT infrastructure, technologies or products with the existing business and products;
- diversion of management time and attention from the core business to the acquired business or joint venture;
- potential failure to retain or hire key technical, management, sales and other personnel of the acquired business or joint venture;
- difficulties in retaining or building relationships with suppliers and customers of the acquired business or joint venture, particularly where such customers or suppliers compete with us;
- potential failure of the due diligence processes to identify significant issues with product quality and development or legal and financial liabilities, among other things;
- potential inability to obtain, or obtain in a timely manner, approvals from governmental authorities, which could delay or prevent acquisitions or the successful operation of joint ventures;

- potential necessity to re-apply for permits of acquired projects;
- problems managing joint ventures with our partners, and reliance upon joint ventures which we do not control, for example, our ability to effectively manage our joint venture with AUO for the expansion of our manufacturing capacity;
- subsequent impairment of the acquired assets, including intangible assets; and
- assumption of liabilities including, but not limited to, lawsuits, tax examinations, warranty issues, liabilities associated with compliance with laws (for example, the Foreign Corrupt Practices Act).

Additionally, we may decide that it is in our best interests to enter into acquisitions or joint ventures that are dilutive to earnings per share or that negatively impact margins as a whole. In an effort to reduce our cost of goods sold, we have and may continue to enter into acquisitions or joint ventures involving suppliers or manufacturing partners, which would expose us to additional supply chain risks. Acquisitions or joint ventures could also require investment of significant financial resources and require us to obtain additional equity financing, which may dilute our stockholders' equity, or require us to incur additional indebtedness. Further, following the spin-off of our shares by Cypress on September 29, 2008, our ability to issue equity, including to acquire companies or assets, is subject to limits as described in &# 8220;*Our agreements with Cypress require us to indemnify Cypress for certain tax liabilities. These indemnification obligations and related contractual restrictions may limit our ability to obtain additional financing, participate in future acquisitions or pursue other business initiatives*." in "Part I. Item 1A: Risk Factors" in our Annual Report on Form 10-K. To the extent these limits prevent us from pursuing acquisitions or investments that we would otherwise pursue, our growth and strategy could be impaired.

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

We may in the future be required to consolidate the assets, liabilities and financial results of certain of our existing or future joint ventures which could have an adverse impact on our financial position, gross margin and operating results.

The Financial Accounting Standards Board has issued accounting guidance regarding variable interest entities ("VIEs") that affects our accounting treatment of our existing and future joint ventures. Our significant VIEs include our joint venture in Woongjin Energy Co., Ltd. and First Philec Solar Corporation, our future equity interest in a polysilicon manufacturer in Saudi Arabia, and our joint venture with AUO to operate our Malaysian manufacturing plant. To ascertain if we are required to consolidate these entities, we determine whether we are the primary beneficiary in accordance with the accounting guidance. Factors we consider in determining whether we are the VIE's primary beneficiary include the decision making authority of each partner, which partner manages the day-to-day operations of the joint venture and th e amount of our equity in relation to that of our partners. Changes in the financial accounting guidance, or changes in circumstances at each of these joint ventures, could lead us to determine that we have to consolidate the assets, liabilities and financial results of such joint ventures. This could have a material adverse impact on our financial position, gross margin and operating results. In addition, we may enter into future joint ventures or make other equity investments, which could have an adverse impact on us because of the financial accounting guidance regarding VIEs.

We carry significant goodwill on our balance sheet, which is subject to impairment testing and could subject us to significant non-cash charges to earnings in the future if impairment occurs.

As of July 4, 2010, we had goodwill of $353.9 million, which represented 10% of our total assets. We have completed strategic acquisitions which have increased our goodwill; most recently, our acquisition of SunRay increased our goodwill by $157.1 million in the first six months of fiscal 2010. The value of this asset may increase in the future if we complete acquisitions as part of our overall business strategy. Goodwill is not amortized, but is tested for impairment annually or more often if events or changes in circumstances indicate a potential impairment may exist. Factors that could indicate that our goodwill is impaired include a decline in stock price and market capitalization, lower than projected operating results and cash flows, and slower growth rates in our industry. Our stock price has declined significantly since mid-2008, which increases the risk of goodwill impairment if the price of our stock does not recover. If an impairment is determined to exist, it may result in a significant non-cash charge to earnings and lower stockholders' equity.

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

Issuer Purchases of Equity Securities

The following table sets forth all purchases made by or on behalf of 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)(1)	Average Price Paid Per Share	Total Number of Shares Purchased as Part of Publicly Announced Plans or Programs	Maximum Number of Shares That May Yet Be Purchased Under the Publicly Announced Plans or Programs
April 4, 2010 through May 2, 2010	2,941	$ 17.57	—	—
May 3, 2010 through May 30, 2010	30,565	$ 15.87	—	—
May 31, 2010 through July 4, 2010	18,429	$ 14.12	—	—
	51,935	$ 15.35	—	—

(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.

Item 6. Exhibits

Exhibit Number	Description
10.1	Convertible Debenture Hedge Transaction Confirmation, dated April 5, 2010, by and between SunPower Corporation and Bank of America, N.A. (incorporated by reference to Exhibit 10.1 to the Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on April 9, 2010).
10.2	Convertible Debenture Hedge Transaction Confirmation, dated April 5, 2010, by and between SunPower Corporation and Barclays Bank PLC (incorporated by reference to Exhibit 10.2 to the Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on April 9, 2010).
10.3	Convertible Debenture Hedge Transaction Confirmation, dated April 5, 2010, by and between SunPower Corporation and Credit Suisse International (incorporated by reference to Exhibit 10.3 to the Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on April 9, 2010).
10.4	Convertible Debenture Hedge Transaction Confirmation, dated April 5, 2010, by and between SunPower Corporation and Deutsche Bank AG, London Branch (incorporated by reference to Exhibit 10.4 to the Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on April 9, 2010).
10.5	Warrant Transaction Confirmation, dated April 5, 2010, by and between SunPower Corporation and Bank of America, N.A. (incorporated by reference to Exhibit 10.5 to the Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on April 9, 2010).
10.6	Warrant Transaction Confirmation, dated April 5, 2010, by and between SunPower Corporation and Barclays Bank PLC (incorporated by reference to Exhibit 10.6 to the Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on April 9, 2010).
10.7	Warrant Transaction Confirmation, dated April 5, 2010, by and between SunPower Corporation and Credit Suisse International (incorporated by reference to Exhibit 10.7 to the Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on April 9, 2010).
10.8	Warrant Transaction Confirmation, dated April 5, 2010, by and between SunPower Corporation and Deutsche Bank AG, London Branch (incorporated by reference to Exhibit 10.8 to the Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on April 9, 2010).
10.9*	Fifth Amendment to Amended and Restated Credit Agreement, dated April 12, 2010, by and among SunPower Corporation, SunPower North America, LLC, SunPower Corporation, Systems, and Wells Fargo Bank, National Association.
10.10*†	Letter of Credit Facility Agreement, dated April 12, 2010, by and among SunPower Corporation, the Subsidiary Guarantors and Subsidiary Applicants parties thereto from time to time, the Banks thereto from time to time, Bank of America, N.A., as Syndication Agent, Deutsche Bank AG New York Branch, as Issuing Bank and Administartive Agent, and Deutsche Bank Securities Inc., as Sole Bookrunner and Arranger.
10.11*	Security Agreement, dated April 12, 2010, by and among SunPower Corporation, SunPower North America LLC, SunPower Corporation, Systems, and Deutsche Bank AG New York Branch, as Administrative Agent.
10.12*	Cash Collateral Account Security, Pledge and Assignment Agreement and Control Agreement, dated April 12, 2010, by and among SunPower Corporation, Deutsche Bank AG New York Branch, as Administrative Agent, and Deutsche Bank Trust Company Americas, as depository bank and securities intermediary.
10.13*†	Mortgage Loan Agreement, dated May 6, 2010, by and among SunPower Philippines Manufacturing Ltd., SPML Land, Inc. and International Finance Corporation.
10.14*	Guarantee Agreement, dated May 6, 2010, between SunPower Corporation and International Finance Corporation.
10.15*†	Joint Venture Agreement, dated May 27, 2010, by and among SunPower Technology, Ltd., AU Optronics Singapore Pte. Ltd., AU Optronics Corporation and SunPower Malaysia Manufacturing Sdn. Bhd.
31.1*	Certification by Chief Executive Officer Pursuant to Rule 13a-14(a)/15d-14(a).
31.2*	Certification by Chief Financial Officer Pursuant to Rule 13a-14(a)/15d-14(a).
32.1*	Certification Furnished Pursuant to 18 U.S.C. Section 1350 as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
101.INS*^	XBRL Instance Document.
101.SCH*^	XBRL Taxonomy Schema Document.
101.CAL*^	XBRL Taxonomy Calculation Linkbase Document.
101.LAB*^	XBRL Taxonomy Label Linkbase Document.
101.PRE*^	XBRL Taxonomy Presentation Linkbase Document.
101.DEF*^	XBRL Taxonomy Definition Linkbase Document.

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

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

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

SIGNATURES

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

SUNPOWER CORPORATION

Dated: August 13, 2010

By: /s/ DENNIS V. ARRIOLA

Dennis V. Arriola
Executive Vice President and
Chief Financial Officer

Index to Exhibits

Exhibit Number	Description
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10.10*†	Letter of Credit Facility Agreement, dated April 12, 2010, by and among SunPower Corporation, the Subsidiary Guarantors and Subsidiary Applicants parties thereto from time to time, the Banks thereto from time to time, Bank of America, N.A., as Syndication Agent, Deutsche Bank AG New York Branch, as Issuing Bank and Administartive Agent, and Deutsche Bank Securities Inc., as Sole Bookrunner and Arranger.
10.11*	Security Agreement, dated April 12, 2010, by and among SunPower Corporation, SunPower North America LLC, SunPower Corporation, Systems, and Deutsche Bank AG New York Branch, as Administrative Agent.
10.12*	Cash Collateral Account Security, Pledge and Assignment Agreement and Control Agreement, dated April 12, 2010, by and among SunPower Corporation, Deutsche Bank AG New York Branch, as Administrative Agent, and Deutsche Bank Trust Company Americas, as depository bank and securities intermediary.
10.13*†	Mortgage Loan Agreement, dated May 6, 2010, by and among SunPower Philippines Manufacturing Ltd., SPML Land, Inc. and International Finance Corporation.
10.14*	Guarantee Agreement, dated May 6, 2010, between SunPower Corporation and International Finance Corporation.
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EXHIBIT 10.9

EXECUTION VERSION

FIFTH AMENDMENT TO AMENDED AND RESTATED CREDIT AGREEMENT

This FIFTH AMENDMENT TO AMENDED AND RESTATED CREDIT AGREEMENT (this "*Amendment*"), dated as of April 12, 2010, is among SUNPOWER CORPORATION, a Delaware corporation ("*SunPower*"), SUNPOWER NORTH AMERICA, LLC, a Delaware limited liability company ("*SunPowerNA")*, SUNPOWER CORPORATION, SYSTEMS, a Delaware corporation ("*SunPower System s*"), and WELLS FARGO BANK, NATIONAL ASSOCIATION ("*Bank*").

RECITALS

WHEREAS SunPower and Bank have previously entered into that certain Amended and Restated Credit Agreement, dated as of March 20, 2009 (as amended, amended and restated and/or otherwise supplemented or modified prior to the date hereof (including, without limitation, pursuant to that certain First Amendment to Amended and Restated Credit Agreement, dated as of April 17, 2009, that certain Second Amendment to Amended and Restated Credit Agreement, dated as of August 31, 2009, that certain Third Amendment to Amended and Restated Credit Agreement, dated as of December 22, 2009 (the "*Third Amendment*"), that certain Fourth Amendment to Amended and Restated Credit Agreement, dated as of February 10, 2010 (as ame nded by that certain letter agreement, dated as of March 16, 2010, the "*Fourth Amendment*"), and pursuant to that certain Consent to New Indebtedness, dated as of April, 2009 and that certain Consent Agreement, dated as of March 24, 2010, the "*Existing Credit Agreement*");

WHEREAS each of SunPower, SunPowerNA and SunPower Systems has requested that Bank, subject to and upon the terms and conditions contained herein, amend the Existing Credit Agreement; and

WHEREAS Bank is willing, subject to and upon the terms and conditions contained herein, to amend the Existing Credit Agreement;

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

Section 1. *Definitions.* Each capitalized term used but not otherwise defined herein has the meaning ascribed thereto in the Existing Credit Agreement.

Section 2. *Amendments to Credit Agreement.* Subject to Section 4 hereof and notwithstanding anything to the contrary contained in the Existing Credit Agreement, the Existing Credit Agreement is hereby amended as follows:

(a) Section 1.1(b) of the Existing Credit Agreement is amended by amending and restating the last sentence thereof to read in full as follows:

In the event that any Subfeature Letter of Credit remains outstanding on the maturity date of the Line of Credit (and the Line of Credit has not been renewed or extended) or in the event of any drawing under a Subfeature Letter of Credit, Borrower shall immediately deliver to Bank cash or cash equivalents acceptable to Bank, to be maintained in an account at Bank (including its Cayman Islands Branch) separate and apart from any account that 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 all outstanding Subfeature Letters of Credit (plus the amount drawn and not yet reimbursed under all Subfeature Letters of Credit) in which Bank is granted a possessory security interest of first priority.

(b) Section 1.2(a) of the Existing Credit Agreement is hereby amended by deleting any reference to "March 27, 2014" contained therein and by substituting therefor a reference to "October 12, 2010."

(c) From and after the effective date of the LC Facility Agreement (as that term is defined in the Existing Credit Agreement as amended hereby), Borrower shall not be entitled to request, and Bank shall not be obligated to make or issue, any advances, Subfeature Letters of Credit, Letters of Credit or any other extensions of credit under the Existing Credit Agreement.

(d) Section 2.5 of the Existing Credit Agreement is hereby amended by deleting all of the language following clause (xviii) thereof and by substituting therefor the following:

(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) liens securing Permitted Indebtedness arising under the LC Facility Agreement or the other Loan Documents (as that term is defined in the LC Facility Agreement); and (xi) other liens so long as the aggregate outstanding principal amount of the obligations secured thereby does not exceed (as to the Borrower and all Third Party Obligors on a consolidated basis) Five Million Dollars ($5,000,000.00) at any one time; provided, however, that in no event shall any Permitted Lien (e xcept those in favor of Bank) attach to, or otherwise extend to or cover, the Deposit Account or the Securities Account (or any of the assets contained in, or credited to, the Deposit Account or the Securities Account).

(e) Clauses (c), (d) and (e) of Section 4.3 of the Existing Credit Agreement are hereby amended and restated to read in full as follows:

(c) [intentionally omitted];

(d) contemporaneously with each annual and fiscal quarter end financial statement of Borrower required hereby, a certificate of the chief executive officer or chief financial officer of Borrower that such financial statements are accurate and that there exists no Event of Default or any condition, act or event which with the giving of notice or the passage of time or both would constitute an Event of Default, and with supporting calculations showing compliance with the financial covenants contained in the LC Facility Agreement; and

(e) from time to time, such other information as Bank shall reasonably request.

(f) The text of each of Sections 4.9 and 4.12 of the Existing Credit Agreement is hereby amended and restated to read in full as follows:

[INTENTIONALLY OMITTED.]

(g) So long as no Event of Default then exists, effective on April 27, 2010, the text of each of Sections 4.11, 5.5, 5.7, 5.8 and 5.10 of the Existing Credit Agreement is hereby amended and restated to read in full as follows:

[INTENTIONALLY OMITTED.]

(h) Section 5.3 of the Existing Credit Agreement is hereby amended and restated to read in full 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 without duplication of amounts: (i) indebtedness of Borrower or any 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 M illion Dollars ($225,000,000.00) plus accrued interest thereon; (vii) indebtedness to Union Bank of California ("UBOC") consisting of an unsecured term loan in an 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; (viii) guaranties and similar obligations that are otherwise permitted under Section 5.4; (ix) loans, advances and investments that are otherwise permitted under Section 5.5; (x) indebtedness in respect of the Debentures Offering (as that term is defined in that certain Consent to New Indebtedness,

dated as of April, 2009, between Borrower and Bank (the "*Consent*") and Hedging Transactions (as that term is defined in the Consent); (xi) indebtedness in respect of the Debentures Offering (as that term is defined in that certain Consent Agreement, dated as of March 24, 2010, between Borrower and Bank (the "*Second Consent*") and Hedging Transactions (as that term is defined in the Second Consent); (xii) indebtedness, in an aggregate principal amount not to exceed Twenty Million Dollars ($20,000,000.00) outstanding at any time, incurred by Borrower and constituting part of the Total Non-Stock Consideration paid by Borrower to consummate the Specified Acquisition Transaction (as defined in that certai n Fourth Amendment to Amended and Restated Credit Agreement, dated as of February 10, 2010 (as amended by that certain letter agreement, dated as of March 16, 2010), between Borrower and Bank) (such indebtedness, the "Specified Acquisition Transaction Indebtedness"); (xiii) indebtedness, in an aggregate principal amount not to exceed Four Hundred Million Dollars ($400,000,000.00), of Borrower and Third Party Obligors arising under a Letter of Credit Facility Agreement, to be dated approximately as of a date in April, 2010, as amended, supplemented or otherwise modified from time to time (the "LC Facility Agreement"), among Borrower, its Subsidiaries, the financial institutions parties thereto from time to time and Deutsche Bank AG New York Branch, as "Issuing Bank" and as "Administrative Agent" (as each of such terms is defined in the LC Facility Agreement), with such LC Facility Agreement (1) to be in form and substance substantially similar to the draft there of supplied by Borrower to Bank on April 9, 2010 and (2) to expressly permit the first priority security interests and liens granted or to be granted by Borrower to Bank pursuant to Section 1.1(b) and/or Section 1.5 of this Agreement as in effect upon the effectiveness of that certain Fifth Amendment to Amended and Restated Credit Agreement, dated as of April 12, 2010, between Borrower and Bank; (xiv) 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 (xv) 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 and conditions of the UBOC Documents or the IFC Document s (as hereinafter defined) which would render the terms thereof more restrictive or onerous to Borrower, any Third Party Obligor or SunPower Philippines Manufacturing Limited than the material terms and conditions reviewed and approved by Bank in writing. In addition, Borrower shall not amend, supplement or otherwise modify (or permit any of the foregoing) or request or agree to any consent or waiver under (any of the foregoing, a "Modification") any evidence of Permitted Indebtedness without the prior written consent of Bank, except to the extent that such Modification of Permitted Indebtedness does not result and could not reasonably be expected to result in an Event of Default or any event which, with the giving of notice, the lapse of time or both, would constitute an Event of Default.

(i) Section 6.1(a) of the Existing Credit Agreement is hereby amended and restated to read in full as follows:

(a) Borrower shall fail: (i) to pay when due any principal, interest, fees or other amounts payable under any of the Loan Documents; or (ii) to provide collateral for any of its obligations owing to Bank hereunder as required by the provisions hereof (including, without limitation, as required by Section 1.5 or by the last sentence of Section 1.1(b)).

(j) Section 6.1(d) of the Existing Credit Agreement is hereby amended and restated to read in full as follows:

(a) Any default in the payment or performance of any obligation, or any defined event of default, under the terms of: (i) the LC Facility Agreement or any "Loan Document" (as that term is defined in the LC Facility Agreement) or (ii) any other contract or instrument (other than any of the Loan Documents) pursuant to which Borrower or any Third Party Obligor has incurred any debt or other liability to any person or entity, including Bank; and, if the subject debt or other liability is owed to a party other than Bank, such default accelerates or cause or permits to become immediately due and payable an amount in excess of Ten Million Dollars ($10,000,000).

(k) Upon and following any termination of the LC Facility Agreement (as that term is defined in the Existing Credit Agreement as amended hereby), the provisions of the covenants (including, without limitation, negative covenants and financial covenants) contained in Article 6 of the LC Facility Agreement (as most recently in effect prior to such termination) shall and shall be deemed to be immediately and automatically incorporated into the Existing Credit Agreement (as amended hereby), *mutatis mutandis*.

Section 3. *Representations and Warranties*. Each of SunPower, SunPowerNA and SunPower Systems hereby represents and warrants to Bank as follows:

(a) No Event of Default or any event which, with the giving of notice, the lapse of time or both, would constitute an Event of Default has occurred and is continuing (or would result from the amendments to the Existing Credit Agreement proposed to be effected hereby).

(b) The execution, delivery and performance by each of SunPower, SunPowerNA and SunPower Systems of this Amendment have been duly authorized by all necessary corporate or other action and do not and will not require any registration with, consent or approval of, or notice to or action by, any person or entity in order to be effective and enforceable.

(c) All representations and warranties of each of SunPower, SunPowerNA and SunPower Systems contained in each Loan Document to which each is a party are true, correct and complete in all material respects (except to the extent such representations and warranties expressly (i) refer to an earlier date, in which case they are true, correct and complete as of such earlier date and (ii) are inaccurate due to the Specified Financial Statement Accounting Errors (as that term is defined in the Third Amendment), which inaccuracy was expressly addressed by the Third Amendment).

Section 4. *Effectiveness.* This Amendment shall become effective as of the date first set forth above (such date, the *Effective Date"*) upon the satisfactions of the following conditions:

(a) Bank shall have received an original of this Amendment, duly executed and delivered by each of SunPower, SunPowerNA and SunPower Systems;

(b) each of the representations and warranties of SunPower, SunPowerNA and SunPower Systems contained in Section 3 of this Amendment shall be true, correct and complete; and

(c) Bank shall have received in immediately available U.S. Dollars, all out-of-pocket costs and expenses (including reasonable attorneys' fees and costs) incurred by Bank in connection with the Specified Events of Default, this Amendment and the transactions contemplated hereby and invoiced to SunPower prior to the date on which this Amendment is otherwise to become effective; *provided* that the failure to invoice any such amounts to SunPower prior to such date shall not preclude Bank from seeking reimbursement of such amounts, or excuse SunPower from paying or reimbursing such amounts, following the Effective Date.

Section 5. *General Provisions.*

(a) Each of SunPower, SunPowerNA and SunPower Systems specifically acknowledges and agrees that: (i) the execution and delivery by Bank of this Amendment shall not be deemed to create a course of dealing or otherwise obligate Bank to execute similar agreements under the same, similar or different circumstances in the future; (ii) Bank does not have any obligation to SunPower or any Third Party Obligor to further amend provisions of the Credit Agreement or the other Loan Documents; and (iii) except as expressly set forth herein, the Existing Credit Agreement and each of the other Loan Documents, and the representations, warranties, covenants, understandings and agreements of SunPower and each Third Party Obligor thereunder, shall remain unchanged and in full force and effect.

(b) This Amendment shall be binding upon and inure to the benefit of the parties to the Existing Credit Agreement and their respective successors and assigns.

(c) This Amendment may be executed in any number of counterparts, each of which shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument. Each of the parties hereto understands and agrees that this document (and any other document required herein) may be delivered by the other party thereto either in the form of an executed original or an executed original sent by telefacsimile or electronic transmission to be followed promptly by mailing of a hard copy original, and that receipt by Bank by electronic mail or telefacsimile transmission of a document purportedly bearing the signature of any party hereto shall bind such party with the same force and effect as the delivery of a hard copy original.

(d) This Amendment contains the entire and exclusive agreement of the parties to the Existing Credit Agreement with reference to the matters discussed herein. This Amendment supersedes all prior drafts and communications with respect hereto. This Amendment may not be amended except in accordance with the provisions of the Credit Agreement.

(e) Each reference to "this Agreement," "hereof," "hereunder," "herein" and "hereby" and each other similar reference contained in the Existing Credit Agreement, and each reference to the "Credit Agreement" and each other similar reference in the other Loan Documents, shall from and after the Effective Date, refer to the Existing Credit Agreement, as amended hereby. This Amendment and the Existing Credit Agreement shall be read together, as one document. This Amendment is a Loan Document.

(f) This Amendment is subject in all respects to Section 7.10 and 7.11 of the Existing Credit Agreement, each of which is incorporated herein, *mutatis mutandis*.

[*Document continues with signature pages.*]

In Witness Whereof, the parties hereto have caused this Fifth Amendment to Amended and Restated Credit Agreement to be duly executed as of the date first written above.

SunPower:

SunPower Corporation,
a Delaware corporation

By: /s/ Dennis Arriola
Name: Dennis Arriola
Title: CFO

THIRD PARTY OBLIGORS:

SUNPOWER NORTH AMERICA, LLC,
a Delaware limited liability company

By: /s/ Dennis Arriola
Name: Dennis Arriola
Title: CFO

SUNPOWER CORPORATION, SYSTEMS,
a Delaware corporation

By: /s/ Dennis Arriola
Name: Dennis Arriola
Title: CFO

BANK:

WELLS FARGO BANK, NATIONAL ASSOCIATION,
a national banking association

By: /s/ Matt Servatius
Name: Matt Servatius
Title: Vice President

Exhibit 10.10

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

LETTER OF CREDIT FACILITY AGREEMENT

dated as of April 12, 2010

among

SUNPOWER CORPORATION,

the SUBSIDIARY GUARANTORS,

the SUBSIDIARY APPLICANTS parties hereto from time to time,

the BANKS parties hereto from time to time,

BANK OF AMERICA, N.A.,
as Syndication Agent,

and

DEUTSCHE BANK AG NEW YORK BRANCH,
as Issuing Bank and as Administrative Agent

DEUTSCHE BANK SECURITIES INC.,
as Sole Bookrunner and Arranger

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SCHEDULES AND EXHIBITS

LETTER OF CREDIT FACILITY AGREEMENT

This LETTER OF CREDIT FACILITY AGREEMENT (this "Agreement") dated as of April 12, 2010 is made by and among SunPower Corporation, a Delaware corporation (the "Company"), the Subsidiary Guarantors, the Subsidiary Applicants parties hereto from time to time, the financial institutions parties hereto from time to time (the "Banks"), and Deutsche Bank AG New York Branch, as Issuing Bank and as Administrative Agent.

The Company has requested that the Issuing Bank and the other Banks provide a letter of credit facility to the Company and the other Applicants, and the Issuing Bank and the other Banks are willing to do so on the terms and subject to the conditions set forth herein.

In consideration of the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

ARTICLE I

DEFINITIONS AND INTERPRETATION

1.01 Certain Defined Terms. As used in this Agreement, the following terms shall have the following meanings:

"Adherence Agreement" means an agreement substantially in the form of **Exhibit D** among a Subsidiary, the Company, the Administrative Agent, the Issuing Bank, and all of the Banks, pursuant to which such Subsidiary becomes a Subsidiary Applicant hereunder.

"Administrative Agent" means DB in its capacity as administrative agent for the Banks hereunder and its successors in such capacity as provided hereunder.

"Affected Bank" means any Bank other than the Issuing Bank that has made, or notified the Company that an event or circumstance has occurred that may give rise to, a demand for compensation under **Section 2.06(a)** or **(b)** or **Section 2.08** (but only so long as the event or circumstance giving rise to such demand or notice is continuing).

"Affiliate" means, with respect to a specified Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified.

"Agreement" means this Letter of Credit Facility Agreement.

"Alternate Currency" means any currency (other than dollars) that is freely tradable and exchangeable into dollars in the London market and approved in writing as an Alternate Currency by the Company, the Administrative Agent, and the Issuing Bank, in their sole discretion.

"Alternate Currency Exposure" means, at any time, the Dollar Equivalent of the sum (without duplication) at such time of (a) the aggregate outstanding amount of all Alternate Currency LOC Disbursements, (b) the aggregate Available Amounts of all Alternate Currency LOCs, and (c) the aggregate Available Amounts of all Alternate Currency LOCs that have been requested by the Applicants to be issued hereunder but have not yet been so issued.

"Alternate Currency LOC" means an LOC denominated in an Alternate Currency.

"Applicant" means each of the Company and each Subsidiary Applicant.

"Assignment and Assumption" means an assignment and assumption entered into by a Bank and an Eligible Assignee, and accepted by the Administrative Agent, in accordance with **Section 9.07** and in substantially the form of **Exhibit A** or any other form approved by the Administrative Agent.

"Available Amount" means, at any time with respect to any LOC, the maximum amount available to be drawn under such LOC under any circumstance at such time or thereafter, giving effect to any scheduled increases in accordance with the terms of such LOC, including any amount that has been the subject of a drawing by the applicable Beneficiary prior to the expiration or termination of such LOC but has not yet been paid or refused by the Issuing Bank.

"Bankruptcy Law" means Title 11, U.S. Code, as amended from time to time, and any successor statute or statutes, or any similar foreign, federal, or state law for the relief of debtors.

"Banks" means the Persons (whether one or more) listed on **Schedule I** and any other Person that shall have become a party hereto pursuant to an Assignment and Assumption, other than any such Person that ceases to be a party hereto pursuant to an Assignment and Assumption. For the avoidance of doubt, references herein to Banks shall include the Issuing Bank unless otherwise specified.

"Base Rate" means a fluctuating interest rate per annum equal at any time to the higher of (a) the sum of the Federal Funds Rate plus 0.5% or (b) the prime lending rate most recently announced by DB (or any U.S. Affiliate of DB if no such rate is announced by DB) as its prime lending rate, which rate is a reference rate and does not necessarily represent the lowest or best rate actually charged to any customer. Each change in DB's prime rate shall be effective from and including the date such change is publicly announced as being effective.

"Beneficiary" means, at any time, any beneficiary of any LOC, including any second or substitute beneficiary or transferee under a transferable LOC and any successor of a beneficiary by operation of law.

"Business Day" means a day of the year on which banks are not required or authorized by law to close in New York, New York.

"Calculation Date" means (a) each date on which an Alternate Currency LOC is issued or is increased, renewed, or extended by amendment and (b) the first Business Day of each calendar month.

"Cash Collateral Agreement" means the Cash Collateral Account, Security, Pledge and Assignment Agreement and Control Agreement, substantially in the form of **Exhibit E**, among the Company, the Administrative Agent, and DB.

"Capital Lease Obligations" of any Person means the obligations of such Person to pay rent or other amounts under any lease of (or other arrangement conveying the right to use) real or personal property, or a combination thereof, which obligations are required to be classified and accounted for as capital leases on a balance sheet of such Person under GAAP, and the amount of such obligations shall be the capitalized amount thereof determined in accordance with GAAP.

"Change in Control" means (a) if the Company is a publicly held Person, that (i) any Person or two or more Persons acting in concert shall have acquired beneficial ownership (within the meaning of Rule 13d-3 under the Exchange Act), directly or indirectly, of Voting Stock of the Company (or other

securities convertible into or exchangeable for such Voting Stock) representing forty percent (40%) or more of the combined voting power of all Voting Stock of the Company (on a fully diluted basis), (ii) during any period of up to twenty-four (24) consecutive months, commencing on or after the date of this Agreement, a majority of the members of the board of directors of the Company shall not be Continuing Directors, or (iii) any Person or two or more Persons acting in concert shall have acquired, by contract or otherwise, or shall have entered into a contract or arrangement that upon consummation will result in its or their acquisition of power to exercise, directly or indirectly, a controlling influence over the management or policies of the Company; and (b) if the Company is not a publicly held Person, (i) a sale (whether of stock or other assets), merger or other transaction or series of related transactions involving the Company, as a res ult of which those Persons who held 100% of the Voting Stock of the Company immediately prior to such transaction do not hold (either directly or indirectly) more than fifty percent (50%) of the Voting Stock of the Company (or the surviving or resulting entity thereof) after giving effect to such transaction, or (ii) the sale of all or substantially all of the assets of the Company in a transaction or series of related transactions.

"Change in Law" means (a) the adoption of any treaty, international agreement, law, rule, or regulation after the date of this Agreement, (b) any change in any treaty, international agreement, law, rule, or regulation or in the interpretation or application thereof by any Governmental Authority after the date of this Agreement, or (c) compliance by the Administrative Agent or any Bank (or, for purposes of **Section 2.06(b)**, by any Lending Office of such Bank or by the corporation controlling such Bank or the Issuing Bank, if any) with any request, guideline, or directive (whether or not having the force of law) of any Governmental Authority made or issued after the date of this Agreement.

"Closing Date" means the first date on which the conditions set forth in **Article III** shall have been satisfied (or waived in accordance with **Section 9.01**).

"Collateral" means all property in which a security interest has been granted or is purported to have been granted to the Administrative Agent for the benefit of the Banks under any Loan Document.

"Collateral Account" means one or more accounts established by the Company at DB, pursuant to the Cash Collateral Agreement, and any and all subaccounts thereof, segregated accounts thereunder, and successor, replacement, or substitute accounts therefor maintained by DB for the Company.

"Collateral Documents" means all security agreements, financing statements, assignments, control agreements, and other collateral documents, in form and substance reasonably satisfactory to the Administrative Agent, as the Administrative Agent acting on behalf of the Secured Parties may reasonably request from time to time for the purpose of granting to, maintaining or perfecting in favor of, the Administrative Agent for the benefit of the Secured Parties, first priority and exclusive security interests in the Collateral.

"Commitment" means, with respect to any Bank, the commitment of such Bank to issue (in the case of the Issuing Bank) or participate in LOCs hereunder in an amount equal to its Commitment Amount.

"Commitment Amount" means, with respect to any Bank at any time, the amount set forth opposite such Bank's name on **Schedule I** under the caption "Commitment Amount", or, if such Bank has entered into one or more Assignment and Assumptions, the amount set forth for such Bank in the Register maintained by the Administrative Agent pursuant to **Section 9.07(d)** as such Bank's "Commitment Amount", as such amount may be reduced or increased at or prior to such time pursuant to **Section 2.04**. The initial aggregate Commitment Amounts are $350,000,000.

"Commitment Fee" means, as to any Bank, an unused commitment fee, which shall accrue during the period from and including the Closing Date to but excluding the date on which such Commitment terminates at the rate of 20 basis points (0.20%) per annum on the daily unused Commitment Amount of such Bank.

"Company" means SunPower Corporation, a Delaware corporation.

"Confidential Information" means all information that the Company or any Affiliate thereof furnishes to the Administrative Agent or any Bank that is clearly identified at the time of delivery as confidential, but does not include any such information that is or becomes generally available to the public other than as a result of a breach by the Administrative Agent or any Bank of its obligations hereunder or that is or becomes available to the Administrative Agent or such Bank from a source other than the Company or an Affiliate thereof that is not, to the best of the Administrative Agent's or such Bank's knowledge, acting in violation of a confidentiality agreement with the Company or any Affiliate thereof.

"Continuing Director" means, for any period, an individual who is a member of the board of directors of the Company on the first day of such period or whose election to the board of directors of the Company is recommended by a majority of the other Continuing Directors prior to such election.

"Constituent Documents" means, with respect to any entity, its constituent, governing, or organizational documents, including (a) in the case of a limited partnership, its certificate of limited partnership and its limited partnership agreement, (b) in the case of a limited liability company, its certificate of formation or organization and its operating agreement or limited liability company agreement, as applicable, and (c) in the case of a corporation, its articles or certificate of incorporation and its by-laws and any shareholders agreement, as applicable.

"Control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. "Controlling" and "Controlled" have meanings correlative thereto.

"Credit Exposure" means, at any time, the Dollar Equivalent of the sum (without duplication) at such time of (a) the aggregate outstanding amount of all LOC Disbursements, (b) the aggregate Available Amounts of all LOCs, and (c) the aggregate Available Amounts of all LOCs that have been requested by the Applicants to be issued hereunder but have not yet been so issued.

"Credit Parties" means, collectively, the Applicants and the Guarantors.

"DB" means Deutsche Bank AG New York Branch.

"DBSI" means Deutsche Bank Securities Inc..

"Default" means any Event of Default or any event or condition that would constitute an Event of Default but for the requirement that notice be given or time elapse or both.

"Defaulting Bank" means any Bank, as determined by the Administrative Agent, that has (a) failed to fund any portion of its participations in any LOC within three (3) Business Days of the date required to be funded by it hereunder, (b) notified the Company, any other Applicant, the Administrative Agent, the Issuing Bank, or any other Bank in writing that it does not intend to comply with any of its funding obligations under this Agreement or has made a public statement to the effect that it does not intend to comply with its funding obligations under this Agreement or under other agreements in which it

commits to extend credit, (c) failed, within three (3) Business Days after request by the Administrative Agent, to confirm that it will comply with the terms of this Agreement relating to its obligations to fund participations in then outstanding LOCs, (d) otherwise failed to pay over to the Administrative Agent or any other Bank any other amount required to be paid by it hereunder within three (3) Business Days of the date when due, unless the subject of a good faith dispute, or (e) (i) become or is insolvent or has a parent company that has become or is insolvent or (ii) become the subject of a bankruptcy or insolvency proceeding, or has had a receiver, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or custodian, appointed for it or has taken any action in furtherance of, or indicating its consent to, approval of or acquiescence in any such proceeding or appointment or has a parent company that has become the subject of a bankruptcy or insolvency proceeding, or has had a receiver, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or custodian appointed for it, or has taken any action in furtherance of, or indicating its consent to, approval of or acquiescence in any such proceeding or appointment.

"Dollar Equivalent" means, on any date of determination, (a) with respect to any amount in dollars, such amount, and (b) with respect to any amount in an Alternate Currency, the equivalent in dollars of such amount, determined by the Administrative Agent pursuant to **Section 1.05(b)** using the Exchange Rate with respect to such Alternate Currency at the time in effect under the provisions of such Section.

"dollars" or "$" refers to lawful money of the United States of America.

"EBITDA" means, for any period, the total of the following calculated for Company and its Subsidiaries without duplication on a consolidated basis in accordance with GAAP consistently applied for such period: (a) consolidated net income from operations; plus (b) any deduction for (or less any gain from) income or franchise taxes included in determining such consolidated net income; plus (c) interest expense deducted in determining such consolidated net income; plus (d) amortization and depreciation expense deducted in determining such consolidated net income; plus (e) any non-recurring and non-cash charges resulting from application of GAAP that requires a charge against earnings for the impairment of goodwill to the extent deducted in determining such consolidat ed net income and not added back pursuant to another clause of this definition; plus (f) any non-cash expenses that arose in connection with the grant of stock options to officers, directors and employees of the Company and its Subsidiaries and were deducted in determining such consolidated net income; plus (g) non-cash restructuring charges; plus (h) non-cash charges related to mark-to-market valuation adjustments as may be required by GAAP from time to time; plus (i) non-cash charges arising from changes in GAAP occurring after the date hereof; less (j) any extraordinary gains and non-cash items of income. As used in this definition, "non-cash charge" shall mean a charge in respect of which no cash is paid during the applicable period (whether or not cash is paid with respect to such charge in a subsequent period) and "non-cash item of income" shall mean an item of income in respect of which no cash is received during the applicable period (whether or not cash is received with respect to such it em of income in a subsequent period).

"Eligible Assignee" means (a) a Bank, (b) an Affiliate of a Bank, or (c) a commercial bank, a savings bank, or other financial institution that is approved by the Administrative Agent, the Issuing Bank, and, so long as there then exists no Event of Default, the Company (such approvals not to be unreasonably withheld); provided that neither the Company nor any Affiliate thereof shall qualify as an Eligible Assignee.

"Equity Interests" means shares of capital stock, general or limited partnership interests, membership interests in a limited liability company, beneficial interests in a trust, or other equity

ownership interests in a Person, and any warrants, options, or other rights entitling the holder thereof to purchase or acquire any such equity interest.

"ERISA" means the United States Employee Retirement Income Security Act of 1974, as amended from time to time, and any successor statute or statutes.

"ERISA Affiliate" means any trade or business (whether or not incorporated) that, together with any Applicant, is treated as a single employer under Section 414(b) or (c) of the Internal Revenue Code or, solely for purposes of Section 302 of ERISA and Section 412 of the Internal Revenue Code, is treated as a single employer under Section 414 of the Internal Revenue Code.

"ERISA Event" means (a) any "reportable event", as defined in Section 4043 of ERISA or the regulations issued thereunder with respect to a Plan (other than an event for which the 30-day notice period is waived); (b) the existence with respect to any Plan of an "accumulated funding deficiency" (as defined in Section 412 of the Internal Revenue Code or Section 302 of ERISA), whether or not waived; (c) the filing pursuant to Section 412(d) of the Internal Revenue Code or Section 303(d) of ERISA of an application for a waiver of the minimum funding standard with respect to any Plan; (d) the incurrence by any Applicant or any of its ERISA Affiliates of any liability under Title IV of ERISA with respect to the termination of any Plan; (e) the receipt by any Applicant or any ERISA Affiliate from the PBGC or a plan administrator of any notice relating to an intention to terminate any Plan or Plans or to appoint a trustee to administer any Plan; (f) the incurrence by any Applicant or any of its ERISA Affiliates of any liability with respect to the withdrawal or partial withdrawal from any Plan or Multiemployer Plan; or (g) the receipt by any Applicant or any ERISA Affiliate of any notice, or the receipt by any Multiemployer Plan from any Applicant or any ERISA Affiliate of any notice, concerning the imposition of Withdrawal Liability or a determination that a Multiemployer Plan is, or is expected to be, insolvent or in reorganization, within the meaning of Title IV of ERISA.

"Event of Default" has the meaning specified in **Section 7.01**.

"Exchange Act" means the United States Securities Exchange Act of 1934, as amended from time to time, and any successor statute or statutes.

"Exchange Rate" means on any day, with respect to any Alternate Currency, the rate at which such Alternate Currency may be exchanged into dollars, as set forth at approximately 11:00 a.m. (New York City time) on such day on the MSN Money website (http://moneycentral.msn.com/investor/market/exchangerates.aspx). In the event that such rate does not appear on such website, the Exchange Rate shall be determined by reference to such other publicly available service for displaying exchange rates as may be agreed upon in writing by the Administrative Agent and the Company, or, in the absence of such agreement, such Exchange Rate shall instead be the arithmetic average of the spot rates of exchange of the A dministrative Agent in the market where its Alternate Currency exchange operations in respect of such Alternate Currency are then being conducted, at or about 11:00 a.m., local time, on such date for the purchase of dollars for delivery two (2) Business Days later; provided that if at the time of any such determination, for any reason, no such spot rate is being quoted, the Administrative Agent, after consultation with the Company, may use any reasonable method it deems appropriate to determine such rate, and such determination shall be conclusive absent manifest error.

"Existing Credit Agreement" means the Amended and Restated Credit Agreement, dated as of March 20, 2009, between the Company and Wells Fargo Bank, National Association, as amended, supplemented, or otherwise modified from time to time.

"Existing Facility" means the credit facility established pursuant to the Existing Credit Agreement.

"Facility" means the letter of credit facility established pursuant to this Agreement.

"Federal Funds Rate" means, for any period, a fluctuating interest rate per annum equal for each day during such period to the weighted average (rounded upwards, if necessary, to the next 1/100 of 1%) of the rates on overnight federal funds transactions with members of the Federal Reserve System arranged by federal funds brokers, as published for such day (or, if such day is not a Business Day, for the next preceding Business Day) by the Federal Reserve Bank of New York, or, if such rate is not so published for any day that is a Business Day, the average (rounded upwards, if necessary, to the next 1/100 of 1%) of the quotations for such day for such transactions received by the Administrative Agent from three (3) federal funds brokers of recognized standing selected by it.< /font>

"Financial Indebtedness" of any Person means, without duplication, (a) all obligations of such Person for borrowed money or with respect to deposits or advances of any kind (other than amounts excluded from the restriction on Indebtedness pursuant to **Section 6.01(g)**), (b) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments, (c) all obligations of such Person upon which interest charges are customarily paid, (d) all obligations of such Person under conditional sale or other title retention agreements relating to property acquired by such Person (other than up to $25,000,000 in the aggregate of obligations arising under agreements with Jabil Circuit, Inc. relating to sales by the C ompany or any of its Subsidiaries to Jabil Circuit, Inc. of used equipment and other than amounts excluded from the restriction on Indebtedness pursuant to **Section 6.01(n)**), (e) all obligations of such Person in respect of the deferred purchase price of property or services (excluding current accounts payable incurred in the ordinary course of business as conducted from time to time and current intercompany liabilities maturing within 365 days of the incurrence thereof), (f) all guarantees by such Person of Financial Indebtedness of others (including, for the avoidance of doubt, any Indebtedness described in **Section 6.01(o)**), and (g) all Capital Lease Obligations of such Person; provided that "Financial Indebtedness" of such Person shall exclude non-recourse indebtedness, other than non-recourse indebtedness with a primary purpose of financing the operations of such Person.

"GAAP" means generally accepted accounting principles as in effect from time to time in the United States of America.

"Governmental Authority" means the government of the United States of America, any other nation or any political subdivision of any thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.

"Guarantee" of or by any Person (the "guarantor") means any obligation, contingent or otherwise, of the guarantor guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation of any other Person (the "primary obligor") in any manner, whether directly or indirectly, and including any obligation of the guarantor, direct or indirect, (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation or to purchase (or to advance or supply funds for the purchase of) any security for the payment thereof, (b) to purchase or lease property, securities or services fo r the purpose of assuring the owner of such Indebtedness or other obligation of the payment thereof, (c) to maintain working capital, equity capital or any other financial statement condition or liquidity of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation, or (d) as an account party in respect of any letter of credit or letter of guaranty issued to support such Indebtedness or obligation; provided that the term Guarantee shall not include endorsements for collection or deposit in the ordinary course of business or customary and

reasonable indemnity obligations in effect on the Closing Date or entered into in connection with any acquisition or disposition of assets permitted under this Agreement. The amount of any Guarantee shall be deemed to be an amount equal to the stated or determinable amount of the primary obligation in respect of which such Guarantee is made or, if not so stated or determinable, the maximum reasonably anticipated liability in respect thereof (assuming such person is required to perform thereunder) as reasonably determined by the Company in good faith. The term "Guarantee" used as a verb has the corresponding meaning.

"Guaranteed Obligations" means, as to each Guarantor, all Obligations (including interest accruing during the pendency of any bankruptcy, insolvency, receivership or other similar proceeding, regardless of whether allowed or allowable in such proceeding) of each other Applicant (if such Guarantor is an Applicant) or of all the Applicants (if such Guarantor is not an Applicant).

"Guarantor" means each Subsidiary Guarantor and the Company.

"Hedge Agreement" means any agreement with respect to any swap, forward, future or derivative transaction or option or similar agreement involving, or settled by reference to, one or more rates, currencies, commodities, equity or debt instruments or securities, or economic, financial or pricing indices or measures of economic, financial or pricing risk or value or any similar transaction or any combination of these transactions; provided that no phantom stock or similar plan providing for payments only on account of services provided by current or former directors, officers, employees or consultants of the Company or any of its Subsidiaries shall be a Hedge Agreement. For purposes of determining the amount of Indebtedness of any Person, the "principal amount" of the obligations of such Person in respect of any Hedge Agreement at any time shall be the maximum aggregate amount (giving effect to any netting agreements) that such Person would be required to pay if such Hedge Agreement were terminated at such time.

"Indebtedness" of any Person means, without duplication, (a) all obligations of such Person for borrowed money or with respect to deposits or advances of any kind, (b) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments, (c) all obligations of such Person upon which interest charges are customarily paid, (d) all obligations of such Person under conditional sale or other title retention agreements relating to property acquired by such Person, (e) all obligations of such Person in respect of the deferred purchase price of property or services (excluding current accounts payable incurred in the ordinary course of business as conducted from time to time and current intercompany liabilities maturing within 365 days of the incurrence thereo f), (f) all Indebtedness of others secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien on property owned or acquired by such Person, whether or not the Indebtedness secured thereby has been assumed, (g) all guarantees by such Person of Indebtedness of others, (h) all Capital Lease Obligations of such Person, (i) all obligations, contingent or otherwise, of such Person as an account party in respect of letters of credit and letters of guaranty, or in respect of bankers' acceptances, and (j) all net payment obligations, contingent or otherwise, of such Person under Hedge Agreements. The Indebtedness of any Person shall include the Indebtedness of any other entity (including any partnership in which such Person is a general partner) to the extent such Person is liable therefor as a result of such Person's ownership interest in or other relationship with such entity, except to the extent the terms of such Indebtedness prov ide that such Person is not liable therefor.

"Indemnified Party" has the meaning specified in **Section 9.04(b)**.

"Indenture Indebtedness" means all Indebtedness referred to in **Section 6.01(h)**.

"Internal Revenue Code" means the United States Internal Revenue Code of 1986, as amended from time to time, and any successor statute or statutes.

"Issuing Bank" means DB in its capacity as the issuer of LOCs hereunder and any additional Issuing Bank that becomes a party hereto in accordance with **Section 2.13(f)** (in which case the term "Issuing Bank" when used with respect to any particular LOC, refers to the applicable Bank that is requested to issue or has issued such LOC) and, in each case, their respective successors in such capacities as provided hereunder. Each Issuing Bank may, in its discretion, arrange for one or more LOCs to be issued by any of its branches or Affiliates (whether domestic or foreign), in which case the term "Issuing Bank" shall include any such branches or Affiliates with respect to any LOC issued by such branches or Affiliat es.

"Issuing Bank Joinder Agreement" means an Issuing Bank Joinder Agreement, substantially in the form of **Exhibit H**, among the Company, the Administrative Agent, and a Bank, pursuant to which such Bank becomes an additional Issuing Bank hereunder in accordance with **Section 2.13(f)**.

"Judgment Currency" has the meaning specified in **Section 2.15(b)**.

"Judgment Currency Conversion Date" has the meaning specified in **Section 2.15(b)**.

"Lending Office" means, with respect to a Bank, the office of such Bank that is to make and receive payments hereunder as specified to the Administrative Agent from time to time.

"Lien" means, with respect to any asset, (a) any mortgage, deed of trust, lien (statutory or other), pledge, hypothecation, collateral assignment, encumbrance, deposit arrangement, charge or security interest in, on or of such asset, (b) the interest of a vendor or a lessor under any conditional sale agreement, capital lease or title retention agreement (or any financing lease having substantially the same economic effect as any of the foregoing) relating to such asset, and (c) in the case of securities, any purchase option, call or similar right of a third party with respect to such securities.

"Loan Documents" means, collectively, this Agreement, the Mandate Letter, each LOC Request, any Adherence Agreements, the Security Agreement, the Cash Collateral Agreement, any other Collateral Documents, and each other instrument or agreement made or entered into by the Company or any other Applicant with or in favor of the Administrative Agent, the Issuing Bank, or the Banks in connection with this Agreement or the transactions contemplated hereby, and any supplements or amendments to or waivers of any of the foregoing executed and delivered from time to time.

"LOC" means each standby letter of credit issued hereunder in such form as the Issuing Bank may approve in its reasonable discretion.

"LOC Disbursement" means the making of any payment by the Issuing Bank under an LOC in the amount of such payment, and the making of any payment by a Bank for the account of the Issuing Bank under **Section 2.02(f)** on account of an unreimbursed drawing on an LOC.

"LOC Participating Interest" means an undivided interest, in a proportion equal to each Bank's Pro Rata Share, in all of the Issuing Bank's rights and obligations in, to or under any LOC, the related LOC Request, all reimbursement obligations with respect to such LOC, and all collateral, guarantees and other rights from time to time directly or indirectly securing or supporting the foregoing (it being understood that the LOC Participating Interest of the Bank serving as the Issuing Bank is the interest not otherwise attributable to the LOC Participating Interests of the other Banks).

"LOC Related Documents" means, collectively, any Loan Document, any LOC Request, any LOC, or any other agreement or instrument relating thereto.

"LOC Request" means a written request substantially in the form of **Exhibit B**.

"Long-Term LOC" means an LOC that has a scheduled expiration date later than the earlier of (i) two years after its date of issuance or (ii) the Termination Date, but in no event beyond the fifth anniversary of the Closing Date.

"Mandate Letter" means the Mandate Letter dated as of March 17, 2010 between the Company, DB, and DBSI.

"Material Adverse Change" means any material adverse change in the business, financial condition, operations or properties of the Company and its Subsidiaries, taken as a whole.

"Material Adverse Effect" means a material adverse effect on (a) the business, financial condition, operations or properties of the Company and its Subsidiaries, taken as a whole, (b) the validity or enforceability of any of the Loan Documents or the rights and remedies of the Administrative Agent or any Bank under any Loan Document, or (c) the ability of the Company or any other Applicant to perform its obligations under the Loan Documents.

"Moody's" means Moody's Investors Service, Inc.

"Multiemployer Plan" means a multiemployer plan as defined in Section 4001(a)(3) of ERISA.

"Nonconsenting Bank" means any Bank other than the Issuing Bank that does not approve a consent, waiver, or amendment to any Loan Document requested by the Company or the Administrative Agent and that requires the approval of all Banks under **Section 9.01** (or all Banks directly affected thereby) at a time when the Required Banks have agreed to such consent, waiver, or amendment.

"Obligations" means all obligations, liabilities, and Indebtedness of every nature of each Applicant from time to time owing to the Administrative Agent or any Bank, under or in connection with this Agreement or any other Loan Document, in each case whether primary, secondary, direct, indirect, contingent (including the undrawn amount of each LOC), fixed or otherwise, including the obligation to provide cash collateral pursuant to any Loan Document and including interest accruing at the rate provided in the applicable Loan Document on or after the commencement of any bankruptcy or insolvency proceeding, whether or not allowed or allowable.

"OFAC" means the U.S. Department of the Treasury's Office of Foreign Assets Control, and any successor thereto.

"Other Taxes" means any present or future stamp, documentary, excise, property or similar taxes, charges or levies that arise from any payment made hereunder or from the execution, delivery or registration of, performance under, or otherwise with respect to, this Agreement or any other Loan Document.

"Patriot Act" means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act, Title III of Pub. L. 107-56 (signed into law October 26, 2001)).

"PBGC" means the Pension Benefit Guaranty Corporation referred to and defined in ERISA and any successor entity performing similar functions.

"Performance LOC" means an LOC used directly or indirectly to cover a default in the performance of any non-financial or commercial obligations of any Applicant or any Subsidiary Account Party under specific contracts, and any LOC issued in favor of a bank or other surety who in connection therewith issues a guarantee or similar undertaking, performance bond, surety bond or other similar instrument that covers a default of any such performance obligations, that is classified as a performance standby letter of credit by the Board of Governors of the Federal Reserve System or by the Office of the Comptroller of the Currency of the United States.

"Permitted Encumbrances" means:

(a) Liens imposed by law for taxes that are not yet due or are being contested in compliance with **Section 5.03**;

(b) carriers', warehousemen's, mechanics', materialmen's, repairmen's and other like Liens imposed by law, arising in the ordinary course of business and securing obligations that are not overdue by more than thirty (30) days or are being contested in compliance with **Section 5.03**;

(c) pledges and deposits made in the ordinary course of business in compliance with workers' compensation, unemployment insurance, and other social security laws or regulations;

(d) deposits to secure the performance of bids, trade contracts, leases, statutory obligations, surety and appeal bonds, performance and return of money bonds, bids, leases, government contracts, trade contracts, and other obligations of a like nature (including letters of credit in lieu of any such bonds or to support the issuance thereof), including those incurred pursuant to any law primarily concerning the environment, preservation or reclamation of natural resources, the management, release or threatened release of any hazardous material or to health and safety matters, in each case in the ordinary course of business as conducted from time to time;

(e) judgment liens in respect of judgments that do not constitute an Event of Default under **Section 7.01(h)**;

(f) easements, zoning restrictions, rights-of-way, and similar encumbrances on real property imposed by law or arising in the ordinary course of business that do not secure any monetary obligations and do not materially detract from the value of the affected property or interfere with the ordinary conduct of business of the Company or any Subsidiary;

(g) Liens on property or assets of the Company or any Subsidiary existing on the Closing Date and listed on **ScheduleV**; provided that such Liens shall secure only those obligations that they secure on the Closing Date (and permitted extensions, renewals, and refinancings of such obligations) and shall not subsequently apply to any other property or assets of the Company or any Subsidiary;

(h) purchase money security interests in equipment or other property or improvements thereto hereafter acquired (or, in the case of improvements, constructed) by the Company or any Subsidiary (including the interests of vendors and lessors under conditional sale and title retention agreements and similar arrangements for the sale of goods entered into by the Company or any Subsidiary in the ordinary course of business as conducted from time to time);

(i) Liens arising out of Capital Lease Obligations, so long as such Liens attach only to the property sold and being leased in such transaction and any accessions thereto or proceeds thereof and related property;

(j) any interest or title of a lessor under any leases or subleases entered into by the Company or any Subsidiary in the ordinary course of business as conducted from time to time;

(k) Liens that are contractual rights of set-off (i) relating to the establishment of depository relations with banks not given in connection with the issuance or incurrence of Indebtedness, (ii) relating to pooled deposit or sweep accounts of the Company or any Subsidiary to permit satisfaction of overdraft or similar obligations incurred in the ordinary course of business of the Company or any Subsidiary or (iii) relating to purchase orders and other agreements entered into with customers of the Company or any Subsidiary in the ordinary course of business;

(l) Liens arising solely by virtue of any statutory or common law provision relating to banker's liens, rights of set-off or similar rights;

(m) licenses of intellectual property granted in the ordinary course of business;

(n) 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;

(o) Liens solely on any cash earnest money deposits made by the Company or any Subsidiary in connection with any letter of intent or purchase agreement permitted hereunder;

(p) the prior rights of consignees and their lenders under consignment arrangements entered into in the ordinary course of business;

(q) agreements to subordinate any interest of the Company or any Subsidiary in any accounts receivable or other proceeds arising from inventory consigned by the Company or any of its Subsidiaries pursuant to an agreement entered into in the ordinary course of business;

(r) Liens arising from precautionary UCC financing statements regarding operating leases;

(s) Liens on equity interests in joint ventures held by the Company or a Subsidiary securing obligations of such joint venture;

(t) Liens on securities that are the subject of repurchase agreements constituting Permitted Investments under subsection (d) of the definition thereof;

(u) Liens arising in connection with the Existing Credit Agreement, and security interests in cash, cash equivalents, and securities maintained as pledged collateral pursuant to the Existing Credit Facility; provided that such Liens do not attach to any Collateral under any of the Loan Documents;

(v) Liens in favor of customers or suppliers of the Company or any Subsidiary 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;

(w) Liens that arise by operation of law for amounts not yet due;

(x) existing and future Liens related to or arising from the sale, transfer, or other disposition of rights to solar power rebates in the ordinary course of business as conducted from time to time;

(y) existing and future Liens in favor of the Company'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 in the ordinary course of the Company's business as conducted from time to time;

(z) Liens in connection with the sale-leaseback arrangement, pursuant to the Master Lease Agreement dated as of June 26, 2009 by and among WF-SPWR I Solar Statutory Trust, Whippletree Solar, LLC, and the other Persons party thereto of certain solar power production projects and the related escrow of funds supporting the obligations of certain Subsidiaries thereunder; provided that such Liens do not attach to any Collateral under any of the Loan Documents;

(aa) Liens in connection with an escrow by the Company in the amount of $2,400,000 in respect of the performance obligations of Greater Sandhill I, LLC ("GS"), an unaffiliated customer of the Company, under a Solar Energy Purchase Agreement between GS and Public Service Company of Colorado and related documentation; and

(bb) other Liens so long as the outstanding principal amount of the obligations secured thereby does not exceed (as to the Credit Parties in the aggregate) $5,000,000 at any one time; provided that such Liens do not attach to any Collateral under any of the Loan Documents.

"Permitted Investments" means:

(a) direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by, the United States of America, Japan or the European Union (or by any agency of any thereof to the extent such obligations are backed by the full faith and credit of such jurisdiction), in each case maturing within one year from the date of acquisition thereof;

(b) investments in commercial paper maturing within 270 days from the date of acquisition thereof and having, at such date of acquisition, a credit rating of at least A-1 from S&P or P-1 from Moody's;

(c) investments in certificates of deposit, banker's acceptances and time deposits maturing within 180 days from the date of acquisition thereof issued or guaranteed by or placed with, and money market deposit accounts issued or offered by, any domestic office of any commercial bank organized under the laws of the United States of America or any State thereof which has a combined capital and surplus and undivided profits of not less than $500,000,000;

(d) fully collateralized repurchase agreements with a term of not more than 30 days for securities described in clause (a) above and entered into with a financial institution satisfying the criteria described in clause (c) above;

(e) money market funds that (i) comply with the criteria set forth in SEC Rule 2a-7 under the Investment Company Act of 1940, (ii) are rated AAAm by S&P and Aaa by Moody's and (iii) have portfolio assets of at least $1,000,000,000;

(f) loans, advances, or investments existing on the Closing Date and listed on **Schedule VI**;

(g) additional loans or advances by the Company or a Subsidiary to employees and officers in the ordinary course of business and in amounts not to exceed an aggregate of $20,000,000 outstanding at any time;

(h) investments which constitute Specified Transactions permitted under Section 6.14(d);

(i) loans, advances, or investments which constitute Indebtedness permitted under **Section 6.01**;

(j) advances to, or investments in, a Subsidiary, in Woongjin Energy Co. Ltd., or in Philippine Electric Corp. by the Company or any Subsidiary in the ordinary course of business as conducted from time to time;

(k) transactions in connection with factoring of the accounts receivable of any Credit Party or Subsidiary pursuant to the Tech Credit Agreement; and

(l) prepayments of obligations to vendors and suppliers in the ordinary course of business as conducted from time to time in an amount not to exceed $450,000,000.

"Person" means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority, or other entity.

"Plan" means any employee pension benefit plan (other than a Multiemployer Plan) subject to the provisions of Title IV of ERISA or Section 412 of the Internal Revenue Code or Section 302 of ERISA, and in respect of which any Applicant or any ERISA Affiliate is (or, if such plan were terminated, would under Section 4069 of ERISA be deemed to be) an "employer" as defined in Section 3(5) of ERISA.

"Pro Rata Share" means, for any Bank, the percentage share that its Commitment Amount is of the aggregate Commitment Amount of all Banks (or, if the Commitments have terminated, that the amount of such Bank's participating interest in the LOC Disbursements and LOCs is of the Credit Exposure). The initial Pro Rata Shares of the Banks are set forth on **Schedule I**.

"Register" means a register for the recordation of the names and addresses of the Banks and the Commitment Amount of, and principal amount of the LOC Disbursements owing to, each Bank from time to time.

"Required Banks" means, at any time, Banks with aggregate Pro Rata Shares of more than fifty percent (50%).

"Responsible Officer" means, (a) in the case of the Company or any other Applicant, its president, chief executive officer, chief financial officer, principal accounting officer, treasurer or controller (and, in any case where two Responsible Officers are acting on behalf of such Person the second such Responsible Officer may also be its Secretary or an Assistant Secretary), and (b) in the case of any other Person, its manager, general partner, or a senior or executive officer of such other Person or of its managing member or general partner, as applicable.

"Restricted Payment" means any dividend or other distribution (whether in cash, securities or other property) with respect to any Equity Interests in the Company or any Subsidiary, or any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination of any such Equity Interests in the Company or any other Applicant or any option, warrant or other right to acquire any

such Equity Interests in the Company or any other Applicant or any transaction that has a substantially similar effect to any of the foregoing; provided, however, that repurchases of Equity Interests of the Company from employees, officers, directors, and consultants pursuant to the Company's equity compensation plans shall not constitute "Restricted Payments" hereunder.

"S&P" means Standard & Poor's.

"SEC" means the United States Securities and Exchange Commission (or any successor Governmental Authority).

"Secured Parties" means each of the Banks and the Administrative Agent.

"Security Agreement" means the Security Agreement, substantially in the form of **Exhibit G**, among each Guarantor and the Administrative Agent.

"Solvent" and "Solvency" mean, when used with respect to any Person, as of any date of determination, (a) the amount of the then "present fair saleable value" of the assets of such Person, as of such date, exceeds the amount of all "liabilities of such Person, contingent or otherwise", as of such date, as such quoted terms are determined in accordance with applicable requirements of law governing determinations of the insolvency of debtors, (b) the present fair saleable value of the assets of such Person, as of such date, is greater than the amount that will be required to pay the anticipated liability of such Person on its debts as such debts become absolute and matured, (c) such Person does not have, as of s uch date, an unreasonably small amount of capital with which to conduct its business, and (d) such Person is able to pay its debts as they mature. For purposes of this definition, (i) "debt" means liability on a "claim," and (ii) "claim" means any (x) 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 (y) right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured or unmatured, disputed, undisputed, secured or unsecured.

"Specified Currency" means any currency in which any Applicant is obligated to make payments hereunder.

"Specified Transaction" means any of the following:

(i) the acquisition by a Guarantor of all or substantially all of the assets of another entity or division of such entity;

(ii) the merger or consolidation of any Guarantor with or into any other entity, provided that the surviving entity shall be a Guarantor;

(iii) the acquisition by a Guarantor of a controlling or majority interest in any other entity; and

(iv) investments in other entities, including joint ventures, by a Guarantor.

"subsidiary" means, with respect to any Person (the "parent") at any date, any corporation, limited liability company, partnership, association or other entity the accounts of which would be consolidated with those of the parent in the parent's consolidated financial statements if such financial statements were prepared in accordance with GAAP as of such date, as well as any other corporation, limited liability company, partnership, association or other entity (a) of which securities or other ownership interests

representing more than fifty percent (50%) of the equity or more than fifty percent (50%) of the ordinary voting power or, in the case of a partnership, more than fifty percent (50%) of the general partnership interests are, as of such date, owned, controlled or held, or (b) that is, as of such date, otherwise Controlled, by the parent or one or more subsidiaries of the parent or by the parent and one or more subsidiaries of the parent.

"Subsidiary" means any subsidiary of any Applicant.

"Subsidiary Account Party" means (a) each Subsidiary listed on **Schedule II** and (b) each other Subsidiary from time to time approved in writing as a Subsidiary Account Party by the Administrative Agent and the Issuing Bank at the written request of the Company.

"Subsidiary Applicant" means (a) each Subsidiary that is a party to this Agreement and is listed on **Schedule III** and (b) each other Subsidiary from time to time approved in writing as a Subsidiary Applicant pursuant to an Adherence Agreement executed and delivered by such Subsidiary, the Company, the Administrative Agent, the Issuing Bank, and all of the other Banks, in each case other than any such Subsidiary that has ceased to be a Subsidiary Applicant pursuant to **Section 2.16**.

"Subsidiary Guarantor" means each of SunPower North America and SunPower Systems.

"Super-Majority Banks" means Banks with aggregate Pro Rata Shares of sixty-six and two-thirds percent (66 2/3%) or more.

"SunPower North America" means SunPower North America, LLC, a Delaware limited liability company.

"SunPower Systems" means SunPower Corporation, Systems, a Delaware corporation.

"Syndication Agent" means Bank of America, N.A., in its capacity as Syndication Agent hereunder.

"Taxes" means any present or future taxes, levies, imposts, deductions, charges, or withholdings, and all liabilities with respect thereto, excluding, in the case of each Bank and the Administrative Agent, (i) taxes that are imposed on (or measured by) its overall net income by the United States and taxes that are imposed on its overall net income (and franchise taxes imposed in lieu thereof) by the state or foreign jurisdiction under the laws of which such Bank or the Administrative Agent, as the case may be, is organized or any political subdivision thereof, (ii) any branch profits tax or any similar tax that is imposed by any jurisdiction described in clause (i) above, and (iii) in the case of a Bank (other than a Bank that became a Bank pursuant to a request by a Compan y pursuant to **Section 2.11**), (x) any United States federal withholding tax imposed under a law that is in effect at the time such Bank acquires the interest hereunder in respect of which it is claiming under **Section 2.08** (or designates a new Lending Office) except to the extent that such Bank (or its assignor, if any) was entitled, immediately prior to the time of designation of a new Lending Office (or assignment), to receive additional amounts from a Credit Party with respect to any withholding tax pursuant to **Section 2.08(a)** and (y) any withholding tax that is attributable to such Bank's failure to comply with **Section 2.08(e)** and, in the case of each Bank, taxes that are imposed on its overall net income (and franchise taxes imposed in lieu thereof) by the state or foreign jurisdiction of such Bank's Lending Office or any political subdivision thereof.

"Tech Credit Agreement" means that certain Purchase Agreement dated May 15, 2006 (as amended on October 19, 2006, October 13, 2008, and December 29, 2008), by and between the Company and Technology Credit Corporation.

"Termination Date" means April 12, 2013.

"Total Non-Stock Consideration" means all consideration whatsoever (other than Equity Interests in the Company or a Subsidiary) and shall include cash, other property, assumed indebtedness, amounts payable, whether evidenced by notes or otherwise, and "earn-out" payments.

"Total Stock Consideration" means all consideration consisting of Equity Interests in the Company or any Subsidiary.

"Voting Stock" means shares of capital stock issued by a corporation (or equivalent interests in any other Person), the holders of which are ordinarily, in the absence of contingencies, entitled to vote for the election of directors (or persons performing similar functions) of such Person, even if the right so to vote has been suspended by the happening of such a contingency.

"Withdrawal Liability" means liability to a Multiemployer Plan as a result of a complete or partial withdrawal from such Multiemployer Plan, as such terms are defined in Part I of Subtitle E of Title IV of ERISA.

1.02 Computation of Time Periods. In this Agreement and the other Loan Documents in the computation of periods of time from a specified date to a later specified date, the word "from" means "from and including" and the words "to" and "until" each mean "to but excluding", in each case except as otherwise expressly provided herein.

1.03 Other Definitional Provisions. The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include", "includes" and "including" shall be deemed to be followed by the phrase "without limitation". The word "will" shall be construed to have the same meaning and effect as the word "shall". The words "herein", "hereof" and "hereunder", and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof. Except as ot herwise expressly provided herein, any definition of or reference to (a) an agreement, instrument, or other document shall mean such agreement, instrument, or other document as amended, supplemented, or otherwise modified from time to time (subject to any restrictions on such amendments, supplements or modifications set forth herein); (b) a law shall mean such law as amended, supplemented, or otherwise modified from time to time (including any successor thereto) and all rules, regulations, guidelines, and decisions interpreting or implementing such law; (c) all references herein to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, this Agreement; (d) a time of day shall mean such time in New York, New York; and (e) any reference herein to any Person shall be construed to include such Person's successors and assigns.

1.04 Accounting Terms and Determinations. Unless otherwise specified herein, all accounting terms used herein shall be interpreted, all accounting determinations hereunder (including calculations made under **Section 6.02** and any other financial covenants, representations, or warranties contained herein) shall be made, and all financial statements required to be delivered hereunder shall be prepared in accordance with GAAP, applied on a basis consistent with the most recent audited consolidated financial statements of the Company and its Subsidiaries delivered to the Banks; provided that, if the Company notifies the Administrative Agent that the Company wishes to amend any covenant to eliminate the effect of any change in GAAP on the operation of such covenant (or if the Administrative Agent notifies the Company that the Required Banks wish to amend any covenant for such purpose), then the Company's compliance with such covenant shall be determined on the basis of GAAP in effect immediately before the relevant change in GAAP became effective (and, concurrently with the delivery of any financial

statements required to be delivered hereunder, the Company shall provide a statement of reconciliation conforming such financial information to such GAAP as previously in effect), until either such notice is withdrawn or such covenant is amended in a manner satisfactory to the Company and the Required Banks.

1.05 Exchange Rates.

(a) Not later than 12:00 noon, New York City time, three (3) Business Days prior to each Calculation Date, beginning with the date that is three (3) Business Days prior to the date on which the initial Alternate Currency LOC is issued, the Administrative Agent shall determine the Exchange Rate as of such Calculation Date with respect to each Alternate Currency. The Exchange Rates so determined shall become effective on the relevant Calculation Date, shall remain effective until the next succeeding Calculation Date, and shall for all purposes of this Agreement (other than **Section 2.01**, **Section 2.15**, or any other provision expressly requiring the use of a current Exchange Rate) be the Exchange Rates employed in converting any amounts between dollars and any Alternate Currency.

(b) Not later than 5:00 p.m., New York City time, on each Calculation Date, the Administrative Agent shall determine the Alternate Currency Exposure. The Administrative Agent shall determine the aggregate amount of the Dollar Equivalent of all amounts denominated in an Alternate Currency at the applicable time and in the manner provided for by this Agreement.

ARTICLE II

AMOUNTS AND TERMS OF LETTERS OF CREDIT

2.01 The Letters of Credit. The Issuing Bank agrees, on the terms and subject to the conditions herein set forth, to issue LOCs, and extend or increase the amount of LOCs, for the account of any Applicant on any Business Day from time to time during the period from the Closing Date to the Termination Date; provided that:

(a) the Issuing Bank shall not have any obligation to issue, extend, or increase the amount of any LOC if (i) the aggregate Credit Exposure (after giving effect to such issuance, extension, or increase) would exceed the aggregate Commitment Amount of the Banks, (ii) any Bank's Pro Rata Share of the aggregate Credit Exposure (after giving effect to such issuance, extension, or increase) would exceed such Bank's Commitment Amount, or (iii) such issuance, extension, or increase would conflict with or cause the Issuing Bank to exceed any limit imposed by applicable law or any applicable requirement hereof;

(b) each LOC shall be denominated in dollars or in an Alternate Currency and shall be in a face amount not less than the Dollar Equivalent of $25,000 (or such lesser amount as the Issuing Bank may agree);

(c) each LOC shall be payable only against sight drafts or demands for payment at sight (and not provide for acceptance of time drafts or incurrence of deferred payment undertakings);

(d) no LOC shall have a scheduled expiration date (including all rights of the applicable Applicant or the Beneficiary to require extension thereof) later than the earlier of (i) two (2) years after its date of issuance or (ii) the Termination Date; provided that (x) any LOC may by its terms be automatically extendible annually for additional one-year periods (provided that the Issuing Bank shall not permit any such extension to take effect that extends the expiration date of such LOC beyond the Termination Date) and (y) up to $100,000,000 in aggregate amount of LOCs may be Long-Term LOCS,

and each LOC permitted under this clause (y) must be cash collateralized in the manner provided in **Section 6.11(b)**; provided, further that the Issuing Bank shall not permit any such automatic extension if it has determined that such extension would not be permitted, or the Issuing Bank would have no obligation, at such time to issue such LOC as extended under the terms hereof, in which case the Issuing Bank shall notify the Beneficiary thereof of its election not to extend such LOC (which the Issuing Bank agrees to do on and subject to the terms of **Section 2.02(c)**); and

(e) each LOC shall be a Performance LOC.

At the request of any Applicant, LOCs may be issued in accordance with this Agreement to support obligations of any Subsidiary Account Party that is a Subsidiary of such Applicant; provided that such Applicant represents, warrants and agrees, without limiting any Obligations of such Applicant hereunder, that: (i) such Subsidiary Account Party has consented to its being referred to in such LOC or otherwise as the "applicant", "account party", "client", or "customer" at whose request or for whose account such LOC is issued; (ii) such Subsidiary Account Party has consented to its not having any rights under this Agreement (including any right to request that the Issuing Bank issue or amend such LOC or that the Issuing Bank dispose of any documents presented under such LOC (or a ny goods represented thereby) in any particular manner) and to the Issuing Bank's treating such Applicant as the sole Person entitled to exercise such rights with respect to such LOC; (iii) such Subsidiary Account Party is a direct or indirect majority-owned subsidiary of the Company at the time of issuance of such LOC (or of any increase or extension thereof); (iv) such Subsidiary Account Party is bound by all the limitations of liability and exculpations in the Issuing Bank's favor contained herein and subject to all the rights and remedies in the Issuing Bank's favor referred to herein as if it were such Applicant; and (v) the Issuing Bank shall not be required to send any notice hereunder to such Subsidiary Account Party, but if the Issuing Bank in its sole discretion chooses to do so, the Issuing Bank may send such notice as provided herein care of such Applicant and such notice shall be effective as if given to such Subsidiary Account Party.

2.02 Issuance; Extensions; Participations; Etc.

(a) Request for Issuance. An Applicant may from time to time request, upon at least three (3) Business Days' notice (given not later than 11:00 a.m. New York City time), that the Issuing Bank issue an LOC by delivering to the Issuing Bank (i) an LOC Request specifying the date on which such LOC is to be issued (which shall be a Business Day), the expiration date thereof, the currency thereof (whether dollars or an Alternate Currency), the Available Amount thereof, and the name and address of the Beneficiary thereof; and (ii) such other documents and agreements as may be required pursuant to the Issuing Bank's customary practices f or the issuance of letters of credit (and in the event of a conflict between the terms of this Agreement and the terms of such other documents or agreements, the terms of this Agreement shall govern). If the requirements set forth in the first sentence of **Section 2.01** and in **Article III** are satisfied, the Issuing Bank shall issue the applicable LOC on the date requested in such LOC Request. Upon the issuance of an LOC, the Issuing Bank shall (A) deliver the original of such LOC to the Beneficiary thereof or as the applicable Applicant shall otherwise direct and (B) promptly notify the Administrative Agent thereof and furnish a copy thereof to the Administrative Agent.

(b) Request for Extension or Increase. The applicable Applicant may from time to time request, upon at least three (3) Business Days' notice (given not later than 11:00 a.m. New York City time), that the Issuing Bank extend the expiration date of an outstanding LOC or increase the Available Amount of an outstanding LOC by delivering to the Issuing Bank a written request therefor. Any such request for an extension or increase shall for all purposes hereof (including for purposes of **Section 2.02(a)**) be treated as though such Applicant had requested issuance of a replacement LOC (except that the Issuing Bank may, if it elects, issue a n otice of extension or increase in lieu of issuing a new LOC in substitution for the outstanding LOC).

(c) Automatic Extensions. If any LOC shall provide for the automatic extension of the expiry date thereof unless the Issuing Bank gives notice that such expiry date shall not be extended, then the Issuing Bank shall allow such LOC to be extended unless such extended expiration date would conflict with Section 2.01(d) or unless the Issuing Bank shall have received, at least five (5) Business Days prior to the date on which such notice of non-extension must be delivered under such LOC (or such shorter period acceptable to the Issuing Bank), (i) notice from the Required Banks or the Administrative Agent stating that one or more of the conditions precedent to the extension of such LOC have not been sati sfied or (ii) notice from the applicable Applicant directing the Issuing Bank not to permit the extension of such LOC, unless the Required Banks or the Administrative Agent shall have notified the Issuing Bank that a Default has occurred and is continuing and directed the Issuing Bank not to permit such extension (and the Issuing Bank shall not permit any LOC to be automatically extended if it has received a timely notice of the type described in the foregoing clause (i) or (ii)).

(d) Limitations on Issuance, Extension and Increase of LOCs. As between the Issuing Bank, on the one hand, and the Administrative Agent and the other Banks, on the other hand, the Issuing Bank shall be justified and fully protected in issuing a proposed LOC, extending the expiration date or increasing the Available Amount of an outstanding LOC or permitting an outstanding LOC to be automatically extended if the Issuing Bank has not received notice that it is not authorized to issue, increase the Available Amount of, or extend such LOC as described in the foregoing provisions of this Section, in each case notwithstanding any subsequent notice to the Issuing Bank, any knowledge the Issuing Bank may ha ve of a Default or of the failure to satisfy any condition specified in the first sentence of **Section 2.01** or in **Article III**, or any other event, condition, or circumstance whatsoever. The Issuing Bank may amend, modify, or supplement LOCs or LOC Requests, or waive compliance with any condition of issuance, extension or payment, without the consent of, and without liability to, the Administrative Agent or any Bank; provided that any such amendment, modification, or supplement that extends the expiration date or increases the Available Amount of an outstanding LOC shall be subject to **Section 2.01**.

(e) LOC Participating Interests. Concurrently with the issuance of each LOC, the Issuing Bank automatically shall be deemed, irrevocably and unconditionally, to have sold, assigned, transferred and conveyed to each other Bank, and each other Bank automatically shall be deemed, irrevocably and unconditionally, severally to have purchased, acquired, accepted, and assumed from the Issuing Bank, without recourse to, or representation or warranty by, the Issuing Bank, an LOC Participating Interest. On the date that any assignee becomes a party to this Agreement in accordance with **Section 9.07**, LOC Participating Interests in all outstandin g LOCs held by the Bank from which such assignee acquired its interest hereunder shall be proportionately reallocated between such assignee and such assignor Bank. Notwithstanding any other provision hereof, each Bank hereby agrees that its obligation to participate in each LOC, its obligation to make the payments specified in **Section 2.02(f)**, and the right of the Issuing Bank to receive such payments in the manner specified therein are each absolute, irrevocable, and unconditional and shall not be affected by any event, condition, or circumstance whatsoever. The failure of any Bank to make any such payment shall not relieve any other Bank of its funding obligation hereunder on the date due, but no Bank shall be responsible for the failure of any other Bank to meet its funding obligations hereunder.

(f) Payment by Banks on Account of Unreimbursed Draws. If the Issuing Bank makes a payment under an LOC and is not reimbursed in full therefor in accordance with **Section 2.03**, the Issuing Bank may notify the Administrative Agent thereof (which notice may be by telephone), and the Administrative Agent shall forthwith notify each Bank thereof (which notice may be by telephone promptly confirmed in writing). No later than the Administrative Agent's close of business on the date such notice is given (if notice is given by 2:00 p.m. (New York City time) on a Business Day) or 10:00 a.m. (New York City time) on the following Business Day (if notice is given after 2:00 p.m. (New York City

time) on a Business Day), each Bank will pay to the Administrative Agent, for the account of the Issuing Bank, in immediately available funds, an amount equal to such Bank's Pro Rata Share of the unreimbursed portion of such payment by the Issuing Bank. Amounts received by the Administrative Agent for the account of the Issuing Bank shall be forthwith transferred, in immediately available funds, to the Issuing Bank. To the extent that any Bank fails to make such payment to the Administrative Agent for the account of the Issuing Bank on such date, such Bank shall pay such amount on demand, together with interest, for the Issuing Bank's own account, from the date such payment is due from such Bank to the Issuing Bank to the date of payment to the Issuing Bank (before and after judgment) at a rate per annum for each day (i) from the date such payment is due from such Bank to the Issuing Bank to the third Business Day thereaft er, equal to the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking rules on interbank compensation, and (ii) thereafter, equal to the Base Rate.

(g) LOC Disbursements. The making of an LOC Disbursement by a Bank with respect to an unreimbursed drawing on an LOC shall reduce, by a like amount, the outstanding LOC Disbursement of the Issuing Bank with respect to such unreimbursed drawing.

(h) LOC Reports. The Issuing Bank will furnish to the Administrative Agent (with a copy to the Company) prompt written notice of each (i) issuance or extension, or increase in the amount, of an LOC (including the Available Amount and expiration date thereof), (ii) other amendment to an LOC, (iii) cancellation of an LOC, and (iv) payment on an LOC. The Administrative Agent will furnish to each Bank promptly upon request and, in any case, prior to the fifteenth Business Day of each calendar quarter a written report summarizing issuance, extension, and expiration dates of LOCs issued or extended during the preceding calendar quarter and payments and reductions in Available Amounts during suc h calendar quarter on all LOCs.

(i) ISP and UCP. Subject to the exculpations, limitations on liability, and other provisions of this Agreement, unless otherwise expressly agreed in writing by the Issuing Bank and the Company when a LOC is issued and subject to applicable laws, performance under LOCs by the Issuing Bank will be governed by (i) either (x) the rules of the "International Standby Practices 1998" (ISP98) (or such later revision as may be published by the Institute of International Banking Law & Practice on any date any LOC may be issued) or (y) the rules of the "Uniform Customs and Practices for Documentary Credits" (2007 Revision), International Chamber of Commerce Publication No. 600 (or such later revision as m ay be published by the International Chamber of Commerce on any date any LOC may be issued) and (ii) to the extent not inconsistent therewith, the governing law of this Agreement as set forth in **Section 9.15**.

2.03 Reimbursement Obligations.

(a) Each Applicant agrees to reimburse the Issuing Bank (by making payment to the Administrative Agent for the account of the Issuing Bank in accordance with **Section 2.07**) in the amount of each LOC Disbursement made by the Issuing Bank under each LOC issued at the request of such Applicant, such reimbursement to be made on the date such LOC Disbursement is made by the Issuing Bank if such Applicant receives notice thereof no later than 1:00 p.m. (New York City time) on such date or on the next Business Day if such notice is received after such time. Such reimbursement obligation shall be payable without further notice, protest or demand, all of which are hereby waived, and an action therefor shall immediatel y accrue. To the extent such payment by such Applicant is not timely made in accordance with the terms hereof, such unpaid reimbursement obligation shall be treated as a matured loan extended to such Applicant under this Agreement in respect of which interest shall accrue and be payable. Such Applicant agrees to pay to the Administrative Agent, for the respective accounts of the Issuing Bank and the other Banks that have funded their respective shares of such amount remaining

unpaid by such Applicant, on demand, interest (at a rate per annum equal to the Base Rate plus two percent (2%)) for each day from the date of such LOC Disbursement to the date such obligation is paid in full. For the avoidance of doubt, the payment by such Applicant of interest pursuant to this **Section 2.03(a)** shall not affect the calculation of fees under the Loan Documents.

(b) The obligation of the applicable Applicant to reimburse the Issuing Bank for any LOC Disbursement made by the Issuing Bank shall be unconditional and irrevocable, and shall be paid strictly in accordance with the terms of this Agreement, the applicable LOC Request and any other applicable agreement or instrument under all circumstances, including the following circumstances:

(i) any lack of validity or enforceability of any LOC Related Document or any term or provision thereof;

(ii) any change in the time, manner, or place of payment of, or in any other term of, any obligation of the Company, any other Applicant, or any other Person in respect of any LOC Related Document or any other amendment or waiver of or any consent to departure from any LOC Related Document;

(iii) the existence of any claim, set-off, defense, or other right that the Company, any other Applicant, or any other Person may have at any time against any Beneficiary (or any Person for which any such Beneficiary may be acting), the Issuing Bank or any other Person, whether in connection with the transactions contemplated by the LOC Related Documents or any unrelated transaction;

(iv) any statement or any other document presented under an LOC being forged, fraudulent, invalid, or insufficient in any respect or any statement therein being untrue or inaccurate in any respect;

(v) payment by the Issuing Bank under an LOC against presentation of a draft or other document that does not strictly comply with the terms of such LOC;

(vi) any exchange, release or non-perfection of any Collateral granted to secure any obligation of the Company, any other Applicant, or any other Person in connection with any Loan Document; or

(vii) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing, including any other circumstance that might otherwise constitute a defense available to, or a discharge of, the Company or any other Applicant.

The foregoing provisions of this **Section 2.03(b)** shall not excuse the Issuing Bank from liability to the applicable Applicant in any independent action or proceeding brought by the such Applicant against the Issuing Bank following reimbursement of each LOC Disbursement in full by the such Applicant to the extent of any direct (but not consequential) damages suffered by the such Applicant that are caused by the Issuing Bank's gross negligence or willful misconduct; provided that (i) the Issuing Bank shall be deemed to have acted with reasonable care if it acts in accordance with standard letter of credit practice of commercial banks located in New York City; an d (ii) the applicable Applicant's aggregate remedies against the Issuing Bank for wrongfully honoring a presentation shall not exceed the aggregate amount paid by the such Applicant to the Issuing Bank with respect to the honored presentation, plus interest.

(c) Without limiting any other provision of this Agreement, the Issuing Bank: (i) may rely upon any oral, telephonic, facsimile, electronic, written, or other communication reasonably

believed to have been authorized by any Applicant, (ii) shall not be responsible for errors, omissions, interruptions, or delays in transmission or delivery of any message, advice or document in connection with any LOC, whether transmitted by courier, mail, telex, any other telecommunication, or otherwise (whether or not they be encrypted), or for errors in interpretation of technical terms or in translation (and the Issuing Bank may transmit any LOC terms without translating them), (iii) may honor any presentation under any LOC that appears on its face to substantially comply with the terms and conditions of such LOC, (iv) may replace a purportedly lost, stolen, or destroyed original LOC, waive a requirement for its presentation, or provide a replacement copy to any Beneficiary, (v) if no form of draft is attached as an exhibit to an LOC, may accept as a draft any written or electronic demand or request for payment under such LOC, and may disr egard any requirement that such draft bear any particular reference to such LOC, (vi) unless an LOC specifies the means of payment, may make any payment under such LOC by any means it chooses, including by wire transfer of immediately available funds, (vii) may select any branch or affiliate of the Issuing Bank or any other bank or financial institution to act as advising, transferring, confirming, and/or nominated bank under the law and practice of the place where it is located (if the applicable LOC Request or LOC Related Documents requested or authorized advice, transfer, confirmation and/or nomination, as applicable), (viii) may amend any LOC to reflect any change of address or other contact information of any Beneficiary, and (ix) shall not be responsible for any other action or inaction taken or suffered by the Issuing Bank under or in connection with any LOC, if required or permitted under any applicable domestic or foreign law or letter of credit practice. None of the circumstances describ ed in this **Section 2.03(c)** shall impair the Issuing Bank's rights and remedies against any Applicant or place the Issuing Bank under any liability to any Applicant.

(d) The applicable Applicant will notify the Issuing Bank in writing of any objection such Applicant may have to the Issuing Bank's issuance or amendment of any LOC, the Issuing Bank's honor or dishonor of any presentation under any LOC, or any other action or inaction taken by the Issuing Bank under or in connection with this Agreement or any LOC. The applicable Applicant's notice of objection must be delivered to the Issuing Bank within five (5) Business Days after such Applicant receives notice of the action or inaction it objects to. The applicable Applicant's failure to give timely notice of objection shall automatically waive such Applicant's objection. The applicable Applicant's acceptance or retention beyond such five (5) Business Da y period of any original documents presented under the applicable LOC, or of any property for which title is conveyed by such documents, shall ratify the Issuing Bank's honor of the applicable presentation(s).

(e) If any amount received by the Issuing Bank on account of any LOC Disbursement shall be avoided, rescinded, or otherwise returned or paid over by the Issuing Bank for any reason at any time, whether before or after the termination of this Agreement (or the Issuing Bank believes in good faith that such avoidance, rescission, return or payment is required, whether or not such matter has been adjudicated), each Bank will (except to the extent a corresponding amount received by such Bank on account of its LOC Disbursement relating to the same payment on an LOC has been avoided, rescinded, or otherwise returned or paid over by such Bank), promptly upon notice from the Administrative Agent or the Issuing Bank, pay over to the Administrative Agent at its office at 60 Wall Stre et, New York, New York 10005 (or such other place as the Administrative Agent shall direct from time to time) and at such account as the Administrative Agent shall direct from time to time for the account of the Issuing Bank in immediately available funds its Pro Rata Share of such amount, together with its Pro Rata Share of any interest or penalties payable with respect thereto.

2.04 Termination or Reduction of Commitments; Increase of Commitments.

(a) The Company may at any time, upon at least five (5) Business Days' notice to the Administrative Agent, terminate the Commitments in whole or reduce in part the unused portion of the Commitment Amounts; provided that each partial reduction (i) shall be in an aggregate amount of

$25,000,000 or a higher integral multiple of $1,000,000 and (ii) shall be made ratably among the Banks in accordance with their Commitment Amounts. The aggregate Commitment Amounts shall be permanently reduced to zero on the Termination Date if not sooner reduced to zero. Each notice delivered by the Company pursuant to this paragraph shall be irrevocable; provided that a notice of termination of the Commitments delivered by the Company may state that such notice is conditioned upon the effectiveness of other credit facilities, in which case such notice may be revoked by the Company (by notice to the Administrative Agent on or prior to the specified effective date) if such condition is not satisfied.

(b) Subject to the terms and conditions herein provided, the Company may, from time to time, in each case upon not less than five (5) Business Days' notice to the Administrative Agent in substantially the form of **Exhibit F**, increase the Commitment Amounts by an amount that is an integral multiple of $1,000,000 and not less than $25,000,000 on each such occasion, provided that the aggregate Commitment Amount shall not exceed $400,000,000. The Company may arrange for any such increase to be provided by one or more Banks increasing its then existing Commitment Amount (each Bank so agreeing, in its sole discretion, to an increase in its Commitment Amount, an "Increasing Bank"), or by one or more other financial institutions or other Persons (each such other financial institution or other Person, a "New Bank") providing an initial Commitment; provided that (i) each New Bank shall be subject to the written approval of the Administrative Agent and the Issuing Bank (such approvals not to be unreasonably withheld); (ii) the Applicants and each applicable Increasing Bank or New Bank shall execute and deliver all such documentation as the Administrative Agent shall reasonably specify; (iii) the Administrative Agent shall have received payment of any and all fees due and payable to it on or prior to the effective date of such increase pursuant to any written agreement with one or more of the Applicants relating to such increase, (iv) the increased portion of the Commi tment Amounts shall be on the same terms and conditions as the other Commitment Amounts hereunder; (v) no Default shall have occurred and be continuing immediately before or after giving effect to such increase in the Commitment Amounts; (vi) the representations and warranties of each Applicant contained in this Agreement and the other Loan Documents shall be true and correct in all material respects on and as of the date of such increase in the Commitment Amounts, both before and after giving effect thereto; and (vii) no Change in Law shall have occurred, no order, judgment or decree of any Governmental Authority shall have been issued, and no litigation shall be pending or threatened, which enjoins, prohibits, or restrains (or with respect to any litigation seeks to enjoin, prohibit, or restrain), the reimbursement of LOC Disbursements, the issuance of any LOC or any participations therein, the granting or perfection of Liens in the Collateral, the consummation of any of the other transactions contemplated hereby, or the use of proceeds of the Facility. The Company's notice to increase the Commitment Amounts shall constitute the representation and warranty of each Guarantor as to the matters set forth in clauses (v), (vi), and (vii) of the preceding sentence. The new Commitment Amounts created pursuant to this paragraph shall become effective on the date agreed to in writing by the Applicants, the Administrative Agent, each applicable Increasing Bank, and each applicable New Bank, and the Administrative Agent shall notify the Issuing Bank and each other Bank thereof. On the effective date of any increase in the Commitment Amounts, (w) each applicable Increasing Bank and each applicable New Bank shall make available to the Administrative Agent such amounts in immediately available funds and in the relevant currency or currencies as the Administrative Agent shall determine, for the benefit of the other Banks, as being required in order to cause, after giving effect to such incre ase and the use of such amounts to make payments to such other relevant Banks, each Bank's portion of the Credit Exposure in each currency to equal its Pro Rata Share (immediately after giving effect to such increase in the aggregate Commitment Amount) of such Credit Exposure in each such currency, (x) each applicable New Bank shall become a Bank, (y) each Bank's Pro Rata Share shall be adjusted in accordance with such increase of the Commitment Amounts, and (z) the respective participations of the Banks shall be adjusted to reflect such new Pro Rata Shares. None of the parties hereto shall have any obligation to provide or to arrange for any bank, financial institution, or other Person to provide for any new or increased Commitment under this paragraph.

2.05 Fees.

(a) The Company agrees to pay to the Administrative Agent for the account of each Bank the Commitment Fee. Accrued Commitment Fees shall be payable in arrears on the last day of March, June, September, and December of each year, and on the date on which the Commitments terminate, commencing on the first such date to occur after the date hereof. All Commitment Fees shall be computed on the basis of a year of 360 days and shall be payable for the actual number of days elapsed (including the first day but excluding the last day).

(b) The Company agrees to pay to the Administrative Agent for the account of each Bank a participation fee with respect to its participations in LOCs, which shall accrue at the rate of 50 basis points (0.50%) per annum on the Dollar Equivalent of the actual amount of such Bank's Credit Exposure for each day during the period from and including the Closing Date through and including the later of the date on which such Bank's Commitment terminates and the date on which such Bank ceases to have any Credit Exposure. Participation fees accrued to but excluding the last day of March, June, September and December of each year shall be payable on such last day, commencing on the first such date to occur after the Closing Date; provided that all such accrued and unpaid fees shall also be payable on the Termination Date, and any such fees accruing after the Termination Date shall be payable on demand. All participation fees shall be computed on the basis of a year of 360 days and shall be payable for the actual number of days elapsed (including the first day and the last day).

(c) The Company agrees to pay all the fees set forth in the Mandate Letter.

(d) All fees payable hereunder shall be paid on the dates due, in dollars, in immediately available funds, to the Administrative Agent (or to the Issuing Bank, in the case of fees payable to it) for distribution, in the case of Commitment Fees and participation fees, to the Banks. Fees paid shall not be refundable under any circumstances.

2.06 Increased Costs and Capital Adequacy.

(a) If, due to any Change in Law, there shall be any increase in the cost to any Bank by an amount such Bank reasonably determines to be material of agreeing to issue or of issuing or maintaining or participating in LOCs or the making of LOC Disbursements (excluding, for purposes of this Section, any such increased costs resulting from (x) Taxes or Other Taxes (as to which **Section 2.08** shall govern) and (y) changes in the basis of taxation of overall net income or overall gross income by the United States or by the foreign jurisdiction or state under the laws of which such Bank is organized or has its Lending Office or any political subdivision thereof), then the Company agrees to pay, from time to time, within ten (10) days after demand by such Bank (with a copy of such demand to the Administrative Agent), which demand shall include a statement of the basis for such demand and a calculation in reasonable detail of the amount demanded, to the Administrative Agent for the account of such Bank additional amounts sufficient to compensate such Bank for such increased cost. A certificate as to the amount of such increased cost, submitted to the Company by such Bank, shall be conclusive and binding for all purposes, absent manifest error of which the Company has notified such Bank or the Issuing Bank (and the Administrative Agent) promptly after receipt of such certificate.

(b) If, due to any Change in Law, there shall be any increase in the amount of capital required or expected to be maintained by any Bank or any corporation controlling such Bank as a result of or based upon the existence of such Bank's commitment to extend credit hereunder and other commitments of such type, then, within ten (10) days after demand by such Bank or such corporation (with a copy of such demand to the Administrative Agent), which demand shall include a statement of the basis for such demand and a calculation in reasonable detail of the amount demanded, the Company

agrees to pay to the Administrative Agent for the account of such Bank, from time to time as specified by such Bank, additional amounts sufficient to compensate such Bank in the light of such circumstances, to the extent that such Bank reasonably determines such increase in capital to be allocable to the existence of such Bank's commitment to issue or participate in LOCs hereunder or to the issuance or maintenance of or participation in any LOC. A certificate as to such amounts submitted to the Company by such Bank shall be conclusive and binding for all purposes, absent manifest error of which the Company has notified such Bank or the Issuing Bank (and the Administrative Agent) promptly after receipt of such certificate.

(c) Each Bank shall promptly notify the Company and the Administrative Agent of any event of which it has actual knowledge that will result in, and will use reasonable commercial efforts available to it (and not, in such Bank's good faith judgment, otherwise materially disadvantageous to such Bank) to mitigate or avoid, any obligation of the Company to pay any amount pursuant to **Section 2.06(a)** or **2.06(b)** above or pursuant to **Section 2.08** (and, if any Bank has given notice of any such event and thereafter such event ceases to exist, such Bank shall promptly so notify the Company and the Administrative Agent). Without limiting the foregoing, each Bank will designate a different Lending Office if such designation will avoid (or reduce the cost to the Company of) any event described in the preceding sentence and such designation will not, in such Bank's good faith judgment, be otherwise materially disadvantageous to such Bank.

(d) Notwithstanding the provisions of **Section 2.06(a)**, **2.06(b)** or **2.08** (and without limiting **Section 2.06(c)** above), if any Bank fails to notify the Company of any event or circumstance that will entitle such Bank to compensation pursuant to **Section 2.06(a)**, **2.06(b)** or **2.08** within 180 days after such Bank obtains actual knowledge of such event or circumstance, then such Bank shall not be e ntitled to compensation from the Company for any amount arising prior to the date that is 180 days before the date on which such Bank notifies the Company of such event or circumstance; provided that, if the event or circumstance giving rise to such entitlement to compensation is retroactive, then the 180-day period referred to above shall be extended to include the period of retroactive effect thereof.

2.07 Payments and Computations.

(a) The applicable Applicant shall make each payment hereunder irrespective of any right of counterclaim or set-off not later than 2:00 p.m. (New York City time) on the day when due, in dollars, to the Administrative Agent at its office at 60 Wall Street, New York, New York 10005 (or to such other office as the Administrative Agent shall direct from time to time) and at such account as the Administrative Agent shall direct from time to time in immediately available funds, with payments being received by the Administrative Agent after such time being deemed to have been received on the next succeeding Business Day; provided that if any amount due hereunder is based upon the Issuing Bank's payment in an Alternat e Currency, the applicable Applicant will pay such amount in the applicable Alternate Currency or, at the Issuing Bank's option, the applicable Applicant will pay the Dollar Equivalent of such amount. The Administrative Agent will promptly thereafter distribute to each Bank its portion of such payment in accordance with the terms hereof. Upon its acceptance of an Assignment and Assumption and recording of the information contained therein in the Register, the Administrative Agent shall make all payments hereunder in respect of the interest assigned thereby to the Bank assignee thereunder, and the parties to such Assignment and Assumption shall make all appropriate adjustments in such payments for periods prior to such effective date directly between themselves.

(b) If at any time insufficient funds are received by and available to the Administrative Agent to pay fully all amounts of principal, unreimbursed LOC Disbursements, interest and fees then due hereunder, such funds shall be applied (i) first, towards payment of interest and fees then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of interest and fees then due to such parties, and (ii) second, towards payment of principal and unreimbursed LOC

Disbursements then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of principal and unreimbursed LOC Disbursements then due to such parties.

(c) Unless the Administrative Agent shall have received notice from any Applicant prior to the date on which any payment is due to the Administrative Agent for the account of the Banks or the Issuing Bank hereunder that any Applicant will not make such payment, the Administrative Agent may assume that each Applicant has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Banks or the Issuing Bank, as the case may be, the amount due. In such event, if the any Applicant has not in fact made such payment, then each of the Banks or the Issuing Bank, as the case may be, severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Bank or the Issuing Bank with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation.

(d) All computations of interest on LOC Disbursements when the Base Rate is determined by reference to DB's prime rate shall be made by the Administrative Agent on the basis of a year of 365 or, if applicable, 366 days; all other computations of interest shall be made by the Administrative Agent on the basis of a year of 360 days. All such computations of interest shall be made for the actual number of days (including the first day but excluding the last day) occurring in the period for which such interest is payable. Each determination by the Administrative Agent of an interest rate hereunder shall be conclusive and binding for all purposes, absent manifest error.

(e) Whenever any payment hereunder shall be stated to be due on a day other than a Business Day, such payment shall be made on the next succeeding Business Day, and such extension of time shall be included in the computation of any payment of interest or fees.

2.08 Taxes.

(a) All payments by the applicable Applicant hereunder shall be made, in accordance with **Section 2.07**, free and clear of and without deduction for any Taxes. If an Applicant shall be required by law to deduct any Taxes from or in respect of any sum payable hereunder to any Bank or the Administrative Agent, (i) the sum payable by such Applicant shall be increased as may be necessary so that after such Applicant and the Administrative Agent have made all required deductions (including deductions applicable to additional sums payable under this **Section 2.08**) such Bank or the Administrative Agent, as the case may be, receives an amount equal to the sum it w ould have received had no such deductions been made, (ii) such Applicant shall make all such deductions, and (iii) such Applicant shall pay the full amount deducted to the relevant taxation authority or other authority in accordance with applicable law.

(b) In addition, the applicable Applicant shall pay any Other Taxes.

(c) The applicable Applicant shall indemnify each Bank and the Administrative Agent for and hold each of them harmless against the full amount of Taxes and Other Taxes, and for the full amount of taxes of any kind imposed by any jurisdiction on amounts payable under this **Section 2.08**, imposed on or paid by such Bank or the Administrative Agent (as the case may be) and any liability (including penalties, additions to tax, interest and expenses) arising therefrom or with respect thereto. Any such indemnification payment shall be made within thirty (30) days from the date such Bank or the Administrative Agent (as the case may be) makes written demand therefor.

(d) Within thirty (30) days after the date of any payment of Taxes, the applicable Applicant shall furnish to the Administrative Agent, at its address referred to in **Section 9.02**, the original or a certified copy of a receipt evidencing such payment. In the case of any payment hereunder by or on behalf of such Applicant through an account or branch outside the United States or by or on behalf of such Applicant by a payor that is not a United States person, if such Applicant determines that no Taxes are payable in respect thereof, such Applicant shall furnish, or shall cause such payor to furnish, to the Administrative Agent, at such address, an opinion of counsel reasonably acceptable to the Administrative A gent stating that such payment is exempt from Taxes. For purposes of this **Section 2.08(d)** and **Section 2.08(e)**, the terms "United States" and "United States person" shall have the meanings specified in Sections 7701(a)(9) and 7701(a)(30) of the Internal Revenue Code, respectively.

(e) Each Bank organized under the laws of a jurisdiction outside the United States shall, on or prior to the date of its execution and delivery of this Agreement in the case of each initial Bank, and on the date of the Assignment and Assumption pursuant to which it becomes a Bank in the case of each other Bank, and from time to time thereafter as requested in writing by the Company (but only so long as such Bank remains lawfully able to do so), provide each of the Administrative Agent and the Company with two original Internal Revenue Service forms W-8BEN or W-8ECI or any successor or other form prescribed by the Internal Revenue Service, certifying that such Bank is exempt from or entitled to a reduced rate of United States withholding tax on payments pursuant to this Agre ement. If the forms provided by a Bank at the time such Bank first becomes a party to this Agreement indicate a United States interest withholding tax rate in excess of zero, withholding tax at such rate shall be considered excluded from Taxes unless and until such Bank provides the appropriate forms certifying that a lesser rate applies, whereupon withholding tax in excess of such lesser rate shall be considered excluded from Taxes only for periods governed by such forms; provided that if, at the effective date of the Assignment and Assumption pursuant to which a Bank becomes a party to this Agreement, the Bank assignor was entitled to payments under **Section 2.08(a)** in respect of United States withholding tax with respect to interest paid on or prior to such date, then, to such extent, the term Taxes shall include (in addition to withholding taxes that may be imposed in the fut ure or other amounts otherwise includable in Taxes) United States withholding tax, if any, applicable with respect to the Bank assignee on such date. If any form or document referred to in this **Section 2.08(e)** requires the disclosure of information, other than information necessary to compute the tax payable and information required on the date hereof by Internal Revenue Service form W-8BEN or W-8ECI, that the Bank reasonably considers to be confidential, the Bank shall give notice thereof to the Company and shall not be obligated to include in such form or document such confidential information.

(f) For any period with respect to which a Bank that may lawfully do so has failed to provide the Company with the appropriate form described in **Section 2.08(e)** above (other than if such failure is due to a change in law occurring after the date on which a form originally was required to be provided or if such form otherwise is not required under **Section 2.08(e)** above), such Bank shall not be entitled to indemnification under **Sections 2.08(a)** or **2.08(c)** with respect to Taxes imposed by the United States by reason of such failure; provided that should a Bank become subject to Taxes because of its failure to deliver a form required hereunder, the Company shall take such steps as such Bank shall reasonably request to assist such Bank to recover such Taxes.

(g) Each Bank represents and warrants to each Applicant that, as of the date such Bank becomes a party to this Agreement, such Bank is entitled to receive payments hereunder from such Applicant without deduction or withholding for or on account of any Taxes.

(h) If the Administrative Agent or a Bank determines, in its sole discretion, that it has received a refund of any Taxes or Other Taxes as to which it has been indemnified by the Company or any Applicant or with respect to which such Applicant has paid additional amounts pursuant to this

Section 2.08, it shall pay over such refund to such Applicant (but only to the extent of indemnity payments made, or additional amounts paid, by such Applicant under this **Section 2.08** with respect to the Taxes and Other Taxes giving rise to such refund), net of all out-of-pocket expenses of the Administrative Agent or such Bank and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund); provided that the applicable Applicant, upon the request of the Administrative Agent or such Bank, agrees to repay the amount paid over to such Applicant (plus any penalties, interest, or ot her charges imposed by the relevant Governmental Authority) to the Administrative Agent or such Bank in the event the Administrative Agent or such Bank is required to repay such refund to such Governmental Authority. This **Section 2.08(h)** shall not be construed to require the Administrative Agent or any Bank to make available its tax returns (or any other information relating to its taxes which it deems confidential) to the Company or any other Person.

2.09 Sharing of Payments, Etc. If any Bank shall obtain at any time any payment (whether voluntary, involuntary, through the exercise of any right of set-off, or otherwise, other than as a result of an assignment pursuant to **Section 9.07**) (a) on account of Obligations due and payable to such Bank hereunder at such time in excess of its ratable share (according to the proportion of (i) the amount of such Obligations due and payable to such Bank at such time to (ii) the aggregate amount of the Obligations due and payable to all Banks hereunder at such time) of payments on account of the Obligations due and payable to all Banks hereunder at such time ob tained by all the Banks at such time or (b) on account of Obligations owing (but not due and payable) to such Bank hereunder at such time in excess of its ratable share (according to the proportion of (i) the amount of such Obligations owing to such Bank at such time to (ii) the aggregate amount of the Obligations owing (but not due and payable) to all Banks hereunder at such time) of payments on account of the Obligations owing (but not due and payable) to all Banks hereunder at such time obtained by all of the Banks at such time, such Bank shall forthwith purchase from the other Banks such interests or participating interests in the Obligations due and payable or owing to them, as the case may be, as shall be necessary to cause such purchasing Bank to share the excess payment ratably with each of them; provided that if all or any portion of such excess payment is thereafter recovered from such purchasing Bank, such purchase from each other Ba nk shall be rescinded and such other Bank shall repay to the purchasing Bank the purchase price to the extent of such Bank's ratable share (according to the proportion of (i) the purchase price paid to such Bank to (ii) the aggregate purchase price paid to all Banks) of such recovery together with an amount equal to such Bank's ratable share (according to the proportion of (i) the amount of such other Bank's required repayment to (ii) the total amount so recovered from the purchasing Bank) of any interest or other amount paid or payable by the purchasing Bank in respect of the total amount so recovered. Each Applicant agrees that any Bank so purchasing an interest or participating interest from another Bank pursuant to this Section may, to the fullest extent permitted by law, exercise all its rights of payment (including the right of set-off) with respect to such interest or participating interest, as the case may be, as fully as if such Bank were the direct creditor of such Applicant in the amount of such interest or participating interest, as the case may be.

2.10 Use of Letters of Credit. The Company and each other Applicant covenants and agrees with the Administrative Agent and the Banks that the LOCs shall be used for general corporate purposes of the Company or such other Applicant, as applicable, including to support obligations of Subsidiary Account Parties.

2.11 Replacement of Affected Bank or Nonconsenting Bank. At any time that any Bank other than the Issuing Bank is an Affected Bank or a Nonconsenting Bank, the Company may, at its sole expense (including the assignment fee specified in **Section 9.07(a)**) and effort and with the written consent of the Issuing Bank (such consent not to be unreasonably withheld), replace such Affected Bank or Nonconsenting Bank as a party to this Agreement with one or more other Banks and/or Eligible Assignees, and upon notice from the Company such Affected Bank or Nonconsenting Bank shall assign

pursuant to an Assignment and Assumption, and without recourse or warranty, its Commitment Amount, its LOC Participating Interests, its LOC Disbursements and all of its other rights and obligations hereunder to such other Banks and/or Eligible Assignees for a purchase price equal to the sum of the principal amount of the LOC Disbursements so assigned, all accrued and unpaid interest thereon, such Affected Bank's or Nonconsenting Bank's ratable share of all accrued and unpaid fees payable pursuant to Section 2.05 and all other obligations owed to such Affected Bank or Nonconsenting Bank hereunder and under the other Loan Documents. Notwithstanding the foregoing, (a) no Affected Bank or Nonconsenting Bank shall be required to make any such assignment if, prior to its receipt of the notice from the Company referred to in the foregoing sentence, as a result of a waiver or otherwise, the circumstances entitling the Company to require such assignment cease to apply, and (b) no Nonconsenting Bank shall be required to make any such assignment if at the time of any such proposed assignment, any Default under this Agreement has occurred and is continuing.

2.12 Defaulting Banks. Notwithstanding any provision of this Agreement to the contrary, if any Bank becomes a Defaulting Bank, then the following provisions shall apply for so long as such Bank is a Defaulting Bank:

(a) Commitment Fees payable in accordance with **Section 2.05(a)** shall cease to accrue on the unfunded portion of the Commitment Amount of such Defaulting Bank;

(b) the Commitment Amount and Credit Exposure of such Defaulting Bank shall not be included in determining whether all Banks or the Required Banks have taken or may take any action hereunder (including any amendment, waiver, or consent pursuant to **Section 9.01**); provided that any waiver, amendment, consent, or other modification that (i) reduces the principal of, or interest on, any reimbursement obligation or any fee or other amount payable to such Defaulting Bank hereunder, (ii) increases such Defaulting Bank's Commitment Amount, (iii) extends the Termination Date, (iv) postpones any date fixed for any payment of principal of, or interest on, any reimbu rsement obligation, fee or other amount payable to such Defaulting Bank hereunder, or (iv) requires the consent of all Banks or each affected Bank which affects such Defaulting Bank differently than other affected Banks shall, in each case, require the consent of such Defaulting Bank;

(c) if any Credit Exposure exists at the time a Bank becomes a Defaulting Bank then:

(i) all or any part of such Credit Exposure shall be reallocated among the non-Defaulting Banks in accordance with their respective Pro Rata Shares but only to the extent (x) the sum of all non-Defaulting Banks' Credit Exposures plus such Defaulting Bank's Credit Exposure does not exceed the total of all non-Defaulting Banks' Commitment Amounts and (y) the conditions set forth in **Section 3.02** are satisfied at such time;

(ii) if the reallocation described in clause (i) above cannot, or can only partially, be effected, each Applicant shall within one Business Day following notice by the Administrative Agent cash collateralize such Defaulting Bank's Credit Exposure (after giving effect to any partial reallocation pursuant to clause (i) above) in a manner satisfactory to the Administrative Agent and the Issuing Bank in their sole discretion for so long as such Credit Exposure is outstanding;

(iii) if any Applicant cash collateralizes any portion of such Defaulting Bank's Credit Exposure pursuant to **Section 2.12(c)**, the Applicants shall not be required to pay any fees to such Defaulting Bank pursuant to **Section 2.05(b)** with respect to such Defaulting Bank's Credit Exposure during the period such Defaulting Bank's Credit Exposure is cash collateralized;

(iv) if the Credit Exposure of the non-Defaulting Banks is reallocated pursuant to **Section 2.12(c)**, then the fees payable to the Banks pursuant to **Section 2.05(a)** and **Section 2.05(b)** shall be adjusted in accordance with such non-Defaulting Banks' Pro Rata Shares; or

(v) if any Defaulting Bank's Credit Exposure is neither cash collateralized nor reallocated pursuant to **Section 2.12(c)**, then, without prejudice to any rights or remedies of the Issuing Bank or any Bank hereunder, all fees that otherwise would have been payable to such Defaulting Bank under **Section 2.05(b)** with respect to such Defaulting Bank's Credit Exposure shall be payable to the Issuing Bank until such Credit Exposure is cash collateralized and/or reallocated; and

(d) so long as any Bank is a Defaulting Bank, the Issuing Bank shall not be required to issue, amend, or increase any LOC, unless it is satisfied that the related exposure will be 100% covered by the Commitments of the non-Defaulting Banks and/or cash collateral provided by the applicable Applicant in accordance with **Section 2.12(c)**, and participating interests in any such newly issued or increased LOC shall be allocated among non-Defaulting Banks in a manner consistent with **Section 2.12(c)(i)** (and Defaulting Banks shall not participate therein).

In the event that the Administrative Agent, the Company, and the Issuing Bank each agrees that a Defaulting Bank has adequately remedied all matters that caused such Bank to be a Defaulting Bank, then the Credit Exposure of the Banks shall be readjusted to reflect the inclusion of such Bank's Commitment Amount and on such date such Bank shall purchase at par such participations in outstanding LOCs and LOC Disbursements as the Administrative Agent shall determine may be necessary in order for such Bank to hold such participations in accordance with its Pro Rata Share.

2.13 Certain Provisions Relating to the Issuing Bank.

(a) LOC Requests. The representations, warranties, and covenants by each Applicant under, and the rights and remedies of the Issuing Bank under, any LOC Request or any documents or agreements delivered to the Issuing Bank pursuant to **Section 2.02(a)(i)** relating to any LOC are in addition to, and not in limitation or derogation of, representations, warranties, and covenants by such Applicant under, and rights and remedies of the Issuing Bank and the other Banks under, this Agreement and applicable law. Each Applicant acknowledges and agrees that all rights of the Issuing Bank under any LOC Request or any such other documents or agreem ents shall inure to the benefit of each Bank to the extent of its LOC Participating Interest in and LOC Disbursements in connection with the applicable LOC as fully as if such Bank were a party to such LOC Request or any such other documents or agreements. In the event of any inconsistency between the terms of this Agreement and any LOC Request or any such other documents or agreements, this Agreement shall prevail.

(b) Certain Provisions. The Issuing Bank shall have no duties or responsibilities to the Administrative Agent or any Bank except those expressly set forth in this Agreement, and no fiduciary or other implied duties or responsibilities on the part of the Issuing Bank shall be read into this Agreement or shall otherwise exist. The duties and responsibilities of the Issuing Bank to the Banks and the Administrative Agent under this Agreement and the other Loan Documents shall be mechanical and administrative in nature, and the Issuing Bank shall not have a fiduciary relationship in respect of the Administrative Agent, any Bank or any other Person. The Issuing Bank shall not be liab le for any action taken or omitted to be taken by it under or in connection with this Agreement or any Loan Document or LOC, except to the extent resulting from its gross negligence or willful misconduct. The Issuing Bank shall not be under any obligation to ascertain, inquire or give any notice to the Administrative Agent or any Bank relating to (i) the performance or observance of any of the terms or conditions of this Agreement or any other Loan Document on the part of any Applicant, (ii) the business, operations, condition (financial or otherwise) or prospects of the Company, any other Applicant, or any other Person,

(iii) anything that has had or could be reasonably expected to have a Material Adverse Effect, or (iv) the existence of any Default. The Issuing Bank shall not be under any obligation, either initially or on a continuing basis, to provide the Administrative Agent or any Bank with any notices, reports or information of any nature, whether in its possession now or hereafter, except for such notices, reports and other information expressly required by this Agreement to be so furnished. The Issuing Bank shall not be responsible for the execution, delivery, effectiveness, enforceability, genuineness, validity or adequacy of this Agreement or any Loan Document.

(c) Administration. The Issuing Bank may rely upon any notice or other communication of any nature (written, electronic or oral, including telephone conversations and transmissions through the Issuing Bank's remote access system, whether or not such notice or other communication is made in a manner permitted or required by this Agreement or any other Loan Document) purportedly made by or on behalf of the proper party or parties, and the Issuing Bank shall not have any duty to verify the identity or authority of any Person giving such notice or other communication. The Issuing Bank may consult with legal counsel (including its in-house counsel or in-house or other counsel for any Applicant), independent public accountants and any other experts selected by it, and the Issuing Bank shall not be liable for any action taken or omitted to be taken in good faith in accordance with the advice of such counsel, accountants or experts. Whenever the Issuing Bank shall deem it necessary or desirable that a matter be proved or established with respect to any Applicant, the Administrative Agent, or any Bank, such matter may be established by a certificate of such Applicant, the Administrative Agent, or such Bank, as the case may be, and the Issuing Bank may conclusively rely upon such certificate. The Issuing Bank shall not be deemed to have any knowledge or notice of the occurrence of any Default unless the Issuing Bank has received notice from a Bank, the Administrative Agent, or the Company referring to this Agreement, describing such Default, and stating that such notice is a "notice of default".

(d) No Liability of the Issuing Bank. Each Applicant assumes all risks of the acts or omissions of any Beneficiary of any LOC with respect to its use of such LOC. Neither the Issuing Bank nor any other Bank nor any of their officers, directors, employees, Affiliates, or agents shall be liable or responsible for: (a) the use that may be made of any LOC or any acts or omissions of any Beneficiary in connection therewith; (b) the validity, sufficiency, or genuineness of documents, or of any endorsement thereon, even if such documents should prove to be in any or all respects invalid, insufficient, fraudulent or forged; or (c) payment by the Issuing Bank against presentation of documents that strictly or substantially comply with the terms of an LOC, including failure of any documents to bear any reference or adequate reference to the LOC. In furtherance and not in limitation of the foregoing, the Issuing Bank may accept documents that appear on their face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary.

(e) Successor Issuing Bank. The Issuing Bank may be replaced at any time by written agreement among the Company, the Administrative Agent, the replaced Issuing Bank, and the successor Issuing Bank. The Administrative Agent shall notify the Banks of any such replacement of the Issuing Bank. At the time any such replacement shall become effective, each Applicant shall pay all unpaid fees accrued for the account of the replaced Issuing Bank, including pursuant to **Section 2.05** and the Mandate Letter. From and after the effective date of any such replacement, (i) the successor Issuing Bank shall have all the rights a nd obligations of the Issuing Bank under this Agreement with respect to LOCs to be issued thereafter and (ii) references herein to the term "Issuing Bank" shall be deemed to refer to such successor or to any previous Issuing Bank, or to such successor and all previous Issuing Banks, as the context shall require. After the replacement of an Issuing Bank hereunder, the replaced Issuing Bank shall remain a party hereto and shall continue to have all the rights and obligations of an Issuing Bank under this Agreement with respect to LOCs issued by it prior to such replacement, but shall not be required to issue additional LOCs.

(f) Additional Issuing Banks. From time to time, the Company may by written notice to the Administrative Agent designate up to three Banks (in addition to DB) as an Issuing Bank hereunder, each of which agrees (in its sole discretion) to act in such capacity and is reasonably satisfactory to the Administrative Agent as an Issuing Bank. Each such additional Issuing Bank shall execute and deliver an Issuing Bank Joinder Agreement and upon the approval of the Administrative Agent (which approval shall not be unreasonably withheld) shall thereafter be an Issuing Bank hereunder for all purposes.

(g) Indemnification of Issuing Bank by Banks. Each Bank severally agrees to reimburse and indemnify the Issuing Bank and each of its directors, officers, employees, Affiliates, advisors, and agents (to the extent not promptly reimbursed by the Applicants or paid by the Credit Parties pursuant to **Section 9.04** and without limitation of the obligations of those parties' to do so), in accordance with its Pro Rata Share, from and against any and all amounts, losses, liabilities, claims, damages, expenses, obligations, penalties, actions, judgments, suits, costs or disbursements of any kind or nature (including the reasonable and documented fees and disbursements of counsel for the Issuing Bank or such other Person, including in connection with any investigative, administrative, or judicial proceeding commenced or threatened, whether or not the Issuing Bank or such other Person shall be designated a party thereto) that may at any time be imposed on, incurred by or asserted against the Issuing Bank, in its capacity as such, or such other Person, as a result of, or arising out of, or in any way related to or by reason of, this Agreement, any other Loan Document or any LOC, any action taken or omitted by the Issuing Bank hereunder, any transaction from time to time contemplated hereby or thereby, or any transaction financed in whole or in part or directly or indirectly with the proceeds of any LOC; provided that no Bank shall be liable for any portion of such amounts, losses, liabilities, claims, damages, expenses, obligations, penalties, actions, judgments, suits, costs or disbursements to t he extent resulting from the gross negligence or willful misconduct of the Issuing Bank or such other Person, as finally determined by a court of competent jurisdiction.

2.14 Issuing Bank in its Individual Capacity. With respect to its commitments and the obligations owing to it, the Issuing Bank shall have the same rights and powers under this Agreement and each other Loan Document as any other Bank and may exercise the same as though it were not the Issuing Bank, and the term "Banks" and like terms shall include the Issuing Bank in its individual capacity as such. The Issuing Bank and its Affiliates may make loans to, accept deposits from, acquire debt or equity interests in, act as trustee under indentures of, act as agent under other credit facilities for, and engage in any other business with , the Company, any other Applicant, any Subsidiary or Affiliate thereof, and any owner of Equity Interests in any Applicant, as though the Issuing Bank were not the Issuing Bank hereunder and without any duty to account therefor to the other Banks.

2.15 Currency Indemnity.

(a) Each Credit Party's obligation to make payments hereunder in any Specified Currency shall not be discharged or satisfied by any tender, or any recovery pursuant to any judgment or otherwise, which is expressed in or converted into any currency other than the Specified Currency, except to the extent that such tender or recovery results in the actual receipt by the Administrative Agent of the full amount of the Specified Currency payable under this Agreement. Each Credit Party shall indemnify the Administrative Agent, the Issuing Bank, and the other Banks for any shortfall and such Credit Party's obligation to make payments in the Specified Currency shall be enforceable as an alternative or a dditional cause of action to the extent that such actual receipt is less than the full amount of the Specified Currency expressed to be payable hereunder, and shall not be affected by judgment being obtained for other sums due hereunder.

(b) If, for the purpose of obtaining or enforcing judgment against any Credit Party in any court or in any jurisdiction, it becomes necessary to convert into or from any currency other than the Specified Currency (such other currency being hereinafter referred to as the "Judgment Currency") an amount due in the Specified Currency, the conversion shall be made at the Dollar Equivalent of such amount, in each case, as of the date immediately preceding the day on which the judgment is given (such Business Day being hereinafter referred to as the "Judgment Currency Conversion Date"). If there is a change in the rate of exchange prevailing between the Judgment Currency Conversion Date and the date of actual payment of the amount due, the applicable Credit Party obligated in respect thereof covenants and agrees to pay, or cause to be paid, such additional amounts, if any (but in any event not a lesser amount), as may be necessary to ensure that the amount paid in the Judgment Currency, when converted at the rate of exchange prevailing on the date of payment, will produce the amount of the Specified Currency which could have been purchased with the amount of Judgment Currency stipulated in the judgment or judicial award at the rate of exchange prevailing on the Judgment Currency Conversion Date.

2.16 Subsidiary Applicants. Subject to the consent of the Administrative Agent, the Issuing Bank, and the other Banks (such consents not to be unreasonably withheld), the Company from time to time may designate any Subsidiary as a Subsidiary Applicant by (i) delivering to the Administrative Agent an Adherence Agreement executed by such Subsidiary, the Company, the Issuing Bank, the other Banks, and the Administrative Agent and (ii) taking such further actions as the Administrative Agent may reasonably request, including executing and delivering other instruments, documents, and agreements corresponding to those obtained in respect of the Company, all in form and substance reasonably satisfactory to the Ad ministrative Agent. Upon such delivery and the taking of such further actions such Subsidiary shall for all purposes of this Agreement be a Subsidiary Applicant and a party to this Agreement until the Company shall have executed and delivered to the Administrative Agent a "Notice of Termination" (as defined in the applicable Adherence Agreement) in respect of such Subsidiary, whereupon such Subsidiary shall cease to be a Subsidiary Applicant. Notwithstanding the preceding sentence, no such Notice of Termination will become effective as to any Subsidiary Applicant at a time when any Obligations of such Subsidiary Applicant shall be outstanding hereunder or any LOC issued at the request of such Subsidiary Applicant shall be outstanding (which shall not have been cash collateralized in a manner satisfactory to the Administrative Agent and the Issuing Bank in their sole discretion); provided that such Notice of Termination sha ll be effective to terminate such Subsidiary Applicant's right to request LOCs hereunder. The Subsidiary Applicants as of the Closing Date are set forth on **Schedule III**.

2.17 Guarantee.

(a) Guarantee. Each Guarantor hereby irrevocably and unconditionally guarantees to the Administrative Agent for its benefit and the benefit of the Issuing Bank and the other Banks, the due and punctual payment of all Guaranteed Obligations. Each Guarantor agrees that the Guaranteed Obligations may be extended or renewed, in whole or in part, without notice to or further assent from it, and that it will remain bound upon its guarantee notwithstanding any extension or renewal of any Guaranteed Obligations. Each and every default in payment or performance on any Guaranteed Obligation shall give rise to a separate cause of action hereunder, and separate suits may be brought hereund er as each cause of action arises.

(b) Guaranteed Obligations Not Waived. To the fullest extent permitted by applicable law, each Guarantor waives presentment to, demand of payment from, and protest to the applicable Applicant or to any other guarantor of any of the Guaranteed Obligations, and also waives notice of acceptance of its guarantee and notice of protest for nonpayment. To the fullest extent permitted by applicable law, the obligations of each Guarantor hereunder shall not be affected by (i) the failure of any Secured Party to assert any claim or demand or to enforce or exercise any right or remedy against any

Applicant or any other Person under the provisions of the Loan Documents or otherwise; (ii) any rescission, waiver, amendment or modification of, or any release of any Person from any of the terms or provisions of any Loan Document or any other agreement; (iii) the failure or delay of the Administrative Agent, the Issuing Bank, or any other Bank for any reason whatsoever to exercise any right or remedy against any other guarantor of any Obligations; (iv) the failure of the Administrative Agent, the Issuing Bank, or any other Bank to assert any claim or demand or to enforce any remedy under any Loan Document, any guarantee or any other agreement or instrument; (v) any default, failure or delay, willful or otherwise, in the performance of any Obligations; (vi) the failure of perfection of any Lien or other rights of the Administrative Agent, the Issuing Bank, or any other Bank in respect of any security for any Obligations, the release or impairm ent of any such Lien or rights, or the failure to assert any such Lien or rights or any other failure to realize upon any such Lien or rights (recourse by the Secured Parties to any such Lien or rights not being a condition to the obligations of each Guarantor under this **Section 2.17**); or (vii) any other act, omission or delay to do any other act which may or might in any manner or to any extent vary the risk of such Guarantor or otherwise operate as a discharge or exoneration of such Guarantor as a matter of law or equity or which would impair or eliminate any right of such Guarantor to subrogation.

(c) Guarantee of Payment. Each Guarantor agrees that its guarantee hereunder constitutes a guarantee of payment when due and not of collection, that such guarantee may be enforced at any time and from time to time, on one or more occasions, during the continuance of any Event of Default, without any prior demand or enforcement in respect of any Guaranteed Obligations, and that such Guarantor waives any right to require that any resort be had by the Administrative Agent, the Issuing Bank, or any other Bank to any other guarantee, or to any security held for payment of any Guaranteed Obligations. The solicitation of, or the delivery by any Guarantor of, any confirmation or reaffirmation of this Agreement under any circumstance shall not give rise to any inference as to the continued effectiveness of this Agreement in any other circumstance in which the confirmation or reaffirmation hereof has not been solicited or has not been delivered, and the obligations of such Guarantor hereunder shall continue in effect as herein provided notwithstanding any solicitation or delivery of any confirmation or reaffirmation hereof or thereof, or any failure to solicit or to deliver any such confirmation or reaffirmation, under any circumstances.

(d) No Discharge or Diminishment of Guarantee. The obligations of each Guarantor hereunder shall not be subject to any reduction, limitation, impairment or termination for any reason (other than the payment in full in cash of the Guaranteed Obligations), including any claim of waiver, release, surrender, amendment, modification, alteration or compromise of any of the Guaranteed Obligations or of any collateral security or guarantee or other accommodation in respect thereof, and shall not be subject to any defense or setoff, counterclaim, recoupment or termination whatsoever by reason of the invalidity, illegality or unenforceability of the Guaranteed Obligations or any Loan Document or any provision thereof (or of this Agreement or any provision hereof) or otherwise. Without limiting the generality of the foregoing, the obligations of each Guarantor hereunder shall not be discharged or impaired or otherwise affected by any change of location, form or jurisdiction of any Applicant or any other Person, any merger, consolidation, or amalgamation of any Applicant or any other Person into or with any other Person, any sale, lease or transfer of any of the assets of any Applicant or any other Person to any other Person, any other change of form, structure, or status under any law in respect of any Applicant or any other Person, or any other occurrence, circumstance, happening or event whatsoever, whether similar or dissimilar to the foregoing, whether foreseen or unforeseen, that might otherwise constitute a legal or equitable defense, release, exoneration, or discharge or that might otherwise limit recourse against any Applicant, such Guarantor or any other Person. The obligations of e ach Guarantor hereunder shall extend to all Obligations of the Applicants without limitation of amount, and each Guarantor agrees that it shall be obligated to honor its guarantee hereunder whether or not any other guarantor or any Person that has provided any collateral or that is the obligor in respect of any obligation

that constitutes collateral for any Obligations of any Applicant (i) has been called to honor its guarantee or provide such collateral or honor any such obligation or, (ii) having been so called has failed to do so in whole or in part, or (iii) has been released for any reason whatsoever from any such obligation.

(e) Defenses Waived; Maturity of Guaranteed Obligations. To the fullest extent permitted by applicable law, each Guarantor waives any defense based on or arising out of any defense of any Applicant or any other guarantor or the unenforceability of the Guaranteed Obligations or any part thereof from any cause, or the cessation from any cause of the liability of any Applicant, other than the final payment in full in cash of the Guaranteed Obligations. The Administrative Agent, the Issuing Bank, and the other Banks may, at their election, compromise or adjust any part of the Guaranteed Obligations, make any other accommodation with any Applicant or any other Person or exercise any other righ t or remedy available to them against any Applicant or any other Person, without affecting or impairing in any way the liability of any Guarantor hereunder except to the extent the Guaranteed Obligations have been fully and finally paid in cash. To the fullest extent permitted by applicable law, each Guarantor waives any defense arising out of any such election even though such election operates, pursuant to applicable law, to impair or to extinguish any right of reimbursement or subrogation or other right or remedy of such Guarantor against any Applicant or any other Person, as the case may be, or any security. Each Guarantor agrees that, as between such Guarantor, on the one hand, and the Administrative Agent, the Issuing Bank, and the other Banks, on the other hand, (i) the maturity of the Guaranteed Obligations guaranteed hereby may be accelerated for the purposes of such Guarantor's guarantee herein, notwithstanding any stay, injunction or other prohibition preventing such accelera tion as to any Applicant in respect of the Guaranteed Obligations (other than any notices and cure periods expressly granted to an Applicant in this Agreement or any other Loan Document evidencing or securing the Obligations of such Applicant) and (ii) in the event of any such acceleration of such Guaranteed Obligations, such Guaranteed Obligations (whether or not due and payable) shall forthwith become due and payable in full by such Guarantor for purposes of this Agreement.

(f) Agreement to Pay; Subordination. In furtherance of the foregoing and not in limitation of any other right that the Administrative Agent, the Issuing Bank, or any other Bank has at law or in equity against each Guarantor by virtue hereof, upon the failure of any Applicant to pay (after the giving of any required notice and the expiration of any cure period expressly granted to such Applicant in this Agreement or any other Loan Document evidencing or securing any Obligation of such Applicant) any Guaranteed Obligation when and as the same shall become due, whether at maturity, upon mandatory prepayment, by acceleration, after notice of prepayment or otherwise, each Guarantor hereby promises to and will forth with pay, or cause to be paid, to the Administrative Agent for its benefit and the benefit of the Issuing Bank and the other Banks, in cash the amount of such unpaid Guaranteed Obligation. Upon payment by each Guarantor of any sums as provided above, all rights of such Guarantor against the applicable Applicant or any other Person arising as a result thereof by way of right of subrogation, contribution, reimbursement, indemnity or otherwise shall in all respects be subordinate and junior in right of payment to the prior payment in full in cash of all the Guaranteed Obligations. In addition, any indebtedness of any Applicant now or hereafter held by each Guarantor is hereby subordinated in right of payment to the prior payment in full of the Guaranteed Obligations. If any amount shall erroneously be paid to any Guarantor on account of (i) such subrogation, contribution, reimbursement, indemnity, or similar right, or (ii) any such indebtedness of any Applicant, such amount shal l be held in trust for the benefit of the Secured Parties and shall forthwith be paid to the Administrative Agent to be credited against the payment of the Guaranteed Obligations, whether matured or unmatured.

(g) Reinstatement. Each Guarantor further agrees that its obligations hereunder shall continue to be effective or be reinstated, as the case may be, if at any time payment, or any part thereof, of any Guaranteed Obligation is rescinded or must otherwise be restored by the Administrative Agent, the Issuing Bank, or any other Bank upon the bankruptcy or reorganization of any Applicant or otherwise.

Nothing shall discharge or satisfy the liability of any Guarantor hereunder except the full and final performance and payment in cash of the Guaranteed Obligations.

(h) Information. Each Guarantor assumes all responsibility for being and keeping itself informed of each Applicant's financial condition and assets, and of all other circumstances bearing upon the nature, scope and extent of the risks that such Guarantor assumes and incurs hereunder, and agrees that neither the Administrative Agent, the Issuing Bank, nor any other Bank will have any duty to advise such Guarantor of information now or hereafter known to it or any of them regarding any of the foregoing.

2.18 Cash Collateralization; Mandatory Prepayments.

(a) If, at any time, the Dollar Equivalent of the Credit Exposure exceeds the aggregate Commitment Amounts (including by reason of fluctuations in exchange rates), then one or more of the Applicants shall, within two (2) Business Days after notice thereof from the Administrative Agent, cash collateralize any outstanding LOCs in a manner satisfactory to the Administrative Agent and the Issuing Bank in their sole discretion and/or pay or reimburse any other amounts then due and payable under the Facility, in each case in an amount sufficient to eliminate such excess; provided, however, that no Applicant (other than a Guarantor) shall be required to cash collateralize any amounts attributable to an LOC issued at the request of any other Applicant.

(b) Each payment of cash collateral pursuant to clause (a) above shall be made by the applicable Applicant to the Collateral Account.

(c) Nothing contained in this Section shall limit any rights or remedies of any Secured Party in connection with any Event of Default (whether or not related to any event referred to in this Section).

2.19 Subordination. The Guarantors shall cause the obligations of each Guarantor to any Credit Party or Subsidiary to be subordinated to the prior payment in full in cash of the Obligations (including cash collateralization of the LOCs) so that no payment thereof is made or received if any Event of Default exists or would exist after giving effect thereto, and each Guarantor hereby agrees not to make any such payment that would be so subordinated; provided that so long as no Event of Default has occurred and is continuing or would exist after giving effect thereto, the obligations of any Guarantor to any Credit Party or Subsidiary may be pai d in accordance with the provisions of the agreements governing such obligations; provided, further, that no such obligations shall be evidenced by a promissory note or any other negotiable instrument.

ARTICLE III

CONDITIONS

3.01 Conditions Precedent to Closing Date. The occurrence of the Closing Date, and the obligation of the Issuing Bank to issue any LOC, is subject to the satisfaction (or waiver in accordance with **Section 9.01**) of the following conditions precedent:

(a) The Administrative Agent shall have received from each party hereto or thereto either (i) a counterpart of this Agreement, the Security Agreement, and the Cash Collateral Agreement signed on behalf of such party or (ii) written evidence satisfactory to the Administrative Agent (which may include electronic transmission of a signed signature page of this Agreement) that such party has signed a counterpart of this Agreement and the Cash Collateral Agreement.

(b) The Administrative Agent shall have received from the Company a signed certificate, dated as of the Closing Date and signed by a Responsible Officer of the Company on behalf of the Company and each other Guarantor, certifying as to (i) the truth in all material respects of the representations and warranties contained in the Loan Documents as though made on and as of the Closing Date and (ii) the absence of any Default.

(c) Direct receipt by the Administrative Agent for distribution to the Secured Parties or filing with the SEC of the audited consolidated financial statements of the Company and its consolidated Subsidiaries for the two most recent fiscal years ended prior to the Closing Date.

(d) The Administrative Agent shall have received such documents and certificates as the Administrative Agent or its counsel may reasonably request relating to the organization, existence, and good standing of each Credit Party, the authorization of the transactions contemplated hereby, and any other matters relevant hereto, all in form and substance reasonably satisfactory to the Administrative Agent, including (i) certified copies of the resolutions (or comparable evidence of authority) of each Credit Party approving the transactions contemplated by the Loan Documents and (ii) a certification as to the names and true signatures of the officers of each Credit Party that are authorized to sign the Loan Documents and the other documents to be delivered hereunder.

(e) The Administrative Agent shall have received a written opinion (addressed to the Administrative Agent and the Banks and dated the Closing Date) of Jones Day, counsel to the Guarantors, substantially in the form of **Exhibit C**, and covering such other matters relating to the Credit Parties, their respective Constituent Documents, the Loan Documents, or the transactions contemplated hereby as the Administrative Agent or the Required Banks shall reasonably request. Each Credit Party hereby requests such counsel to deliver such opinion, which may be delivered by electronic transmission to the Administrative Agent with the signed original(s) to follow within five (5) days after the Closing Date.

(f) The Administrative Agent shall have received such other assurances, certificates, documents, consents, or instruments as the Administrative Agent, the Issuing Bank, or the Required Banks may reasonably request.

(g) There shall exist no action, suit, investigation, litigation or proceeding affecting any Credit Party or any of its Subsidiaries pending or threatened in writing before any Governmental Authority that (x) could be reasonably expected to have a Material Adverse Effect or (y) could reasonably be expected to materially adversely affect the legality, validity, or enforceability of any Loan Document or the transactions contemplated hereby.

(h) No development or change shall have occurred after January 3, 2010, and no information shall have become known after such date, that has had or could reasonably be expected to have a Material Adverse Effect.

(i) The Administrative Agent shall have received written authorization from each Guarantor to file UCC financing statements satisfactory to the Administrative Agent with respect to the Collateral, or written evidence satisfactory to the Administrative Agent that the same have been filed or submitted for filing in the appropriate public filing office(s).

(j) The Administrative Agent shall have received one or more waivers or consents, as applicable, from the lenders, issuers, or other appropriate parties in respect of any other letter of credit facility or any other agreement to which any Guarantor is a party which restricts or prohibits the Facility, the granting of any security interest in any Collateral hereunder, or any of the transactions contemplated hereby, including in respect of the Existing Credit Facility.

(k) The Administrative Agent shall have received all fees and other amounts due and payable on or prior to the Closing Date, including pursuant to the Mandate Letter and, to the extent invoiced, reimbursement or payment of all expenses required to be reimbursed or paid by any Applicant hereunder, including the reasonable fees and disbursements invoiced through the Closing Date of DB's special counsel, Moses & Singer LLP.

The Administrative Agent shall notify the Company and the Banks of the Closing Date, and such notice shall be conclusive and binding. Notwithstanding the foregoing, the obligations of the Issuing Bank to issue LOCs hereunder shall not become effective unless each of the foregoing conditions is satisfied (or waived pursuant to **Section 9.01**) at or prior to 3:00 p.m., New York City time, on April 12, 2010 (and, in the event such conditions are not so satisfied or waived, the Commitments shall terminate at such time).

3.02 Conditions Precedent to Each Issuance, Extension or Increase of an LOC. In addition to the conditions to issuance, extension, or increase set forth in **Section 2.01**, the obligation of the Issuing Bank to issue, extend, or increase the amount of an LOC (including any issuance on the Closing Date) shall be subject to the further conditions precedent that on the date of such issuance, extension, or increase:

(a) the representations and warranties contained in each Loan Document are true and correct in all material respects on and as of such date, before and after giving effect to such issuance, extension (other than any automatic extension of an LOC), or increase, as though made on and as of such date, other than any such representation or warranty that, by its terms, refers to a specific date other than the date of such issuance, extension or increase, in which case as of such specific date;

(b) no Default has occurred and is continuing or would result from such issuance, extension, or increase;

(c) the Administrative Agent shall have received such other assurances, certificates, documents, or consents as the Administrative Agent may reasonably request or as the Administrative Agent shall have been notified was reasonably requested by the Issuing Bank or the Required Banks in order to issue or properly account for the applicable LOC; and

(d) in the case of the issuance, extension or increase of the amount of any LOC denominated in an Alternate Currency, there shall not have occurred any change in national or international financial, political, or economic conditions or currency exchange rates or exchange controls which in the reasonable opinion of the Administrative Agent or the Issuing Bank would make it impracticable for such LOC to be issued, extended or increased in such Alternate Currency.

Each request for issuance, extension, or increase of an LOC and each automatic extension permitted pursuant to **Section 2.02(c)** shall be deemed to be a representation and warranty by the applicable Applicant that both on the date of such request and on the date of such issuance, extension, or increase or automatic extension the foregoing statements are true and correct.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES

Each Guarantor represents and warrants as follows:

4.01 Existence, Etc. Each Credit Party and each Subsidiary (i) is duly organized or formed, validly existing, and in good standing under the laws of the jurisdiction of its incorporation or formation,

except, in the case of the good standing of any Subsidiary, where the failure to do so could not reasonably be expected to have a Material Adverse Effect, (ii) is duly qualified and in good standing as a foreign corporation or other entity in each other jurisdiction in which it owns or leases property or in which the conduct of its business requires it to so qualify or be licensed except where the failure to so qualify or be licensed could not reasonably be expected to have a Material Adverse Effect, and (iii) has all requisite power and authority (including all governmental licenses, permits and other approvals) to own or lease and operate its properties and to carry on its business as now conducted and as proposed to be conducted, except where the failure to have any license, permit or other approval could not reasonably be expected to have a Material Adverse Effect.

4.02 Authority and Authorization. The execution, delivery, and performance by each Credit Party of each Loan Document to which such Credit Party is party, and the consummation of the transactions contemplated thereby, are within the organizational powers of such Credit Party, have been duly authorized by all necessary organizational action, and do not (i) contravene the Constituent Documents of such Credit Party, (ii) violate any law, rule, regulation (including Regulation X of the Board of Governors of the Federal Reserve System), order, writ, judgment, injunction, decree, determination or award, (iii) conflict with or result in the breach of, or constitute a default under, any contract, loan agreement, indenture, mortgage, deed of trust, lease or other instrument binding on or affecting such Credit Party or its properties, or (iv) result in or require the creation or imposition of any Lien upon or with respect to any of the properties of such Credit Party other than in favor of the Administrative Agent pursuant to the Loan Documents, which, in the case of any violation, conflict, breach or default under clause (ii), (iii), or (iv) could reasonably be expected to have a Material Adverse Effect. No Credit Party is in violation of any such law, rule, regulation, order, writ, judgment, injunction, decree, determination or award or in breach of any such contract, loan agreement, indenture, mortgage, deed of trust, lease or other instrument, the violation or breach of which could reasonably be expected to have a Material Adverse Effect.

4.03 Approvals. No authorization or approval or other action by, and no notice to or filing with, any Governmental Authority or any other third party is required for the due execution, delivery, or performance by any Credit Party of any Loan Document to which it is party or the consummation of the transactions contemplated thereby, other than as may be required (and has been obtained and is in full force and effect) under the Existing Credit Facility or any Hedge Agreements to which such Credit Party is a party as of the Closing Date.

4.04 Enforceability. This Agreement has been, and each other Loan Document to which a Credit Party is a party, has been or when delivered hereunder will have been, duly executed and delivered by such Credit Party. This Agreement is, and each other Loan Document to which a Credit Party is a party, is or when delivered hereunder will be, the legal, valid, and binding obligation of such Credit Party, enforceable against it in accordance with the terms thereof, subject to bankruptcy, insolvency, and similar laws of general application relating to creditors' rights and to general principles of equity.

4.05 Litigation. Except as disclosed in the Company's filings with the SEC from time to time, there is no action, suit, investigation, litigation or proceeding affecting any Guarantor pending or, to the knowledge of any Guarantor, threatened in writing before any Governmental Authority that (i) could reasonably be expected to have a Material Adverse Effect or (ii) could reasonably be expected to affect the legality, validity, or enforceability of any Loan Document or the transactions contemplated by the Loan Documents.

4.06 Financials. The Company has heretofore furnished to the Banks its consolidated balance sheet and statements of income, partners' or shareholders' equity (as the case may be) and cash flows as of and for the fiscal year ended January 3, 2010 and December 28, 2008, reported on by

PricewaterhouseCoopers LLP, independent public accountants. Such financial materials present fairly, in all material respects, the financial position and results of operations, partners' or shareholders' equity (as the case may be) and cash flows of the Company and its consolidated Subsidiaries as of such dates and for such periods in accordance with GAAP. Since January 3, 2010, there has been no Material Adverse Change.

4.07 Properties.

(a) Each Credit Party and its Subsidiaries has good title to, or valid leasehold interests in, all its real and personal property material to its business, except for minor defects in title that do not interfere with its ability to conduct its business as currently conducted or to utilize such properties for their intended purposes.

(b) Each Credit Party owns, or is licensed to use, all trademarks, tradenames, copyrights, patents and other intellectual property material to its business, and the use thereof by such Credit Party does not infringe upon the rights of any other Person, except for any such infringements that, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

4.08 Accuracy of Information. No written information, exhibit, or report furnished by or on behalf of any Credit Party to the Administrative Agent or any Bank in connection with the negotiation of the Loan Documents or pursuant to the terms of the Loan Documents contained any untrue statement of a material fact or omitted to state a material fact necessary to make the statements made therein not misleading as at the date it was dated (or if not dated, so delivered).

4.09 Margin Stock. No Applicant is engaged, principally or as one of its important activities, in the business of purchasing or carrying margin stock (within the meaning of Regulation U of the Board of Governors of the Federal Reserve System) or extending credit for the purpose of purchasing or carrying margin stock.

4.10 Compliance with Laws and Agreements. Each Credit Party is in compliance with all laws, regulations, and orders of any Governmental Authority applicable to it or its property and all indentures, agreements and other instruments binding upon it or its property, except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect. No Credit Party is in default in any material respect beyond any applicable grace period under or with respect to any of its Constituent Documents or any indenture, agreement, instrument or undertaking to which it is a party or by which it or any of its property is bound, the existence of which default has not been waived in writing and which, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect.

4.11 Compliance with Certain Acts. Each Credit Party is in compliance in all material respects with the Patriot Act. No part of any payment under any LOC will be used, directly or indirectly, 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 from time to time, and any successor statute or statutes. Neither any Credit Party nor any of its directors, officers, managers or principal employees is on the list of Specially Designated Nationals and Blocked Persons issued by OFAC.

4.12 Investment Company Act. No Credit Party is an "investment company", or an "affiliated person" of, or "promoter" or "principal underwriter" for, an "investment company", as such terms are defined in the United States Investment Company Act of 1940, as amended from time to time, and any

successor statute or statutes. Neither the making of any LOC Disbursements, nor the issuance of any LOC, nor the application of the proceeds or repayment thereof, nor the consummation of the other transactions contemplated by the Loan Documents, will violate any provision of such Act or any rule, regulation, or order of the SEC thereunder.

4.13 Solvency. Each Guarantor is, individually and together with its Subsidiaries, Solvent.

4.14 No Immunity. Each Credit Party's execution, delivery, and performance of this Agreement and the other Loan Documents constitute private rather than public or government acts and neither it nor any of its property has any sovereign immunity from jurisdiction of any court or from set-off or any legal process under the laws of the United States of America or the State of New York or the laws of its jurisdiction of organization.

4.15 Taxes. The Company and each of its Subsidiaries has filed, has caused to be filed or has been included in all material United States federal tax returns and all other material tax returns required to be filed and has paid all taxes shown thereon to be due, together with applicable interest and penalties, except to the extent contested in good faith and by appropriate proceedings (in which case adequate reserves have been established therefor in accordance with GAAP).

4.16 No Default. No Default has occurred and is continuing.

4.17 Subsidiaries. Each Credit Party other than the Company is a Subsidiary of the Company.

4.18 Disclosure. Each Credit Party has disclosed to the Banks all agreements, instruments and corporate or other restrictions to which it or any of its Subsidiaries is subject, that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect. No reports, financial statements, certificates, or other information furnished by or on behalf of any Credit Party to the Administrative Agent or any Bank in connection with the negotiation of this Agreement or delivered hereunder (as modified or supplemented by other information so furnished) contains any material misstatement of fact or omits to state any material fact necessary to make the statements therein, i n the light of the circumstances under which they were made, not misleading; provided that, with respect to projected financial information, each Credit Party represents only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time.

4.19 ERISA. No ERISA Event has occurred or is reasonably expected to occur that, when taken together with all other such ERISA Events for which liability is reasonably expected to occur, could reasonably be expected to result in a Material Adverse Effect. As of the date hereof, neither the Company nor any Person which would be aggregated with the Company for ERISA purposes has any Plan that is a defined-benefit plan or has within the preceding three (3) years maintained or contributed to such a plan.

4.20 Security Interests and Liens. The Security Agreement and the Cash Collateral Agreement create, as security for all the Obligations, a valid and enforceable, perfected first priority security interest in and Lien on all of the Collateral, in favor of the Administrative Agent as agent for the benefit of the Secured Parties, subject to no other Liens, except for Permitted Encumbrances and as expressly permitted by the Cash Collateral Agreement in favor of the Intermediary referred to therein and except as enforceability may be limited by applicable insolvency, bankruptcy or other laws affecting creditors' rights generally, or general principles of equity, whether such enforceability is considered in a p roceeding in equity or at law. Such security interest in and Lien on the Collateral shall be superior to and prior to the rights of all third parties in the Collateral except as expressly permitted by the Cash Collateral Agreement in favor of the Intermediary referred to therein and under this Agreement. The Lien in favor of the Administrative Agent referred to in this Section is and shall be the sole and exclusive Lien

on the Collateral subject thereto except as expressly permitted by any Cash Collateral Agreement in favor of the Intermediary referred to therein and under this Agreement.

4.21 Pari Passu Ranking. Without derogating from the secured nature of the Guarantors' Obligations, each Credit Party's obligations under or in respect of each Loan Document rank at least pari passu with the claims of all its other unsecured and unsubordinated creditors, except for claims that are preferred by any bankruptcy, insolvency, liquidation, or other similar laws of general application.

4.22 Burdensome Agreements. To the Credit Parties' knowledge, neither any Credit Party nor any of its Subsidiaries is a party to or bound by, nor are any of the properties or assets owned by any Credit Party or any of its Subsidiaries used in the conduct of their respective businesses affected by, any agreement, resolution, bond, note, or indenture that could reasonably be expected to result in a Material Adverse Effect.

ARTICLE V

AFFIRMATIVE COVENANTS

Until the Commitments have expired or been terminated and the principal of and interest on each LOC Disbursement and all fees payable hereunder shall have been paid in full in cash and all LOCs shall have expired without any pending drawing or terminated, each Guarantor covenants and agrees with the Administrative Agent and each Bank that:

5.01 Information. The Company will furnish to the Administrative Agent and each Bank:

(a) as soon as available and in any event within ninety (90) days after the end of each fiscal year of the Company, audited financial statements of the Company (with supporting schedules in form satisfactory to the Administrative Agent), including a consolidated balance sheet of the Company and its consolidated Subsidiaries as of the end of such fiscal year and the related consolidated statements of operations, shareholders' or partners' equity, as applicable, and cash flows for such fiscal year, setting forth in each case in comparative form (commencing with the first fiscal year for which the Company had a corresponding prior fiscal period) the figures for the previous fiscal year, all reported on by PricewaterhouseCoopers LLC or other independent public accountants of re cognized national standing (without a "going concern" or like qualification or exception and without any qualification or exception as to the scope of such audit) to the effect that such consolidated financial statements present fairly in all material respects the financial condition and results of operations of the Company and its consolidated Subsidiaries on a consolidated basis in accordance with GAAP consistently applied;

(b) as soon as available and in any event within forty-five (45) days after the end of each of the first three fiscal quarters of each fiscal year of the Company, an unaudited consolidated balance sheet of the Company and its consolidated Subsidiaries as of the end of such quarter and the related unaudited consolidated statements of operations, shareholders' or partners' equity, as applicable, and cash flows for such quarter and for the portion of the Company's fiscal year ended at the end of such quarter, setting forth in each case in comparative form (commencing with the first fiscal quarter for which the Company had a corresponding quarter in the prior fiscal year) the figures for the corresponding period or periods of (or, in the case of the balance sheet, as of the end of) the previous fiscal year, together with supporting schedules in form satisfactory to the Administrative Agent;

(c) simultaneously with the delivery of each set of financial statements referred to in **Section 5.01(a) or 5.01(b)**, a certificate of the chief financial officer or the chief accounting officer of the Company, certifying (i) that such financial statements fairly present in all material respects the financial

condition and the results of operations, shareholders' or partners' equity, as applicable, and cash flows of the Company and its consolidated Subsidiaries on the dates and for the periods indicated, in accordance with GAAP consistently applied, subject, in the case of interim financial statements, to normally recurring year-end adjustments and the absence of footnotes, and (ii) that such officer has reviewed the terms of the Loan Documents and has made, or caused to be made under his or her supervision, a review in reasonable detail of the business and condition of the Company during the period beginning on the date through which the last such review was made pursuant to this **Section 5.01(c)** (or, in the case of the first certification pursuant to this **Section 5.01(c)**, the Closing Date) and ending on a date not more than ten (10) Business Days prior to the date of such delivery and that on the basis of such review of the Loan Documents, the use of the proceeds of the LOCs, and the business and condition of the Company, to the actual knowledge of such officer, no Default has occurred or, if any such Default has occurred, specifying the nature and extent thereof and, if continuing, the action the Applicants are taking or propose to take in respect thereof;

(d) a certificate of a Responsible Officer of the Company, setting forth the details thereof and the action that the affected Person(s) is taking or proposes to take with respect thereto: promptly and in any event within five (5) days (or 15 days in the case of an event specified in subclause (iv)) after a Responsible Officer of any Credit Party obtains knowledge of any of the following events: (i) any Default that is then continuing, (ii) any litigation or governmental proceeding pending or threatened against or involving any Credit Party or subsidiary thereof as to which there is a reasonable possibility of an adverse determination and which, if adversely determined, could reasonably be expected, individually or in the aggregate, to result in a Mater ial Adverse Effect (unless the Company has reasonably determined that an adverse determination would not, individually or in the aggregate, result in a Material Adverse Effect), (iii) any monetary default in excess of $25,000,000 or other material default that is then continuing under any Indebtedness, (iv) the occurrence of any ERISA Event that, alone or together with any other ERISA Events that have occurred, could reasonably be expected to result in liability of any Credit Party and its Subsidiaries in an aggregate amount exceeding $25,000,000, and (v) any other events, acts, or conditions that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect (unless the Company has reasonably determined that such other events, acts or conditions would not, individually or in the aggregate, result in a Material Adverse Effect); and

(e) reasonably promptly following any request therefor, such additional information regarding any Applicant or any Subsidiary or compliance with the terms of this Agreement or the other Loan Documents as the Administrative Agent or any Bank may reasonably request.

Anything required to be delivered pursuant to **Section 5.01(a)** or **(b)** above (to the extent any such financial statements or reports 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 Company posts such reports, or provides a link thereto, on the Company's website on the Internet, or on the date on which such reports are filed with the SEC and become publicly available.

5.02 Existence. Each Guarantor shall do or cause to be done all things necessary to preserve and keep in full force and effect its legal existence and the rights, licenses, permits, privileges, authorizations, qualifications and accreditations material to the conduct of its business, in each case if the failure to do so, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect; provided that the foregoing shall not prohibit any merger, consolidation or other transaction expressly permitted hereunder.

5.03 Payment of Obligations. Each Credit Party will, and will cause each of its Subsidiaries to, pay and discharge, at or before maturity, all of its respective material obligations and liabilities, including any obligation pursuant to any agreement by which it or any of its properties is bound and any

Tax liabilities, except where (i) the validity or amount thereof is being contested in good faith by appropriate proceedings diligently pursued, (ii) such Applicant or such Subsidiary has set aside on its books adequate reserves with respect thereto in accordance with GAAP, and (iii) the failure to make such payment pending such contest could not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect.

5.04 Compliance with Laws. Each Guarantor will comply with all applicable laws, ordinances, rules, regulations, and requirements of Governmental Authorities (including ERISA) except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

5.05 Inspection of Property, Books and Records. Each Credit Party will keep, and will cause each of its Subsidiaries to keep, adequate books of record and account in which entries, in accordance with GAAP consistently applied, shall be made of all material financial matters and transactions in relation to its business and activities; and will permit representatives of the Administrative Agent or any Bank to visit and inspect (upon one (1) Business Day's notice) any of its properties, to examine and make abstracts from any of its books and records and to discuss its affairs, finances and accounts with its officers, employees and independent public accountants, all during regular business hours and as often as reasonably requested (provided, however, that unless an Event of Default shall have occurred and be continuing, such inspection right shall be limited to one occurrence per Bank in any 12-month period).

5.06 Maintenance of Property; Insurance.

(a) Each Credit Party will, and will cause each of its Subsidiaries to, keep and maintain all property necessary in its business in good working order and condition, ordinary wear and tear excepted, except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

(b) Each Credit Party (i) shall maintain, and cause each of its Subsidiaries to maintain, with financially sound and reputable insurers, insurance in such amounts (after giving effect to any self-insurance reasonable and customary for similarly situated companies engaged in the same or similar businesses as the Company and the Subsidiaries) and against such risks as are customarily maintained by reputable companies under similar circumstances, and (ii) shall furnish to the Administrative Agent from time to time, upon written request, copies of certificates of insurance under which such insurance is issued and such other information relating to such insurance as the Administrative Agent or any Bank may reasonably request. On or prior to the date that is three (3) Business Days after the Closing Date, the Administrative Agent shall have received from the Guarantors all documentation referred to in **Section 4(j)** of the Security Agreement that has not theretofore been furnished to the Administrative Agent, such documentation to be in form and substance reasonably satisfactory to the Administrative Agent.

5.07 Collateral Account. The Company shall establish and maintain with the bank serving as the Administrative Agent the Collateral Account into which the Collateral shall be deposited and maintained until application thereof in accordance with this Agreement and the Cash Collateral Agreement or other Collateral Documents. The Administrative Agent shall have exclusive dominion and control, including the exclusive right of withdrawal, over the Collateral Account. As and to the extent required under **Section 2.18** and **Section 7.02**, the applicable Applicant shall deposit in the C ollateral Account an additional amount in cash, as collateral security for the payment of all the Obligations.

5.08 Further Assurances. Each Applicant shall execute, deliver, and acknowledge such Collateral Documents, and take such further actions from time to time, as the Administrative Agent acting

on behalf of the Secured Parties may reasonably request from time to time for the purpose of granting to, maintaining or perfecting in favor of, the Administrative Agent for the benefit of the Secured Parties, or enforcing, first priority and exclusive security interests in the Collateral, including providing such reasonable assurances as to the enforceability and priority of the Liens and security interests of the Secured Parties and assurances of due recording of the Collateral Documents as the Administrative Agent may reasonably require.

5.09 Annual Budget. During the continuance of a Default or an Event of Default, at the request of any Bank, the Company will furnish to the Administrative Agent and each Bank, within ten (10) Business Days after such request, a copy of the Company's annual budget for the then current fiscal year.

ARTICLE VI

NEGATIVE COVENANTS

Until the Commitments have expired or been terminated and the principal of and interest on each LOC Disbursement and all fees payable hereunder shall have been paid in full in cash and all LOCs shall have expired without any pending drawing or terminated, each Guarantor covenants and agrees with the Administrative Agent and each Bank that:

6.01 Indebtedness. No Guarantor will at any time create, incur, assume, or guarantee any Indebtedness other than:

(a) Indebtedness under this Facility,

(b) Indebtedness that is non-recourse to such Guarantor (including Indebtedness containing customary recourse carve-outs, including those for environmental indemnities); provided that such Indebtedness shall not be permitted under this clause (b) if in connection therewith a personal recourse claim is established by judgment, decree or award by any court of competent jurisdiction or arbitrator of competent jurisdiction and the same shall remain undischarged for a period of thirty (30) consecutive days during which execution shall not be effectively stayed, or any action shall be legally taken to attach or levy upon any assets such Guarantor to enforce any such judgment, decree or award,

(c) Indebtedness existing on the date hereof and listed on **Schedule IV**,

(d) Indebtedness arising from the endorsement of instruments for collection in the ordinary course of business,

(e) Indebtedness of any Guarantor (on the one hand) to the Company or any Subsidiary (on the other hand) in the ordinary course of business as conducted from time to time, which Indebtedness shall be subordinated to the prior payment in full in cash of the Obligations in accordance with **Section 2.19**;

(f) Guarantees by any Guarantor in the ordinary course of business as conducted from time to time of any Guarantor or any Subsidiary, for any obligation other than Financial Indebtedness;

(g) Indebtedness in favor of customers and suppliers of the Company and the Subsidiaries 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);

(h) Indebtedness in respect of (i) the Company's 1.25% Senior Convertible Debentures due 2027 issued under that certain Indenture (the "Indenture"), dated as of February 7, 2007 by and among the Company and Wells Fargo Bank, National Association (the "Trustee"), that certain First Supplemental Indenture, dated as of February 7, 2007 by and among the Company and the Trustee with respect to the Company's 1.25% Senior Convertible Debentures due 2027, each as in effect on the date hereof, in the maximum aggregate principal amount not to exceed $200,000,000 plus accrued interest thereon, (ii) the Company's 0.75% Senior Convertible Debentures issued un der the Indenture and that certain Second Supplemental Indenture, dated as of July 25, 2007, by and between the Company and the Trustee with respect to the Company's 0.75% Senior Convertible Debentures due 2027, each as in effect on the date hereof, in the maximum aggregate principal amount of $225,000,000 plus accrued interest thereon, (iii) the Company's 4.75% Senior Convertible Debentures due 2014 issued under the Indenture and that certain Third Supplemental Indenture, dated May 4, 2009 by and between the Company and the Trustee, in the maximum aggregate principal amount of $230,000,000, and refinancings thereof, and (iv) the Company's 4.5% Senior Convertible Debentures due 2015 issued under the Indenture and that certain Fourth Supplemental Indenture, dated April 1, 2010 by and between the Company and the Trustee, in the maximum aggregate principal amount of $250,000,000, and refinancings thereof;

(i) 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 the Company and the Subsidiaries for the benefit of their customers and contract counterparties;

(j) Indebtedness of the Company owing to International Finance Corporation, in an aggregate principal amount not to exceed, at any time, $75,000,000 (plus interest accruing thereon and costs, fees and expenses incurred in connection therewith);

(k) Indebtedness of the Company, in an aggregate principal amount not to exceed $250,000,000, with a bank counterparty which is guarantied by the Export-Import Bank of the U.S.;

(l) Indebtedness of any Guarantor pursuant to the Existing Credit Facility;

(m) liabilities of the Guarantors under Hedge Agreements, with nationally recognized financial institutions reasonably satisfactory to the Administrative Agent pursuant to bona fide hedging transactions and not for speculation;

(n) Indebtedness in connection with the factoring of the accounts receivable of any Guarantor in respect of rebates from U.S. Governmental Authorities pursuant to the Tech Credit Agreement in the ordinary course of business, which Indebtedness shall not exceed an aggregate amount equal to the face amount of such accounts receivable plus any accrued interest thereon;

(o) Indebtedness consisting of guarantees by one or more Guarantors of payment obligations of customers under purchase agreements entered into by such customers with the Company or any of its Subsidiaries, in an aggregate amount for all the Guarantors combined not to exceed $50,000,000; and

(p) other Indebtedness in an aggregate amount for all Guarantors not in excess of $25,000,000.

6.02 Certain Financial Covenants; Termination of Existing Credit Facilities.

(a) At all times during the first three fiscal quarters of the Company during fiscal year 2010, the Company shall maintain on a consolidated basis unrestricted cash and cash equivalents in an aggregate amount not less than $100,000,000. At all times thereafter, the Company shall maintain on a consolidated basis unrestricted cash and cash equivalents in an aggregate amount not less than the lesser of (i) $225,000,000 or (ii) an amount equal to the sum of (A) $50,000,000 plus (B) an amount equal fifty percent (50%) of the Dollar Equivalent of the Credit Exposure at such time.

(b) The Company shall not permit or suffer the ratio of (i) the aggregate Financial Indebtedness of the Company and its consolidated Subsidiaries at any time (other than Indebtedness of any consolidated Subsidiary that is non-recourse to such Subsidiary except for customary carve-outs (including environmental liability, gross negligence or willful misconduct, and similar matters)) to (ii) the sum of (A) the aggregate Financial Indebtedness of the Company and its consolidated Subsidiaries at such time (other than Indebtedness of any consolidated Subsidiary that is non-recourse to such Subsidiary except for customary carve-outs (including environmental liability, gross negligence or willful misconduct, and similar matters)) plus (B) the stockholder's equity of the Company and its consolidated Subsidiaries at such time to exceed fifty-five percent (55%).

(c) The Company shall maintain an interest coverage ratio on a rolling four quarters basis of consolidated EBITDA to consolidated interest expense (including all fees and charges with respect to LOCs) of not less than 3.0 to 1.0 at the end of any fiscal quarter of the Company.

(d) The Company shall maintain a ratio of net consolidated Financial Indebtedness to consolidated EBITDA for the four immediately preceding completed fiscal quarters of the Company of not more than 5.5 to 1.0 at the end of any of the first three fiscal quarters of the Company ending during fiscal year 2010. As used herein, "net consolidated Financial Indebtedness" means at any time an amount equal to (i) the aggregate Financial Indebtedness of the Company and its consolidated Subsidiaries at such time (other than Indebtedness of any consolidated Subsidiary that is non-recourse to such Subsidiary except for customary carve-outs (including environmental liability, gross negligence or willful misconduct, and similar matters)) minus (ii) the amount, if any, by which (A) the aggregate amount of unrestricted cash and cash equivalents of the Company and its consolidated Subsidiaries at such time exceeds (B) the aggregate amount of unrestricted cash and cash equivalents required to be maintained by the Company and its consolidated Subsidiaries at such time pursuant to **Section 6.02(a)**.

(e) At all times from and after the fourth fiscal quarter of the Company during fiscal year 2010, the Company shall maintain a ratio of gross Financial Indebtedness to consolidated EBITDA for the four immediately preceding completed fiscal quarters of the Company of not more than 4.0 to 1.0 at the end of any fiscal quarter of the Company. As used herein, the term "gross Financial Indebtedness" means at any time the aggregate Financial Indebtedness of the Company and its consolidated Subsidiaries at such time (other than Indebtedness of any consolidated Subsidiary that is non-recourse to such Subsidiary except for customary carve-outs (including environmental liability, gross negligence or willful misconduct, and similar matters)).

(f) The Administrative Agent shall have received evidence, satisfactory to it in its sole discretion, (i) of a substantial reduction of the credit available and amounts outstanding under each other letter of credit facility of the Applicants, including the Existing Facility, on or prior to the date that is three (3) months after the Closing Date, and (ii) the termination of each other letter of credit facility of the Applicants (including the termination of any Liens arising under or in connection therewith), including the Existing Facility, on or prior to the date that is six (6) months after the Closing Date. Any letter of credit issuer under any such facility may be furnished LOCs hereunder to induce it to release any

collateral security for any such facility and to support the obligations of the Credit Parties to reimburse or indemnify it in respect of any letters of credit outstanding thereunder.

6.03 Liens. Except for (a) the Liens in favor of the Administrative Agent for the benefit of the Secured Parties arising pursuant to the Loan Documents, (b) Permitted Encumbrances, (c) the Liens expressly permitted by the Cash Collateral Agreement in favor of the Intermediary referred to therein, or (d) Liens on accounts receivable and any resulting credit balances arising from the factoring of the accounts receivable of any Credit Party or Subsidiary under the Tech Credit Agreement, no Guarantor shall create or suffer to exist any mortgage, pledge, security interest, encumbrance, or other Lien, whether junior, equal or superior in priority to the Liens created by the Loan Documents, on any Collateral.□ 60; In addition, other than as permitted by subclause (d) of the preceding sentence, no Guarantor shall create or suffer to exist any mortgage, pledge, security interest, encumbrance, or other Lien on its accounts receivable.

6.04 Pari Passu Ranking. Without derogating from the Guarantors' obligations under the Loan Documents to, among other things, maintain a perfected security interest in the Collateral, each Guarantor will ensure that at all times the claims of the Banks and the Administrative Agent against it under the Loan Documents will rank at least pari passu with the claims of all of its other unsecured and unsubordinated creditors, except for claims that are preferred by any bankruptcy, insolvency, liquidation or other similar laws of general application.

6.05 Consolidation, Merger and Sale of Assets. No Guarantor shall (i) enter into any merger or consolidation, unless it is the surviving entity and no Default exists after giving effect thereto or unless such transaction is a Specified Transaction permitted pursuant to **Section 6.14**, (ii) liquidate, wind up or dissolve (or suffer any liquidation, winding up or dissolution), terminate, or discontinue its business, or (iii) except to a Subsidiary, sell, assign, lease, or otherwise transfer, in one transaction or a series of transactions, all or substantially all of its business or property, whether now or hereafter acquired, in each case other than in c onnection with a Specified Transaction.

6.06 Hedge Agreements. No Guarantor will enter into any Hedge Agreement, except Hedge Agreements entered into in the ordinary course of business (not for purposes of speculation) to hedge or mitigate risks related to interest rates, currency exchange rates, or credit risk to which such Guarantor is exposed in the conduct of its business as conducted from time to time or the management of its liabilities, or for commodities hedges in the ordinary course of business as conducted from time to time, or hedges entered into in connection with Indebtedness of the Company convertible into equity securities of the Company (or cash settled, with settlement calculated with reference to the price of the Company's equ ity securities) for the benefit of the holders of the Company's equity securities.

6.07 Fiscal Year; Fiscal Quarters. No Guarantor shall change the method of identifying its fiscal periods without the Administrative Agent's consent (not to be unreasonably withheld).

6.08 Margin Stock. No Applicant shall use the proceeds of any LOC, whether directly or directly, and whether immediately, incidentally, or ultimately, to purchase or carry margin stock (within the meaning of Regulation U of the Board of Governors of the Federal Reserve System) or in a manner that will violate or be inconsistent with Regulation T, U, or X of the Board of Governors of the Federal Reserve System.

6.09 Transactions with Affiliates. No Guarantor will sell, lease or otherwise transfer any property or assets to, or purchase, lease or otherwise acquire any property or assets from, or otherwise engage in any other transactions with, any of its Affiliates, except (a) in the ordinary course of business at

prices and on terms and conditions not less favorable to such Guarantor than could be obtained on an arm's-length basis from unrelated third parties, (b) transactions between or among the Company and its wholly owned Subsidiaries, (c) any dividends or distributions permitted by **Section 6.13**, (d) transactions constituting the incurrence of Indebtedness permitted under **Section 6.01**, (e) transactions constituting Permitted Investments, (f) Specified Transactions, (g) the payment of reasonable fees, compensation, or employee benefit arrangements to, and any indemnity provided for the benefit of, officers, employees, and directors, and (h) loans or advances to employees in the ordinary course of business in compliance with applicable law.

6.10 Conduct of Business. No Guarantor will engage to any material extent in any business other than businesses of the type conducted by such Guarantor on the date of execution of this Agreement and any businesses reasonably related thereto from time to time.

6.11 Collateral Coverage.

(a) At no time shall the Company permit or suffer the aggregate amount of Collateral held in or credited to the Collateral Account to be less than the sum of (i) fifty percent (50%) of the Credit Exposure at such time that is denominated in dollars plus (ii) the Dollar Equivalent of fifty-five percent (55%) of the Credit Exposure at such time that is denominated in Alternate Currencies.

(b) Without limiting the foregoing paragraph (a), at no time shall the Company permit or suffer the aggregate amount of Collateral held in or credited to the Collateral Account to be less than the sum of (i) one hundred percent (100%) of the Credit Exposure attributable to all Long-Term LOCs at such time that are denominated in dollars plus (ii) the Dollar Equivalent of one hundred five percent (105%) of the Credit Exposure attributable to all Long-Term LOCs at such time that are denominated in Alternate Currencies plus (iii) fifty percent (50%) of the Credit Exposure attributable to all LOCs at such time that are denominated in dollars and are not Long-Term LOCs plus (iv) the Dollar Equivalent of fifty-five percent (55%) of the Credit Exposure attributable to all LOCs at s uch time that are denominated in Alternate Currencies and are not Long-Term LOCs.

6.12 Events Relating to Section 2.18 Payments. Without limiting any other covenant of any Applicant hereunder, no Applicant shall take any action or omit to take any action the effect of which would result in any amounts becoming due under **Section 2.18**, unless all amounts that would become due thereunder are deposited as cash collateral (and/or paid) in accordance with such **Section 2.18** at a time not later than the effectiveness of such action(s) (or inactions).

6.13 Restricted Payments. No Guarantor shall declare or pay any Restricted Payments (a) except as permitted under its Constituent Documents, (b) which, after giving effect thereto, would result in the occurrence of any Default, (c) during the continuance of any Event of Default, regardless of whether the Administrative Agent has given the Company notice of such Event of Default, or (d) from and after notice from the Administrative Agent of the occurrence of any Default, until such time as such Default has been cured or waived in accordance with the terms hereof. Without limiting the foregoing, the Company shall not declare or pay any Restricted Payments to its shareholders which, in the a ggregate, exceed $200,000,000 in any fiscal year.

6.14 Limitation on Investments, Loans and Advances. No Guarantor shall purchase, hold or acquire (including pursuant to any merger with any Person that was not a wholly-owned Subsidiary prior to such merger) any capital stock, evidences of Indebtedness or other securities (including any option, warrant or other right to acquire any of the foregoing) of, make or permit to exist any loans or advances to, Guarantee any obligations of, or make or permit to exist any investment or any other interest in, any other Person, or purchase or otherwise acquire (in one transaction or a series of transactions) any assets of

any other Person constituting a business unit, except:

(a) Permitted Investments;

(b) loans or advances made to any Subsidiary (or any special-purpose entity created or sponsored by the Company or a Subsidiary) or made by any Subsidiary (or any special-purpose entity created or sponsored by the Company or a Subsidiary) to the Company or any other Subsidiary (or any special-purpose entity created or sponsored by the Company or a Subsidiary);

(c) Guarantees permitted by **Section 6.01**;

(d) Specified Transactions, other than

(i) Specified Transactions with respect to which the Total Non-Stock Consideration paid or payable by such Guarantor exceeds (i) $50,000,000 in the aggregate in respect of Specified Transactions that occur during the period from the date hereof until the end of fiscal year 2010 and (ii) $200,000,000 in the aggregate per fiscal year in respect of Specified Transactions that occur during any fiscal year after fiscal year 2010; provided, however, that a Guarantor may enter into a Specified Transaction regardless of the value of Total Non-Stock Consideration so long as such Specified Transaction involves no unaffiliated third parties and involves o nly such Guarantor and one or more Subsidiaries; and

(ii) Specified Transactions with respect to which the Total Stock Consideration paid or payable by such Guarantor exceeds $750,000,000 in the aggregate per fiscal year; and

(e) in accordance with and pursuant to the terms of the indentures governing the Indenture Indebtedness (such as a conversion of debt to equity securities or cash settlement thereof by way of repaying, prepaying, or purchasing Indebtedness thereunder).

ARTICLE VII

EVENTS OF DEFAULT

7.01 Events of Default and Their Effect. If any of the following events (each an "Event of Default") shall occur and be continuing:

(a) Any Applicant shall fail to pay any reimbursement obligation in respect of any LOC Disbursement made by the Issuing Bank pursuant to an LOC when and as the same shall become due and payable; or any Applicant (or a Guarantor on behalf of such Applicant) shall fail to deposit cash collateral when and as the same shall become due and payable; or any Credit Party shall fail to pay any other amount payable by such Credit Party under any Loan Document within five (5) Business Days after the same becomes due and payable;

(b) Any representation or warranty made by any Credit Party (or any of its officers or other representatives) under or in connection with any Loan Document shall prove to have been incorrect in any material respect when made or deemed to have been made;

(c) Any Credit Party shall fail to perform or observe any term, covenant, or agreement contained in **Section 2.10**, **2.12(c)(ii)**, **2.18**, **5.01(d)**, **5.02** (with respect to any Credit Party's existence), or **5.07,** or in **Article VI**, on its part to be performed or observed;

(d) Any Credit Party shall fail to perform or observe any term, covenant, or agreement contained herein (other than those specified in clause (a), (b), or (c) of this Section or contained in any other Loan Document on its part to be performed or observed if such failure shall remain unremedied for thirty (30) days after written notice thereof shall have been given to the Company by the Administrative Agent or any Bank, except where such default cannot be reasonably cured within 30 days but can be cured within 60 days, the Credit Party has (i) during such 30-day period commenced and is diligently proceeding to cure the same and (ii) such default is cured within 60 days after the earlier of becoming aware of such failure and receipt of notice from the Administrative Agent or the applicable Bank specifying such failure;

(e) The Company or any of its Subsidiaries shall fail to pay any Indebtedness of the Company or such Subsidiary (as the case may be) individually or in the aggregate in excess of the Dollar Equivalent of $25,000,000, when the same becomes due and payable (whether by scheduled maturity, required prepayment, acceleration, demand or otherwise), and such failure shall continue after the applicable grace period, if any, specified in the agreement or instrument relating to such Indebtedness, provided, however, that a written waiver of such failure by the Person to whom such Indebtedness is owed shall be a written waiver of the Event of Default resultin g pursuant to this subclause from such failure; or any other event shall occur or condition shall exist under any agreement or instrument relating to any such Indebtedness and shall continue after the applicable grace period, if any, specified in such agreement or instrument, if the effect of such event or condition is to accelerate, or to permit the acceleration of, the maturity of such Indebtedness or otherwise to cause, or to permit the holder thereof to cause, such Indebtedness to mature, provided, however, that a written waiver of such failure by the Person to whom such Indebtedness is owed shall be a written waiver of the Event of Default resulting pursuant to this subclause from such failure; or any such Indebtedness shall be declared to be due and payable or required to be prepaid or redeemed (other than by a regularly scheduled required payment or redemption), purchased o r defeased, or an offer to prepay, redeem, purchase or defease such Indebtedness shall be required to be made, in each case prior to the stated maturity thereof;

(f) The entry by a court having jurisdiction in the premises of (i) a decree or order for relief in respect of the Company, any other Credit Party, or any Subsidiary in an involuntary case or proceeding under any applicable United States federal, state, or foreign bankruptcy, insolvency, reorganization, or other similar law or (ii) a decree or order adjudging the Company, any other Credit Party, or any Subsidiary bankrupt or insolvent, or approving as properly filed a petition seeking reorganization, arrangement, adjustment or composition of or in respect of the Company, any other Credit Party, or any Subsidiary under any applicable United States federal, state, or foreign law, or appointing a custodian, receiver, liquidator, assignee, trustee, sequestrator or other simila r official of the Company, any other Credit Party, or any Subsidiary or of any substantial part of the property, or ordering the winding up or liquidation of the affairs of the Company, any other Credit Party, or any Subsidiary, and the continuance of any such decree or order for relief or any such other decree or order unstayed and in effect for a period of sixty (60) consecutive days;

(g) The commencement by the Company, any other Credit Party, or any Subsidiary of a voluntary case or proceeding under any applicable United States federal, state, or foreign bankruptcy, insolvency, reorganization or other similar law or of any other case or proceeding to be adjudicated a bankrupt or insolvent, or the consent by the Company, any other Credit Party, or any Subsidiary to the entry of a decree or order for relief in respect of the Company, any other Credit Party, or any Subsidiary in an involuntary case or proceeding under any applicable United States federal, state, or foreign bankruptcy, insolvency, reorganization, or other similar law or to the commencement of any bankruptcy or insolvency case or proceeding against it, or the filing by the Company, any othe r Credit Party, or any Subsidiary of a petition or answer or consent seeking reorganization or relief under any applicable United States federal, state, or foreign law, or the consent by the Company, any other Credit Party, or any Subsidiary

to the filing of such petition or the appointment of or taking possession by a custodian, receiver, liquidator, assignee, trustee, sequestrator, or similar official of the Company, any other Credit Party, or any Subsidiary or of any substantial part of the property of, or the making by the Company, any other Credit Party, or any Subsidiary of an assignment for the benefit of creditors, or the admission by the Company, any other Credit Party, or any Subsidiary in writing of its inability to pay its debts generally as they become due, or the taking of corporate action by the Company, any other Credit Party, or any Subsidiary in furtherance of any such action;

(h) One or more judgments for the payment of money in an aggregate amount in excess of the Dollar Equivalent of $25,000,000 shall be rendered against any Credit Party, any Subsidiary or any combination thereof and the same shall remain undischarged for a period of thirty (30) consecutive days during which execution shall not be effectively stayed, or any action shall be legally taken by a judgment creditor to attach or levy upon any assets of any Credit Party or any Subsidiary to enforce any such judgment;

(i) An ERISA Event shall have occurred that, in the opinion of the Administrative Agent or the Required Banks, when taken together with all other ERISA Events that have occurred, could reasonably be expected to result in a Material Adverse Effect;

(j) A Change in Control shall occur; or

(k) Any Credit Party shall repudiate, or assert the unenforceability of, this Agreement or any other Loan Document, or any Loan Document shall for any reason not be in full force and effect or shall not provide to the Administrative Agent the Liens and the material rights, priorities, powers and privileges purported to be created thereby, including an exclusive, perfected security interest in, and lien on, the Collateral prior to all other Liens;

then, and in any such event, the Administrative Agent (i) may, and at the request of the Required Banks shall, by notice to the Company, declare the obligation of the Issuing Bank to issue, extend, or increase the amount of any LOC to be terminated, whereupon the same shall forthwith terminate, and/or (ii) may, and at the request of the Required Banks shall, by notice to the Company, declare all amounts payable under this Agreement and the other Loan Documents to be forthwith due and payable, whereupon all such amounts shall become and be forthwith due and payable, without presentment, demand, protest, or further notice of any kind, all of which are hereby expressly waived by each Credit Party, and/or (iii) may require, or may direct the Issuing Bank to require, the Beneficiary of any LOC to draw the entire amount available to be drawn un der such LOC in accordance with (and to the extent permitted by) such LOC and/or (iv) may exercise in respect of the Collateral any and all remedies of a secured party on default under applicable law and/or (v) require the applicable Applicant to use best efforts to cause the Issuing Bank to be released from all its obligations under each LOC, and/or (vi) exercise any and all other remedies available at law, in equity or otherwise, to secure, collect, enforce or satisfy any Obligations of any of the Credit Parties; provided that in the event of an actual or deemed entry of an order for relief with respect to any Applicant under the Bankruptcy Law, (x) the obligation of the Issuing Bank to issue, extend, or increase the amount of any LOC shall automatically terminate, (y) all such amounts shall automatically become due and payable, without presentment, demand, protest, or any notice of any kind, all of which are hereby expressly waived by each A pplicant, and (z) the obligation of each Applicant to provide cash collateral under **Section 7.02** shall automatically become effective.

7.02 Actions in Respect of the Letters of Credit upon Default. If any Event of Default shall have occurred and be continuing, the Administrative Agent may, or shall at the request of the Required Banks, whether before or after taking any of the actions described in **Section 7.01**, demand that the Company and each other Applicant, and forthwith upon such demand the Company and each other

Applicant will, without duplication of any other cash collateral provide to the Administrative Agent, remit as cash collateral to the Administrative Agent on behalf of the Banks in immediately available funds an aggregate amount not less than the sum of (i) one hundred percent (100%) of the aggregate Available Amount at such time of all LOCs denominated in dollars plus (ii) one hundred five percent (105%) of the aggregate Available Amount at such time of all LOCs denominated in Alternate Currencies. If at any time during the continuance of an Event of Default the Administrative Agent determines that such funds are subject to any right or claim of any Person other than the Administrative Agent and the Banks or that the total amount of such funds is less than the aggregate Available Amount at such time of all LOCs, the Company and each other Applicant will, forthwith upon demand by the Administrative Agent, remit to the Administrative Agent, as additional cash collateral, an amount equal to the excess of (a) such aggregate Available Amount over (b) the total amount of funds, if any, that the Administrative Agent determines to be free and clear of any such right and claim. Notwithstanding the two preceding sentences, no Applicant (other than a Guarantor) shall be required to cash collateralize any amounts attributable to an LOC issued at the request of any other Applicant. Upon the drawing of any LOC, such funds shall be applied to reimburse the Issuing Bank, to the extent permitted by applicable law.

ARTICLE VIII

THE ADMINISTRATIVE AGENT

8.01 Authorization and Action.

(a) Each Bank (in its capacity as a Bank) hereby appoints and authorizes the Administrative Agent to take such action as agent on its behalf and to exercise such powers and discretion under this Agreement and the other Loan Documents as are delegated to the Administrative Agent by the terms hereof and thereof, together with such powers and discretion as are reasonably incidental thereto. Notwithstanding the foregoing, the Administrative Agent shall not have any duties or obligations except those expressly set forth herein. Without limiting the foregoing, except as expressly set forth herein, the Administrative Agent shall not have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to any Credit Party or any of its Subsidiaries that is communicated to or obtained by the financial institution serving as Administrative Agent or any of its Affiliates in any capacity. The Administrative Agent shall not be liable for any action taken or not taken by it with the consent or at the request of the Required Banks (or such other number or percentage of the Banks as shall be necessary under the circumstances as provided in **Section 9.01**) or in the absence of its own gross negligence or willful misconduct.

(b) Each Bank agrees that it shall not have any right individually to realize upon the Collateral granted to the Administrative Agent pursuant to any Loan Document, it being understood and agreed that such rights and remedies may be exercised by the Administrative Agent for the benefit of the Secured Parties upon the terms thereof. Notwithstanding anything to the contrary herein or in any other Loan Document, the Administrative Agent is hereby irrevocably authorized by each Bank to release any Lien in any Collateral if such release is consented to in accordance with **Section 9.01**.

8.02 Administrative Agent's Reliance, Etc. Neither the Administrative Agent nor any of its directors, officers, affiliates, agents, or employees shall be liable for any action taken or omitted to be taken by it or them under or in connection with the Loan Documents, except for its or their own gross negligence or willful misconduct. The Administrative Agent shall not by reason of this Agreement or any other Loan Document be deemed to have a fiduciary relationship in respect of any Bank, any Credit Party, or any other Person. Without limiting the generality of the foregoing, the Administrative Agent: (a) may consult with legal counsel (including counsel for any Credit Party), independent public accountants, and other experts selected by it and shall not be liable for any action taken or omitted to be

taken in good faith by it in accordance with the advice of such counsel, accountants, or experts; (b) makes no warranty or representation to any Bank and shall not be responsible to any Bank for any statement, warranty, or representation (whether written or oral) made in or in connection with the Loan Documents; (c) shall not have any duty to ascertain or to inquire as to the performance or observance of any of the terms, covenants, or conditions of any Loan Document on the part of any Credit Party or any Subsidiary or the existence of any Default or the business, operations, condition (financial or otherwise) or prospects of any Credit Party or any Subsidiary or any other Person or to inspect the property (including the books and records) of any Credit Party or any Subsidiary; (d) shall not be responsible to any Bank for the due execution, legality, validity, enforceability, genuineness, sufficiency, or value of, or the perfection or priority of any Lien created or purported to be created under or in connection with, any Loan Document or any other instrument or document furnished pursuant thereto; (e) shall not be responsible for insuring any Collateral, for the payment of any taxes, charges, assessments or Liens upon any Collateral or otherwise as to the maintenance of any Collateral or any income thereon or as to the preservation of rights against prior or other parties or any other rights pertaining thereto (except the duty to accord such of the Collateral as may be in its actual possession and control substantially the same care as it accords its own assets and the duty to account for monies actually received by it); (f) shall incur no liability under or in respect of any Loan Document by acting upon any notice, consent, certificate, or other instrument or writing (which may be by facsimile) reasonably believed by it to be genuine and signed or sent by the proper party or parties; and (g) shall have no fiduciary or other implied duties or res ponsibilities.

8.03 The Administrative Agent and Affiliates. With respect to its Commitment, its LOC Participating Interests (as contemplated under **Section 2.02**), its LOC Disbursements, and the obligations owing to it, the financial institution serving as Administrative Agent shall have the same rights and powers under the Loan Documents as any other Bank and may exercise the same as though it were not the Administrative Agent; and the term "Bank" or "Banks" shall, unless otherwise expressly indicated, include the Administrative Agent in its individual capacity. The Administrative Agent and its Affiliates may accept deposits from, lend money to, act as t rustee under indentures of, accept investment banking engagements from and generally engage in any kind of business with, the Company, any of its Subsidiaries, any of its other Affiliates, and any Person that may do business with or own securities of the Company or any such Subsidiary, all as if the Administrative Agent were not the Administrative Agent and without any duty to account therefor to the Banks.

8.04 Bank Credit Decision. Each Bank acknowledges that it has, independently and without reliance upon the Administrative Agent or any other Bank and based on such financial statements and such other documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Bank also acknowledges that it will, independently and without reliance upon the Administrative Agent or any other Bank and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under this Agreement.

8.05 Indemnification. Each Bank severally agrees to indemnify the Administrative Agent and each of its officers, directors, employees, agents, advisors and Affiliates (to the extent not promptly reimbursed by each Applicant or paid by the Credit Parties pursuant to **Section 9.04** and without limitation of each of those parties' obligation to do so) from and against such Bank's Pro Rata Share of all claims, liabilities, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature (including the reasonable and documented fees and disbursements of counsel) whatsoever that may be imposed on, incurred by, or asserted against the Administrative Agent or any such other Person in any way relating to or arising out of the Loan Documents, any action taken or omitted by the Administrative Agent under the Loan Documents, any transaction from time to time contemplated by any Loan Document or LOC, or any transaction financed in whole or in part or directly or indirectly with the proceeds of any LOC; provided that no Bank shall be liable to any such indemnified

Person for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements resulting from such Person's gross negligence or willful misconduct. Without limitation of the foregoing, each Bank severally agrees to reimburse the Administrative Agent promptly upon demand for its Pro Rata Share of any costs and expenses (including the reasonable and documented fees and expenses of counsel) payable by the Applicants under **Section 9.04**, to the extent that the Administrative Agent is not promptly reimbursed for such costs and expenses by the Applicants. The failure of any Bank to reimburse the Administrative Agent promptly upon demand for its Pro Rata Share of any amount required to be paid by the Banks to the Administrative Agent as provided herein shall not re lieve any other Bank of its obligation hereunder to reimburse the Administrative Agent for its Pro Rata Share of such amount, but no Bank shall be responsible for the failure of any other Bank to reimburse the Administrative Agent for such other Bank's Pro Rata Share of such amount. Without prejudice to the survival of any other agreement of any Bank hereunder, the agreement and obligations of each Bank contained in this Section shall survive the payment in full of principal, interest and all other amounts payable hereunder and under the other Loan Documents.

8.06 Sub-Agents. The Administrative Agent may perform any and all its duties and exercise its rights and powers by or through any one or more sub-agents appointed by the Administrative Agent. The Administrative Agent and any such sub-agent may perform any and all its duties and exercise its rights and powers through their respective Affiliates, officers, directors, employees, agents, or advisors. The exculpatory provisions set forth in this **Article VIII** shall apply to any such sub-agent and to the Affiliates, officers, directors, employees, agents, and advisors of the Administrative Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the Facility provided for herein as well as activities as Administrative Agent.

8.07 Successor Administrative Agent. The Administrative Agent may resign at any time by giving written notice thereof to the Banks and the Company. Upon any such resignation, the Required Banks shall have the right to appoint, with the prior written approval of the Company (which approval shall not be unreasonably withheld) so long as there then exists no Event of Default, a successor Administrative Agent. If no successor Administrative Agent shall have been so appointed by the Required Banks, and shall have accepted such appointment, within 30 days after the retiring Administrative Agent's giving of notice of resignation, then the retiring Administrative Agent may, on behalf of the Banks, appoint a successor Administrative Agent, which shall be a commercial bank organized under the laws of the United States or of any State thereof and having a combined capital and surplus of at least $250,000,000. Upon the acceptance of any appointment as Administrative Agent hereunder by a successor Administrative Agent such successor Administrative Agent shall succeed to and become vested with all the rights, powers, discretion, privileges and duties of the retiring Administrative Agent, and the retiring Administrative Agent shall be discharged from its duties and obligations under the Loan Documents. If within 45 days after written notice is given of the retiring Administrative Agent's resignation under this Section no successor Administrative Agent shall have been appointed and shall have accepted such appointment, then on such 45th day (i) the retiring Administrative Agent's resignation shall become effective, (ii) the retiring Administrative Agent shall thereupon be discharg ed from its duties and obligations under the Loan Documents and (iii) the Required Banks shall thereafter perform all duties of the retiring Administrative Agent under the Loan Documents until such time, if any, as the Required Banks appoint a successor Administrative Agent as provided above. After any retiring Administrative Agent's resignation hereunder as Administrative Agent shall have become effective, the provisions of this **Article VIII** shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Administrative Agent under this Agreement.

8.08 Syndication Agent. The title of Syndication Agent is honorific and the institution having such title shall not have any additional rights, privileges, duties or responsibilities hereunder or under the other Loan Documents in its capacity as Syndication Agent.

ARTICLE IX

MISCELLANEOUS

9.01 Amendments, Etc. No amendment or waiver of any provision of this Agreement or any other Loan Document (other than with respect to an increase in the Commitment Amounts pursuant to **Section 2.04(b)** or any agreement or agreements executed and delivered thereunder), nor consent to any departure by any Credit Party therefrom, shall in any event be effective unless the same shall be in writing and signed by the Required Banks (and, in the case of an amendment, the Company), and then any such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; provided that no amendment, waiver or consent shall:

(a) unless in writing and signed by all of the Banks, do any of the following at any time: (i) waive any of the conditions specified in **Section 2.01, 3.01** or **3.02**, (ii) change the number of Banks or the percentage of (x) the Commitment Amounts, (y) the aggregate unpaid principal amount of the LOC Disbursements or (z) the aggregate Available Amount of LOCs that, in each case, shall be required for the Banks or any of them to take any action hereunder, (iii) release the Company or otherwise limit the Company's liability with respect to the Obligations owing to the Secured Parties, (iv) release all or substantially all of the Collateral or release any of the Guaranto rs from its Guarantee hereunder, (v) amend this **Section 9.01** or any of the definitions herein that would have such effect, (vi) extend the Termination Date, (vii) limit the liability of any Applicant under any of the Loan Documents, or (viii) change or waive any provision of **Section 2.07(a)** or any other provision of this Agreement requiring the ratable treatment of the Banks;

(b) unless in writing and signed by the Super-Majority Banks, amend **Section 6.02(a)** or any of the definitions herein that would have such effect;

(c) unless in writing and signed by each affected Bank, do any of the following at any time: (i) subject such Bank to any additional obligation, (ii) reduce the principal of, or interest on, any reimbursement obligation or any fee or other amount payable to such Bank hereunder, or increase such Bank's Commitment Amount, or (iii) postpone any date fixed for any payment of principal of, or interest on, any reimbursement obligation, fee or other amount payable to such Bank hereunder;

provided, further, that (x) no amendment, waiver or consent shall, unless in writing and signed by the Administrative Agent in addition to the Banks required above to take such action, affect the rights or duties of the Administrative Agent under this Agreement or any other Loan Document and (y) no amendment, waiver or consent shall, unless in writing and signed by the Issuing Bank in addition to the Banks required above to take such action, affect the rights or duties of the Issuing Bank under this Agreement or any other Loan Document.

9.02 Notices, Etc. All notices and other communications provided for hereunder shall be in writing (including facsimile or e-mail) and mailed or sent to the applicable party at its address set forth below its signature hereto (or, in the case of any Bank that is not a party hereto on the Closing Date, at its address specified in the Assignment and Assumption pursuant to which it becomes a Bank and in the case of any Subsidiary Applicant that is not a party hereto on the Closing Date, at its address specified in the Adherence Agreement pursuant to which it becomes a Subsidiary Applicant) or at such other address as shall be designated by such party in a written notice to the other parties. All s uch notices and communications shall be effective (a) if mailed, three Business Days after the date deposited in the mail, (b) if sent by messenger or courier, when delivered, or (c) if sent by facsimile or e-mail, when the sender receives electronic confirmation of receipt, except that (i) notices and communications to the Administrative Agent pursuant to **Article II**, shall not be effective until received by the Administrative

Agent; and (ii) any notice or other communication received at a time when the recipient is not open for its regular business shall be deemed received one hour after such recipient is again open for its regular business.

9.03 No Waiver; Remedies. No failure on the part of any Bank or the Administrative Agent to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedies provided by law.

9.04 Costs and Expenses.

(a) Each Credit Party agrees to pay on demand (i) all reasonable and documented costs and expenses of the Administrative Agent and the Issuing Bank (including the reasonable and documented fees and expenses of counsel for the Administrative Agent and the Issuing Bank) in connection with the preparation, execution, delivery, administration, modification and amendment of the Loan Documents and (ii) all reasonable and documented costs and expenses of the Administrative Agent and each Bank in connection with the enforcement of the Loan Documents, whether in any action, suit or litigation, or any bankruptcy, insolvency or other similar proceeding affecting creditors' rights generally (including the reasonable and documented fees and expenses of counsel for the Administrative Age nt and each Bank with respect thereto); provided, however, that no Applicant (other than a Guarantor) shall be obligated to pay any costs and expenses to the extent attributable to any LOC issued at the request of any other Applicant.

(b) Each Credit Party agrees to indemnify and hold harmless the Administrative Agent, the Issuing Bank and each Bank and each of their respective Affiliates and the officers, directors, employees, agents and advisors of any of the foregoing (each an "Indemnified Party") from and against all claims, damages, losses, liabilities and expenses (including reasonable and documented fees and expenses of counsel) of any kind or nature whatsoever that may be incurred by or asserted or awarded against any Indemnified Party arising out of or in connection with or by reason of (including in connection with any investigation, litigation, or proceeding or preparation of a defense in connection therewith) (i) this Agreement, the other Loan Documents (including any agreements relating to the establishment or operations of the Collateral Account), or any transaction contemplated hereby or thereby, (ii) the enforcement of this Agreement or any other Loan Document, (iii) each LOC or the transaction(s) supported by each LOC, (iv) any payment or other action taken or omitted to be taken in connection with any LOC or this Agreement or the other Loan Documents, (v) any act or omission, whether rightful or wrongful, of any present or future de jure or de facto Governmental Authority with respect to this Agreement or any other Loan Document or any LOC or any other cause beyond the Issuing Bank's control, (vi) the actual or proposed use of the proceeds of the LOC Disbursements, (vii) compliance with any governmental exchange, currency control, or other law, rule, or regulation of any country now or hereafter applicable to the purchase or sale of, or dealings in, foreign currency, (viii) any indemnity or other undertaking requested or appr oved by any Applicant that the Issuing Bank issues to induce any other financial institution (including any branch or Affiliate of the Issuing Bank) to issue its own letter of credit, guarantee, or other undertaking in connection with any LOC, or (ix) any adviser's, confirmer's, or other nominated person's fees and expenses with respect to any LOC that are chargeable to any Applicant or the Issuing Bank (if the applicable LOC Request or any LOC Related Document requested or authorized such advice, confirmation, or other nomination, as applicable), including, in the case of the Banks, all amounts for which they are liable to the Issuing Bank or the Administrative Agent under **Section 2.13(g)** or **Section 8.05**, respectively, except to the extent such claim, damage, loss, liability or expense shall have resulted from the gross negligence or willful misconduct of such Indemnified Party; provided, however, that no Applicant (other than a Guarantor) shall be obligated to

indemnify any Indemnified Party for any claims, damages, losses, liabilities and expenses to the extent attributable to any LOC issued at the request of any other Applicant. In the case of any investigation, litigation or other proceeding to which the indemnity in this **Section 9.04(b)** applies, such indemnity shall be effective whether or not such investigation, litigation or proceeding is brought by the Company, any of its Affiliates, their respective officers, directors, shareholders or creditors or an Indemnified Party or any Indemnified Party is otherwise a party thereto and whether or not the transactions contemplated by the Loan Documents are consummated. Each Credit Party also agrees not to assert any claim against any Indemnified Party on any theory of liability for, and no Indemnified Party shall be liable in cont ract, tort, or otherwise for, special, indirect, consequential, exemplary, or punitive damages arising out of or otherwise relating to this Agreement, any other Loan Document, any transaction contemplated hereby or thereby or the actual or proposed use of the LOC Disbursements or any LOC (including for any consequences of forgery or fraud by any Beneficiary or any other Person).

(c) Without prejudice to the survival of any other agreement of any Credit Party hereunder or under any other Loan Document, the agreements and obligations of each Credit Party contained in **Section 2.06**, **Section 2.08**, and this **Section 9.04** shall survive the payment in full of principal, interest, and all other amounts payable hereunder and under any other Loan Document, the expiration or termination of the Commitments, and the expiration without any pending drawing or termination of all LOCs.

9.05 Right of Set-off; Control Arrangements.

(a) Upon the occurrence and during the continuance of any Event of Default, the Administrative Agent and each Bank and each of their respective Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by law, to set off and otherwise apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other indebtedness at any time owing by the Administrative Agent, such Bank, or such Affiliate to or for the credit or the account of any Credit Party against any obligations of such Credit Party now or hereafter existing under the Loan Documents, irrespective of whether the Administrative Agent or such Bank shall have made any demand under this Agreement and although such obligations may be unmatu red. The Administrative Agent and each Bank agree promptly to notify the Company after any such set-off and application; provided that the failure to give such notice shall not affect the validity of such set-off and application. The rights of the Administrative Agent and each Bank and their respective Affiliates under this Section are in addition to other rights and remedies (including other rights of set-off) that the Administrative Agent, such Bank and their respective Affiliates may have.

(b) Without limiting any other means of obtaining perfection of the Administrative Agent's security interest in any or all of the Collateral provided hereunder or under any other Loan Document, each Applicant, the Administrative Agent, and DB hereby agree (i) as to any Collateral now or hereafter provided by any Applicant consisting of investment property as to which DB is the securities intermediary, that DB will comply with instructions or entitlement orders originated by the Administrative Agent without further consent by any Applicant, (ii) as to any Collateral now or hereafter provided by any Applicant consisting of a deposit account maintained at DB, that DB will comply with instructions originated by the Administrative Agent directing disposition of the funds in such deposit account without further consent by any Applicant, and (iii) as to any other Collateral now or hereafter provided by any Applicant in the possession of DB, that DB holds or will hold, as applicable, such collateral for the benefit of the Administrative Agent acting on behalf of the Banks.

9.06 Binding Effect. This Agreement shall become effective when it shall have been executed by each Credit Party, each Bank, and the Administrative Agent and thereafter shall be binding upon and inure to the benefit of each Credit Party, each Bank, and the Administrative Agent and their respective

successors and assigns, except that no Credit Party shall have the right to assign its rights hereunder or any interest herein without the prior written consent of the Administrative Agent (such consent not to be unreasonably withheld) and the Banks.

9.07 Assignments and Participations.

(a) Each Bank may, and so long as no Default shall have occurred and be continuing, if demanded by the Company pursuant to **Section 2.11** upon at least five (5) Business Days' notice to such Bank and the Administrative Agent, will, assign to one or more Eligible Assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment, its LOC Participating Interests and the LOC Disbursements owing to it); provided that (i) each such assignment shall be of a uniform, and not a varying, percentage of all rights and obligations of such Bank hereunder, (ii) except in the case of an assignment to a Person that, immediately prior to such assignment, was (x) a Bank or an Affiliate of a Bank, the aggregate amount of the Commitment being assigned to such Eligible Assignee pursuant to such assignment (determined as of the date of the Assignment and Assumption with respect to such assignment) shall in no event be less than $1,000,000 unless it is an assignment of the entire amount of such assignor's Commitment, or (y) not a Bank or an Affiliate of any Bank, the aggregate amount of the Commitment being assigned to such Eligible Assignee pursuant to such assignment (determined as of the date of the Assignment and Assumption with respect to such assignment) shall in no event be less than $5,000,000 unless it is an assignment of the entire amount of such assignor's Commitment, (iii) each such assignment shall be to an Eligible Assignee and such assignment is consented to and approved by the Administrative Agent, the Issuing Bank and, so long as there then exists no Event of Default, the Company (such approvals not to be unre asonably withheld), (iv) each assignment made as a result of a demand by the Company pursuant to **Section 2.11** shall be arranged by the Company after consultation with the Administrative Agent, and shall be either an assignment of all of the rights and obligations of the assigning Bank under this Agreement or an assignment of a portion of such rights and obligations made concurrently with another such assignment or other such assignments that together cover all of the rights and obligations of the assigning Bank under this Agreement, (v) no Bank shall be obligated to make any such assignment as a result of a demand by the Company pursuant to **Section 2.11** unless and until such Bank shall have received one or more payments from either the Company or other Eligible Assignees in an aggregate amount at least equal to the aggregate outstanding principal amount of the LOC Disbursements made by such Bank, t ogether with accrued interest thereon to the date of payment of such principal amount and all other amounts payable to such Bank under this Agreement, (vi) as a result of such assignment, the Company shall not be subject to additional amounts under **Section 2.06** or **2.08**, and (vii) the parties to each such assignment shall execute and deliver to the Administrative Agent, for its acceptance and recording in the Register, an Assignment and Assumption, together with a processing and recordation fee of $3,500.

(b) Upon such execution, delivery, acceptance and recording, from and after the effective date specified in such Assignment and Assumption, (i) the assignee thereunder shall be a party hereto and, to the extent that rights and obligations hereunder have been assigned to it pursuant to such Assignment and Assumption, have the rights and obligations of a Bank hereunder, and (ii) the Bank assignor thereunder shall, to the extent that rights and obligations hereunder have been assigned by it pursuant to such Assignment and Assumption, relinquish its rights (other than its rights under Sections **2.06**, **2.08** and **9.04** to the extent any claim thereunder relates to an event arising prior to such assignment and any other rights that are expressly provided hereunder to survive) and be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the remaining portion of an assigning Bank's rights and obligations under this Agreement, such Bank shall cease to be a party hereto).

(c) By executing and delivering an Assignment and Assumption, each Bank assignor thereunder and each assignee thereunder confirm to and agree with each other and the other parties thereto and hereto as follows: (i) other than as provided in such Assignment and Assumption, such assigning Bank makes no representation or warranty and assumes no responsibility with respect to any statements, warranties or representations made in or in connection with any Loan Document or the execution, legality, validity, enforceability, genuineness, sufficiency or value of, or the perfection or priority of any Lien created or purported to be created under or in connection with, any Loan Document or any other instrument or document furnished pursuant thereto; (ii) such assigning Bank makes no r epresentation or warranty and assumes no responsibility with respect to the financial condition of the Company or any of its Subsidiaries or the performance or observance by the Company or any of its Subsidiaries of any of its obligations under any Loan Document or any other instrument or document furnished pursuant thereto; (iii) such assignee confirms that it has received a copy of this Agreement, together with copies of the financial statements and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into such Assignment and Assumption; (iv) such assignee will, independently and without reliance upon the Administrative Agent, such assigning Bank or any other Bank and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under this Agreement; (v) such assignee confirms that it is an Eligible Assignee; (vi) such assignee appoints and authoriz es the Administrative Agent to take such action as agent on its behalf and to exercise such powers and discretion under the Loan Documents as are delegated to the Administrative Agent by the terms hereof and thereof, together with such powers and discretion as are reasonably incidental thereto; and (vii) such assignee agrees that it will perform in accordance with their terms all of the obligations that by the terms of this Agreement are required to be performed by it as a Bank.

(d) The Administrative Agent, acting for this purpose (but only for this purpose) as the agent of the Company, shall maintain at its address referred to in **Section 9.02** a copy of each Assignment and Assumption delivered to and accepted by it and the Register. The entries in the Register shall be conclusive and binding for all purposes, absent manifest error, and the Company, the other Applicants, the Administrative Agent and the Banks shall treat each Person whose name is recorded in the Register as a Bank hereunder for all purposes of this Agreement. The Register shall be available for inspection by the Company or any Bank at any reasonable time and from time to time upon reasonable prior notice.

(e) Upon its receipt of a completed Assignment and Assumption executed by an assigning Bank and an assignee and consented to by the Administrative Agent, the Issuing Bank, and, where required, pursuant to **Section 9.07(a)**, the Company, the Administrative Agent shall (i) accept such Assignment and Assumption, (ii) record the information contained therein in the Register and (iii) give prompt notice thereof to the Company and to the parties to such Assignment and Assumption.

(f) Each Bank may sell participations to one or more Persons (other than the Company or any of its Affiliates) in or to all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment, its LOC Participating Interests and the LOC Disbursements owing to it; provided that (i) such Bank's obligations under this Agreement (including its Commitment and its LOC Participating Interests) shall remain unchanged, (ii) such Bank shall remain solely responsible to the other parties hereto for the performance of such obligations, (iii) the Company, the other Applicants, the Administrative Agent and the other Banks shall continue to deal solely and directly with such Bank in connection with such Bank's rights and obligations under this Agreement, and (iv) no participant under any such participation shall have any right to approve any amendment or waiver of any provision of any Loan Document, or any consent to any departure by the Company therefrom, except to the extent that such amendment, waiver or consent would reduce the principal of, or interest on, reimbursement obligations or any fees or other amounts payable hereunder, or postpone any date fixed for

any payment thereof, in each case to the extent subject to such participation. Each Bank shall, as agent of the Company solely for the purposes of this **Section 9.07**, record in book entries maintained by such Bank, the name and amount of the participating interest of each Person entitled to receive payments in respect of any participating interests sold pursuant to this **Section 9.07**.

(g) Any Bank may, in connection with any assignment or participation or proposed assignment or participation pursuant to this **Section 9.07**, disclose to the assignee or participant or proposed assignee or participant any information relating to the Company or any of its Subsidiaries furnished to such Bank by or on behalf of the Company or any such Subsidiary; provided that, prior to any such disclosure, the assignee or participant or proposed assignee or participant shall agree to preserve the confidentiality of any Confidential Information received by it from such Bank.

(h) Notwithstanding any other provision set forth in this Agreement, any Bank may at any time create a security interest in all or any portion of its rights under this Agreement (including the LOC Disbursements owing to it) in favor of any Federal Reserve Bank in accordance with Regulation A of the Board of Governors of the Federal Reserve System.

9.08 Execution in Counterparts. This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement. Delivery of an executed counterpart of a signature page to this Agreement (or any related agreement, including any amendment hereto or waiver hereunder) by facsimile or e-mail (in a pdf or similar file) shall be effective as delivery of an original executed counterpart of this Agreement (or such related agreement).

9.09 Severability. Any provision of this Agreement held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions hereof; and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction.

9.10 Confidentiality. Neither the Administrative Agent nor any Bank shall disclose any Confidential Information to any Person without the consent of the Company, other than (a) to the Administrative Agent's or such Bank's Affiliates and their officers, directors, employees, agents and advisors, to actual or prospective Eligible Assignees and participants, and to any direct, indirect, actual or prospective counterparty (and its advisor) to any swap, derivative or securitization transaction related to the obligations under this Agreement, and in each case then only on a confidential basis, (b) as required by any law, rule or regulation or judicial process, (c) as requested or required by any state, federal or foreign authority or examiner regulating such Bank or pursuant to any request of any self-regulatory body having or claiming authority to regulate or oversee any aspect of a Bank's business or that of any of its Affiliates, and (d) to any rating agency when required by it; provided that, prior to any such disclosure, such rating agency shall undertake to preserve the confidentiality of any Confidential Information relating to the Company and its Subsidiaries received by it from such Bank.

9.11 Disclosure of Information. Each Credit Party agrees and consents to the Administrative Agent's disclosure of information relating to this transaction to Gold Sheets and other similar bank trade publications. Such information will consist of deal terms and other information customarily found in such publications.

9.12 Patriot Act. Each Bank that is subject to the requirements of the Patriot Act hereby notifies the Company and each other Credit Party that pursuant to the requirements of the Patriot Act, it is

required to obtain, verify, and record information that identifies the Company and each other Credit Party, which information includes the name and address of the Company and each other Credit Party and other information that will allow such Bank to identify the Company and each other Credit Party in accordance with the Patriot Act.

9.13 Waiver of Immunity. Each Credit Party acknowledges that this Agreement and each other Loan Document is, and each LOC will be, entered into for commercial purposes of the applicable Applicant. To the extent that any Credit Party or any of its assets has or hereafter acquires any right of sovereign or other immunity from or in respect of any legal proceedings to enforce or collect upon any Obligation or any other agreement relating to the transactions contemplated herein, such Credit Party hereby irrevocably waives any such immunity and agrees not to assert any such right or claim in any such proceeding.

9.14 Jurisdiction, Etc.

(a) Each of the parties hereto hereby irrevocably and unconditionally submits, for itself and its property, to the nonexclusive jurisdiction of any New York state court or federal court of the United States of America sitting in the Borough of Manhattan in New York City, and any appellate court from any thereof, in any action or proceeding arising out of or relating to this Agreement or any of the other Loan Documents, or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in any such New York state court or, to the extent permitted by law, in such federal court. Each of the parties hereto agrees that a final judgme nt in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

(b) Each of the parties hereto irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection that it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement or any of the other Loan Documents to which it is a party in any New York state or federal court. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court sitting in the Borough of Manhattan in New York City.

(c) Each Credit Party hereby agrees that service of process in any such action or proceeding may be made on such Applicant by the mailing of copies thereof by express or overnight mail or courier, postage prepaid, to such Applicant at its address referred to in **Section 9.02**.

(d) Nothing in this Agreement shall affect any right that any party may otherwise have to bring any action or proceeding relating to this Agreement or any of the other Loan Documents in the courts of any jurisdiction or to serve process in any other matter.

9.15 Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York. If any LOC expressly chooses a state or country law other than the State of New York, the applicable Applicant shall be obligated to reimburse the Issuing Bank for payments made under such LOC if such payment is justified under New York law or such other law.

9.16 WAIVER OF JURY TRIAL. EACH PARTY HERETO IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO ANY OF THE LOAN DOCUMENTS, THE ADVANCES OR THE ACTIONS OF THE

ADMINISTRATIVE AGENT OR ANY BANK IN THE NEGOTIATION, ADMINISTRATION, PERFORMANCE OR ENFORCEMENT THEREOF.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the parties hereto have caused this Letter of Credit Facility Agreement to be duly executed and delivered by their respective officers thereunto duly authorized, as of the date first above written.

SUNPOWER CORPORATION

By: /s/ Dennis V. Arriola
Name: Dennis V. Arriola
Title: Senior Vice President and Chief Financial Officer

Address: 3939 North First Street
San Jose, CA 95134
Attention: Dennis V. Arriola
Telephone: 408-240-5500
Facsimile: 408-240-5404
E-mail: dennis.arriola@sunpowercorp.com

SUNPOWER CORPORATION, SYSTEMS

By: /s/ Dennis V. Arriola
Name: Dennis V. Arriola
Title: Senior Vice President and Chief Financial Officer

Address: 3939 North First Street
San Jose, CA 95134
Attention: Dennis V. Arriola
Telephone: 408-240-5500
Facsimile: 408-240-5404
E-mail: dennis.arriola@sunpowercorp.com

SUNPOWER NORTH AMERICA, LLC

By: /s/ Dennis V. Arriola
Name: Dennis V. Arriola
Title: Chief Financial Officer

Address: 3939 North First Street
San Jose, CA 95134
Attention: Dennis V. Arriola
Telephone: 408-240-5500
Facsimile: 408-240-5404
E-mail: dennis.arriola@sunpowercorp.com

DEUTSCHE BANK AG NEW YORK
BRANCH, individually, as Administrative Agent,
and as Issuing Bank

By: /s/ Anthony F. Calabreses
Name: Anthony F. Calabrese
Title: Director

By: /s/ Katrina Krallitsch
Name: Katrina Krallitsch
Title: Assistant Vice President

Address: c/o Deutsche Bank Securities Inc.
225 Franklin Street, 24th Floor
Boston, MA 02110
Attention: Mr. David Dickinson
Telephone: 617-217-6381
Facsimile: 617-217-6300
E-mail: david.dickinson@db.com

Address: Deutsche Bank Trust Company Americas
60 Wall Street, 9th Floor, Room 0938
New York, NY 10005
Attention: Mr. Everardus Rozing
Telephone: 212-250-1014
Facsimile: 212-797-0403
E-mail: everardus.rozing@db.com

BARCLAYS BANK PLC, as a Bank

By: /s/ Sam Yoo

Name: Sam Yoo
Title: Assistant Vice President

Address: Barclays Bank PLC
745 7th Avenue
New York, NY 10019
Attention: Sam Yoo
Telephone: 212.526.1264
Facsimile: 212.526.5115
E-mail: sam.yoo@barcap.com

BANK OF AMERICA, N.A., as Syndication Agent and as a Bank

By: /s/ Sugeet Manchanda Madan

Name: Sugeet Manchanda Madan
Title: Senior Vice President

Address: 315 Montgomery Street, 6th Floor
San Francisco, CA 94104

Attention: Sugeet Manchanda Madan
Telephone: 415.913.2798
Facsimile: 415.844.2099
E-mail: s_manchanda.madan@baml.com

CITIBANK, N.A., as a Bank

By: /s/ Avrum Spiegel
Name: Avrum Spiegel
Title: Managing Director

Address: _____

Attention: _____
Telephone: _____
Facsimile: _____
E-mail: _____

CREDIT SUISSE AG, CAYMAN ISLANDS BRANCH, as a Bank

By: /s/ Shaheen Malik
Name: Shaheen Malik
Title: Vice President

Address: Eleventh Madison Ave
New York, NY 10010
Attention: Shaheen Malik
Telephone: 212-538-4047
Facsimile: 212-325-8319
E-mail: Shaheen.malik@credit-suisse.com

By: /s/ Kevin Buddhdew
Name: Kevin Buddhdew
Title: Associate

Address: Eleventh Madison Ave
New York, NY 10010
Attention: Kevin Buddhdew
Telephone: 212-538-4294
Facsimile: 212-322-0486
E-mail: Kevin.buddhdew@credit-suisse.com

SCHEDULE I

BANKS, PRO RATA SHARES, AND COMMITMENT AMOUNTS

Name	Pro Rata Share	Commitment Amount
Deutsche Bank New York Branch	42.857142857%	$150,000,000
Bank of America, N.A.	28.571428571%	$100,000,000
Citibank, N.A.	14.285714285%	$50,000,000
Credit Suisse AG, Cayman Islands Branch	7.142857142%	$25,000,000
Barclays Bank PLC	7.142857142%	$25,000,000
TOTALS:	**100%**	**$350,000,000**

SCHEDULE II

SUBSIDIARY ACCOUNT PARTIES

Name	Jurisdiction and Type of Organization
SunPower Malaysia Manufacturing Sdn Bhd	Malaysia Sdn Bhd
SunPower Energy Systems Spain SL	Spain SL
SunPower Systems Sarl	Switzerland Sarl
SunPower Italia S.r.l.	Italy S.r.l.
Sunpower GmbH	Germany GmbH
SunPower Energy Systems Korea Ltd.	Republic of Korea corporation

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SCHEDULE III

SUBSIDIARY APPLICANTS

Name	Jurisdiction and Type of Organization
SunPower Corporation, Systems	Delaware corporation

***

SCHEDULE IV

EXISTING INDEBTEDNESS

1. Indebtedness of the Company in connection with the Company's guarantee of leasing arrangements, pursuant to a Term Leasing Master Agreement between the Company's Malaysian subsidiary as lessee and IBM Malaysia Sdn. Bhd. as lessor. [Desktop and laptop computers for use by the Company's Malaysian Subsidiary]

2. Indebtedness of the Company in connection with the Company's guarantee of leasing arrangements, pursuant to a Corporate Guarantee by the Company of obligations of SunPower Philippines Mfg. Ltd. as lessee in favor of IBM Philippines, Inc. as lessor [Desktop and laptop computers for use by the Company's Philippines subsidiary]

3. Indebtedness of the Company under the Company's Master Agreement with Cisco Systems Capital Corporation as lessor and any schedules appurtenant thereto (the "Cisco Leasing Indebtedness"). [Routers and other IT equipment for use by the Company and its Subsidiaries]

4. Indebtedness of the Company in connection with leasing arrangements with US Bancorp (the "US Bancorp Leasing Indebtedness"). [Office copiers and printers for use by the Company and its Subsidiaries]

5. Indebtedness of the Company in connection with a leasing arrangement with Well Fargo Bank, N.A. as lessor (the "Wells Fargo Leasing Indebtedness"). [Cleaning equipment for use of the Company and its Subsidiaries]

6. Indebtedness of the Company pursuant to the following promissory notes, each dated March 26, 2010, issued to certain officers and employees of SunRay Renewable Energy ("SunRay"), in lieu of cash payment to such persons for their SunRay shares in connection with the Company's acquisition of SunRay:

   a. *** in the amount of $***;
   b. *** in the amount of $***;
   c. *** in the amount of $***;
   d. *** in the amount of $***;
   e. *** in the amount of $***;
   f. *** in the amount of $***;
   g. *** in the amount of $***; and
   h. *** in the amount of $***.

***

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

SCHEDULE V

EXISTING LIENS

1. Liens on leased equipment in connection with the Cisco Leasing Indebtedness, which equipment is the subject of the underlying lease arrangements giving rise to such Indebtedness.

2. Liens on leased equipment in connection with the US Bancorp Leasing Indebtedness, which equipment is the subject of the underlying lease arrangements giving rise to such Indebtedness.

3. Liens on leased equipment in connection with the Wells Fargo Indebtedness, which equipment is the subject of the underlying lease arrangements giving rise to such Indebtedness.

***

SCHEDULE VI

EXISTING LOANS, ADVANCES, AND INVESTMENTS

1. Investment in *** (approximately $3,000,000).

2. Investment in *** (approximately $1,500,000).

3. Investment in Woongjin Energy Co. Ltd. (approximately $34,000,000).

4. Put/Call option to invest in ***.

5. Investment in *** (approximately $10,000,000).

6. Investment in First Philec Solar Corporation (approximately $6,000,000).

7. All equity interests of Whippletree Solar, LLC.

8. 90% interest in SunPower Bermuda Holdings (held by SunPower Corporation); 10% interest in SunPower Bermuda Holdings (held by SunPower Corporation, Systems).

9. All equity interests of Swingletree Operations, LLC.

10. All equity interests of SunPower Development Company.

11. All equity interests of SunPower North America, LLC.

12. All equity interests of Pluto Acquisition Company LLC.

13. All equity interests of SunPower Foundation.

14. All equity interests of Tilt Solar, LLC.

15. All equity interests of High Plains Ranch I, LLC.

16. All equity interests of High Plains Ranch II, LLC.

17. All equity interests of High Plains Ranch III, LLC.

18. All equity interests of Mack Meadow Solar Star, LLC.

19. All equity interests of Parrey, LLC.

20. All equity interests of Solar Star Arizona I, LLC.

21. All equity interests of Solar Star Arizona II, LLC.

22. All equity interests of Solar Star California I, LLC.

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

23. All equity interests of Solar Star California IV, LLC.

24. All equity interests of Solar Star California VIII, LLC.

25. All equity interests of Solar Star California XIII, LLC.

26. All equity interests of Solar Star California XV, LLC.

27. All equity interests of Solar Star Colorado I, LLC.

28. All equity interests of Solar Star Hawaii I, LLC.

29. All equity interests of Solar Star HI Air, LLC.

30. All equity interests of Solar Star Highland I, LLC.

31. All equity interests of Solar Star Koyo I, LLC.

32. All equity interests of Solar Star MWHI I, LLC.

33. All equity interests of Solar Star New Jersey III, LLC.

34. All equity interests of Solar Star New Jersey IV, LLC.

35. All equity interests of Solar Star New Jersey VI, LLC.

36. All equity interests of Solar Star North Carolina II, LLC.

37. All equity interests of Solar Star Ohio I, LLC.

38. All equity interests of Solar Star Rancho CWD I, LLC.

39. All equity interests of Solar Star TJX I, LLC.

40. All equity interests of Solar Star YC, LLC.

41. 1% member interest in SPWR Galaxy Holdco 2007 LLC.

42. All equity interests of SSSA, LLC.

43. All equity interests of SunPower Access I, LLC.

44. All equity interests of SunPower Commercial Finance I, LLC.

45. All equity interests of SunPower Residential I, LLC.

46. All equity interests of Whirlwind Solar Star, LLC.

47. All equity interests of Solar Star XI, LLC.

48. Investment in a privately-held company accepted in connection ***, with a current value that does not exceed $***.

***

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

EXHIBIT A

[FORM OF]
ASSIGNMENT AND ASSUMPTION

This Assignment and Assumption (the "Assignment and Assumption") is dated as of the Effective Date set forth below and is entered into by and between [*Insert name of Assignor*] (the "Assignor") and [*Insert name of Assignee*] (the "Assignee"). Capitalized terms used but not defined herein shall have the meanings given to them in the Letter of Credit Facility Agreement identified below (as amended, supplemented, or otherwise modified from time to time, the "Facility Agre ement"), receipt of a copy of which (and any other Loan Documents requested by the Assignee) is hereby acknowledged by the Assignee. The Standard Terms and Conditions set forth in Annex 1 attached hereto are hereby agreed to and incorporated herein by reference and made a part of this Assignment and Assumption as if set forth herein in full.

For an agreed consideration, the Assignor hereby irrevocably sells and assigns to the Assignee, and the Assignee hereby irrevocably purchases and assumes from the Assignor, subject to and in accordance with the Standard Terms and Conditions and the Facility Agreement, as of the Effective Date inserted by the Administrative Agent as contemplated below (i) all of the Assignor's rights and obligations in its capacity as a Bank (but not in its capacity as Issuing Bank if the Assignor is the Issuing Bank) under the Facility Agreement and any other documents or instruments delivered pursuant thereto to the extent related to the amount and percentage interest identified below of all of such outstanding rights and obligations of the Assignor under the facility identified below and (ii) to the extent permitted to be assigned under applicable law, all claims, suits, causes of action and any other right of the Assignor (in its capacity as a Bank) against any Person, whether known or unknown, arising under or in connection with the Facility Agreement, any other documents or instruments delivered pursuant thereto or the loan transactions governed thereby or in any way based on or related to any of the foregoing, including contract claims, tort claims, malpractice claims, statutory claims and all other claims at law or in equity related to the rights and obligations sold and assigned pursuant to clause (i) above (the rights and obligations sold and assigned pursuant to clauses (i) and (ii) above being referred to herein collectively as the "Assigned Interest"). Such sale and assignment is without recourse to the Assignor and, except as expressly provided in this Assignment and Assumption, without representation or warranty by the Assignor.

1.	Assignor:	_____
2.	Assignee:	_____ [and is an Affiliate of [*identify Bank*]]
3.	[Company / Applicants]:	_____
4.	Administrative Agent:	_____, as the administrative agent under the Facility Agreement
5.	Facility Agreement:	The $350,000,000 Letter of Credit Facility Agreement dated as of April 12, 2010 among SunPower Corporation, the Subsidiary Guarantors, the Subsidiary Applicants parties thereto from time to time, the Banks parties thereto from time to time, and Deutsche Bank AG New York Branch, as Issuing Bank and as Administrative Agent

6. Assigned Interest:

Facility Assigned	Aggregate Commitment Amounts / Credit Exposure for all Banks	Amount of Commitment / Credit Exposure Assigned	Percentage Assigned of Commitment/Credit Exposure[1]
Letter of Credit Facility	$	$	%

Effective Date: _____ ___, 20___ [TO BE INSERTED BY ADMINISTRATIVE AGENT AND WHICH SHALL BE THE EFFECTIVE DATE OF RECORDATION OF TRANSFER IN THE REGISTER.]

The terms set forth in this Assignment and Assumption are hereby agreed to:

ASSIGNOR

[NAME OF ASSIGNOR]

By: _____
Name:
Title:

ASSIGNEE

[NAME OF ASSIGNEE]

By: _____
Name:
Title:

[1] Set forth, to at least 9 decimals, as a percentage of the Commitment / Credit Exposure of all Banks thereunder.

[Consented to and][3] Accepted:
[NAME OF ADMINISTRATIVE AGENT],
as Administrative Agent

By: _____
Name:
Title:

[Consented to:][4]

[NAME OF ISSUING BANK], as Issuing Bank

By _____
Title:

[Consented to:][5]

[NAME OF RELEVANT PARTY]

By _____
Title:

---

2 To be added only if the consent of the Administrative Agent is required by the terms of the Facility Agreement.

3 To be added only if the consent of the Issuing Bank is required by the terms of the Facility Agreement.

4 To be added only if the consent of the Company [and/or other Applicants] is required by the terms of the Facility Agreement.

Letter of Credit Facility Agreement dated as of April 12, 2010 among SunPower Corporation, the Subsidiary Guarantors, the Subsidiary Applicants parties thereto from time to time, the Banks parties thereto from time to time, and Deutsche Bank AG New York Branch, as Issuing Bank and as Administrative Agent

STANDARD TERMS AND CONDITIONS FOR
ASSIGNMENT AND ASSUMPTION

1. Representations and Warranties.

1.1 Assignor. The Assignor (a) represents and warrants that (i) it is the legal and beneficial owner of the Assigned Interest, (ii) the Assigned Interest is free and clear of any lien, encumbrance or other adverse claim, and (iii) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby; and (b) assumes no responsibility with respect to (i) any statements, warranties or representations made in or in connection with the Facility Agreement or any other Loan Document, (ii) the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Loan Documents or an y collateral thereunder, (iii) the financial condition of the Company, any of its Subsidiaries or Affiliates or any other Person obligated in respect of any Loan Document, or (iv) the performance or observance by the Company, any of its Subsidiaries or Affiliates or any other Person of any of their respective obligations under any Loan Document.

1.2. Assignee. The Assignee (a) represents and warrants that (i) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby and to become a Bank under the Facility Agreement, (ii) it satisfies the requirements, if any, specified in the Facility Agreement that are required to be satisfied by it in order to acquire the Assigned Interest and become a Bank, (iii) from and after the Effective Date specified in this Assignment and Assumption, it shall be bound by the provisions of the Facility Agreement as a Bank thereunder and, to the extent of the Assigned Interest, shall have the oblig ations of a Bank thereunder, (iv) it has received a copy of the Facility Agreement, together with copies of the most recent financial statements delivered pursuant to **Section 4.06 or 5.01** thereof, as applicable, and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into this Assignment and Assumption and to purchase the Assigned Interest on the basis of which it has made such analysis and decision independently and without reliance on the Administrative Agent or any other Bank, and (v) if it is a Bank organized under the laws of a jurisdiction outside of the United States, attached to the Assignment and Assumption is any documentation required to be delivered by it pursuant to the terms of the Facility Agreement, duly completed and executed by the Assignee; and (b) agrees that (i) it will, independently and without reliance on the Administrative Agent, the Assignor or any other Bank, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Loan Documents, and (ii) it will perform in accordance with their terms all of the obligations which by the terms of the Loan Documents are required to be performed by it as a Bank.

2. Payments. From and after the Effective Date, the Administrative Agent shall make all payments in respect of the Assigned Interest (including payments of principal, interest, fees and other amounts) to the Assignor for amounts which have accrued to but excluding the Effective Date and to the Assignee for amounts which have accrued from and after the Effective Date.

3. General Provisions. This Assignment and Assumption shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns. This Assignment and Assumption may be executed in any number of counterparts, which together shall constitute one instrument. Delivery of an executed counterpart of a signature page of this Assignment and Assumption by electronic transmission shall be effective as delivery of a manually executed counterpart of this Assignment and Assumption. This Assignment and Assumption shall be governed by, and construed in accordance with, the law of the State of New York [confirm that choice of law provision parallels the Facility Agreement].

* * * * *

EXHIBIT B

[FORM OF]
LOC REQUEST

Date:_____

Deutsche Bank AG New York Branch,
as Issuing Bank
60 Wall Street
New York, NY 10005
Attention: Mr. Everardus Rozing
Telecopy No.: 212-797-0403

Ladies and Gentlemen:

Reference is hereby made to the Letter of Credit Facility Agreement dated as of April 12, 2010 (as the same may be amended, supplemented, or otherwise modified from time to time, the "Agreement") by and among SunPower Corporation, a Delaware corporation (the "Company"), the Subsidiary Guarantors, the Subsidiary Applicants parties thereto from time to time, the Banks parties thereto from time to time, and Deutsche Bank AG New York Branch, as Issuing Bank and as Administrative Agent. All capitalized terms used herein without definition shall have the meanings given to such terms in the Agreement.

Pursuant to Section 2.02(a) of the Agreement, the Applicant hereby requests the Issuing Bank to issue the following LOC:

(a)	Date of LOC issuance, which is a Business Day:	_____, 20__
(b)	Expiration Date of LOC:	_____, 20__
(c)	Type of Currency (*Dollars or an Alternate Currency*):	_____
(d)	Available Amount of LOC:	$_____
(e)	Name and Address of Beneficiary:	_____ _____ _____
(f)	Other Information:	Per the attached Application.

[SIGNATURE PAGE FOLLOWS]

Very truly yours,

[SUNPOWER CORPORATION, a Delaware corporation / NAME OF SUBSIDIARY APPLICANT]

By: _____

Name:
Title:

CC: Deutsche Bank AG New York Branch,
as Administrative Agent
225 Franklin Street, 24th Floor
Boston, MA 02110
Attention: Mr. David Dickinson
Telecopy No.: 617-217-6300

Deutsche Bank

Letter of Credit number: _____

APPLICATION FOR IRREVOCABLE STANDBY LETTER OF CREDIT
UNDER LETTER OF CREDIT FACILITY AGREEMENT

Applicant *(Full name and address)*:	Issuing Bank: Deutsche Bank AG New York Branch 60 Wall Street New York, New York 10005
Date of Application:	**Expiry Date:** **Place of Expiry:**
o Issue by (air) mail o with brief advice by teletransmission o Issue by teletransmission o Issue by courier o Applicant to arrange pick-up o Issue by other (specify): **Name and Jurisdiction of Organization of any Subsidiary Account Party for this LOC (or specify "None"):**	**Beneficiary** *(Full name and address)*:
Confirmation of the LOC: o not requested o requested o authorized if requested by Beneficiary	**Currency and Amount in Figures and Words** *(Please use ISO Currency Codes)*:

LOC available against the document(s) detailed herein:
o Beneficiary's sight draft(s) drawn on Issuing Bank

o Original LOC and any and all amendments to the LOC

o Beneficiary's signed and dated statement, reading as follows:

o Other documents (specify issuer(s) and data content):

LOC to be issued subject to (check one):
o International Standby Practices 1998, International Chamber of Commerce Publication No. 590 (ISP98), or such later revision thereof as may be in effect when the Credit is issued.
o Uniform Customs and Practice for Documentary Credits, 2007 Revision, International Chamber of Commerce Publication No. 600 (UCP 600), or such later revision thereof as may be in effect when the Credit is issued.

o See attached for additional instructions	o Check if only a single drawing for all or a portion of the amount of the letter of credit is permitted

The undersigned requests you to issue your irrevocable Letter of Credit (herein called the "LOC"), substantially in accordance with these instructions (marked (x) where appropriate). The undersigned agrees to be bound in respect of the LOC by the terms and conditions of the Letter of Credit Facility Agreement dated as of April 12, 2010 among SunPower Corporation, the Subsidiary Guarantors, the Subsidiary Applicants parties thereto from time to time, the Banks parties thereto from time to time, and Deutsche Bank AG New York Branch, as Issuing Bank and as Administrative Agent (as amended, supplemented, or otherwise modified from time to time, the "Agreement"). All capitalized terms used herein without definition shall have the meanings given to such terms in the Agreement. The undersigned represents and warrants to the Secured Parties that (i) no Event of Default or other event that with notice or lapse of time or both would constitute such an Event of Default has occurred and is continuing or would result from the issuance of the requested LOC and (ii) all representations and warranties contained in the Agreement are true and correct in all material respects as of the date hereof and shall be true and correct in all material respects immediately after issuance of the requested LOC.

Applicant's Name:

By: _____
Print Name:
Title:

THIS IS AN IMPORTANT LEGAL DOCUMENT. CONSULT WITH YOUR LEGAL COUNSEL.

EXHIBIT C

[FORM OF]
OPINION OF COUNSEL TO THE CREDIT PARTIES

April 12, 2010

To the Banks, the Issuing Bank and the Administrative Agent
Referred to Below
c/o Deutsche Bank AG New York Branch, as Administrative Agent
225 Franklin Street, 24th Floor
Boston, Massachusetts 02110
Attention: David Dickinson

Re: SunPower Corporation Letter of Credit Facility Agreement

Ladies/Gentlemen:

We have acted as special New York counsel to SunPower Corporation, a Delaware corporation (the "Company"), SunPower North America, LLC, a Delaware limited liability company and a wholly owned subsidiary of the Company ("SunPower North America"), and SunPower Corporation, Systems, a Delaware corporation and a wholly owned subsidiary of the Company ("SunPower Systems" and, together with SunPower North America, the "Subsidiary Guarantors"), in connection with the Letter of Credit Facility Agreement, dated as of April 12, 2010 (the " Letter of Credit Agreement"), among the Company, the Subsidiary Guarantors, the Subsidiary Applicants (as defined in the Letter of Credit Agreement) party thereto from time to time, the financial institutions listed on the signature pages thereof (the "Banks") and Deutsche Bank AG New York Branch, as issuing bank (in such capacity, the "Issuing Bank"), and as administrative agent for the Banks (in such capacity, the "Administrative Agent") under the Letter of Credit Agreement, the Mandate Letter, the Security Agreement, the Cash Collateral Agreement, and any other Collateral Documents (each of the foregoing as defined herein). The Company and the Subsidiary Guarantors are sometimes referred to herein individually as a "Transaction Party" and collectively as the "Transaction Parties." The Uniform Commercial Code, as amended and in effect in the State of Delaware on the date hereof, is referred to herein as the "Del. UCC." The Article 9 Collateral (as defined below) in which a Transaction Party has rights is referred to herein as the "Delaware Article 9 Collateral."

This opinion letter is delivered to you at the request of the Transaction Parties and pursuant to Section 3.01(e) of the Letter of Credit Agreement. Capitalized terms used herein and not otherwise defined herein have the meanings assigned to such terms in the Letter of Credit Agreement. With your permission, all assumptions and statements of reliance herein have been made without any independent investigation or verification on our part except to the extent, if any, otherwise expressly stated, and we express no opinion with respect to the subject matter or accuracy of the assumptions or items upon which we have relied.

In connection with the opinions expressed herein, we have examined such documents, records and matters of law as we have deemed necessary for the purposes of such opinions. We have examined, among other documents, the following:

(1) an executed copy of the Letter of Credit Agreement;

(2) an executed copy of the Mandate Letter, dated as of March 17, 2010 (the "Mandate Letter"), among the Company, the Administrative Agent and Deutsche Bank Securities Inc.;

(3) an executed copy of the Security Agreement, dated as of April 12, 2010 (the "Security Agreement"), among each Transaction Party and the Administrative Agent;

(4) an executed copy of the Cash Collateral Account, Security, Pledge and Assignment Agreement and Control Agreement, dated as of April 12, 2010 (the "Cash Collateral Agreement"), among the Company, the Administrative Agent, and Deutsche Bank Trust Company Americas, as depository bank and securities intermediary (the "Intermediary");

(5) the Officer's Certificate of each Transaction Party delivered to us in connection with this opinion letter, a copy of each of which is attached hereto as Exhibits A-1 through A-3 (as to each such Transaction Party, the "Officer's Certificate" and, collectively, the "Officer's Certificates");

(6) unfiled copies of financing statements naming each Transaction Party as debtor and the Administrative Agent as secured party (the "Delaware Financing Statements"), a copy of each of which is attached hereto as Exhibits B-1 through B-3, which Delaware Financing Statements we understand will be filed in the office of the Secretary of State of the State of Delaware (such office, the "Delaware Filing Office");

(7) a copy of the Certificate of Incorporation of the Company certified by the Secretary of State of the State of Delaware on April 5, 2010 and certified to us by an officer of the Company as being complete and correct and in full force and effect as of the date hereof, a copy of the Certificate of Formation of SunPower North America certified by the Secretary of State of the State of Delaware on April 5, 2010 and certified to us by an officer of SunPower North America as being complete and correct and in full force and effect as of the date hereof, and a copy of the Certificate of Incorporation of SunPower Systems certified by the Secretary of State of the State of Delaware on April 5, 2010 and certified to us by an officer of SunPower Systems as being complete and correct and in full force and effect as of the date hereof; and

(8) a copy of certificates, dated April 5, 2010, of the Secretary of State of the State of Delaware as to the existence and good standing of the Company, SunPower North America and SunPower Systems in the State of Delaware as of such date.

The documents referred to in items (1) through (4) above, inclusive, are referred to herein collectively as the "Documents" and the documents referred to in items (3) and (4) above are referred to herein collectively as the "Collateral Documents." Each of the organizational documents described in item (7) above is referred to herein as a "Certified Organizational Document" and each of the good standing certificates described in item (8) above is referred to herein as a "Good Standing Certificate." In addition, as used herein "security interest" means "security interest" (as defined in Section 1-201(37) of the NY UCC).

In all such examinations, we have assumed the legal capacity of all natural persons executing documents, the genuineness of all signatures, the authenticity of original and certified documents and the conformity to original or certified copies of all copies submitted to us as conformed or reproduction copies. As to various questions of fact relevant to the opinions expressed herein, we have relied upon, and assume the accuracy of, representations and warranties contained in the Documents and certificates and oral or written statements and other information of or from representatives of the Transaction Parties and others and assume compliance on the part of the Transaction Parties with their covenants and agreements contained therein. In connection with the opinions expressed in the first sentence of paragraph (a) be low, we have relied solely upon the Good Standing Certificates as to the factual matters and legal conclusions set forth therein. With respect to the opinions expressed in clause (i) in paragraph (a) below and clauses (ii) and (iv)(A) of paragraph (b) below, our opinions are limited (x) to our actual knowledge, if any, of the specially regulated business activities and properties of the Transaction Parties based solely upon an officer's certificate in respect of such matters and without any independent investigation or verification on our part and (y) to only those laws and regulations that, in our experience, are normally applicable to transactions of the type contemplated by the Documents.

Based upon the foregoing, and subject to the limitations, qualifications and assumptions set forth herein, we are of the opinion that:

(a) Each Transaction Party is duly formed and existing in good standing under the laws of the State of Delaware. Each Transaction Party has the corporate or limited liability company power and authority, as applicable, (i) to conduct its business substantially as described in the Officer's Certificate of such Transaction Party and (ii) to enter into and to incur and perform its obligations under the Documents to which it is a party.

(b) The execution and delivery to the Administrative Agent by each Transaction Party of the Documents to which it is a party and the performance by such Transaction Party of its obligations thereunder, and the granting by each Transaction Party of the security interests provided for in the Collateral Documents, (i) have been authorized by all necessary corporate or limited liability company action, as applicable, by such Transaction Party, (ii) do not require under present law, or present regulation of any governmental agency or authority, of the State of New York or the United States of America any filing or registration by such Transaction Party with, or approval or consent to such Transaction Party of, any governmental

agency or authority of the State of New York or the United States of America that has not been made or obtained except those required in the ordinary course of business in connection with the performance by such Transaction Party of its obligations under certain covenants contained in the Documents to which it is a party and to perfect security interests, if any, granted by such Transaction Party thereunder pursuant to securities and other laws that may be applicable to the disposition of any collateral subject thereto and filings, registrations, consents or approvals in each case not required to be made or obtained by the date hereof, (iii) do not contravene any provision of the Certificate of Incorporation, By-laws, Certificate of Formation or Limited Liability Company Agreement, as applicable, of such Transaction Party and (iv) do not v iolate (A) any present law, or present regulation of any governmental agency or authority, of the State of New York or the United States of America applicable to such Transaction Party or its property or (B) any agreement binding upon such Transaction Party or its property that is listed on Annex I to the Officer's Certificate thereof (this opinion being limited in that we express no opinion with respect to any violation not readily ascertainable from the face of any such agreement, or arising under or based upon any cross default provision insofar as it relates to a default under an agreement not so identified to us, or arising under or based upon any covenant of a financial or numerical nature or requiring computation) and (v) will not result in or require the creation or imposition of any security interest or lien upon any of its properties pursuant to the provisions of any agreement binding upon such Transaction Party or its properties that is listed on Annex I to the Officer's Certificate thereof other than any security interests or liens created by the Documents and any other security interests or liens in favor of the Administrative Agent arising under any of the Documents or applicable law.

(c) Each Document has been duly executed and delivered on behalf of each Transaction Party signatory thereto and constitutes a valid and binding obligation of such Transaction Party, enforceable against such Transaction Party in accordance with its terms.

(d) The borrowings by the Company or any Applicant (as defined in the Letter of Credit Agreement) under the Letter of Credit Agreement and the application of the proceeds thereof as provided in the Letter of Credit Agreement will not violate Regulation T, U or X of the Board of Governors of the Federal Reserve System.

(e) The Company is not required to register as an “investment company” (under, and as defined in, the Investment Company Act of 1940, as amended.

(f) The Security Agreement creates in favor of the Administrative Agent for the benefit of the Banks, as security for the Obligations (as defined in the Security Agreement), a security interest in the Company’s, SunPower North America’s and SunPower Systems’s rights in the Collateral (as defined in the Security Agreement) to which Article 9 of the NY UCC is applicable (the “Article 9 Collateral”).

(g) Upon the effective filing of the Delaware Financing Statements with the Delaware Filing Office, the Administrative Agent will have, for the benefit of the Banks, a perfected

security interest in that portion of the Delaware Article 9 Collateral in which a security interest may be perfected by filing an initial financing statement with the Delaware Filing Office under the Del. UCC (the "Delaware Filing Collateral").

(h) The Security Agreement, together with physical delivery of that portion of the Article 9 Collateral consisting of "instruments" (as defined in the NY UCC) to the Administrative Agent, creates in favor of the Administrative Agent, for the benefit of the Banks, as security for the Obligations (as defined in the Security Agreement), a perfected security interest under the NY UCC in the Company's, SunPower North America's and SunPower Systems' rights in such instruments while such instruments are located in the State of New York and in the possession of the Secured Party.

(i) The Security Agreement and the Cash Collateral Agreement together create in favor of the Administrative Agent, as security for the Obligations (as defined in the Security Agreement) a perfected security interest in the Company's rights in the Collateral Account (as defined in the Cash Collateral Agreement).

The opinions set forth above are subject to the following qualifications and limitations:

(A) Our opinions in paragraph (c) above are subject to (i) applicable bankruptcy, insolvency, reorganization, fraudulent transfer and conveyance, voidable preference, moratorium, receivership, conservatorship, arrangement or similar laws, and related regulations and judicial doctrines, from time to time in effect affecting creditors' rights and remedies generally, (ii) general principles of equity (including, without limitation, standards of materiality, good faith, fair dealing and reasonableness, equitable defenses, the exercise of judicial discretion and limits on the availability of equitable remedies), whether such principles are considered in a proceeding at law or in equity, and (iii) the qualification that certain other provisio ns of the Documents may be unenforceable in whole or in part under the laws (including judicial decisions) of the State of New York or the United States of America, but the inclusion of such provisions does not affect the validity as against the Transaction Parties party thereto of the Documents as a whole and the Documents contain adequate provisions for enforcing payment of the obligations governed thereby and otherwise for the practical realization of the principal benefits provided by the Documents, in each case subject to the other qualifications contained in this letter.

(B) We express no opinion as to the enforceability of any provision in the Documents:

(i) providing that any person or entity may sell or otherwise dispose of, or purchase, any collateral subject thereto, or enforce any other right or remedy thereunder (including without limitation any self-help or taking-possession remedy), except in compliance with the NY UCC and other applicable laws;

(ii) establishing standards for the performance of the obligations of good faith, diligence, reasonableness and care prescribed by the NY UCC or of any of the rights or duties referred to in Section 9-603 of the NY UCC;

(iii) relating to indemnification, contribution or exculpation in connection with violations of any securities laws or statutory duties or public policy, or in connection with willful, reckless or unlawful acts or gross negligence of the indemnified or exculpated party or the party receiving contribution;

(iv) providing that any person or entity may exercise set-off rights other than with notice and otherwise in accordance with and pursuant to applicable law;

(v) relating to choice of governing law to the extent that the enforceability of any such provision is to be determined by any court other than a court of the State of New York or may be subject to constitutional limitations;

(vi) waiving any rights to trial by jury;

(vii) purporting to confer, or constituting an agreement with respect to, subject matter jurisdiction of United States federal courts to adjudicate any matter;

(viii) purporting to create a trust or other fiduciary relationship;

(ix) specifying that provisions thereof may be waived only in writing, to the extent that an oral agreement or an implied agreement by trade practice or course of conduct has been created that modifies any provision of such Documents;

(x) giving any person or entity the power to accelerate obligations or to foreclose upon collateral without any notice to the obligor;

(xi) providing for the performance by any guarantor of any of the nonmonetary obligations of any person or entity not controlled by such guarantor;

(xii) granting or purporting to create a power of attorney, and we express no opinion as to the effectiveness of any power of attorney granted or purported to be created under any Document;

(xiii) providing for restraints on alienation of property and purporting to render transfers of such property void and of no effect or prohibiting or restricting the assignment or transfer of property or rights to the extent that any such prohibition or restriction is ineffective pursuant to Sections 9-406 through 9-409 of the NY UCC; or

(xiv) providing for liquidated damages, make-whole or other prepayment premiums or similar payments, default interest rates, late charges or other economic

remedies to the extent a court were to determine that any such economic remedy is not reasonable and therefore constitutes a penalty.

(C) Our opinions as to enforceability are subject to the effect of generally applicable rules of law that:

(i) provide that forum selection clauses in contracts are not necessarily binding on the court(s) in the forum selected; and

(ii) may, where less than all of a contract may be unenforceable, limit the enforceability of the balance of the contract to circumstances in which the unenforceable portion is not an essential part of the agreed exchange, or that permit a court to reserve to itself a decision as to whether any provision of any agreement is severable.

(D) We express no opinion as to the enforceability of any purported waiver, release, variation, disclaimer, consent or other agreement to similar effect (all of the foregoing, collectively, a "Waiver") by any Transaction Party under any of the Documents to the extent limited by Sections 1-102(3), 9-602 or 9-624 of the NY UCC or other provisions of applicable law (including judicial decisions), or to the extent that such a Waiver applies to a right, claim, duty or defense or a ground for, or a circumstance that would operate as, a discharge or release otherwise existing or occurring as a matter of law (including judicial decisions), except to the extent that such a Waiver is effective under and is not prohibited by or void or in valid under Section 9-602 or 9-624 of the NY UCC or other provisions of applicable law (including judicial decisions).

(E) Our opinions in paragraphs (f), (g), (h), and (i) are subject to the following assumptions, qualifications and limitations:

(i) Any security interest in the proceeds of collateral is subject in all respects to the limitations set forth in Section 9-315 of the NY UCC.

(ii) We express no opinion as to the nature or extent of the rights, or the power to transfer rights, of any Transaction Party in, or title of any Transaction Party to, any collateral under any of the Documents, or property purporting to constitute such collateral, or the value, validity or effectiveness for any purpose of any such collateral or purported collateral, and we have assumed that each Transaction Party has sufficient rights in, or power to transfer rights in, all such collateral or purported collateral for the security interests provided for under the Documents to attach.

(iii) We express no opinion as to the priority of any pledge, security interest, assignment for security, lien or other encumbrance, as the case may be, that may be created or purported to be created under the Documents. Other than as expressly noted in paragraphs (g), (h), and (i) above, we express no opinion as to the perfection of, and other than as expressly noted in paragraphs (f), (h), and (i) above, we express no opinion as to

the creation, validity or enforceability of, any pledge, security interest, assignment for security, lien or other encumbrance, as the case may be, that may be created or purported to be created under the Documents.

(iv) In the case of property that becomes collateral under the Documents after the date hereof, Section 552 of the United States Bankruptcy Code limits the extent to which property acquired by a debtor after the commencement of a case under the United States Bankruptcy Code may be subject to a lien arising from a security agreement entered into by the debtor before the commencement of such case.

(v) We express no opinion as to the enforceability of the security interests under the Documents in any item of collateral subject to any restriction on or prohibition against transfer contained in or otherwise applicable to such item of collateral or any contract, agreement, license, permit, security, instrument or document constituting, evidencing or relating to such item, except to the extent that any such restriction is rendered ineffective pursuant to any of Section 9-401 or Sections 9-406 through 9-409, inclusive, of the NY UCC.

(vi) We call to your attention that Article 9 of the Del. UCC requires the filing of continuation statements within the period of six months prior to the expiration of five years from the date of original filing of financing statements under the Del. UCC in order to maintain the effectiveness of such financing statements and that additional financing statements may be required to be filed to maintain the perfection of security interests if the debtor granting such security interests makes certain changes to its name, or changes its location (including through a change in its jurisdiction of organization) or the location of certain types of collateral, all as provided in the Del. UCC.

(vii) We call to your attention that an obligor (as defined in the NY UCC) other than a debtor may have rights under Part 6 of Article 9 of the NY UCC.

(viii) With respect to our opinions above as to the perfection of a security interest in the Article 9 Collateral through the filing of a financing statement, we express no opinion with respect to the perfection of any such security interest in any Article 9 Collateral constituting timber to be cut, as extracted collateral, cooperative interests, or property described in Section 9-311(a) of the Del. UCC (including, without limitation, property subject to a certificate-of-title statute), and we express no opinion with respect to the effectiveness of any financing statement filed or purported to be filed as a fixture filing.

(ix) We express no opinion as to the effectiveness of Section 2 of the Security Agreement for purposes of Sections 9-108 and 9-203 of the NY UCC regarding the description of the Article 9 Collateral.

(x) We have assumed that each Transaction Party is organized solely under the laws of the state identified as such Transaction Party's jurisdiction of organization in the Certified Organizational Document of and Good Standing Certificate for such Transaction Party.

(xi) We assume the "instruments" described in our opinion in paragraph (h) above constitute "instruments" and not "securities" under the NY UCC.

(F) The opinions set forth in paragraph (i) above are subject to the following additional assumptions, qualifications and limitations:

(i) We call to your attention that under the NY UCC actions taken by the Intermediary or the Administrative Agent (including amending any agreement relating to the Collateral Account in a manner that either (1) eliminates or changes the basis for the Administrative Agent 's "control" over the Collateral Account, (2) changes the identity of the Intermediary's customer with respect to the Collateral Account or (3) changes the law governing the Collateral Account) may adversely affect the security interest of the Administrative Agent, and we express no opinion as to the effect of any of the foregoing on the opinions expressed herein.

(ii) We have assumed that the Collateral Account has been established and will be maintained in the manner set forth herein and in the Cash Collateral Agreement (including, without limitation, as to the identity of the Intermediary's customer) and is and will remain a "securities account" within the meaning of the NY UCC.

(G) For purposes of our opinions in paragraphs (a) and (b) above insofar as they relate to the Company, SunPower North America and SunPower Systems, we have assumed that the Company's, SunPower North America's and SunPower Systems' obligations under the Documents are, and would be deemed by a court of competent jurisdiction to be, necessary or convenient to the conduct, promotion or attainment of the Company's, SunPower North America's and SunPower Systems' business.

(H) To the extent it may be relevant to the opinions expressed herein, we have assumed that the parties to the Documents (other than the Transaction Parties) have the power to enter into and perform such documents and to consummate the transactions contemplated thereby and that such documents have been duly authorized, executed and delivered by, and constitute legal, valid and binding obligations of, such parties.

(I) For purposes of the opinions set forth in paragraph (d) above, we have assumed that (i) neither the Administrative Agent nor any of the Banks has or will have the benefit of any agreement or arrangement (excluding the Documents) pursuant to which any extensions of credit to any Transaction Party are directly or indirectly secured by "margin stock" (as defined under the Margin Regulations), (ii) neither the Administrative Agent nor any of the Banks nor any of their respective affiliates has extended or will extend any other credit to any Transaction

Party directly or indirectly secured by margin stock, and (iii) neither the Administrative Agent nor any of the Banks has relied or will rely upon any margin stock as collateral in extending or maintaining any extensions of credit pursuant to the Letter of Credit Agreement, as to which we express no opinion.

(J) We express no opinion as to the application of, and our opinions above are subject to the effect, if any, of, any applicable fraudulent conveyance, fraudulent transfer, fraudulent obligation or preferential transfer law.

(K) The opinions expressed herein are limited to (i) the federal laws of the United States of America and the laws of the State of New York and, (ii) to the extent relevant to the opinions expressed in paragraphs (a) and (b) above, the General Corporation Law and the Limited Liability Company Act of the State of Delaware and (iii) to the extent relevant to the opinion expressed in paragraph (g) above, the Del. UCC, in each case as currently in effect. Our opinions in paragraphs (f) and (i) above are limited to Article 9 of the NY UCC, and therefore those opinion paragraphs do not address (i) laws of jurisdictions other than New York, and laws of New York except for Articles 8 and 9 of the NY UCC, and (ii) collateral of a type not subject to Article 9 of the NY UCC, and (iii) under the choice of law rules of the NY UCC with respect to the law governing perfection and priority of security interests, what law governs perfection and/or priority of the security interests granted in the collateral covered by this opinion letter.

Our opinions as to any matters governed by the Del. UCC are based solely upon our review of the Del. UCC as published in Delaware Code Annotated Title 6 § 9-101 *et seq.*, without any review or consideration of any decisions or opinions of courts or other adjudicative bodies or governmental authorities of the State of Delaware, whether or not reported or summarized in the foregoing publication.

(L) Our opinions are limited to those expressly set forth herein, and we express no opinions by implication. This opinion letter speaks only as of the date hereof and we have no responsibility or obligation to update this opinion letter, to consider its applicability or correctness to any person or entity other than its addressee(s), or to take into account changes in law, facts or any other developments of which we may later become aware.

(M) The opinions expressed herein are solely for the benefit of the addressees hereof and of any other person or entity becoming a Bank, an Issuing Bank, or Administrative Agent under the Letter of Credit Agreement, in each case above, and your assignees referred to below in connection with the transaction referred to herein and may not be relied on by such addressees or such other persons or entities for any other purpose or in any manner or for any purpose by any other person or entity. At your request, we hereby consent to reliance hereon by any future assignee of your interest in the LOCs under the Letter of Credit Agreement pursuant to an assignment that is made and consented to in accordance with the express provisions of Section 9.07 of the Letter of Credit Agreement, on the condition and un derstanding that (i) this opinion letter speaks only as of the date hereof, (ii) we have no responsibility or obligation to update this opinion letter, to consider its applicability or correctness to any person or entity other than its addressee(s), or to take into account changes in law, facts or any other developments of which we may later become aware and (iii) any such reliance by a future assignee must be actual and reasonable under the circumstances existing at the time of assignment, including any changes in law, facts or any other developments known to or reasonably knowable by the assignee at such time.

Very truly yours,

JONES DAY

SUNPOWER CORPORATION

OFFICER'S CERTIFICATE

Exhibit A-1

SUNPOWER NORTH AMERICA, LLC

OFFICER'S CERTIFICATE

Exhibit A-2

SUNPOWER CORPORATION, SYSTEMS

OFFICER'S CERTIFICATE

Exhibit A-3

COPIES OF DELAWARE FINANCING STATEMENTS

Exhibit B

EXHIBIT D

[FORM OF]
ADHERENCE AGREEMENT

ADHERENCE AGREEMENT (this "Agreement") dated as of _____ among _____, a _____, which is a new Subsidiary Applicant (the "New Subsidiary Applicant"), SunPower Corporation, a Delaware corporation, the direct or indirect parent of the New Subsidiary Applicant (the "Company"), and the Administrative Agent, the Issuing Bank, and the other Banks party to the Facility Agreement referred to below.

Reference is made to the Letter of Credit Facility Agreement dated as of April 12, 2010 among the Company, the Subsidiary Guarantors, the Subsidiary Applicants parties thereto from time to time, the Banks party thereto from time to time, and Deutsche Bank AG New York Branch, as Issuing Bank and as Administrative Agent (as amended, supplemented, or otherwise modified from time to time, the "Facility Agreement"). Unless the context requires otherwise, terms used herein as defined terms and not otherwise defined herein shall have the meanings given thereto in the Facility Agreement.

Section 2.16 of the Facility Agreement provides that, subject to the satisfaction of certain conditions, the undersigned New Subsidiary Applicant may become a party to, and a "Subsidiary Applicant" under, the Facility Agreement by entering into an agreement in the form of this Agreement.

Accordingly, and for other good and lawful consideration the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. In accordance with Section 2.16 of the Facility Agreement, the New Subsidiary Applicant by its signature below becomes a "Subsidiary Applicant" under the Facility Agreement with the same force and effect as if originally named therein as a Subsidiary Applicant. The New Subsidiary Applicant hereby (a) agrees to all of the terms and provisions of the Facility Agreement applicable to it as a Subsidiary Applicant thereunder and (b) represents and warrants that it satisfies all of the requirements under the Facility Agreement for becoming a Subsidiary Applicant and that the representations and warranties relating to it contained in the Facility Agreement are true and correct in all material respects on and as of the date hereof (except to the extent such representa tions and warranties expressly relate to an earlier date, in which case such representations and warranties were true and correct in all material respects as of such earlier date). The Facility Agreement is hereby incorporated herein by reference.

2. Hereinafter, each reference to the "Subsidiary Applicants" in the Facility Agreement shall be deemed to include the New Subsidiary Applicant until such time as the Company executes and delivers to the Administrative Agent a notice of termination in substantially the form of **Annex A** hereto or such other form acceptable to the Administrative Agent (a "Notice of Termination"), whereupon the New Subsidiary Applicant shall cease to be a Subsidiary Applicant. Notwithstanding the preceding sentence, no such Notice of Termination will become effective at a time when any Obligations of the New Subsidiary Applicant shall be outstanding thereunder or a ny LOC issued at the request of the New Subsidiary Applicant shall be outstanding (which shall not have been cash collateralized in a manner satisfactory to the Administrative Agent and the Issuing Bank in their sole discretion); provided that such Notice of Termination shall be effective to terminate the New Subsidiary Applicant's right to request LOCs under the Facility Agreement.

3. Each of the New Subsidiary Applicant and the Company represents and warrants to the Administrative Agent, the Issuing Bank, and the other Banks that this Agreement has been duly authorized, executed and delivered by it and constitutes its legal, valid and binding obligation,

enforceable against it in accordance with its terms, subject to the effects of bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and other similar laws relating to or affecting creditors' rights generally.

4. Each of the New Subsidiary Applicant and the Company represents and warrants that no Default or Event of Default has occurred and is continuing immediately after giving effect to the execution and delivery of this Agreement.

5. This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which, when taken together, shall constitute but one agreement. This Agreement shall become effective when the Administrative Agent shall have received counterparts of this Agreement that bear the signatures of the New Subsidiary Applicant, the Company, the Administrative Agent, the Issuing Bank, and the other Banks. Delivery of an executed counterpart of a signature page of this Agreement by electronic transmission shall be effective as delivery of a manually executed counterpart of this Agreement.

6. Each of the New Subsidiary Applicant and the Company agrees to furnish to the Administrative Agent such information as the Administrative Agent, the Issuing Bank, or any other Bank shall reasonably request in connection with the New Subsidiary Applicant or the Company.

7. Except as expressly supplemented hereby, the Facility Agreement shall remain in full force and effect.

8. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

9. If any one or more of the provisions contained in this Agreement should be held invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein and in any other Loan Document shall not in any way be affected or impaired.

10. All communications and notices hereunder shall be in writing and given as provided in Section 9.02 of the Facility Agreement. All communications and notices hereunder to the New Subsidiary Applicant shall be given to it at the address set forth under its signature hereto.

11. Neither this Agreement nor any provision hereof may be waived, amended, or modified except as provided in Section 9.01 of the Facility Agreement.

12. The New Subsidiary Applicant agrees to reimburse the Administrative Agent and the Issuing Bank for their reasonable expenses incurred in connection with this Agreement, including the reasonable fees, disbursements, and other charges of counsel.

[SIGNATURE PAGE FOLLOWS]

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

Address:

_____

_____

_____

_____

[NEW SUBSIDIARY APPLICANT]

By: _____
Name:
Title:

SUNPOWER CORPORATION

By: _____
Name:
Title:

DEUTSCHE BANK AG NEW YORK BRANCH, individually, as Administrative Agent, and as Issuing Bank

By: _____
Name:
Title:

By: _____
Name:
Title:

[OTHER BANKS]

By: _____
Name:
Title:

[FORM OF]

NOTICE OF TERMINATION

Reference is made to (a) the Letter of Credit Facility Agreement dated as of April 12, 2010 among SunPower Corporation (the "Company"), the Subsidiary Guarantors, the Subsidiary Applicants parties thereto from time to time, the Banks party thereto from time to time, and Deutsche Bank AG New York Branch, as Issuing Bank and as Administrative Agent, and the other parties thereto from time to time (as amended, supplemented, or otherwise modified from time to time, the "Facility Agreement") and (b) the Adherence Agreement dated as of [_____] among [_____, a _____] (the "Terminating Subsidiary Applicant"), the Company, the Administrativ e Agent, the Issuing Bank, and the other Banks, (as amended, supplemented, or otherwise modified from time to time, the "Adherence Agreement"). Unless the context requires otherwise, terms used herein as defined terms and not otherwise defined herein shall have the meanings given thereto in the Facility Agreement.

The Company hereby notifies the Administrative Agent that the Terminating Subsidiary Applicant shall no longer be a "Subsidiary Applicant", or otherwise have the right to request LOCs, under the Facility Agreement.

The Company acknowledges and agrees that this Notice of Termination will not become effective until such time as all Obligations of the New Subsidiary Applicant shall have been paid in full in cash and all LOCs issued at the request of the New Subsidiary Applicant shall have expired without any pending drawing or terminated or shall have been cash collateralized in a manner satisfactory to the Administrative Agent and the Issuing Bank in their sole discretion; provided that this Notice of Termination shall be effective as of the date hereof to terminate the New Subsidiary Applicant's right to request LOCs under the Facility Agreement.

[COMPANY]

By: _____

Name:
Title:

EXHIBIT E

[FORM OF]

CASH COLLATERAL AGREEMENT

[separately filed with the Securities and Exchange Commission]

EXHIBIT F

[FORM OF]
COMMITMENT INCREASE REQUEST

Date:_____

Deutsche Bank AG New York Branch,
as Administrative Agent
225 Franklin Street, 24th Floor
Boston, MA 02110
Attention: Mr. David Dickinson
Telecopy No.: 617-217-6300

Ladies and Gentlemen:

Reference is hereby made to the Letter of Credit Facility Agreement dated as of April 12, 2010 (as the same may be amended, supplemented, or otherwise modified from time to time, the "Agreement") by and among SunPower Corporation, a Delaware corporation (the "Company"), the Subsidiary Guarantors, the Subsidiary Applicants parties thereto from time to time, the Banks parties thereto from time to time, and Deutsche Bank AG New York Branch, as Issuing Bank and as Administrative Agent. All capitalized terms used herein without definition shall have the meanings given to such terms in the Agreement.

The Company hereby requests the following increase of the aggregate Commitment Amounts pursuant to Section 2.04(b) of the Agreement:

(a)	Aggregate Commitment Amounts prior to this Notice:	$_____
(b)	Amount of Requested Increase *(must be a multiple of $1,000,000 and not less than $25,000,000)*	$_____
(c)	Aggregate Commitment Amounts after Requested Increase: *(must not exceed $400,000,000)*	$_____

As of the date hereof, the Applicants satisfy all of the conditions under the Credit Agreement for such an increase in the aggregate Commitment Amounts.

[SIGNATURE PAGE FOLLOWS]

Very truly yours,

SUNPOWER CORPORATION, a Delaware corporation

By: _____
Name:
Title:

CC: Deutsche Bank Trust Company Americas
60 Wall Street, 9th Floor, Room 0938
New York, NY 10005
Attention: Mr. Everardus Rozing
Telecopy No.: 212-797-0403

EXHIBIT G

[FORM OF]
SECURITY AGREEMENT

[separately filed with the Securities and Exchange Commission]

EXHIBIT H

[FORM OF]
ISSUING BANK JOINDER AGREEMENT

ISSUING BANK JOINDER AGREEMENT, dated as of _____, 20__ (as it may be amended, supplemented or otherwise modified from time to time, this "Agreement"), among SUNPOWER CORPORATION, a Delaware corporation (the "Company"), DEUTSCHE BANK AG NEW YORK BRANCH, as Administrative Agent (in such capacity, the "Administrative Agent"), and [_____], as an additional Issuing Bank (the "Additional Issuing Bank").

Reference is made to the Letter of Credit Facility Agreement dated as of April 12, 2010 among the Company, the Subsidiary Guarantors, the Subsidiary Applicants parties thereto from time to time, the Banks parties thereto from time to time, and Deutsche Bank AG New York Branch, as Issuing Bank and as Administrative Agent (as it may be amended, supplemented or otherwise modified from time to time, the "Facility Agreement"). Unless the context requires otherwise, terms used herein as defined terms and not otherwise defined herein shall have the meanings given thereto in the Facility Agreement.

Pursuant to Section 2.13(f) of the Facility Agreement, the Company desires to designate the Additional Issuing Bank as an "Issuing Bank" under the Facility Agreement.

Accordingly, and for other good and lawful consideration the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. In accordance with Section 2.13(f) of the Facility Agreement, the Additional Issuing Bank, the Company, and the Administrative Agent hereby agree that, from and after the date hereof, the Additional Issuing Bank shall be an "Issuing Bank" under the Facility Agreement.

2. The Additional Issuing Bank (a) represents and warrants to the Company and the Administrative Agent that (i) it has full power and authority to execute and deliver this Agreement and that this Agreement has been duly authorized, executed and delivered by it and constitutes a valid and legally binding agreement, enforceable in accordance with its terms, and (ii) there is no provision of law, statute, regulation, rule, order, injunction, decree, writ or judgment, no provision of its organizational documents and no provision of any mortgage, indenture, contract or agreement binding on it or affecting its properties, which would prohibit, conflict with or in any way prevent its execution, delivery, or performance of the terms of this Agreement; (b) confirms that it has received a copy of the Facility Agr eement and the other Loan Documents and such other documents and information as it has deemed appropriate to make its own decision to enter into this Agreement and become a party to the Facility Agreement; and (c) agrees that it will be bound by the provisions of, and will perform in accordance with their terms all of the obligations which by the terms of the Facility Agreement or any other Loan Document are required to be performed by it as an Issuing Bank.

3. The Company represents and warrants to the Administrative Agent that (a) it has full power and authority to execute and deliver this Agreement and that this Agreement has been duly authorized, executed and delivered by it and constitutes a valid and legally binding agreement, enforceable in accordance with its terms, and (b) there is no provision of law, statute, regulation, rule, order, injunction, decree, writ or judgment, no provision of its organizational documents and no provision of any mortgage, indenture, contract or agreement binding on it or affecting its properties, which would prohibit, conflict with or in any way prevent its execution, delivery, or performance of the terms of this Agreement.

4. The Company represents and warrants that no Default or Event of Default has occurred and is continuing immediately after giving effect to the execution and delivery of this Agreement.

5. This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which, when taken together, shall constitute but one agreement. This Agreement shall become effective when the Administrative Agent shall have received counterparts of this Agreement that bear the signatures of the Additional Issuing Bank, the Company, and the Administrative Agent. Delivery of an executed counterpart of a signature page of this Agreement by electronic transmission shall be effective as delivery of a manually executed counterpart of this Agreement.

6. Each of the Additional Issuing Bank and the Company agrees to furnish to the Administrative Agent such information as the Administrative Agent shall reasonably request in connection with the Additional Issuing Bank or the Company.

7. Except as expressly supplemented hereby, the Facility Agreement shall remain in full force and effect.

8. **THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK**.

9. If any one or more of the provisions contained in this Agreement should be held invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein and in any other Loan Document shall not in any way be affected or impaired.

10. All communications and notices hereunder shall be in writing and given as provided in Section 9.02 of the Facility Agreement. All communications and notices hereunder to the Additional Issuing Bank shall be given to it at the address set forth under its signature hereto.

11. Neither this Agreement nor any provision hereof may be waived, amended, or modified except as provided in Section 9.01 of the Facility Agreement.

12. The Company agrees to reimburse the Administrative Agent for its reasonable expenses incurred in connection with this Agreement, including the reasonable fees, disbursements, and other charges of counsel.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, each of the undersigned has duly executed and delivered this Issuing Bank Joinder Agreement as of _____, 20__.

Address:

[NEW ADDITIONAL ISSUING BANK]

By: _____
Name:
Title:

SUNPOWER CORPORATION

By: _____
Name:
Title:

DEUTSCHE BANK AG NEW YORK BRANCH, as Administrative Agent

By: _____
Name:
Title:

By: _____
Name:
Title:

SECURITY AGREEMENT

SECURITY AGREEMENT, dated as of April 12, 2010 (as it may be amended, supplemented or otherwise modified from time to time, this "Agreement"), is made by and among SunPower Corporation, a Delaware corporation, SunPower North America, LLC, a Delaware limited liability company, and SunPower Corporation, Systems, a Delaware corporation (collectively, the "Debtors", and each, a "Debtor"), each having its chief executive office at 3939 North First Street, San Jose, California 95134, in favor of Deutsche Bank AG New York Branch, as agent (in such capacity, and together with its successors in such capacity, the "Administrative Agent") for the benefit of the Secured Parties (as defined in the Facility Agreement referred to below).

R E C I T A L S:

A. The Debtors, the Subsidiary Applicants (as defined in the Facility Agreement) parties thereto from time to time, the Banks (as defined in the Facility Agreement) parties thereto from time to time, and the Administrative Agent, have entered into the Letter of Credit Facility Agreement, dated as of April 12, 2010 (as the same may be amended, supplemented or otherwise modified from time to time, the "Facility Agreement"). Subject to the terms and conditions of the Facility Agreement, the Secured Parties have agreed to provide a letter of credit facility to the Debtors.

B. The Secured Parties are willing to provide a letter of credit facility to the Debtors, but only upon the conditions, among others, that the Debtors shall have executed and delivered to the Administrative Agent, for the benefit of the Secured Parties, this Agreement and shall have granted to the Administrative Agent, for the benefit of the Secured Parties, a security interest in the Collateral to secure the Obligations as herein provided, and the Debtors have agreed to do so.

NOW, THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. Defined Terms. Unless the context otherwise requires, capitalized terms used in this Agreement without definition shall have the respective meanings provided therefor in the Facility Agreement. Furthermore, capitalized terms used herein that are not defined in this Agreement or in the Facility Agreement shall have the respective meanings provided therefor in the New York UCC. The rules of construction specified in Section 1.03 of the Facility Agreement shall also apply to this Agreement. The following terms shall have the following meanings:

"Collateral" shall mean, with respect to any Debtor, all (a) Accounts and Inventory of such Debtor and (b) Contract Rights, Supporting Obligations, General Intangibles, and Records to the extent relating to or supporting such Accounts or Inventory of such Debtor or any Proceeds or products of either thereof, now owned or at any time hereafter acquired by such Debtor or in which such Debtor now has or at any time in the future may acquire any right, title or interest, in each case wheresoever located, and, to the extent not otherwise included, all

Proceeds and products of any of the foregoing; provided, however, that receivables in respect of rebates from U.S. Governmental Authorities sold pursuant to the Tech Credit Agreement, shall not constitute "Collateral".

"Contract Rights" shall mean, with respect to any Debtor, all rights of such Debtor under contracts and agreements (including those giving rise to an Account) to which such Debtor is a party or by which it or its assets are bound ("Contracts"), as the same may be amended, supplemented, extended or replaced, including (a) all rights of such Debtor to receive money or other property thereunder or in connection therewith, (b) all rights to damages for default or other violation, and (c) all rights to make waivers, releases, modifications, and amendments thereto and to exercise remedies thereunder.

"General Intangible" shall have the meaning provided therefor in the New York UCC and shall include all Payment Intangibles.

"New York UCC" shall mean the Uniform Commercial Code in effect in the State of New York on the date hereof.

"Obligations" means, with respect to any Debtor, all obligations, liabilities, and Indebtedness of every nature of such Debtor from time to time owing to the Administrative Agent or any Bank, under or in connection with the Facility Agreement or any other Loan Document, in each case whether primary, secondary, direct, indirect, contingent (including the undrawn amount of each LOC), fixed or otherwise, including the obligation to provide cash collateral pursuant to any Loan Document and including interest accruing at the rate provided in the applicable Loan Document on or after the commencement of any bankruptcy or insolvency proceeding, whether or not allowed or allowable.

"UCC" shall mean the Uniform Commercial Code as in effect from time to time in any applicable jurisdiction.

2. Grant of Security Interest. As collateral security for the prompt and complete payment and performance when due of all of its present and future Obligations, each Debtor hereby grants, assigns, conveys, mortgages, pledges, hypothecates and transfers to the Administrative Agent, for the benefit of the Secured Parties, a continuing lien on, and first priority perfected security interest in, all of such Debtor's right, title and interest in, to and under the Collateral.

3. Rights of the Administrative Agent; Limitations on the Administrative Agent's Obligations.

(a) Anything herein to the contrary notwithstanding, each Debtor shall remain liable under each Contract to observe and perform all the conditions and obligations to be observed and performed by it thereunder, all in accordance with and pursuant to the terms and provisions of each such Contract. The Administrative Agent shall not have any obligation or liability under any Contract by reason of or arising out of this Agreement or the receipt by the Administrative Agent of any payment relating to any Account pursuant hereto, nor shall the Administrative Agent be required or obligated in any manner to perform or fulfill any of the obligations of any of the Debtors under or pursuant to any Contract, or to make any payment, or

to make any inquiry as to the nature or the sufficiency of any payment received by it or the sufficiency of any performance by any party to any Contract, or to present or file any claim, or to take any action to collect or enforce any performance or the payment of any amounts which may have been assigned to it or to which it may be entitled at any time or times. If the Administrative Agent shall elect, in its sole discretion, to perform or fulfill any obligations of any of the Debtors under any Contract, then the Debtors shall not be released from and shall remain fully liable with respect to each such Contract.

(b) At the Administrative Agent's request, each Debtor shall deliver to the Administrative Agent all original and other documents evidencing and relating to the performance of labor or services which created the Accounts, including all original orders, invoices and shipping receipts and duplicate copies of credit memoranda.

(c) The Administrative Agent may, at any time after the occurrence and during the continuance of an Event of Default, after first notifying the applicable Debtors of its intention to do so, notify account debtors and parties to Contracts that the Accounts and General Intangibles have been assigned to the Administrative Agent and that payments shall be made directly to a designated special account or directly to the Administrative Agent. Upon the request of the Administrative Agent at any time after the occurrence and during the continuation of an Event of Default, each Debtor will so notify such account debtors and such parties. The Administrative Agent may at any time in its own name communicate with account debtors and parties to Contracts in order to verify with them to the Administrative A gent's satisfaction the existence, amount and terms of any Accounts or General Intangibles.

(d) The Administrative Agent shall have the right, upon reasonable notice to the Debtors, to make or cause the Debtors to make, and the Debtors shall make, in the name of the Debtors and to an address controlled by the Administrative Agent, test verifications of the Collateral in any reasonable manner and through any reasonable medium that the Administrative Agent considers advisable, and the Debtors agree to furnish all such assistance and information as the Administrative Agent may reasonably require. Any out-of-pocket costs and expenses incurred by the Administrative Agent or any Secured Party in connection with any such test verification shall be borne by the Debtors. The Debtors, at their own expense, will furnish, or will cause independent public accountants satisfactory to the Administr ative Agent to furnish, to the Administrative Agent, at any time and from time to time at reasonable intervals, promptly upon request, the following reports: (i) reconciliation of all Collateral, (ii) aging of all Collateral, (iii) trial balances, and (iv) test verifications of such Collateral as the Administrative Agent may request.

4. Representations, Warranties and Covenants – General. Each Debtor hereby represents and warrants to and covenants and agrees with the Administrative Agent, from and after the date of this Agreement and until all of its Obligations are indefeasibly satisfied in full in cash, that:

(a) Good Title, Etc. Except for the security interest granted to the Administrative Agent pursuant to this Agreement, such Debtor is the sole owner of each item of Collateral in which it purports to grant a security interest hereunder, having good title thereto, free and clear of any and all Liens or rights of others, except Permitted Encumbrances. No

amounts payable under or in connection with any of the Accounts are evidenced by promissory notes, letters of credit or other instruments which are required to be delivered to the Administrative Agent in accordance with Section 5(b) hereof and have not been so delivered. All Accounts of such Debtor have been originated by such Debtor and all Inventory of such Debtor has been acquired by such Debtor in the ordinary course of its business.

(b) No Other Lien. Except as disclosed in the Facility Agreement, no security agreement, control agreement, financing statement, initial financing statement, continuation statement, bailee acknowledgment agreement or equivalent security or lien instrument covering all or any part of the Collateral exists or is on file or of record in any public office or will hereafter be created or filed or recorded in any public office, except in favor of the Administrative Agent as secured party under the Loan Documents. Such Debtor has not previously granted a security interest in any of its property or assets of the types constituting Collateral hereunder to any Person, except as set forth on Schedule A hereto, and will not hereafter grant a security interest in any of its property or assets of the types constituting Collateral, except in favor of the Administrative Agent as secured party under the Loan Documents.

(c) Perfection. This Agreement creates a valid and continuing lien on, and security interest in, all of the Collateral. Upon appropriate financing statements having been filed in the offices listed on Schedule B hereto, this Agreement creates a duly perfected, valid and continuing lien on and security interest in all of the Collateral with respect to which a security interest may be perfected solely by filing pursuant to the UCC in favor of the Administrative Agent, prior to all other Liens and rights of others, and is enforceable as such as against creditors of and, subject to the provisions of Section 9-320 of the UCC in effect in any applicable jurisdiction or an y similar law generally affecting the rights of creditors and buyers of goods in the ordinary course of business, purchasers from such Debtor and as against any owner, lessor or mortgagee of real property where any of the Inventory is located and any purchaser of such real property. All action necessary or desirable to protect and perfect such security interest under the UCC in such Collateral has been duly taken, it being understood that the Debtors are not being required to make any filings or recordings to perfect any security interests in the U.S. Copyright Office or the Patent and Trademark Office or with respect to any vehicles or other equipment subject to any jurisdiction's certificate of title laws.

(d) Name(s) of the Debtors; Chief Executive Office, Etc. The exact full legal name of such Debtor as it appears in its certificate of incorporation or certificate of formation, as applicable, is as set forth in the preamble hereto. Except as set forth on Schedule C hereto, such Debtor has had no other name since its organization, and such Debtor has not changed its identity or corporate or limited liability company structure (including by way of any merger, consolidation, acquisition or any change in the form, nature or jurisdiction of organization). Except as set forth on Schedule C hereto, neither such Debtor nor any of its divisions or business units has used any other names (including trade names, assumed names, or similar appellations) at any time during the past five (5) years. The federal tax identification number and any organizational identification number assigned by the state of incorporation or organization of such Debtor is as set forth on Schedule C hereto. The principal place of business and chief executive office of such Debtor, and the only place where such Debtor's records concerning the Accounts and General Intangibles are kept, is, and has been at all times during the prior four (4)

months, as set forth on Schedule D hereto. Such Debtor will not change such chief executive office or remove such records, except, in each case, to a location within the continental United States of America, provided that such Debtor shall have given at least thirty (30) days' prior written notice to the Administrative Agent thereof and shall have taken such action, at such Debtor's expense, as the Administrative Agent may deem necessary or desirable under the UCC to maintain the security interest of the Administrative Agent in the Collateral at all times fully perfected and in full force and effect. Such Debtor will not change its name, identity or structure in any manner which might make any financing statement filed in favor of the Administrative Agent as secured party misleading or otherwise ineffective unles s such Debtor shall have given the Administrative Agent at least thirty (30) days' prior written notice thereof and shall have taken such action, at such Debtor's expense, as the Administrative Agent may deem necessary or desirable to maintain the security interest of the Administrative Agent in the Collateral at all times fully perfected and in full force and effect. The Debtors will not reincorporate or reorganize itself under the laws of any jurisdiction other than the jurisdiction in which it is incorporated or organized as of the date hereof as set forth on Schedule D hereto unless such Debtor provides written notice to the Administrative Agent at least thirty (30) days prior to such reincorporation or reorganization and delivers to the Administrative Agent appropriate lien searches and financing statements in that new jurisdiction sufficient to confirm to the Administrative Agent's reasonable satisfaction its continuing security interest in the Collateral as to which a security interest may be perfected by the filing of a financing statement; provided, that the foregoing shall not be deemed to permit any action otherwise prohibited by the Facility Agreement.

(e) Further Documentation. At any time and from time to time, upon the written request of the Administrative Agent, and at the sole cost and expense of such Debtor, such Debtor will promptly and duly execute, acknowledge and/or deliver any and all such further agreements, applications, certificates, documents and other papers and take such further actions as may be necessary or as the Administrative Agent may reasonably deem necessary in obtaining the full benefits of this Agreement and of the rights and powers herein granted, including, the filing of any financing statement or any initial financing statement or continuation statements under the UCC in effect in any United States jurisdiction with respect to the liens and securit y interests granted hereby. Such Debtor will furnish to the Administrative Agent from time to time statements and schedules further identifying and describing the Collateral and such other reports in connection with the Collateral as the Administrative Agent may reasonably request, all in reasonable detail. Such Debtor also hereby irrevocably authorizes the Administrative Agent, at any time and from time to time, to file in any filing office in any UCC jurisdiction, any initial financing statements and amendments thereto, and any such financing statement or amendment may (i) indicate the Collateral (A) as being of an equal or lesser scope or with greater detail or (B) in substantially the form of Schedule E, and (ii) provide any other information required by Part 5 of Article 9 of the UCC, for the sufficiency or filing office acceptance of any financing statement or amendment, including, whether such Debtor is an organizat ion, the type of organization and any organizational identification number issued to such Debtor. Such Debtor agrees to furnish any such information to the Administrative Agent promptly upon the Administrative Agent's request. Such Debtor also ratifies its authorization for the Administrative Agent to have filed in any UCC jurisdiction any like initial financing statements or amendments thereto if filed prior to the date hereof.

(f) Maintenance of Records. Such Debtor will keep and maintain at its own cost and expense satisfactory and complete records of the Collateral, including a record of any payments received or credits granted with respect to the Collateral and all other dealings with the Collateral. Such Debtor will mark its books and records pertaining to the Collateral to evidence this Agreement and the security interests granted hereby. For the Administrative Agent's further security, each Debtor agrees that the Administrative Agent shall have a special property interest in all of the Debtor's Records pertaining to the Collateral and each Debtor shall, on demand of the Administrative Agent, deliver and turn over copies of any su ch Records to the Administrative Agent or to its representatives at any time after the occurrence and during the continuance of an Event of Default.

(g) Compliance with Laws, Etc. Such Debtor is in compliance with all statutes, rules, regulations, orders, decrees and lawful directions of any Governmental Authority applicable to the Collateral or any part thereof or to the operation of such Debtor's business (including, the Fair Labor Standards Act of 1938, as amended (29 U.S.C. § 201 *et seq*. and all rules and regulations promulgated thereunder), except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect; provided, however , that such Debtor may contest any statute, rule, regulation, order, decree or direction in any reasonable manner which shall not, in the opinion of the Administrative Agent, adversely affect the Administrative Agent's rights or the priority of its security interest in the Collateral if such Debtor shall maintain on its books and records proper reserves with respect thereto in accordance with GAAP. To the best of its knowledge, such Debtor is not currently the subject of any investigation by any Governmental Authority.

(h) Payment of Obligations. Such Debtor will pay promptly, when due, all taxes, assessments and governmental charges or levies in accordance with the Facility Agreement.

(i) Limitation on Liens on and Dispositions of Collateral. Such Debtor will not sell, transfer, license, lease or otherwise dispose of any portion of the Collateral, or attempt, offer or contract to do so, except in the ordinary course of business or as permitted by the Facility Agreement (including, but not limited to, sales of receivables pursuant to the Tech Credit Agreement).

(j) Maintenance of Insurance. Such Debtor will maintain with financially sound and reputable companies, insurance policies (i) insuring its Inventory against loss by fire, explosion, theft and such other casualties as are usually insured against by companies engaged in the same or similar businesses and (ii) insuring such Debtor and the Administrative Agent, for the benefit of the Secured Parties, against liability for personal injury and property damage, such policies to be in such form and in such amounts and coverages as may be satisfactory to the Administrative Agent, with losses payable to the Administrative Agent as loss payee under standard non-contributory "mortgagee", "lender" or "secured party" clauses. Such Debtor shall deliver to the Administrative Agent, as often as the Administrative Agent may reasonably request, a report of a reputable insurance agent with respect to the insurance. All insurance shall (A) in the case of property insurance, contain a breach of warranty clause in favor of the Administrative Agent, and (B) be satisfactory in all respects to the Administrative Agent. Such Debtor will provide to the Secured Parties at least thirty (30) days prior written notice of any

cancellation or non-renewal of (together with a description of any actual or proposed replacement policy(ies)), or material adverse change to, any insurance policy described in this paragraph. So long as no Default has occurred and is continuing or would occur after giving effect thereto, any cash proceeds of the insurance described in clause (i) of this paragraph received by the Administrative Agent as a result of any casualty to any Inventory shall, at the option of such Debtor, either be applied by the Administrative Agent to the obligations of such Debtor or be remitted to such Debtor for the purpose of replacing the Inventory involved, and such Debtor shall apply such proceeds solely for such purpose.

(k) Notices. Such Debtor will promptly advise the Administrative Agent, in writing and in reasonable detail, (i) of any Lien asserted by notice to such Debtor or adverse claim made against any of the Collateral, (ii) of any material change in the composition of the Collateral, and (iii) of the occurrence of any other event which might have a material adverse effect on the aggregate value, enforceability or collectibility of the Collateral or on the security interests created hereunder.

(l) Right of Inspection. The Administrative Agent and each Secured Party shall at all times have inspection rights in accordance with the Facility Agreement.

(m) Information True. All information with respect to the Collateral set forth in any schedule, certificate or other writing at any time heretofore or hereafter furnished by such Debtor to the Administrative Agent or any Secured Party, and all other written information heretofore or hereafter furnished by such Debtor to the Administrative Agent or any Secured Party, is and will be true and correct in all material respects as of the date furnished.

5. Representations, Warranties and Covenants – Particular Collateral. Each Debtor hereby represents and warrants to and covenants and agrees with the Administrative Agent, without prejudice to the provisions of Section 4 of this Agreement, from and after the date of this Agreement and until the Obligations are indefeasibly satisfied in full in cash, that:

(a) Accounts. The amount represented by such Debtor to the Administrative Agent or any Secured Party from time to time as owing by each account debtor or by all of its account debtors in respect of the Accounts of such Debtor will at such time be substantially the correct amount actually and unconditionally owing by such account debtors thereunder. Each Account is a bona fide, valid and legally enforceable obligation of the parties thereto to the account debtor in respect thereof. The right, title and interest of such Debtor in any Account is not subject to any material defense, offset, counterclaim or claim, nor have any of the foregoing been asserted or alleged against any Debtor or any Account.

(b) Certain Inventory. If any Inventory of the Debtors shall at any time be in the possession or control of any warehouseman or other bailee, such person shall authenticate a record acknowledging that it holds possession of such Inventory for the benefit of the Administrative Agent as secured party, and agreeing to act on the Administrative Agent's instructions without the further consent of the Debtors. The Debtors agree to promptly deliver to the Administrative Agent all Documents covering any Inventory of the Debtors. If any such Document is not in bearer form it shall be endorsed to the order of the Administrative Agent before it is delivered to the Administrative Agent.

(c) Inventory. None of the Inventory is, or has during the prior four (4) months been, located at any place other than the locations specified in Schedule F hereto. Such Debtor will not permit or suffer any of the Inventory to be located at any place other than the locations specified in such Schedule F (except for items of Inventory in transit in the ordinary course of business of such Debtor and items of Inventory sent out on approval in the ordinary course of business of such Debtor) unless such place is within the continental United States of America, the Administrative Agent shall have received si xty (60) days' prior written notice thereof and such Debtor shall have taken such actions, at such Debtor's expense, as the Administrative Agent may deem necessary or desirable to maintain its security interest in such Inventory at all times following such change of location fully perfected, first priority and in full force and effect.

(d) Limitations on Modifications of Contracts, No Waivers, Extensions. Such Debtor will not, without the written consent of the Administrative Agent, (i) except in the ordinary course of business, amend, modify, terminate or waive any provision of any Contract in any manner which might materially adversely affect the value of the Account related thereto as Collateral, or (ii) except in the ordinary course of business, fail to exercise promptly and diligently each and every material right which it may have under each Contract. After the occurrence and during the continuance of an Event of Default, such Debtor will not, without the Administrative Agent's prior written consent or in the ordinary course of business, (i) grant any ext ension of the time of payment of any of the Accounts, (ii) compromise, compound or settle the same for less than the full amount thereof, (iii) release, wholly or partly, any Person liable for the payment thereof, (iv) allow any credit or discount whatsoever thereon other than trade discounts granted in the normal course of business, or (v) fail to deliver promptly to the Administrative Agent a copy of each material demand, notice or document received by it relating in any way to any Account or Contract in respect thereof.

6. The Administrative Agent's Appointment as Attorney-In-Fact.

(a) Each Debtor hereby irrevocably constitutes and appoints the Administrative Agent and any officer or agent (including a receiver) thereof, with full power of substitution, as its true and lawful attorney-in-fact with full irrevocable power and authority in the place and stead of such Debtor and in the name of such Debtor or in its own name, for the purpose of carrying out the terms of this Agreement, to take any and all appropriate action and to execute any and all documents and instruments which may be necessary or desirable to accomplish the purposes of this Agreement and, without limiting the generality of the foregoing, hereby gives the Administrative Agent the power and right, on behalf of such Debtor, without notice to or assent by such Debtor, to do the following:

(i) to pay or discharge taxes or Liens levied or placed on or threatened against the Collateral, to effect any repairs or any insurance called for by the terms of this Agreement and to pay all or any part of the premiums therefor and the costs thereof;

(ii) to ask, demand, collect, receive and give acquittances and receipts for any and all monies due and to become due under or arising out of any Account or General Intangible and, in the name of such Debtor or its own name or otherwise, to take possession of and endorse and collect any checks, drafts, notes, acceptances or other documents

or instruments for the payment of monies due under or arising out of any Account or General Intangible and to file any claim or to take any other action or proceed in any court of law or equity or otherwise as deemed appropriate by the Administrative Agent for the purpose of collecting any and all such monies due under or arising out of any Account or General Intangible whenever payable;

(iii) (A) to direct any party liable for any payment under or arising out of any Account or General Intangible to make payment of any and all monies due and to become due thereunder directly to the Administrative Agent or as the Administrative Agent shall direct, (B) to receive, open and dispose of all mail addressed to such Debtor and to notify postal authorities or delivery services to change the address for delivery thereof to such address as may be designated by the Administrative Agent, and (C) to receive payment of and receipt for any and all monies, claims and other amounts due and to become due at any time in respect of or arising out of any Collateral;

(iv) (A) to sign and endorse any invoices, freight or express bills, bills of lading, storage or warehouse receipts, drafts against debtors, assignments, verifications and notices in connection with accounts and other documents relating to the Collateral, (B) to commence and prosecute any suits, actions or proceedings at law or in equity in any court of competent jurisdiction to collect the Collateral or any part thereof and to enforce any other right in respect of any Collateral, (C) to defend any suit, action or proceeding brought against such Debtor with respect to any Collateral, (D) to settle, compromise or adjust any suit, action or proceeding described above and, in connection therewith, to give such discharges or releases as the Administrative Agent may deem appropriate, and (E) generally to do, at the Administr ative Agent's option and such Debtor's cost and expense, at any time or from time to time, all acts and things which the Administrative Agent deems necessary to protect, preserve or realize upon the Collateral and the Administrative Agent's security interest therein, in order to effect the intent of this Agreement, all as fully and effectively as such Debtor might do; and

(v) to execute, acknowledge, deliver and record or file all documents or instruments which may be necessary or desirable to preserve and perfect the Administrative Agent's security interest in any Collateral including any financing statement or amendment to or continuation thereof, and any amendment to the Schedules attached hereto.

Such Debtor hereby ratifies all that said attorneys shall lawfully do or cause to be done by virtue hereof. This power of attorney is a power coupled with an interest and shall be irrevocable.

(b) The powers conferred on the Administrative Agent hereunder are solely to protect its interests in the Collateral and shall not impose any duty upon it to exercise any such powers. The Administrative Agent shall be accountable only for amounts that it actually receives as a result of the exercise of such powers, and neither it nor any of its officers, directors, employees or agents shall be responsible to any Debtor for any act or failure to act.

(c) Each Debtor also authorizes the Administrative Agent, at any time and from time to time, to execute, in connection with any sale or sales provided for in Section 8(b) of this Agreement, any endorsements, assignments or other instruments of conveyance or transfer with respect to the Collateral.

7. Performance by the Administrative Agent of the Debtors' Obligations. If any Debtor fails to perform or comply with any of its agreements contained herein and the Administrative Agent, as provided for by the terms of this Agreement, shall itself perform or comply, or otherwise cause performance or compliance, with such agreement, or if the Administrative Agent shall take action pursuant to Section 6 of this Agreement, the costs and expenses of the Administrative Agent incurred in connection therewith, together with interest thereon at the applicable interest rate provided for in the Facility Agreement, shall be payable by such Debtor to the Administrative Agent on demand and shall constitut e Obligations of such Debtor secured hereby.

8. Certain Remedies; Rights Upon Default.

(a) If an Event of Default shall occur and be continuing, upon the request of the Administrative Agent, each Debtor shall deposit with the Administrative Agent, promptly when collected, all Proceeds, whether consisting of checks, notes, drafts, bills of exchange, money orders or other items, received in payment of any Collateral or on account of any Contract and in precisely the form received, except for such Debtor's endorsement when required, in a special bank account maintained by the Administrative Agent, subject to withdrawal only by the Administrative Agent as hereinafter provided, and until so turned over, such Proceeds shall be deemed to be held in trust by such Debtor for and as the Administrative Agent's property and shall not be commingled with such Debtor's other funds. Such Proceeds, when de posited, shall continue to be collateral security for all of the Obligations and shall not constitute payment thereof until applied as hereinafter provided. In no event shall any checks, drafts or other items which are deposited into such special account pursuant hereto constitute final payment unless and until such items have been collected. Any and all such Proceeds so received by the Administrative Agent (whether from such Debtor or otherwise) shall be applied in whole or in part by the Administrative Agent against all or any part of such Debtor's Obligations, in such order as the Administrative Agent may in its sole discretion elect. Any balance of such Proceeds held by the Administrative Agent and remaining after payment in full of all of such Obligations shall be paid over to whomsoever may be lawfully entitled to receive the same.

(b) If an Event of Default shall occur and be continuing, then, in addition to all other remedies granted to it in this Agreement or in any other instrument or agreement securing, evidencing or relating to the Obligations, the Administrative Agent may exercise all rights and remedies of a secured party under the UCC and under any other applicable law. Without limiting the generality of the foregoing, each Debtor expressly agrees that in any such event the Administrative Agent, without demand of performance or other demand, advertisement or notice of any kind (except the notice specified below of the time and place of a public sale or the time after a private sale) to or upon such Debtor or any other Person (all and each of which demands, advertisements and/or notices are hereby expressly waived to the fu llest extent permitted by applicable law), may forthwith collect, receive, appropriate and realize upon the Collateral, or any part thereof, and/or may forthwith sell, lease, assign, give option or options to purchase or sell or otherwise dispose of and deliver such Collateral (or contract to do so), or any part thereof, in one or more parcels at public or private sale or sales, at any exchange or broker's board or at any of the Administrative Agent's offices or elsewhere at such prices as it may deem best, for cash or on credit or for future delivery without assumption of any credit risk. The

Administrative Agent or any Secured Party shall have the right upon any such public sale or sales and, to the extent permitted by law, upon any such private sale or sales to purchase the whole or any part of such Collateral so sold, free of any right or equity of redemption in the Debtors which right or equity of redemption is hereby waived and released to the maximum extent permitted by applicable law. In connection with any sale or other disposition of all or any part of the Collateral, the Administrative Agent may comply with any applicable state or federal law requirements and/or disclaim warranties of title, possession, quiet enjoyment or the like without affecting the commercial reasonableness of such sale or other disposition. Each Debtor further agrees, at the Administrative Agent's request, to assemble the Collateral and to make it available to the Administrative Agent at such places as the Administrative Agent sh all reasonably select, whether at such Debtor's premises or elsewhere. The Administrative Agent shall apply the net proceeds of any such collection, recovery, receipt, appropriation, realization or sale, after deducting all costs and expenses of every kind incurred in connection with the foregoing or incidental to the care, safekeeping or otherwise of any or all of the Collateral or in any way relating to the rights of the Administrative Agent hereunder, including reasonable attorneys' fees and legal expenses, to the payment in whole or in part of the applicable Debtor's Obligations, in such order as the Administrative Agent may in its sole discretion elect, the Debtors remaining liable for any deficiency remaining unpaid after such application, and only after so applying such net proceeds and after the payment by the Administrative Agent of any other amount required by any provision of law, including Section 9-615(a)(3) of the UCC, need the Administrative Agent account for the surplus, if any, to the applicable Debtor. To the extent permitted by applicable law, each Debtor waives all claims, damages and demands against the Administrative Agent and the Secured Party arising out of the repossession, retention or sale of the Collateral and neither the Administrative Agent nor any Secured Party shall under any circumstances be liable for any punitive, consequential, or other special damages. The Administrative Agent shall have, with respect to the Collateral, in addition to any other rights and remedies that may be available to it at law or in equity or pursuant to this Agreement or any other Loan Document or any other contract or agreement, all rights and remedies of a secured party under any applicable law, and it is expressly agreed that if the Administrative Agent should proceed to dispose of or utilize the Collateral, or any part thereof, in accordance with the provisions of said law, ten (10) days' prior written notice by the Administrative Agent to the applicable Debtor shal l be deemed to be reasonable notice under any such provision requiring such notice (provided that no prior notice shall be required for Collateral that threatens to decline rapidly in value or that is of a type customarily sold on a recognized market).

(c) Each Debtor also agrees to pay all costs and expenses of the Administrative Agent and the Secured Parties, including attorneys' fees and disbursements, incurred with respect to the collection of any of the Obligations and the enforcement of any of its rights hereunder.

(d) Except as otherwise specifically provided herein, each Debtor hereby waives presentment, demand, protest or any notice (to the extent permitted by applicable law) of any kind in connection with this Agreement or any Collateral.

(e) The Administrative Agent shall not be required to marshal any present or future collateral security (including but not limited to the Collateral) for, or other assurances of payment of, the Obligations or any of them or to resort to such collateral security or other

assurances of payment in any particular order, and all of its rights and remedies hereunder and in respect of such collateral security and other assurances of payment shall be cumulative and in addition to all other rights and remedies, however existing or arising. To the extent that it lawfully may, each Debtor hereby agrees that it will not invoke any law relating to the marshalling of collateral which might cause delay in or impede the enforcement of the Administrative Agent's rights and remedies under this Agreement or under any other instrument creating or evidencing any of the Obligations or under which any of the Obligations is outstanding or by which any of the Obligations is secured or payment thereof is otherwise assured, and, to the extent that it lawfully may, such Debtor hereby irrevocably waives the benefits of all such laws.

9. Limitation on the Administrative Agent's Duty in Respect of Collateral. Beyond the safe custody thereof, the Administrative Agent shall have no duty as to any Collateral in its possession or control or in the possession or control of any agent or nominee of it or any income thereon or as to the preservation of rights against prior parties or any other rights pertaining thereto. Each Debtor shall indemnify, reimburse and save and hold harmless the Administrative Agent and the Secured Parties and their respective officers, directors, shareholders, agents, successors and assigns from and against any and all claims, demands, causes of action, suits or judgments, whether or not the A dministrative Agent or any Secured Party is named as a party, and any and all costs and expenses in connection with any thereof (including fees and expenses of legal counsel), for or on account of injury to or death of any person (including employees and agents of the Debtor), loss of or damage to property (including the Collateral) and any other liability which may result from or arise in any manner out of this Agreement or the ownership, control, management, use or operation of the Collateral, including any breach by any Debtor of any representation, warranty, covenant or agreement contained herein or any act done by the Administrative Agent or any Secured Party in reliance upon any of the foregoing or in connection with any such action or proceeding relating to any Collateral, except where any such liability arises solely out of or as the result of the actual possession or control of the relevant Collateral by the Administrative Agent or its agents or assigns and except where any such liability arises out of the Administrative Agent's willful misconduct or gross negligence. The indemnity contained in this Section 9 shall continue in full force and effect notwithstanding the full payment of the Obligations.

10. Security Interest Absolute. The pledges and security interest created hereby shall be absolute and unconditional irrespective of (a) any lack of validity or enforceability of the Facility Agreement, any other Loan Document, any agreement with respect to any of the Obligations or any other agreement or instrument relating to any of the foregoing, (b) any change in the time, manner or place of payment of, or in any other term of, all or any of the Obligations, or any other amendment or waiver of or any consent to any department from the Facility Agreement, any other Loan Document or any other agreement or instrument, (c) any exchange, release or non-perfection of any Lien on other collateral, or any release or amendment or waiver of or consent under or departure from any guarantee, securing or guaranteeing all or any of the Obligations, or (d) any other circumstance (other than termination of the security interest as provided in Section 11) that might otherwise constitute a defense available to, or a discharge of, any Debtor or guarantor in respect of the Obligations or this Agreement.

11. Continuing Security Interest. This Agreement shall create a continuing security interest in the Collateral and shall remain in full force and effect notwithstanding that from time to time no Obligations may be outstanding. This Agreement shall terminate upon the later to occur of all of the following: (a) the express written termination of the Facility Agreement in accordance with its terms (accompanied by a release of any claims asserted by any party entitled to indemnification thereunder), (b) the termination or expiration without any pending drawing of each LOC, and (c) the final payment or satisfaction in full in cash of the Obligations.

12. No Offset. No offset or claim that any Debtor now has or may have in the future against the Administrative Agent or any Secured Party shall relieve such Debtor from paying any amounts due hereunder or from performing any other obligations contained herein.

13. Notices. All notices, demands, requests and other communications provided for or permitted under this Agreement shall be in writing and sent to the parties hereto in accordance with the provisions of Section 9.02 of the Facility Agreement.

14. Severability. Any provision of this Agreement held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions hereof; and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction.

15. No Waiver; Cumulative Remedies. No failure on the part of any Secured Party or the Administrative Agent to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedies provided by law.

16. Successors and Assigns. This Agreement and all obligations of the Debtors hereunder shall be binding upon the successors and assigns of the Debtors and shall, together with the rights and remedies of the Administrative Agent hereunder, inure to the benefit of the Administrative Agent and the Secured Parties and their respective successors and assigns; provided that the Debtors may not transfer or assign its rights and obligations hereunder (and any such assignment on transfer shall be void).

17. Indemnification. Each Debtor shall indemnify and hold harmless the Administrative Agent and each Secured Party for any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursement of any kind and nature whatsoever that may be imposed on, incurred by or asserted against the Administrative Agent or such Secured Party in any way relating to or arising out of this Agreement or the transactions contemplated hereby or the enforcement of any of the terms hereof; provided that the Debtors shall not be liable for any of the foregoing to the extent they arise from the gross negligen ce or willful misconduct of the Administrative Agent or such Secured Party. The agreements in this Section shall survive the termination of this Agreement. Each Debtor further agrees to pay, and to indemnify, save and hold harmless the Administrative Agent and each Secured Party and their respective successors and assigns from, any and all liabilities with respect to, or resulting from any delay in paying, any and all excise, sales or other taxes which

may be payable or determined to be payable with respect to any of the Collateral or in connection with any of the transactions contemplated by this Agreement.

18. Governing Law. **This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York.**

19. Jurisdiction; Waiver of Right to Jury Trial; Other Waivers.

(a) Each of the parties hereto hereby irrevocably and unconditionally submits, for itself and its property, to the nonexclusive jurisdiction of any New York state court or federal court of the United States of America sitting in the Borough of Manhattan in New York City, and any appellate court from any thereof, in any action or proceeding arising out of or relating to this Agreement or any of the other Loan Documents, or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in any such New York state court or, to the extent permitted by law, in such federal court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

(b) EACH PARTY HERETO IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE).

(c) Each of the parties hereto irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection that it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement or any of the other Loan Documents to which it is a party in any New York state or federal court. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court sitting in the Borough of Manhattan in New York City.

20. Counterparts. This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement. Delivery of an executed counterpart of a signature page to this Agreement (or any related agreement, including any amendment hereto or waiver hereunder) by facsimile or e-mail (in a pdf or similar file) shall be effective as delivery of an original executed counterpart of this Agreement (or such related agreement).

[BALANCE OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, each of the Debtors has caused this Security Agreement to be duly executed and delivered as of the day and year first above written.

SUNPOWER CORPORATION

By: /s/ Dennis V. Arriola
Name: Dennis V. Arriola
Title: Senior Vice President and Chief Financial Officer

SUNPOWER CORPORATION, SYSTEMS

By: /s/ Dennis V. Arriola
Name: Dennis V. Arriola
Title: Senior Vice President and Chief Financial Officer

SUNPOWER NORTH AMERICA, LLC

By: /s/ Dennis V. Arriola
Name: Dennis V. Arriola
Title: Chief Financial Officer

ACCEPTED AND AGREED:

DEUTSCHE BANK AG NEW YORK BRANCH, as Administrative Agent

By: /s/ Anthony F. Calabrese
Name: Anthony F. Calabrese
Title: Director

By: /s/ Katrina Krallitsch
Name: Katrina Krallitsch
Title: Assistant Vice President

Schedule A to Security
Agreement dated as of
April 12, 2010 made by
Debtors in favor of Administrative Agent

Prior Security Interests

1. Security interest in equipment evidenced by UCC-1 No. 72900396 filed in Delaware in connection with indebtedness of the Company under the Company's Master Agreement with Cisco Systems Capital Corporation and any schedules appurtenant thereto.

2. Security interest in equipment evidenced by UCC-1s No. 81644762, 81644770, and 93228381 filed in Delaware filed in connection with indebtedness of the Company in connection with leasing arrangements with US Bancorp.

3. Security interest in equipment evidenced by UCC-1 No. 82389649 filed in Delaware in connection with indebtedness of the Company in connection with a leasing arrangement with Well Fargo Bank, N.A.

4. Security interest in accounts of the Company evidenced by UCC-1s No. 61861277 and 61861301 filed in Delaware in connection with the Company's factoring agreement with Technology Credit Corporation.

5. Security interest in certain pledged shares of a subsidiary of the Company evidenced by UCC-1 No. 93867451 filed in Delaware in connection with a Pledge Agreement between the Company and Wells Fargo Bank Northwest, N.A., as Collateral Agent.

***

Schedule B to Security
Agreement dated as of
April 12, 2010 made by
Debtors in favor of Administrative Agent

Offices and Jurisdictions for Filing of Financing Statements

Name of Debtor	Jurisdiction of Organization	Filing Office
SunPower Corporation	Delaware	Delaware Secretary of State
SunPower Corporation, Systems	Delaware	Delaware Secretary of State
SunPower North America, LLC	Delaware	Delaware Secretary of State

Schedule C to Security
Agreement dated as of
April 12, 2010 made by
Debtors in favor of Administrative Agent

Names; Changes in Corporate Structure; Trade Names; Tax ID No.; Organizational ID No.

Legal Name of Debtor	Prior Names of Debtor or its Divisions	Prior Corporate Structure of Debtor	Federal Tax Identification Number	Organizational Identification Number
SunPower Corporation	SPR Acquisition Corporation	-	94-3008969	3808702 (Delaware)
SunPower Corporation, Systems	PowerLight Corporation	-	20-8248962	4280403 (Delaware)
SunPower North America, LLC	SunPower North America, Inc.	Corporation	20-4600194	3991321 (Delaware)

Schedule D to Security
Agreement dated as of
April 12, 2010 made by
Debtors in favor of Administrative Agent

Location of Principal Place of
Business and Chief Executive
Office and of Records Concerning
Accounts and General Intangibles; Mailing Address

Name of Debtor	Principal Place of Business	Chief Executive Office	Location of Records	State of Incorporation/Organization
SunPower Corporation	3939 North First Street San Jose, CA 95134	3939 North First Street San Jose, CA 95134	3939 North First Street San Jose, CA 95134	Delaware
SunPower Corporation, Systems	1414 Harbour Way South Richmond, CA 94804	1414 Harbour Way South Richmond, CA 94804	3939 North First Street San Jose, CA 95134	Delaware
SunPower North America, LLC	3939 North First Street San Jose, CA 95134	3939 North First Street San Jose, CA 95134	3939 North First Street San Jose, CA 95134	Delaware

Schedule E to Security
Agreement dated as of
April 12, 2010 made by
Debtors in favor of Administrative Agent

Collateral Description

See Attached.

***

[redacted]

UCC FINANCING STATEMENT
FOLLOW INSTRUCTIONS (font and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER [optional]

B. SEND ACKNOWLEDGMENT TO: (Name and Address)

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S EXACT FULL LEGAL NAME – insert only one debtor name (1a or 1b) – do not abbreviate or combine names

OR 1a. ORGANIZATION'S NAME SUNPOWER CORPORATION					
1b. INDIVIDUAL'S LAST NAME		FIRST NAME	MIDDLE NAME		SUFFIX
1c. MAILING ADDRESS 3939 NORTH FIRST STREET		CITY SAN JOSE	STATE CA	POSTAL CODE 95134	COUNTRY USA
1d. **SEE INSTRUCTIONS**	ADD'L INFO RE ORGANIZATION DEBTOR 1e. TYPE OF ORGANIZATION CORPORATION	1f. JURISDICTION OF ORGANIZATION DELAWARE	1g. ORGANIZATION ID#, if any 3808702		o NONE

2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME – insert only one debtor name (1a or 1b) – do not abbreviate or combine names

OR 2a. ORGANIZATION'S NAME					
2b. INDIVIDUAL'S LAST NAME		FIRST NAME	MIDDLE NAME		SUFFIX
2c. MAILING ADDRESS		CITY	STATE	POSTAL CODE	COUNTRY
2d. **SEE INSTRUCTIONS**	ADD'L INFO RE ORGANIZATION DEBTOR 2e. TYPE OF ORGANIZATION	2f. JURISDICTION OF ORGANIZATION	2g. ORGANIZATION ID#, if any		o NONE

3. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE or ASSIGNOR S/P) – insert only one secured party name (3a or 3b)

OR 3a. ORGANIZATION'S NAME DEUTSCHE BANK AG NEW YORK BRANCH, AS ADMINISTRATIVE AGENT				
3b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME		SUFFIX
3c. MAILING ADDRESS 225 FRANKLIN STREET, 24TH FLOOR	CITY BOSTON	STATE MA	POSTAL CODE 02110	COUNTRY USA

4. This FINANCING STATEMENT covers the following collateral:
See Schedule A attached hereto and made a part hereof.

5. ALTERNATIVE DESIGNATION [if applicable]: LESSEE/LESSOR CONSIGNEE/CONSIGNOR BAILEE/BAILOR SELLER/BUYOR AG.

LIEN NON-UCC FILING

6.	This FINANCING STATEMENT is to be filed [for record] (or recorded) in the REAL ESTATE RECORDS. Attach Addendum [if applicable]	7. Check to REQUEST SEARCH REPORT(S) on Debtor(s) [ADDITIONAL FEE] [optional]	All Debtors Debtor 1 Debtor 2

8. OPTIONAL FILER REFERENCE DATA
SOS DELAWARE (052529-0177) (MEA/PMR/CF) doc. # 811383

FILING OFFICE COPY – NATIONAL UCC FINANCING STATEMENT (FORM UCC1) (REV. 05/22/02)

SCHEDULE A TO UCC FINANCING STATEMENT

DEBTOR: SUNPOWER CORPORATION

3939 NORTH FIRST STREET

SAN JOSE, CA 95134

SECURED PARTY: DEUTSCHE BANK AG NEW YORK BRANCH, AS ADMINISTRATIVE AGENT
225 FRANKLIN STREET, 24TH FLOOR
BOSTON, MA 02110

This financing statement covers the following types or items of property, in each case whether now owned or hereafter acquired and whether now existing or hereafter arising and regardless of where located:

All of the Debtor's right, title and interest in and to:

(A) (i) all Accounts and Inventory of the Debtor and (ii) Contract Rights, Supporting Obligations, General Intangibles, and Records to the extent relating to or supporting such Accounts or Inventory of the Debtor or any Proceeds or products of either thereof, in each case wheresoever located, and, to the extent not otherwise included, all Proceeds and products of any of the foregoing; provided, however, that receivables in respect of rebates from U.S. Governmental Authorities sold pursuant to the Tech Credit Agreement, shall not constitute collateral hereunder; and

(B) (i) the Collateral Account and all funds, cash, checks, drafts, certificates, instruments, Permitted Investments, financial assets, and other assets deposited or held in or credited to the Collateral Account, and all security entitlements from time to time credited thereto or reflected therein, (ii) all interest, dividends, distributions, cash, instruments and other property received, receivable or otherwise payable or distributed in respect of, or in exchange for, any of the foregoing, (iii) all certificates and instruments representing or evidencing any of the foregoing, and (iv) all proceeds of any of the foregoing.

Definitions.

Capitalized terms used herein have the meanings specified below.

"Account" shall have the meaning provided therefor in the New York UCC.

"Administrative Agent" means Deutsche Bank AG New York Branch, in its capacity as administrative agent for the Banks under the LC Facility Agreement.

"Bank" has the meaning given thereto in the LC Facility Agreement.

"Cash Collateral Agreement" means the Cash Collateral Agreement dated April 12, 2010 among the Debtor, the Administrative Agent and the Intermediary, as amended, supplemented or otherwise modified from time to time.

"Collateral Account" means one or more collateral accounts established by the Administrative Agent with the Intermediary, including, without limitation, "SunPower, DB Admin Agent Collat

Acct", Account Number S55321.1, (including any and all subaccounts thereof, segregated accounts thereunder and successor, replacement or substitute accounts therefor maintained by the Intermediary for the Agent), pursuant to the Cash Collateral Agreement.

"Contract Rights" shall mean all rights of the Debtor under contracts and agreements (including those giving rise to an Account) to which the Debtor is a party or by which it or its assets are bound, as the same may be amended, supplemented, extended or replaced, including (a) all rights of the Debtor to receive money or other property thereunder or in connection therewith, (b) all rights to damages for default or other violation, and (c) all rights to make waivers, releases, modifications, and amendments thereto and to exercise remedies thereunder.

"Debtor" means SunPower Corporation, a Delaware corporation.

"General Intangible" shall have the meaning provided therefor in the New York UCC and shall include all Payment Intangibles.

"Governmental Authority" means the government of the United States of America, any other nation or any political subdivision of any thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.

"Intermediary" means Deutsche Bank Trust Company Americas, in its capacity as depositary bank and as securities intermediary.

"Inventory" shall have the meaning provided therefor in the New York UCC.

"Issuing Bank" has the meaning given thereto in the LC Facility Agreement.

"LC Facility Agreement" means the Letter of Credit Facility Agreement, dated as of April 12, 2010 the Debtor, the Subsidiary Guarantors, the Subsidiary Applicants parties thereto from time to time, the Banks parties thereto from time to time, and Deutsche Bank AG New York Branch, as Issuing Bank and as Administrative Agent.

"New York UCC" shall mean the Uniform Commercial Code in effect in the State of New York on April 12, 2010.

"Payment Intangible" shall have the meaning provided therefor in the New York UCC.

"Permitted Investments" shall mean, (i) cash denominated in legal currency of the United States of America, or (ii) investments in money market funds that (a) comply with the criteria set forth in Securities and Exchange Commission Rule 2a-7 under the Investment Company Act of 1940, as amended, (b) are rated not less than AAAm by S&P and Aaa by Moody's, (c) have portfolio assets of at least $5,000,000,000 and (d) invest only in securities or other obligations denominated in legal currency of the United States of America.

"Proceeds" shall have the meaning provided therefor in the New York UCC.

"Record" shall have the meaning provided therefor in the New York UCC.

"Subsidiary Applicant" has the meaning given thereto in the LC Facility Agreement.

"Subsidiary Guarantor" has the meaning given thereto in the LC Facility Agreement.

"Supporting Obligation" shall have the meaning provided therefor in the New York UCC.

"Tech Credit Agreement" means that certain Purchase Agreement dated May 15, 2006 (as amended on October 19, 2006, October 13, 2008, and December 29, 2008), by and between the Debtor and Technology Credit Corporation.

****

[redacted]

UCC FINANCING STATEMENT
FOLLOW INSTRUCTIONS (font and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER [optional]

B. SEND ACKNOWLEDGMENT TO: (Name and Address)

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S EXACT FULL LEGAL NAME – insert only one debtor name (1a or 1b) – do not abbreviate or combine names

OR 1a. ORGANIZATION'S NAME SUNPOWER CORPORATION, SYSTEMS					
1b. INDIVIDUAL'S LAST NAME		FIRST NAME	MIDDLE NAME		SUFFIX
1c. MAILING ADDRESS 3939 NORTH FIRST STREET		CITY SAN JOSE	STATE CA	POSTAL CODE 95134	COUNTRY USA
1d. **SEE INSTRUCTIONS**	ADD'L INFO RE ORGANIZATION DEBTOR	1e. TYPE OF ORGANIZATION CORPORATION	1f. JURISDICTION OF ORGANIZATION DELAWARE	1g. ORGANIZATION ID#, if any 4280403	NONE

2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME – insert only one debtor name (1a or 1b) – do not abbreviate or combine names

OR 2a. ORGANIZATION'S NAME					
2b. INDIVIDUAL'S LAST NAME		FIRST NAME	MIDDLE NAME		SUFFIX
2c. MAILING ADDRESS		CITY	STATE	POSTAL CODE	COUNTRY
2d. **SEE INSTRUCTIONS**	ADD'L INFO RE ORGANIZATION DEBTOR	2e. TYPE OF ORGANIZATIONORGANIZATION	2f. JURISDICTION OF ORGANIZATION	2g. ORGANIZATION ID#, if any	NONE

3. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE or ASSIGNOR S/P) – insert only one secured party name (3a or 3b)

OR 3a. ORGANIZATION'S NAME DEUTSCHE BANK AG NEW YORK BRANCH, AS ADMINISTRATIVE AGENT					
3b. INDIVIDUAL'S LAST NAME		FIRST NAME	MIDDLE NAME		SUFFIX
3c. MAILING ADDRESS 225 FRANKLIN STREET, 24TH FLOOR		CITY BOSTON	STATE MA	POSTAL CODE 02110	COUNTRY USA

4. This FINANCING STATEMENT covers the following collateral:
See Schedule A attached hereto and made a part hereof.

5. ALTERNATIVE DESIGNATION [if applicable]: LESSEE/LESSOR CONSIGNEE/CONSIGNOR BAILEE/BAILOR SELLER/BUYOR AG.

LIEN NON-UCC FILING

6.	This FINANCING STATEMENT is to be filed [for record] (or recorded) in the REAL ESTATE RECORDS. Attach Addendum [if applicable]	7. Check to REQUEST SEARCH REPORT(S) on Debtor(s) [ADDITIONAL FEE] [optional]	All Debtors Debtor 1 Debtor 2

8. OPTIONAL FILER REFERENCE DATA
SOS DELAWARE (052529-0177) (MEA/PMR/CF) doc. # 811385

FILING OFFICE COPY – NATIONAL UCC FINANCING STATEMENT (FORM UCC1) (REV. 05/22/02)

SCHEDULE A TO UCC FINANCING STATEMENT

DEBTOR: SUNPOWER CORPORATION, SYSTEMS
3939 NORTH FIRST STREET
SAN JOSE, CA 95134

SECURED PARTY: DEUTSCHE BANK AG NEW YORK BRANCH, AS ADMINISTRATIVE AGENT
225 FRANKLIN STREET, 24TH FLOOR
BOSTON, MA 02110

This financing statement covers the following types or items of property, in each case whether now owned or hereafter acquired and whether now existing or hereafter arising and regardless of whether located:

All of the Debtor's right, title and interest in and to: (i) all Accounts and Inventory of the Debtor and (ii) Contract Rights, Supporting Obligations, General Intangibles, and Records to the extent relating to or supporting such Accounts or Inventory of the Debtor or any Proceeds or products of either thereof, in each case wheresoever located, and, to the extent not otherwise included, all Proceeds and products of any of the foregoing; provided, however, that receivables in respect of rebates from U.S. Governmental Authorities sold pursuant to the Tech Credit Agreement, shall not constitute collateral hereunder.

Definitions.

Capitalized terms used herein have the meanings specified below.

"Account" shall have the meaning provided therefor in the New York UCC.

"Contract Rights" shall mean all rights of the Debtor under contracts and agreements (including those giving rise to an Account) to which the Debtor is a party or by which it or its assets are bound, as the same may be amended, supplemented, extended or replaced, including (a) all rights of the Debtor to receive money or other property thereunder or in connection therewith, (b) all rights to damages for default or other violation, and (c) all rights to make waivers, releases, modifications, and amendments thereto and to exercise remedies thereunder.

"Debtor" means SunPower Corporation, Systems, a Delaware corporation.

"General Intangible" shall have the meaning provided therefor in the New York UCC and shall include all Payment Intangibles.

"Governmental Authority" means the government of the United States of America, any other nation or any political subdivision of any thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.

"Inventory" shall have the meaning provided therefor in the New York UCC.

"New York UCC" shall mean the Uniform Commercial Code in effect in the State of New York on April 12, 2010.

"Payment Intangible" shall have the meaning provided therefor in the New York UCC.

"Proceeds" shall have the meaning provided therefor in the New York UCC.

"Record" shall have the meaning provided therefor in the New York UCC.

"Supporting Obligation" shall have the meaning provided therefor in the New York UCC.

"Tech Credit Agreement" means that certain Purchase Agreement dated May 15, 2006 (as amended on October 19, 2006, October 13, 2008, and December 29, 2008), by and between SunPower Corporation and Technology Credit Corporation.

****

[redacted]

UCC FINANCING STATEMENT
FOLLOW INSTRUCTIONS (font and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER [optional]

B. SEND ACKNOWLEDGMENT TO: (Name and Address)

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S EXACT FULL LEGAL NAME – insert only one debtor name (1a or 1b) – do not abbreviate or combine names

OR 1a. ORGANIZATION'S NAME SUNPOWER NORTH AMERICA, LLC					
1b. INDIVIDUAL'S LAST NAME		FIRST NAME	MIDDLE NAME		SUFFIX
1c. MAILING ADDRESS 3939 NORTH FIRST STREET		CITY SAN JOSE	STATE CA	POSTAL CODE 95134	COUNTRY USA
1d. **SEE INSTRUCTIONS**	ADD'L INFO RE ORGANIZATION DEBTOR NONE	1e. TYPE OF ORGANIZATION limited liability company	1f. JURISDICTION OF ORGANIZATION DELAWARE	1g. ORGANIZATION ID#, if any 3991321	

2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME – insert only one debtor name (1a or 1b) – do not abbreviate or combine names

OR 2a. ORGANIZATION'S NAME					
2b. INDIVIDUAL'S LAST NAME		FIRST NAME	MIDDLE NAME		SUFFIX
2c. MAILING ADDRESS		CITY	STATE	POSTAL CODE	COUNTRY
2d. **SEE INSTRUCTIONS**	ADD'L INFO RE ORGANIZATION DEBTOR NONE	2e. TYPE OF ORGANIZATIONORGANIZATION	2f. JURISDICTION OF ORGANIZATION	2g. ORGANIZATION ID#, if any	

3. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE or ASSIGNOR S/P) – insert only one secured party name (3a or 3b)

OR 3a. ORGANIZATION'S NAME DEUTSCHE BANK AG NEW YORK BRANCH, AS ADMINISTRATIVE AGENT					
3b. INDIVIDUAL'S LAST NAME		FIRST NAME	MIDDLE NAME		SUFFIX
3c. MAILING ADDRESS 225 FRANKLIN STREET, 24TH FLOOR		CITY BOSTON	STATE MA	POSTAL CODE 02110	COUNTRY USA

4. This FINANCING STATEMENT covers the following collateral:
See Schedule A attached hereto and made a part hereof.

5. ALTERNATIVE DESIGNATION [if applicable]: LESSEE/LESSOR CONSIGNEE/CONSIGNOR BAILEE/BAILOR SELLER/BUYOR AG. LIEN NON-UCC FILING

6.	This FINANCING STATEMENT is to be filed [for record] (or recorded) in the REAL ESTATE RECORDS. Attach Addendum [if applicable]	7. Check to REQUEST SEARCH REPORT(S) on Debtor(s) [ADDITIONAL FEE] [optional]	All Debtors Debtor 1 Debtor 2

8. OPTIONAL FILER REFERENCE DATA

SOS DELAWARE (052529-0177) (MEA/PMR/CF) doc. # 811384

FILING OFFICE COPY – NATIONAL UCC FINANCING STATEMENT (FORM UCC1) (REV. 05/22/02)

SCHEDULE A TO UCC FINANCING STATEMENT

DEBTOR: SUNPOWER NORTH AMERICA, LLC
3939 NORTH FIRST STREET
SAN JOSE, CA 95134

SECURED PARTY: DEUTSCHE BANK AG NEW YORK BRANCH, AS ADMINISTRATIVE AGENT
225 FRANKLIN STREET, 24TH FLOOR
BOSTON, MA 02110

This financing statement covers the following types or items of property, in each case whether now owned or hereafter acquired and whether now existing or hereafter arising and regardless of whether located:

All of the Debtor's right, title and interest in and to: (i) all Accounts and Inventory of the Debtor and (ii) Contract Rights, Supporting Obligations, General Intangibles, and Records to the extent relating to or supporting such Accounts or Inventory of the Debtor or any Proceeds or products of either thereof, in each case wheresoever located, and, to the extent not otherwise included, all Proceeds and products of any of the foregoing; provided, however, that receivables in respect of rebates from U.S. Governmental Authorities sold pursuant to the Tech Credit Agreement, shall not constitute collateral hereunder.

Definitions.

Capitalized terms used herein have the meanings specified below.

"Account" shall have the meaning provided therefor in the New York UCC.

"Contract Rights" shall mean all rights of the Debtor under contracts and agreements (including those giving rise to an Account) to which the Debtor is a party or by which it or its assets are bound, as the same may be amended, supplemented, extended or replaced, including (a) all rights of the Debtor to receive money or other property thereunder or in connection therewith, (b) all rights to damages for default or other violation, and (c) all rights to make waivers, releases, modifications, and amendments thereto and to exercise remedies thereunder.

"Debtor" means SunPower North America, LLC, a Delaware limited liability company.

"General Intangible" shall have the meaning provided therefor in the New York UCC and shall include all Payment Intangibles.

"Governmental Authority" means the government of the United States of America, any other nation or any political subdivision of any thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.

"Inventory" shall have the meaning provided therefor in the New York UCC.

"New York UCC" shall mean the Uniform Commercial Code in effect in the State of New York on April 12, 2010.

"Payment Intangible" shall have the meaning provided therefor in the New York UCC.

"Proceeds" shall have the meaning provided therefor in the New York UCC.

"Record" shall have the meaning provided therefor in the New York UCC.

"Supporting Obligation" shall have the meaning provided therefor in the New York UCC.

"Tech Credit Agreement" means that certain Purchase Agreement dated May 15, 2006 (as amended on October 19, 2006, October 13, 2008, and December 29, 2008), by and between SunPower Corporation and Technology Credit Corporation.

****

Schedule F to Security
Agreement dated as of
April 12, 2010 made by
Debtors in favor of Administrative Agent

Location of Inventory

Name of Debtor	Location of Inventory
SunPower Corporation SunPower Corporation, Systems SunPower North America, LLC	3939 North First Street San Jose, CA 95134
SunPower Corporation SunPower Corporation, Systems SunPower North America, LLC	CVAR c/o NAL Worldwide Warehouse 44400 Osgood Road Fremont, CA 94539
SunPower Corporation SunPower Corporation, Systems SunPower North America, LLC	VAR c/o McCollister's Transportation 45125 Industrial Drive Fremont, CA 94538
SunPower Corporation SunPower Corporation, Systems SunPower North America, LLC	VAR 10672 Jasmine Street Fontana, CA 92337
SunPower Corporation SunPower Corporation, Systems SunPower North America, LLC	VAR c/o McCollister's Transportation 1800 Route 130 North Burlington, NJ 08016
SunPower Corporation SunPower Corporation, Systems SunPower North America, LLC	VAR c/o NAL Worldwide Warehouse 6B Fitzgerald Avenue Monroe, NJ 08831
SunPower Corporation SunPower Corporation, Systems SunPower North America, LLC	McCollister's Transportation Group Inc. 4440 E. Elwood Street, Suite 103 Phoenix, AZ 85040
SunPower Corporation SunPower Corporation, Systems SunPower North America, LLC	VAR c/o McCollister's Transportation 403 South Airport Boulevard Aurora, CO 80017
SunPower Corporation SunPower Corporation, Systems SunPower North America, LLC	VAR c/o McCollister's Transportation 1320 Progress Industrial Boulevard, Suite 500 Lawrenceville, GA 30043
SunPower Corporation SunPower Corporation, Systems SunPower North America, LLC	DSR Logistics - OAHU 94-144 Leoole Street Waipahu, HI 96797
SunPower Corporation SunPower Corporation, Systems	O&M 1414 Harbour Way South

SunPower North America, LLC	Richmond, CA 94804
SunPower Corporation SunPower Corporation, Systems SunPower North America, LLC	900-1959 Upper Water Street Halifax, CN B3J 2X2
SunPower Corporation SunPower Corporation, Systems SunPower North America, LLC	AMJ Campbell Van Lines 176 Hillmount Road Markham, CN L6C 1Z9
SunPower Corporation SunPower Corporation, Systems SunPower North America, LLC	VAR 580 Division Street Elizabeth, NJ 07201-2003
SunPower Corporation SunPower Corporation, Systems SunPower North America, LLC	Stagecoach Cartage & Distribution LP 7167 Chino Drive El Paso, TX 79915
SunPower Corporation SunPower Corporation, Systems SunPower North America, LLC	NAL/Stagecoach Cartage & Distribution LP 5850 Welch Avenue El Paso, TX 79915
SunPower Corporation SunPower Corporation, Systems SunPower North America, LLC	NAL/Stagecoach Cartage & Distribution LP 300 N Revere El Paso, TX 79915

Exhibit 10.12

CASH COLLATERAL ACCOUNT
SECURITY, PLEDGE AND ASSIGNMENT AGREEMENT
AND CONTROL AGREEMENT

CASH COLLATERAL ACCOUNT SECURITY, PLEDGE AND ASSIGNMENT AGREEMENT AND CONTROL AGREEMENT, dated as of April 12, 2010 (as it may be amended, supplemented or otherwise modified from time to time, this "Agreement"), among SUNPOWER CORPORATION, a Delaware corporation (the "Pledgor"), having its chief executive office at 3939 North First Street, San Jose, California 95134, DEUTSCHE BANK AG NEW YORK BRANCH, as Administrative Agent (in such capacity, the "Agent") for the benefit of the Secured Parties (as defined in the Facility Agreement referred to below), and DEUTSCHE BANK TRUST COMPANY AMERICAS, as depositary bank and as securities intermediary (in such capacities, the "Intermediary").

R E C I T A L S:

The Pledgor, the Subsidiary Guarantors, the Subsidiary Applicants parties thereto from time to time, the Banks parties thereto from time to time, and the Agent have entered into that certain Letter of Credit Facility Agreement, dated as of the date hereof (as it may be amended, supplemented or otherwise modified from time to time, the "Facility Agreement").

It is a condition to the availability of credit under the Facility Agreement that the Pledgor, the Agent, and the Intermediary shall have entered into this Agreement.

Pursuant to the Facility Agreement, in order to secure the Obligations of the Pledgor thereunder, the Pledgor has agreed to establish the Collateral Account (as such term is hereinafter defined) and to grant to the Agent, for the benefit of the Secured Parties, a first priority perfected security interest therein, upon the terms and subject to the conditions hereof.

NOW, THEREFORE, in consideration of the agreements and covenants hereinafter contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. Definitions.

Unless the context otherwise requires, capitalized terms used but not otherwise defined herein shall have the respective meanings provided therefor in the Facility Agreement, and the following terms shall have the following meanings:

"Collateral" has the meaning set forth in Section 2 hereof.

"Collateral Account" has the meaning set forth in Section 3(a) hereof.

"New York UCC" means the Uniform Commercial Code as in effect on the date hereof in the State of New York.

"Permitted Investments" has the meaning set forth in Section 3(e) hereof.

"UCC" means the Uniform Commercial Code as in effect from time to time in any applicable jurisdiction.

2. Security for Obligations.

As security for the full and punctual payment and performance of all the Pledgor's Obligations when due (whether upon stated maturity, mandatory prepayment, acceleration, or otherwise), the Pledgor hereby pledges, assigns, transfers, conveys, delivers, and grants to the Agent, for the benefit of the Secured Parties, a first priority continuing and perfected security interest in and lien on all of the Pledgor's right, title and interest in and to the following property, in each case, whether now owned or hereafter acquired and whether now existing or hereafter arising and regardless of where located (collectively, for purposes of this Agreement, the "Collateral"):

(i) the Collateral Account and all funds, cash, checks, drafts, certificates, instruments, Permitted Investments, financial assets, and other assets deposited or held in or credited to the Collateral Account, and all security entitlements from time to time credited thereto or reflected therein;

(ii) all interest, dividends, distributions, cash, instruments and other property received, receivable or otherwise payable or distributed in respect of, or in exchange for, any of the foregoing;

(iii) all certificates and instruments representing or evidencing any of the foregoing; and

(iv) all proceeds of any of the foregoing.

3. Account.

(a) (i) On or before the date hereof, there has been established by the Agent with the Intermediary in connection with the Facility Agreement an account entitled "SunPower, DB Admin Agent Collat Acct", Account Number: S55321.1 (including any and all subaccounts thereof, segregated accounts thereunder and successor, replacement or substitute accounts therefor maintained by the Intermediary for the Agent, the "Collateral Account"), which shall be under the sole control of the Agent, as to which the Pledgor shall have no right to draw checks or give other instructions or orders except as permitted by this Agreement.

(ii) Interest and any other amounts earned on or received in respect of any assets held in or credited to the Collateral Account shall be periodically added to the principal amount of the Collateral Account, as applicable, and shall be held, credited, disbursed and applied in accordance with the provisions of this Agreement. All items of income, gain, expense and loss recognized in the Collateral Account shall be reported by the Pledgor for Federal and applicable state tax purposes to the extent required by applicable law, under the name and taxpayer identification number of the Pledgor.

(b) The Pledgor shall at all times maintain on deposit in the Collateral Account an amount not less than that required to be maintained pursuant to Section 6.11 of the Facility Agreement.

(c) Provided (i) that the Pledgor would be in compliance with Section 6.11 of the Facility Agreement after giving effect to any requested withdrawal, and (ii) that no Default shall have occurred and be continuing or would exist after giving effect thereto, the Pledgor may direct the Agent to withdraw and pay to the Pledgor requested amounts on deposit in the Collateral Account. Upon any such

withdrawal, the Pledgor shall be deemed to have represented to the Agent that all of such conditions to such withdrawal were satisfied.

(d) Upon the occurrence and during the continuance of a Default, with or without notice from the Agent, the Pledgor shall have no further right to direct the Agent to make withdrawals from the Collateral Account. During the existence of an Event of Default, the Agent shall have the exclusive right, at any time, without prior notice to or consent of the Pledgor, to withdraw funds from the Collateral Account to pay any or all of the Pledgor's Obligations then due, and the Agent may collect or liquidate any assets then held in or credited to the Collateral Account or reinvest any amounts in Permitted Investments, as the Agent may reasonably determine is necessary to perfect or protect any security interest granted or purported to be granted hereby or to enable the Agent to exercise and enf orce its rights and remedies hereunder with respect to any Collateral.

(e) Provided no Event of Default shall have occurred and be continuing, the Pledgor may direct the Agent to arrange that assets held in or credited to the Collateral Account be invested, liquidated and reinvested in permitted investments, as set forth on Exhibit A hereto (the "Permitted Investments"), to be held in or credited to the Collateral Account (or to an account of the Agent maintained with the Intermediary for overnight or other investments the proceeds of which are to be credited to the Collateral Account upon maturity, liquidation or other disposition thereof) and disbursed in accordance with and subject to the terms and conditions of this Agreement. In no event shall the Agent have any responsibility or liability for investments made at the direction of the Pledgor, nor shal l it have any duty or responsibility to confirm that the same are in fact Permitted Investments or that such investments conform to the limitations set forth in this Section 3 or elsewhere in the Loan Documents.

4. Financing Statements; Further Assurances.

(a) The Pledgor agrees that, at any time and from time to time, including in connection with any Permitted Investments under Section 3(e) hereof, at the expense of the Pledgor, the Pledgor will promptly execute and deliver all further instruments and documents (including financing statements and control agreements), and take all further action, that may be reasonably necessary, or that the Agent may reasonably request, (1) in order to more fully perfect, evidence and protect, or establish the priority of (including by control), any security interest granted or purported to be granted hereby, or to enable the Agent to exercise and enforce the Agent's rights and remedies hereunder or (2) to maintain the security interest of the Agent in the Collateral granted hereunder at all times fully perfected a nd in full force and effect. The Pledgor authorizes the Agent to file one or more financing or continuation statements under the UCC relating to the Collateral, naming the Agent as "secured party".

(b) The Pledgor represents and warrants that the information set forth on **Schedule A** hereto is true, correct and complete as of the date hereof. The Pledgor shall not change its legal name, jurisdiction of organization, identity, type of organization or effect any other change that could impair the effectiveness of any UCC filing naming it as debtor, unless it shall have given the Agent at least thirty (30) days' prior written notice of such change.

5. Transfers and Other Liens.

The Pledgor will not (i) sell or otherwise dispose of any of the Collateral other than pursuant to the terms hereof and of the Facility Agreement, (ii) create or permit to exist any Lien upon or with respect to all or any of the Collateral, except for the Liens granted to the Agent pursuant to this Agreement or as may otherwise be permitted under the Loan Documents, or (iii) enter into or suffer to exist

any control agreement with any Person whereby such Person may issue entitlement orders or other orders or instructions with respect to any or all of the Collateral (except any control agreement with the Agent for the benefit of the Secured Parties).

6. Reasonable Care.

Beyond the exercise of reasonable care with respect to the custody of any Collateral actually in its possession, the Agent shall not have any duty as to the collection or protection of any Collateral or any income thereon or payments with respect thereto, or as to the preservation of any rights against any Person or otherwise with respect thereto. The Pledgor consents to all actions by the Agent in accordance with the provisions of this Agreement, and agrees that the Collateral need not be held separate and apart from other assets held by the Agent (or the Intermediary) in any capacity. The Agent shall be deemed to have exercised reasonable care in the custody and preservation of the Collateral in its possession if the Collateral is accorded treatment substantially equal to that which a reasonable person would exercise under similar circumstances, it being understood that the Agent shall not be liable or responsible for any loss or damage to any of the Collateral, or for any diminution in value thereof (including any loss, damage or diminution in value resulting from any investment thereof), by reason of the act or omission of the Agent or its agents, employees or bailees, except to the extent that such loss or damage results from the Agent's gross negligence or willful misconduct.

7. Remedies.

(a) Upon the occurrence and during the continuance of an Event of Default, and subject to the terms and conditions of this Agreement and the other Loan Documents, as applicable, the Agent may, without obligation to resort to any other security, right or remedy granted under any other agreement or instrument, at any time or from time to time in its sole discretion exercise any or all of the following rights and remedies:

(i) without notice to the Pledgor, except as required by law or any of the Loan Documents, charge, set-off and otherwise apply all or any part of the Collateral against the Pledgor's Obligations or any part thereof, including any expenses due in accordance with the Facility Agreement;

(ii) issue entitlement orders or other orders or instructions with respect to any or all of the Collateral held in or credited to or for the Collateral Account;

(iii) exercise any and all rights and remedies available to it under this Agreement and/or as a secured party under the UCC and/or otherwise available at law or in equity; and

(iv) demand, collect, take possession of, receipt for, settle, compromise, adjust, sue for, liquidate, foreclose or realize upon the Collateral (or any portion thereof) as the Agent may determine in its sole discretion.

The Pledgor hereby expressly waives, to the fullest extent permitted by law, presentment, demand, protest or any notice of any kind in connection with this Agreement or the Collateral. The Pledgor acknowledges and agrees that, to the extent that notice of any sale of the Collateral or other intended disposition thereof shall be required by the UCC or other applicable law, ten (10) Business Days' prior written notice of the time and place of any public sale or of the time after which any private sale or other intended disposition may be made shall be commercially reasonable and sufficient notice to the Pledgor within the meaning of the UCC or otherwise under applicable law. In connection with any sale or other disposition of all or any

part of the Collateral, the Agent may comply with any applicable state or federal law requirements and/or disclaim warranties of title, possession, quiet enjoyment and the like without affecting the commercial reasonableness of such sale or other disposition.

8. No Waiver.

The rights and remedies provided in this Agreement and the other Loan Documents are cumulative and may be exercised independently or concurrently, and are not exclusive of any other right or remedy provided at law or in equity. No failure to exercise or delay in exercising any right or remedy hereunder or under the other Loan Documents shall impair or prohibit the exercise of any such rights or remedies in the future or be deemed to constitute a waiver or limitation of any such right or remedy or acquiescence therein. To the fullest extent permitted by applicable law, any and all of the Agent's rights with respect to the lien and security interest granted hereunder shall continue unimpaired, and the Pledgor shall be and remain obligated in accordance with the terms hereof, notwithstanding (a) any p roceeding of the Pledgor or any other Person or any of their respective property under any bankruptcy, insolvency or reorganization laws, (b) the release or substitution of any collateral or any guaranty or other security for any of the Obligations at any time, or of any rights or interests therein or (c) any delay, extension of time, renewal, compromise or other indulgence granted by the Agent in the event of any default, with respect to any collateral or any guaranty or other security for any of the Obligations or otherwise hereunder or under any other Loan Document.

9. Expenses.

The Collateral shall also secure, and the Pledgor shall pay to the Agent upon ten (10) days' written notice from the Agent from time to time, all reasonable costs and expenses (including reasonable attorneys' fees and disbursements, and transfer, recording and filing fees, taxes and other charges) actually incurred for, or incidental to, the creation or perfection of any lien or security interest granted or intended to be granted hereby, the custody, care, sale, transfer, investment, administration, or collection of or realization on the Collateral, or in any way relating to the enforcement, protection or preservation of the rights or remedies of the Agent under this Agreement or the other Loan Documents. The provisions of this Section 9 shall survive any termination of this Agreement or release of any Collat eral.

10. Agent Appointed Attorney-In-Fact.

(a) The Pledgor irrevocably constitutes and appoints the Agent as the Pledgor's true and lawful attorney-in-fact, with full power of substitution, upon the occurrence and during the continuance of an Event of Default, to execute, acknowledge and deliver any instruments and to exercise and enforce every right, power, remedy, option and privilege of the Pledgor with respect to the Collateral, and do in the name, place and stead of the Pledgor, all such acts, things and deeds for and on behalf of and in the name of the Pledgor, which the Pledgor could or might do or which the Agent may deem necessary or desirable to more fully vest in the Agent the rights and remedies provided for herein or to accomplish the purposes of this Agreement. The foregoing powers of attorney are irrevocable and c oupled with an interest.

(b) If the Pledgor fails to perform any agreement herein contained, the Agent may itself perform or cause performance of any such agreement, and any expenses (including any reasonable fees, charges and disbursements of counsel) of the Agent incurred in connection therewith shall be paid by the Pledgor as provided in Section 9 hereof.

11. Liability of Agent.

(a) The Agent, in the Agent's capacity as secured party hereunder, shall be responsible for the performance only of such duties as are specifically set forth in this Agreement, and no duty shall be implied from any provision hereof. The Agent shall not be required to take any discretionary actions hereunder. The Agent shall not be under any obligation or duty (i) to perform any act which, in the Agent's sole judgment (consistent with the Agent's responsibility to exercise reasonable care with respect to the custody of any Collateral actually in its possession), could involve any liability or any expense for which it will not be reimbursed or (ii) to institute or defend any suit in respect hereof, or to advance any of its own monies. The Pledgor shall indemnify and hold the Agent, and its agents, employees and officers harmless from and against any loss, cost or damage (including reasonable attorneys' fees and disbursements) incurred by the Agent or such other indemnitee in connection with the transactions contemplated hereby, excepting losses, costs, expenses and claims arising as a result of the Agent's gross negligence or willful misconduct. The provisions of this Section 11 shall survive any termination of this Agreement or release of any Collateral.

(b) The Agent shall be protected in acting upon any notice, resolution, request, consent, order, certificate, representation, report, opinion, bond or other paper, document or signature reasonably believed by the Agent to be genuine, and the Agent may assume that any purported officer or other representative of the Pledgor purporting to give any of the foregoing in connection with the provisions hereof has been duly authorized to do so. The Agent may require such written certifications or directions from the Pledgor as it reasonably deems necessary or appropriate before taking any action hereunder. The Agent may consult with counsel, and the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by it hereund er and in good faith in accordance therewith. The Agent shall not be responsible for monitoring the Pledgor's compliance with the Pledgor's or any other Credit Party's obligations under this Agreement or any other Loan Document.

12. Continuing Security Interest.

This Agreement shall create a continuing security interest in the Collateral and shall remain in full force and effect until payment in full in cash of all the Pledgor's Obligations and termination of the Commitments and the expiration without any pending drawing or termination of all LOCs (or, in the sole discretion of the Agent, the cash collateralization of such LOCs in a manner satisfactory to the Agent). Upon termination of the Commitments, the expiration without any pending drawing or termination of all LOCs (or, in the sole discretion of the Agent, cash collateralization of such LOCs in a manner satisfactory to the Agent), and payment in full in cash of all of the Pledgor's Obligations, this Agreement shall terminate (other than any provisions hereof expressly stated to survive termination) and the Ple dgor shall be entitled to the return, upon its request and at its expense, of such of the Collateral as shall not have been sold or otherwise applied pursuant to the terms hereof and the Agent shall execute without recourse such instruments and documents as may be reasonably requested by the Pledgor to evidence such termination and the release of the lien hereof.

13. Securities Account; Deposit Account; Entitlement Orders; Instructions.

(a) To the extent permitted by applicable law, the Intermediary will treat all property held by it in the Collateral Account as financial assets as defined in Article 8 of the New York UCC.

(b) Without limiting any other means of perfecting the Agent's security interest in any or all of the Collateral, (i) as to any Collateral now or hereafter held in or credited to the Collateral Account

in the event the Collateral Account constitutes a securities account (as defined in Section 8-501(a) of the New York UCC) as to which the Intermediary is the securities intermediary (as defined in Section 8-102(a)(14) of the New York UCC), the Intermediary will comply with entitlement orders (as defined in Section 8-102(a)(8) of the New York UCC) or other orders or instructions originated by the Agent without further consent by the Pledgor, and (ii) as to any Collateral now or hereafter held in or credited to the Collateral Account in the event the Collateral Account constitutes a deposit account (as defined in Section 9-102(a)(29) of the New York UCC) maintained at the Intermediary, the Intermediary will comply with instructions originated by the Agent directing disposition of the funds in such deposit account without further consent by the Pledgor.

(c) The Intermediary represents that it has not agreed, and covenants that it will not agree, with any third party to comply with any entitlement orders or other orders or instructions concerning the Collateral except with the prior written consent of the Pledgor and the Agent.

14. Subordination.

The Intermediary hereby subordinates any lien or security interest or right of set-off or recoupment it may now or hereafter have on or in the Collateral Account or any or all of the Collateral to the lien and security interest of the Agent; provided that this subordination shall not apply to any lien or security interest or right of set-off or recoupment securing obligations to the Intermediary arising out of the operation of the Collateral Account, including (i) all amounts due to the Intermediary in respect of its customary fees and expenses for the maintenance and operation of the Collateral Account, including any obligation to reimburse the Intermediary for any amounts expended or obligations incurred by the Intermediary to acquire any Collateral, and (ii) the face amount of any checks which have been credited to the Collateral Account but are subsequently returned unpaid because of uncollected or insufficient funds.

15. Notice of Adverse Claims.

Except for the claims and interest of the Agent and the Pledgor in the Collateral Account, the Intermediary does not know of any claim to, or interest in, the Collateral Account or any property held in or credited thereto, including any financial asset (as defined in Section 8-102(a)(9) of the New York UCC). The Intermediary shall promptly notify the Pledgor and Agent of any claim to, or interest in, the Collateral Account or any property held in or credited thereto (including any financial asset) arising or purporting to arise on or after the date hereof.

16. Certain Rights of Intermediary.

(a) Notwithstanding any provision contained herein or in any other document or instrument to the contrary, neither the Intermediary nor any of its officers, directors, employees, agents or representatives (collectively, the "Other Indemnified Parties") shall be liable for (y) any action taken or not taken by the Intermediary (or the Other Indemnified Parties) at the instruction of the Agent, or (z) any action taken or not taken by the Intermediary (or the Other Indemnified Parties) under or in connection with this Agreement, except for the Intermediary's (or the Other Indemnified Party's) own gross negligence or willful misconduct. In no event shall the Intermediary be liable for indirect, special, punitive or consequentia l damages even if advised of the possibility of such damages. Without limiting the foregoing, and notwithstanding any provision to the contrary elsewhere, the Intermediary and the Other Indemnified Parties:

(i) shall have no responsibilities, obligations or duties in respect of the subject matter hereof other than those expressly set forth in this Agreement, and no implied duties, responsibilities or obligations shall be read into this Agreement against the Intermediary; without limiting the foregoing, the Intermediary shall have no duty to preserve, exercise or enforce rights in the Collateral (against prior parties or otherwise), to determine whether or not an event of default exists under any agreement between the Pledgor and the Agent, or to determine whether or not the Agent is entitled to give any entitlement orders or other orders or instructions with respect to the Collateral;

(ii) may in any instance where the Intermediary reasonably determines that it lacks or is uncertain as to its authority to take or refrain from taking certain action, or as to the requirements of this Agreement under the circumstance before it, delay or refrain from taking action unless and until it shall have received appropriate instructions from the Agent or advice from legal counsel (or other appropriate advisor), as the case may be; provided that the Intermediary gives prompt written notice to the Agent of such concerns;

(iii) so long as it and they shall have acted (or refrained from acting) in good faith and with the reasonable belief that such action or omission is duly authorized or within the discretion or powers granted to it hereunder, shall not be liable for any error of judgment in any action taken, suffered or omitted, or for any act done or step taken or omitted, or for any mistake of fact or law, unless such action constitutes gross negligence or willful misconduct on its (or their) part;

(iv) will not be responsible to the Agent, the Issuing Bank, any other Bank, or any other Person for the due execution, legality, validity, enforceability, genuineness, effectiveness or sufficiency of this Agreement (provided, however, that the Intermediary warrants that the Intermediary has legal capacity and has been duly authorized to enter into this Agreement, and that this Agreement is enforceable against the Intermediary, subject to customary exceptions with respect to bankruptcy, public policy, and the effect of applicable law) or for any statement, warranty or representation made by any other party in connection with this Agreement;

(v) will not incur any liability by acting or not acting in reliance upon advice of counsel, or upon any notice, consent, certificate, statement, wire instruction, telecopy or other writing reasonably and in good faith believed by it or them to be genuine and signed or sent by the proper party or parties and contemplated herein;

(vi) will not incur liability for any notice, consent, certificate, statement, wire instruction, telecopy or other writing which is delayed, canceled or changed without the actual knowledge of the Intermediary;

(vii) shall not be required by any provision of this Agreement to expend or risk the Intermediary's own funds, or to take any action (including the institution or defense of legal proceedings) which in its or their reasonable judgment may cause it or them to incur or suffer any expense or liability, unless the Intermediary shall have been provided with security or indemnity, acceptable to the Intermediary, for the payment of the costs, expenses (including reasonable attorneys' fees) and liabilities which may be incurred therein or thereby;

(viii) shall not incur any liability for acts or omissions of any domestic or foreign depository or book-entry system for the central handling of any Collateral, or for investing any Collateral pursuant hereto on a commingled basis with assets of other customers, but shall be responsible for the acts

or omissions of domestic or foreign agents and subcustodians appointed by the Intermediary to the same extent as if such acts or failure to act relevant to this Agreement were those of Intermediary itself; and

(ix) shall not be responsible for the title, validity or genuineness of any Collateral in or delivered into the Collateral Account.

(b) The Pledgor shall pay or reimburse all reasonable out-of-pocket expenses of the Intermediary (including reasonable fees and expenses for legal services) and all of the Intermediary's standard account maintenance fees and transaction fees in respect of, or incident to, the execution, administration or enforcement of this Agreement or in connection with any amendment, waiver or consent relating to this Agreement. The Pledgor agrees to indemnify and hold harmless the Intermediary and the Other Indemnified Parties against any and all claims, liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever, including reasonable attorneys' fees (including costs and expenses of enforcing this indemnity), that may be imposed on, incurred by or asserted against it or them in any way relating to or arising out of this Agreement or any action taken or not taken by it or them hereunder, except to the extent that such claims, liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements were imposed on, incurred by or asserted against the Intermediary or such Other Indemnified Party because of gross negligence or willful misconduct on the part of the Intermediary or the Other Indemnified Parties. The provisions of this Section 16(b) shall survive any termination of this Agreement.

(c) If any Collateral subject to this Agreement is at any time attached or levied upon, or in case the transfer or delivery of any such Collateral shall be stayed or enjoined, or in the case of any other legal process or judicial order affecting such Collateral, the Intermediary is authorized to comply with any such order in any manner as the Intermediary or its legal counsel reasonably deems appropriate and shall give the Agent and the Pledgor prompt written notice of such compliance. If the Intermediary complies with any process, order, writ, judgment or decree relating to the Collateral, then the Intermediary shall not be liable to the Pledgor, the Agent, the Issuing Bank, any other Bank or any other Person even if such order or process is subsequently modified, vacated or otherwise determined to have been without legal force or effect.

(d) The Intermediary shall not be responsible for delays or failures in performance resulting from events or conditions beyond its reasonable control so long as the same exist or continue and cannot reasonably be remedied by the Intermediary in accordance with normal business practices. Such events or conditions shall include acts of God, strikes, lockouts, riots, acts of war or terrorism, epidemics, nationalization, expropriation, currency restrictions, governmental regulations superimposed after the fact, fire, communication line failures, power failures, earthquakes or other disasters.

17. Resignation of Intermediary.

Subject to the appointment and acceptance of a successor Intermediary as provided below, the Intermediary may resign at any time by giving thirty (30) days prior written notice thereof to the Agent and the Pledgor. Upon any such resignation, the Agent shall have the right to appoint a successor Intermediary, which (except during the continuation of a Default) must be reasonably acceptable to the Pledgor. If no successor Intermediary shall have been so appointed and shall have accepted such appointment within thirty (30) days after the retiring Intermediary's giving of notice of resignation, then (i) the retiring Intermediary may petition a court of competent jurisdiction for the appointment of a successor Intermediary or (ii) the retiring Intermediary may appoint a successor Intermediary, which sha ll be a bank or trust company reasonably acceptable to the Agent and Pledgor. Upon the acceptance of any

appointment as Intermediary hereunder by the successor, (i) such successor Intermediary shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring Intermediary and the retiring Intermediary shall be discharged from its duties and obligations hereunder and (ii) the retiring Intermediary shall promptly transfer all Collateral within its possession or control to the possession or control of the successor Intermediary and shall execute and deliver such notices, instructions and assignments as may be necessary or desirable to accomplish the foregoing. After the retiring Intermediary's resignation hereunder as Intermediary, the provisions of Section 16 hereof shall continue in effect for its benefit in respect of any actions taken or omitted to be taken by it while it was acting as Intermediary.

18. Miscellaneous.

(a) This Agreement, together with the other Loan Documents, constitutes the entire and final agreement among the parties with respect to the subject matter hereof and may not be changed, terminated or otherwise varied, except by a writing duly executed by the parties.

(b) No waiver of any term or condition of this Agreement, whether by delay, omission or otherwise, shall be effective unless in writing and signed by the party sought to be charged, and then such waiver shall be effective only in the specific instance and for the purpose for which given.

(c) This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns; provided that the Pledgor may not assign any of its rights or obligations hereunder or any interest herein except as expressly contemplated by this Agreement or the other Loan Documents (and any such attempted assignment shall be void).

(d) Any notice or other communication which by any provision of this Agreement is required or permitted to be given or served hereunder shall be in writing and shall be given or served in the manner specified in the Facility Agreement (in the case of the Intermediary, as if it were DB).

(e) All captions in this Agreement are included herein for convenience of reference only and shall not constitute part of this Agreement for any other purpose. The provisions of Sections 1.02, 1.03 and 1.04 of the Facility Agreement shall apply to this Agreement, mutatis mutandis.

(f) This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of New York.

(g) Any legal action or proceeding with respect to this Agreement and any action for enforcement of any judgment in respect thereof may be brought in the courts of the State of New York sitting in New York County or of the United States of America for the Southern District of New York, and, by execution and delivery of this Agreement, each party hereto hereby submits to and accepts for itself and in respect of its property, generally and unconditionally, the non-exclusive jurisdiction of the aforesaid courts and appellate courts from any thereof. Each party hereto irrevocably consents to the service of process out of any of the aforementioned courts in any such action or proceeding by the mailing of copies thereof by registered or certified mail, postage prepaid, to such part y at its address set forth herein. Each party hereto hereby irrevocably waives any objection which it may now or hereafter have to the laying of venue of any of the aforesaid actions or proceedings arising out of or in connection with this Agreement brought in the courts referred to above and hereby further irrevocably waives and agrees not to plead or claim in any such court that any such action or proceeding brought in any such court has been brought in an inconvenient forum. Nothing herein shall affect the right of a party hereto to serve process in any other

manner permitted by law or to commence legal proceedings or otherwise proceed against any other party hereto in any other jurisdiction.

(h) In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, but each shall be construed as if such invalid, illegal or unenforceable provision had never been included hereunder.

19. WAIVER OF JURY TRIAL.

EACH PARTY HERETO IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE ACTIONS OF A PARTY HERETO IN THE ADMINISTRATION, PERFORMANCE OR ENFORCEMENT HEREOF.

20. Counterparts.

This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement. Delivery of an executed counterpart of a signature page to this Agreement (or any related agreement, including any amendment hereto or waiver hereunder) by facsimile or e-mail (in a pdf or similar file) shall be effective as delivery of an original executed counterpart of this Agreement (or such related agreement).

[SIGNATURE PAGE FOLLOWS]

N WITNESS WHEREOF, the parties hereto have duly executed and delivered this Agreement as of the day and year first above written:

PLEDGOR:

SUNPOWER CORPORATION

By: /s/ Dennis V. Arriola
Name: Dennis V. Arriola
Title: Senior Vice President and Chief Financial Officer

AGENT:

DEUTSCHE BANK AG NEW YORK BRANCH, as Administrative Agent

By: /s/ Anthony F. Calabrese
Name: Anthony F. Calabrese
Title: Director

By: /s/ Katrina Krallitsche
Name: Katrina Krallitsche
Title: Assistant Vice President

INTERMEDIARY:

DEUTSCHE BANK TRUST COMPANY AMERICAS

By: /s/ Luigi Sacramone
Name: Luigi Sacramone
Title: Assistant Vice President

By: /s/ Christina Van Ryzin
Name: Christina Van Ryzin
Title: Vice President

SCHEDULE A

PLEDGOR'S FILING INFORMATION

1.	Pledgor's Exact Full Legal Name:	SunPower Corporation
2.	Pledgor's Mailing Address:	3939 North First Street San Jose, California 95134
3.	Pledgor's Tax ID No.:	94-3008969
4.	Pledgor's Type of Organization:	Corporation
5.	Pledgor's Jurisdiction of Organization:	Delaware
6.	Pledgor's State Organizational ID No.:	3808702
7.	Pledgor's Chief Executive Office:	3939 North First Street San Jose, California 95134

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EXHIBIT A

"Permitted Investments" shall mean, (i) cash denominated in legal currency of the United States of America, or (ii) investments in money market funds that (a) comply with the criteria set forth in Securities and Exchange Commission Rule 2a-7 under the Investment Company Act of 1940, as amended, (b) are rated not less than AAAm by S&P and Aaa by Moody's, (c) have portfolio assets of at least $5,000,000,000 and (d) invest only in securities or other obligations denominated in legal currency of the United States of America.

EXHIBIT 10.13

CONFIDENTIAL TREATMENT REQUESTED
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INVESTMENT NUMBER 27807

MORTGAGE LOAN AGREEMENT

among

INTERNATIONAL FINANCE CORPORATION,

SUNPOWER PHILIPPINES MANUFACTURING LTD.

and

SPML LAND, INC.

Dated May 6, 2010

CONTENTS

PART 1

GENERAL AGREEMENT

This **MORTGAGE LOAN AGREEMENT** (the "Mortgage Loan Agreement") is made on May 6, 2010 by and between:

INTERNATIONAL FINANCE CORPORATION, an international organization established by Articles of Agreement among its member-countries, with address at 2121 Pennsylvania Ave., N.W., Washington, D.C. 20433, United States of America ("***IFC***" or "***Lender***" or "***Mortgagee***" or "***Lender***-***Mortgagee***");

SUNPOWER PHILIPPINES MANUFACTURING LTD., a company organized and existing under the laws of the Cayman Islands and duly licensed to do business under the laws of the Philippines as a branch, with Philippine office address at 100 Trade Avenue, Phase 4, Special Economic Zone, Laguna Technopark, Biñan, Laguna ("***Borrower***" or "***Mortgagor***" or "***Borrower***-***Mortgagor***"); and

SPML LAND INC., a corporation organized and existing under Philippine laws, with office address at 100 Trade Avenue, Phase 4, Special Economic Zone, Laguna Technopark, Biñan, Laguna ("***SPML Land***" or "***Mortgagor***").

RECITALS:

WHEREAS, the Borrower has requested the Lender to provide the Loan described in this Mortgage Loan Agreement to finance the Borrower's capital expenditures or working capital requirements, in each case in the Philippines;

WHEREAS, as part of the security for its full and prompt payment of the Loan and its faithful performance of all its other obligations, the Borrower has agreed, and has caused SPML Land to agree, to jointly constitute a mortgage in favor of the Lender over certain real property owned by SPML Land and chattel and other real property owned by the Borrower; and

WHEREAS, IFC is willing to provide such Loan upon the terms and conditions set forth in this Mortgage Loan Agreement.

WHEREFORE, IT IS AGREED as follows:

ARTICLE I

DEFINITIONS

Section 1.01. *Definitions*. Terms used in the Mortgage Loan Agreement shall, unless otherwise expressly defined in a Part, have the following meanings opposite them:

"Authority"	any national, supranational, regional or local government, or governmental, administrative, fiscal,, judicial or government-owned body, department, commission, authority, tribunal, agency or entity, or central bank (or any Person whether or not government-owned and howsoever constituted or called, that exercises the functions of the central bank);
"Business Day"	a day when banks are open for business in New York, New York or, solely for the purpose of determining any Interest Rate, London, England;
"Dollars" and "$"	the lawful currency of the United States of America;
"Lien"	any mortgage, pledge, charge, assignment, hypothecation, security interest, title retention, preferential right, trust arrangement, right of set-off, counterclaim or banker's lien, privilege or priority of any kind having the effect of security, any designation of loss payees or beneficiaries or any similar arrangement under or with respect to any insurance policy or any preference of one creditor over another arising by operation of law;
"Loan Agreement"	the agreement entitled "Loan Agreement" and which constitutes Part 2 of the Mortgage Loan Agreement, entered into by and between the Borrower and IFC;
"Mortgage Agreement"	the agreement entitled "Mortgage Agreement" and which constitutes Part 3 of the Mortgage Loan Agreement, entered into by and among the Borrower, SPML Land and IFC, and all Mortgage Supplements and any and all documents arising from the Mortgage Agreement, including any amendments or supplements to the foregoing;
"Person"	any natural person, corporation, company, partnership, firm, voluntary association, joint venture, trust, unincorporated organization, Authority or any other entity whether acting in an individual, fiduciary or other capacity;

"Philippines"	the Republic of the Philippines;
"Transaction Documents"	(a) the Mortgage Loan Agreement; (b) the Guarantee Agreement; (c) the Share Retention Agreement; (d) the Subordination Agreement; (e) the Security Documents; (f) the Project Documents; and (g) any other agreement or document which IFC and the Borrower agree is a "Transaction Document";
"Taxes"	any present or future taxes, withholding obligations, duties and other charges of whatever nature levied by any Authority; and
"U.S." or "United States"	the United States of America.

ARTICLE II

INTERPRETATION

Section 2.01. *Certain Terms*. Except as otherwise expressly provided herein, the rules of interpretation set forth in Section 6.07 (*Interpretation*) of the Loan Agreement shall apply herein, *mutatis mutandis*, as if set out in this General Agreement in full. In addition, when used in an agreement comprising a Part of the Mortgage Loan Agreement:

(a) a "***party***" shall be construed so as to include such party and any subsequent successors and permitted transferees in accordance with their respective interests;

(b) a "***Part***" shall be construed as a reference to a Part of the Mortgage Loan Agreement;

(c) "***this Agreement***", "***this Deed***", "***hereunder***", "***hereto***" or "***this Part***" shall be construed as a reference to only that Part of the Mortgage Loan Agreement in which the reference is made and not to the Mortgage Loan Agreement or any other Part thereof;

(d) a "***Section***", "***Clause***", "***Annex***" or "***Schedule***" shall be construed as a reference to the corresponding Section, Clause, Annex or Schedule (as the case may be) in the Part in which the reference is made (unless the context indicates otherwise); and

(e) "***parties hereto***" or "***parties to this Agreement***" and similar references are shall mean references only to the parties to such agreement comprising such Part;

Section 2.02. *Agreements and Statutes*. Any reference in the Mortgage Loan Agreement to:

(a) the Mortgage Loan Agreement or any other agreement or document shall be construed as a reference to the Mortgage Loan Agreement or, as the case may be, such other agreement or document as the same may have been, or may from time to time be, amended, varied, novated, or supplemented; and

(b) a statute or treaty shall be construed as a reference to such statute or treaty as the same may have been, or may from time to time be, amended or, in the case of a statute, re-enacted.

Section 2.03. *Headings*. Section, Clause, Annex and Schedule headings are for ease of reference only.

ARTICLE III

BINDING EFFECT; SEVERABILITY

Section 3.01. *Binding Effect*. Each party to the Mortgage Loan Agreement is entering into the same for the purpose of binding it to the agreements in the applicable Parts to which it is a party. Each Part of the Mortgage Loan Agreement shall be binding upon, inure to the benefit of, and be enforceable by only the parties described therein as parties thereto, assignees and transferees of such parties permitted under such Part, and not any other Person (even if such other Person may be party to the Mortgage Loan Agreement).

Section 3.02. *Benefit of Parts*. Each party executing this General Agreement acknowledges and agrees that:

(a) it shall not be entitled (by way of third party beneficiary status or otherwise) to any of the benefits of, and shall have no rights to enforce, any of the provisions of the other Parts of the Mortgage Loan Agreement to which it is not a party, except to the extent expressly provided in such other Parts; and

(b) each party to any Part of the Mortgage Loan Agreement shall be entitled to enforce such Part as a separate agreement, and the inclusion of such agreement as a Part herein shall in no way derogate from or impair such rights.

Section 3.03. *Severability*. Without limiting any similar provision of any other Transaction Document, if any provision of any Part of the Mortgage Loan Agreement is declared invalid or unenforceable by any lawful tribunal, then it shall be construed, to the extent feasible, to conform to legal requirements of that tribunal. If no feasible interpretation would save such provision, it shall be severed from the remainder of such Part as though never included in such Part and the remaining provisions of such Part shall remain in full force and effect unless such invalidity or unenforceability causes substantial deviation from the underlying intent of the

parties expressed in such Part. In such a case the parties thereto shall replace the invalid or unenforceable provisions with a valid or enforceable provision which corresponds as far as possible to the spirit and purpose of the invalid or unenforceable provision.

ARTICLE IV

MISCELLANEOUS

Section 4.01. *Waivers and Amendments*. Neither this Part 1 nor any of its terms may be changed, waived, discharged, or terminated unless such change, waiver, discharge, or termination is in writing signed by each of the parties to this General Agreement. Each other Part of the Mortgage Loan Agreement may be changed, waived, discharged, or terminated in accordance with the terms set out in such Part.

Section 4.02. *Counterparts*. The Mortgage Loan Agreement may be signed in any number of counterparts, all of which taken together shall be deemed to constitute one and the same document.

Section 4.03. *Waiver of notarization*. The parties hereto acknowledge and confirm that the notarization of the Mortgage Loan Agreement is intended solely for the purpose of complying with the requirements of the laws of the Republic of the Philippines with respect to the formalization of the Security granted under Part 3.

Section 4.04. *Effectiveness*. The Mortgage Loan Agreement shall be effective on the date that it is executed by all the parties hereto. Each party hereto hereby confirms and acknowledges (a) the contemporaneous execution by the parties of the Mortgage Loan Agreement and each of the Parts included therein, for the purpose of providing the financings thereunder, and (b) that the Mortgage Loan Agreement and each of its Parts shall be part of a single integrated financing transaction.

Section 4.05. *Parts*. This Mortgage Loan Agreement shall be comprised of the following parts (each, a "***Part***"):

Part 1 – General Agreement;

Part 2 – Loan Agreement; and

Part 3 – Mortgage Agreement.

IN WITNESS WHEREOF, the duly authorized signatories of the following parties have executed this Part 1 of this Mortgage Loan Agreement on May 6, 2010, in Taguig City, Philippines:

INTERNATIONAL FINANCE CORPORATION

By: /s/ Jesse O. Ang

Name: JESSE O. ANG
Title: Resident Representative

SUNPOWER PHILIPPINES MANUFACTURING LTD.

By: /s/ Gregory D. Reichow

Name: GREGORY D. REICHOW
Title: Attorney-in-Fact

SPML LAND, INC.

By: /s/ Telesforo P. Alfelor

Name: TELESFORO P. ALFELOR
Title: President

INVESTMENT NUMBER 27807

Loan Agreement

between

SUNPOWER PHILIPPINES MANUFACTURING LTD.

and

INTERNATIONAL FINANCE CORPORATION

Dated May 6, 2010

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LOAN AGREEMENT

LOAN AGREEMENT (this "Agreement"), dated May 6, 2010, between SUNPOWER PHILIPPINES MANUFACTURING LTD., a company organized and existing under the laws of the Cayman Islands, (the "Borrower") and INTERNATIONAL FINANCE CORPORATION, an international organization established by Articles of Agreement among its member countries ("IFC").

ARTICLE I

General

Section 1.01. *General*. This Agreement and the documents referred to herein, including the attached Annexes and Schedules, constitute the entire obligation of the Borrower and IFC. Wherever used in this Agreement (including the Annexes and Schedules), unless the context otherwise requires, terms have the meaning as set out in Annex A.

ARTICLE II

The Loan

Section 2.01. *The Loan*. Subject to the terms and conditions of this Agreement, IFC agrees to lend to the Borrower, and the Borrower agrees to borrow, the Loan consisting of a principal amount of up to seventy-five million Dollars ($75,000,000) (the "Loan").

Section 2.02. *Disbursement Procedure*. (a) The Borrower may request Disbursements by delivering to IFC at least ten (10) Business Days before the proposed date of disbursement, a Disbursement request substantially in the form of Schedule 2. Each Disbursement shall be made by IFC at a bank in New York, New York for further credit to the Borrower's account at a bank in the Philippines, or any other place acceptable to IFC, all as specified by the Borrower in the relevant Disbursement request. The first Di sbursement shall be in an amount of not less than twenty million Dollars ($20,000,000) and each Disbursement thereafter (other than the last Disbursement) shall be in an amount of not less than ten million Dollars ($10,000,000).

(b) The Borrower shall deliver to IFC a receipt substantially in the form of Schedule 3, within five (5) Business Days following each Disbursement.

(c) IFC may, by notice to the Borrower, suspend the right of the Borrower to Disbursements or cancel the undisbursed portion of the Loan in whole or in part: (i) if the first Disbursement has not been made by the one (1) year anniversary of the date of this Agreement; (ii) if any Event of Default has occurred and is continuing or if the Event of Default specified in Section 5.02 (e) (*Events of Default*) is, in the reasonable opinion of IFC, imminent; (iii) if any event or condition has occurred which has or can reasonably be expected to have a Material Adverse Effect; or (iv) on or after the two-year anniversary of the date of this Agreement. Upon any cancellation, the Borrower shall, subject to subsection (e) of this Section 2.02, pay to IFC all

fees and other amounts accrued (whether or not then due and payable) under this Agreement up to the date of that cancellation.

(d) The Borrower may, by notice to IFC, irrevocably request IFC to cancel the undisbursed portion of the Loan on the date specified in that notice (which shall be a date not earlier than thirty (30) days after the date of that notice) provided that, subject to subsection (e) of this Section 2.02, IFC has received all fees and other amounts accrued (whether or not then due and payable) under this Agreement up to such specified date.

(e) In the case of partial cancellation of the Loan pursuant to subsection (c) or (d) of this Section 2.02, interest on the amount then outstanding of the Loan remains payable as provided in Section 2.03 (*Interest*).

(f) Any portion of the Loan that is cancelled under this Section 2.02 may not be reinstated or disbursed. Except as provided in Section 2.07 (*Fees*) and Section 2.13 (*Expenses*), no interest or fees shall accrue in respect of such portion of the Loan that is cancelled under this Section 2.02 (*Disbursement Procedure*).

Section 2.03. *Interest*. Subject to the provisions of Section 2.04 (*Default Rate Interest*), the Borrower shall pay interest on the Loan in accordance with this Section 2.03:

(a) During each Interest Period, the Loan (or, with respect to the first Interest Period for each Disbursement, the amount of that Disbursement) shall bear interest at the applicable Interest Rate for that Interest Period.

(b) Interest on any Disbursement or, as the case may be, on the Loan, shall accrue from day to day, be prorated on the basis of a 360 day year for the actual number of days in the relevant Interest Period and be payable in arrears on the Interest Payment Date immediately following the end of that Interest Period, provided that with respect to any Disbursement made less than fifteen (15) days before an Interest Payment Date, interest on that Disbursement shall be payable commencing on the second Interest Payment Date following the date of that Disbursement.

(c) Subject to Sections 2.03 (e) and (f), the Interest Rate for any Interest Period shall be the rate which is the sum of:

(i) the Spread; and

(ii) LIBOR on the Interest Determination Date for that Interest Period for six (6) months (or, in the case of the first Interest Period for any Disbursement, for one (1) month, two (2) months, three (3) months or six (6) months, whichever period is closest to the duration of the relevant Interest Period (or, if two periods are equally close, the longer one)) rounded upward to the nearest three decimal places.

(d) If, for any Interest Period, IFC cannot determine LIBOR by reference to the Reuters Service or any other service that displays BBA rates, IFC shall notify the Borrower and shall instead determine LIBOR:

(i) on the second Business Day before the beginning of the relevant Interest Period by calculating the arithmetic mean (rounded upward to the nearest three decimal places) of the offered rates advised to IFC on or around 11:00 a.m., London time, for deposits in the Loan Currency and otherwise in accordance with Section 2.03 (c) (ii), by any four (4) major banks active in the Loan Currency in the London interbank market, selected by IFC; provided that if less than four quotations are received, IFC may rely on the quotations so received if not less than two (2); or

(ii) if less than two (2) quotations are received from the banks in London in accordance with subsection (i) above, on the first day of the relevant Interest Period, by calculating the arithmetic mean (rounded upward to the nearest three decimal places) of the offered rates advised to IFC on or around 11:00 a.m., New York time, for loans in the Loan Currency and otherwise in accordance with Section 2.03 (c) (ii), by a major bank or banks in New York, New York selected by IFC.

(e) Subject to any alternative basis agreed as contemplated by Section 2.03(f) below, if a Market Disruption Event occurs in relation to all or any part of the Loan for any Interest Period, IFC shall promptly notify the Borrower of such event and the relevant Interest Rate for that Interest Period shall be the rate which is the sum of:

(i) the Spread; and

(ii) either (A) the rate which expresses as a percentage rate per annum the cost to IFC (or the relevant Participant as notified to IFC as soon as practicable and in any event not later than the close of business on the first day of the relevant Interest Period) of funding the Loan or such Participation (as applicable) from whatever source it may reasonably select or (B) at the option of IFC (or any such Participant, as applicable), LIBOR for the relevant period as determined in accordance with Section 2.03 (c) (ii) above.

(f) (i) If a Market Disruption Event occurs in relation to all or any part of the Loan and the Borrower so requests, within 5 Business Days of the notification by IFC pursuant to Section 2.03 (e), IFC and the Borrower shall enter into good faith negotiations (for a period of not more than 30 days) with a view to agreeing a substitute basis for determining the rate of interest applicable to the Loan, or the relevant portion thereof.

(ii) Any alternative basis agreed pursuant to sub-paragraph (i) above shall take effect in accordance with its terms and be binding on the Borrower and IFC.

(iii) If agreement cannot be reached, the Borrower may prepay the relevant portion of the Loan in accordance with Section 2.06 (a) but without any prepayment premium.

(g) On each Interest Determination Date for any Interest Period, IFC shall determine the Interest Rate applicable to that Interest Period and promptly notify the Borrower of that rate.

(h) The determination by IFC, from time to time of the applicable Interest Rate shall be final and conclusive and bind the Borrower (unless the Borrower shows to IFC's satisfaction that the determination involves manifest error).

Section 2.04. *Default Rate Interest*. Without limiting the remedies available to IFC under this Agreement or otherwise (and to the maximum extent permitted by applicable law), if the Borrower fails to make any payment of principal or interest (including interest payable pursuant to this Section) or any other payment provided for in Section 2.07 (*Fees*) when due as specified in this Agreement, the Borrower shall pay interest on the amount of that payment due and unpaid at the rate which shall be the sum of two per cent (2%) per annum and the Interest Rate in effect from time to time determined in accordance with Section 2.03 (*Interest*); and that interest shall accrue from the date on which payment of the relevant overdue amount became due until the date of actual payment of that amount (as well after as before judgment), and shall be payable on demand or, if not demanded, on each Interest Payment Date falling after any such overdue amount became due.

Section 2.05. *Repayment*. Subject to Section 2.14 (*Business Day Adjustment*), the Borrower shall repay the principal amount outstanding of each Disbursement in ten (10) equal installments on the ten (10) consecutive Interest Payment Dates beginning on the first Interest Payment Date to occur at least two (2) years after the date of such Disbursement.

Section 2.06. *Prepayment*. (a) Without prejudice to Section 2.10 (*Increased Costs*), Section 2.03 (f) (iii), Section 2.12 (*Taxes*) and Section 2.15 (*Illegality of Participation*), the Borrower may prepay on any Interest Payment Date all or any part of the Loan on not less than thirty (30) days' prior notice to IFC, but only if, simultaneously with the prepayment, the Bor rower pays all accrued interest on the amount of the Loan to be prepaid, together with all amounts payable under Section 2.11 (*Unwinding Costs*), all amounts payable under Section 2.10 (*Increased Costs*) and a prepayment premium equal to one per cent (1%) of the amount to be prepaid. Any partial prepayment shall (i) be in an amount of not less than ten million Dollars ($10,000,000) and (ii) applied to the remaining repayment installments of the Loan in inverse order of maturity.

(b) Upon delivery of a notice in accordance with Section 2.06 (a), the Borrower shall make the prepayment in accordance with the terms of that notice.

(c) Any principal amount of the Loan prepaid under this Agreement may not be re-borrowed.

Section 2.07. *Fees*. The Borrower shall pay to IFC:

(a) a front-end fee equal to one per cent (1%) of the principal amount of each Disbursement, on the Business Day immediately preceding the date of such Disbursement, provided that, upon any cancellation of the undisbursed portion of the Loan pursuant to Section 2.02 (c) (*Disbursement Procedures*), the Borrower shall, on the date of such cancellation, pay to IFC a fee equal to one per cent (1%) of the amount so cancelled;

(b) a commitment fee at the rate of one half of one per cent (½%) per annum on that part of the Loan that from time to time has not been disbursed or cancelled, beginning to accrue on the date of this Agreement and pro-rated on the basis of a 360-day year for the actual number of days elapsed; such commitment fee to be payable semi-annually in arrears on each Interest Payment Date, beginning on July 15, 2010; and

(c) a portfolio supervision fee of ten thousand Dollars ($10,000) per annum, payable promptly upon receipt of a statement from IFC.

Section 2.08. *Currency and Place of Payment*. (a) The Borrower shall pay all amounts due under this Agreement in the Loan Currency, in same day funds, to Citibank, N.A., 111 Wall Street, New York, New York, U.S.A., ABA#021000089, for credit to IFC's account number *** unless a different account has been designated from time to time by IFC.

(b) The payment obligations of the Borrower under this Agreement shall be discharged or satisfied only to the extent that (and as of the date when) IFC actually receives funds in the Loan Currency in the account referred to in subsection (a) above, notwithstanding the tender or payment (including by way of recovery under a judgment) of any amount in any currency other than the Loan Currency. Accordingly, the Borrower shall, as a separate obligation or by way of indemnity, as the case may be, pay such additional amount as is necessary to enable IFC to receive, after conversion to the Loan Currency at a market rate and transfer to that account, the full amount due to IFC under this Agreement in the Loan Currency and in the account referred to in subsection (a) above.

Section 2.09. *Allocation of Partial Payments*. If IFC at any time receives less than the full amount then due and payable under this Agreement, IFC may allocate and apply the amount received as IFC in its sole discretion determines, notwithstanding any instruction of the Borrower to the contrary.

Section 2.10. *Increased Costs*. On each Interest Payment Date, the Borrower shall pay, in addition to interest, the amount which IFC from time to time notifies to the Borrower in an Increased Costs Certificate as being the aggregate Increased Costs of IFC and each Participant accrued and unpaid prior to that Interest Payment Date.

Section 2.11. *Unwinding Costs*. (a) If IFC or any Participant incurs any cost, expense or loss as a result of the Borrower:

(i) failing to borrow in accordance with a request for Disbursement made pursuant to Section 2.02 (*Disbursement Procedure*);

(ii) failing to prepay in accordance with a notice of prepayment made pursuant to Section 2.06 (*Prepayment*);

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

(iii) prepaying all or any portion of the Loan on a date other than an Interest Payment Date; or

(iv) after acceleration of the Loan, paying all or any portion of the Loan on a date other than an Interest Payment Date;

then the Borrower shall immediately pay to IFC the amount that IFC from time to time notifies to the Borrower as being the amount of those costs, expenses and losses incurred.

(b) For the purposes of this Section, "costs, expenses and losses" include any premium, penalty or expense incurred to liquidate or obtain third party deposits, borrowings, hedges or swaps in order to make, maintain, fund or hedge all or any part of any Disbursement or prepayment of the Loan, or any payment of all or part of the Loan upon acceleration.

Section 2.12. *Taxes*. (a) The Borrower shall pay or cause to be paid all Taxes on or in connection with the payment of all amounts due under this Agreement, and make all payments under this Agreement without deducting any present or future Taxes whatsoever by whomsoever levied or imposed in connection with the payment of any amount under this Agreement; provided that, if the Borrower is prevented from making payments without deduction, the Borrower shall, in each case, pay to IFC an increased amount such that, after deduction, IFC receives the full amount it would have received had that payment been made without deduction.

(b) Subsection (a) does not apply to Taxes which directly result from a Participant having its principal office in the Cayman Islands or the Philippines or maintaining a permanent office or establishment in the Cayman Islands or the Philippines, if and to the extent that such permanent office or establishment acquires the relevant Participation.

Section 2.13. *Expenses*. (a) The Borrower shall pay, or reimburse IFC for any amount paid by IFC on account of, all Taxes (including stamp Taxes), duties, fees or other charges payable on or in connection with the execution, issue, delivery, registration or notarization of the Transaction Documents and any other documents related to them.

(b) The Borrower shall pay to IFC or as IFC may direct, the fees and expenses of IFC's counsel, accountants and consultants incurred in connection with: (i) the preparation, review, execution, translation and, where appropriate, registration of the Transaction Documents and any other documents related to them; (ii) the preparation, administration and implementation by IFC of the investment provided for in this Agreement or otherwise in connection with any amendment, supplement or modification to, or consents or waiver under, any Transaction Document; (iii) the giving of any legal opinions required by IFC under this Agreement and any other Transaction Document; (iv) the occurrence of any Event of Default or Potential Event of Default; (v) the release of the Security following repayment in full of the Loan and (vi) costs of any environmental or social audits.

(c) The Borrower shall pay to IFC, or as IFC may direct, the costs and expenses incurred by IFC in relation to efforts to enforce or protect its rights under any Transaction Document, or the exercise of its rights or powers consequent upon or arising out of the occurrence of any Event of Default or Potential Event of Default, including legal and other professional consultant's fees.

Section 2.14. *Business Day Adjustment*. (a) When an Interest Payment Date is not a Business Day, then such Interest Payment Date shall be automatically changed to the next Business Day in that calendar month (if there is one) or the preceding Business Day (if there is not).

(b) When the day on or by which a payment (other than a payment of principal or interest) is due to be made is not a Business Day, that payment shall be made on or by the next Business Day in that calendar month (if there is one) or the preceding Business Day (if there is not).

Section 2.15. *Illegality of Participation*. If IFC has sold a Participation and after the date of this Agreement, any change made in any applicable law or regulation or official directive (or its interpretation or application by any Authority charged with its administration) (herein the "Relevant Change") makes it unlawful for the Participant acquiring that Participation to continue to maintain or to fund that Participation:

(a) the Borrower shall, upon request by IFC (but subject to any applicable Authorization having been obtained), on the earlier of (x) the next Interest Payment Date and (y) the date that IFC advises the Borrower is the latest day permitted by the Relevant Change, prepay (without prepayment premium referred to in Section 2.06 (*Prepayment*)) in full that part of the Loan that IFC advises corresponds to that Participation; provided that, only with respect to any such prepayment required under clause (x) above, default interest under Section 2.04 (*Default Rate Interest*) shall not begin to accrue in respect of such prepayment amount if not paid w hen due until the tenth (10^{th}) day after the Borrower receives such request for prepayment from IFC;

(b) concurrently with the prepayment of the part of the Loan corresponding to the Participation affected by the Relevant Change, the Borrower shall pay all accrued interest, Increased Costs (if any) on that part of the Loan (and, if that prepayment is not made on an Interest Payment Date, any amount payable in respect of the prepayment under Section 2.11 (*Unwinding Costs*)), but without prepayment premium referred to in Section 2.06 (*Prepayment*); and

(c) the Borrower agrees to take all reasonable steps to obtain, as quickly as possible after receipt of IFC's request for prepayment, the Authorization referred to in Section 2.15 (a) if any such Authorization is then required.

Section 2.16. *Conditions of Disbursement*. (a) IFC is not obligated to make the first Disbursement unless and until the following conditions have all been met:

(i) all Transaction Documents, each in form and substance satisfactory to IFC, have been entered into by all parties to them and have become (or, as the case may be, remain) unconditional and fully effective in accordance with their respective terms, and IFC has received a copy of each of those agreements to which it is not a party;

(ii) the Borrower has obtained, and provided to IFC copies of all Authorizations listed in Annex C, and such other Authorizations

not listed in these Sections that may become necessary for the Loan, its Operations, the execution of, and performance under, this Agreement and each Transaction Document and the remittance to IFC of all monies payable with respect to the Transaction Documents; and all those Authorizations are in full force and effect;

(iii) IFC has received legal opinions, each in form and substance satisfactory to it, from the Borrower's and Guarantor's counsel in the U.S., IFC's counsel in the Philippines, counsel in the Cayman Islands acceptable to IFC and, if requested by IFC, Borrower's counsel in the Philippines and IFC's counsel in the U.S., covering such matters relating to the transactions contemplated by the Transaction Documents as IFC may reasonably request;

(iv) the Borrower's and each other Loan Party's organizational documents are in form and substance satisfactory to IFC;

(v) IFC has received the fees which Section 2.07 (*Fees*) requires to be paid before the date of the first Disbursement and all other amounts then due under this Agreement including but not limited to, reimbursement of all invoiced fees and expenses of IFC's counsel, if IFC so requires;

(vi) IFC has received from the Borrower, and only with respect to clause (A) below, from each other Loan Party, (A) a Certificate of Incumbency and Authority; and (B) a copy of a letter in the form attached as Schedule 4, authorizing its auditors to communicate directly with IFC and provide any information regarding the financial condition of the Borrower as IFC may from time to time request;

(vii) the Borrower has delivered to IFC evidence, satisfactory to IFC, of the appointment of an agent for service of process for the Borrower and the Guarantor, each in the form of Schedule 6;

(viii) the Security has been duly created, perfected and registered or delivered, as the case may be;

(ix) IFC has received copies of all insurance policies required to be obtained pursuant to Section 4.01 (m) (*Affirmative Covenants*) and Annex D, and a certification of the Borrower's insurers or insurance agents confirming that such policies are in full force and effect and all premiums then due and payable under those policies have been paid;

(x) the Borrower and the Guarantor have agreed and documented the conversion of the Borrower's outstanding inter-company accounts

payables to the Guarantor into the Subordinated Promissory Note, on terms and conditions satisfactory to IFC;

(xi) (A) the Borrower has delivered to IFC the S&EA and the Action Plan, each in form and substance acceptable to IFC, and (B) the Borrower and IFC have agreed on the form of Annual Monitoring Report;

(xii) the Borrower has initiated a review of the (A) solid and hazardous materials and waste management practices (including training, handling, storage and emergency procedures) at its Operations, and (B) workplace air quality against relevant standards such as those established by the Occupational Safety and Health Act of 1970 (as amended) of the United States of America for exposure to industrial chemicals and vapor, by a qualified professional acceptable to IFC;

(xiii) the Borrower has retained a consultant acceptable to IFC who has either established alternate discharge standards or confirmed the applicability of existing regulatory standards for (A) emissions to air and (B) discharge to surface water, based on assimilative capacity of ambient environment, with the terms of reference for the scope of work to be established in consultation with IFC;

(xiv) IFC has received the audited 2009 financial statements for each of the Borrower and the Guarantor (or, if more recent financial statements of the Borrower or the Guarantor are available, such more recent financial statements), in each case, restated (if so required) following completion by the Guarantor of its investigation into its accounting entries and financial statements, which shall be in form and substance satisfactory to IFC;

(xv) the Borrower has implemented accounting, management information and cost control systems in a manner satisfactory to IFC, and as required by and consistent with the Securities Laws;

(xvi) the Borrower has established the Debt Service Reserve Account and provided IFC evidence satisfactory to IFC that the amount on deposit in the Debt Service Reserve Account is not less than the aggregate principal and interest due or expected to become due to IFC under this Agreement during the 6-month period commencing on the date of such Disbursement;

(xvii) the Borrower has delivered to IFC a copy of a completed environmental and social impact assessment for its Operations, as approved by all relevant Authorities;

(xviii) IFC has received a legal opinion from legal counsel acceptable to IFC and in form and substance satisfactory to IFC, with respect to the Debt Service Reserve Account Agreement; and

(xix) IFC has received a duly executed amendment extending the term of that certain lease agreement between SPML Land, as lessor, and SPML, as lessee, in respect of the land and building located in Sta. Anastacia, Sto. Tomas, Batangas, Philippines.

(b) IFC is not obligated to make any Disbursement unless and until the following conditions have all been met:

(i) no Event of Default and no Potential Event of Default has occurred and is continuing;

(ii) the proceeds of that Disbursement:

(A) are, at the date of the relevant request, needed by the Borrower in connection with its capital expenditures and/or working capital requirements in the Philippines, or will be needed for such purpose within three (3) months of that date; and

(B) are not in reimbursement of, or to be used for, expenditures in the territories of any country that is not a member of the World Bank or for goods produced in or services supplied from any such country;

(iii) since the date of this Agreement nothing has occurred which has or could reasonably be expected to have a Material Adverse Effect;

(iv) after giving effect to that Disbursement, the Borrower would not be in violation of:

(A) its organizational documents;

(B) any provision contained in any document to which the Borrower is a party (including this Agreement) or by which the Borrower is bound; or

(C) any law, rule, regulation, Authorization or agreement or other document binding on the Borrower directly or indirectly limiting or otherwise restricting the Borrower's borrowing power or authority or its ability to borrow;

(v) IFC has received the request for disbursement referred to in Section 2.02 (*Disbursement Procedure)* and the Borrower's

certifications set out in paragraph 3 of Schedule 2 are true and accurate;

(vi) the Borrower has provided IFC evidence satisfactory to IFC that the amount on deposit in the Debt Service Reserve Account is not less than the aggregate principal and interest due or expected to become due to IFC under this Agreement during the 6-month period commencing on the date of such Disbursement, as notified by IFC to the Borrower;

(vii) the representations and warranties made in Article III of this Agreement and in the other Transaction Documents are true and correct in all material respects on and as of the date of that Disbursement with the same effect as if those representations and warranties had been made on and as of the date of that Disbursement;

(viii) IFC has received evidence satisfactory to IFC that, prior to such Disbursement, the Current Ratio of the Borrower (which, for the purpose of calculating the Current Ratio in this clause (viii), shall exclude (A) any intercompany payables and receivables between the Borrower and other Subsidiaries of the Guarantor and (B) and indebtedness under the Subordinated Promissory Note); is not less than 1.1 and, after giving effect to such Disbursement, the Prospective Debt Service Coverage Ratio of the Borrower would not be less than 1.5;

(ix) the Borrower has implemented the S&E Management System diligently and in accordance with the timetable described in the Action Plan; and

(x) IFC has received all amounts then due under this Agreement, including but not limited to all invoiced fees and expenses of IFC's counsel.

ARTICLE III

Representations and Warranties

Section 3.01. *Representations and Warranties*. The Borrower represents and warrants that on the date of (x) this Agreement, (y) each Disbursement request and (z) each Disbursement:

(a) it is duly incorporated and validly existing under the laws of the Cayman Islands and has the corporate power to own its assets, conduct its business as presently conducted and to enter into, and comply with its obligations under, this Agreement and the Transaction Documents to which it is or will be a party;

(b) each Transaction Document to which the Borrower is a party has been duly authorized and executed by it and constitutes its valid and legally binding obligation, enforceable in accordance with its terms;

(c) neither the making of any Transaction Document to which it is a party nor the compliance with its terms will conflict with or result in a breach of any of the material terms, conditions or provisions of, or constitute a default or require any consent that has not been obtained under, any indenture, mortgage, agreement or other instrument or arrangement to which it is a party or by which it is bound, or violate any of the terms or provisions of its organizational documents or any Authorization, judgment, decree or order or any statute, rule or regulation applicable to it;

(d) it has good and marketable title to all of the assets purported to be owned by it and possesses a valid leasehold interest in all assets which it purports to lease, in all cases free and clear of all Liens, and no contracts or arrangements, conditional or unconditional, exist for the creation by the Borrower of any Lien, except for the Security and as otherwise listed in Annex G;

(e) the provisions of the Security Documents are effective to create, in favor of IFC, legal, valid and enforceable Liens on or in all of the assets covered by the Security;

(f) all recordings and filings have been made in all public offices, all necessary consents obtained and all other action has been taken so that the Liens created by each Security Document constitute perfected Liens on the Security with the priority specified in the Security Documents;

(g) all tax returns and reports of the Borrower and its Subsidiaries required by law to be filed have been duly filed and all Taxes, obligations, fees and other governmental charges, and non-governmental fees, dues, charges or levies, upon the Borrower or any of its Subsidiaries, or their respective properties, income or assets, which are due and payable or to be withheld, have been paid or withheld, other than those presently payable without penalty or interest, except those which (i) are being contested in good faith by appropriate proceedings being diligently conducted, (ii) for which adequate reserves have been provided for in the Borrower's books, (iii) as to which Taxes no Liens have been filed and (iv) such contest effectively suspends the collection of the contested obligation and the enforcement of any Lien securing such obligations;

(h) neither the Borrower nor any of its Subsidiaries is in breach or violation of any indenture, mortgage, agreement or other instrument or arrangement to which it is a party or by which it is bound, and no condition exists with respect to the Borrower, its Subsidiaries, or their respective property that, with notice or the passage of time, or both, has resulted or is reasonably likely to result in a breach or violation which could reasonably be expected to have a Material Adverse Effect;

(i) to the best of the Borrower's knowledge and belief after due inquiry, neither the Borrower nor any of its Subsidiaries is in violation of any statute or regulation of any Authority, and neither the Borrower nor any of its Subsidiaries is engaged in or threatened by any

litigation, arbitration or administrative proceedings, the outcome of which could reasonably be expected to have a Material Adverse Effect; no judgment or order has been issued which has or may reasonably be expected to have a Material Adverse Effect;

(j) to the best of the Borrower's knowledge after due inquiry, the Authorizations specified in Annex C are all the Authorizations (other than Authorizations that are of a routine nature and are obtained in the ordinary course of business) needed by the Borrower to conduct its business, carry out its Operations and execute, and comply with its obligations under this Agreement and each of the other Transaction Documents to which it is a party and those Authorizations have all been obtained and are in full force and effect;

(k) the Borrower is duly authorized and licensed to conduct business in the Philippines;

(l) its charter documents have not been amended since May 22, 2003;

(m) neither the Borrower nor any of its Subsidiaries nor any of their respective properties enjoys any right of immunity from set-off, suit, or execution with respect to their respective assets or their respective obligations under any Transaction Document;

(n) since January 3, 2010, it has not (i) suffered any change that has a Material Adverse Effect, (ii) incurred losses or liabilities in excess of ten million Dollars ($10,000,000) in the aggregate, or (iii) undertaken or agreed to undertake any substantial obligation with a value in excess of ten million Dollars ($10,000,000);

(o) it is not a party to, or committed to enter into, any contract which would or would be reasonably likely to have a Material Adverse Effect;

(p) its financial statements for the period ending on January 3, 2010 have been prepared in accordance with the Accounting Standards, and give a true and fair view of its financial condition as of that date and the results of its operations during the period then ended;

(q) there are no ongoing or, to the best knowledge of the Borrower after due inquiry, threatened strikes, slowdowns or works stoppages by employees of the Borrower or any of its Subsidiaries;

(r) (i) to the best of the Borrower's knowledge and belief after due inquiry, there are no material social or environmental risks or issues in respect of its Operations other than those identified in the S&EA; and (ii) neither it nor any of its Subsidiaries has received nor is it or any of its Subsidiaries aware of either (A) any existing or threatened complaint, order, directive, claim, citation or notice from any Authority or (B) any material written communication from any Person, in either case, concerning the failure of its Operations to comply with any matter covered by the Performance Standards which failure has, or could be reasonably expected to have, a Material Adverse Effect or a material adverse impact on its Opera tions in accordance with the Performance Standards;

(s) neither the Borrower, nor any of its Subsidiaries, nor the Guarantor, nor any of their respective Affiliates, nor any Person acting on its or any of their behalf, has committed or

engaged in, with respect to any of their respective Operations or any transaction contemplated by this Agreement, any Sanctionable Practice;

(t) the Power Agreement with NAPOCOR is in full force and effect and with such terms as previously disclosed to IFC;

(u) by reason of the Borrower's registration with the Philippine Economic Zone Authority, the Borrower is exempt from Philippine national, state or regional income taxes;

(v) none of the representations and warranties in this Section omits any matter the omission of which makes any of them misleading in any material respect;

(w) neither the Borrower nor any of its Subsidiaries nor any of its respective officers, directors, employees, agents or Affiliates, in each case acting on its or its Subsidiary's behalf, has taken any action in connection with its Operations that violates the anti-graft laws of the Philippines, including the Anti-Graft and Corrupt Practices Act (Republic Act No. 3019) or any similar law of any other jurisdiction; and

(x) neither the Borrower nor any of its Subsidiaries has entered into any transaction or engaged in any activity prohibited by any resolution of the United Nations Security Council under Chapter VII of the United Nations Charter.

Section 3.02. *IFC Reliance*. The Borrower acknowledges that it makes the representations and warranties in Section 3.01 (*Representations and Warranties*) with the intention of inducing IFC to enter into this Agreement and that IFC enters into this Agreement in full reliance on each of them.

ARTICLE IV

Covenants

Section 4.01. *Affirmative Covenants*. Unless IFC otherwise agrees, the Borrower shall:

(a) maintain its corporate existence, comply with its organizational documents, and conduct its business and its Operations with due diligence and efficiency and in accordance with sound and standard solar industry and manufacturing, financial and business practices;

(b) comply in all material respects with all applicable law, statutes, regulations and orders of, and all applicable restrictions imposed by, all Authorities in respect of its Operations and the ownership of its property (including applicable law, statutes, regulations, orders and restrictions relating to environmental standards and controls);

(c) maintain an accounting and control system, management information system, and books of account and other records, which together adequately give a fair and true view the financial condition of the Borrower and the results of its operations in conformity with the Accounting Standards;

(d) pay and discharge all Taxes, assessments and governmental charges or levies, and non-governmental fees, dues, charges or levies, imposed upon it or upon its income or profits or upon any properties belonging to it; provided that the Borrower shall not be required to pay any such Tax, assessment, charge, levy or claim which is being contested in good faith and by proper proceedings if it has maintained adequate reserves with respect thereto in accordance with the Accounting Principles;

(e) maintain at all times Isla Lipana and Co. (an affiliate of PricewaterhouseCoopers LLP in the Philippines) or any other auditor that is affiliated with the Guarantor's auditor, as the auditor of the Borrower and authorize such auditor in the form of Schedule 4 to communicate directly with IFC;

(f) upon IFC's request and with reasonable prior notice to the Borrower, permit representatives of IFC and CAO, during normal office hours, to (i) visit and inspect any of the premises where the business of the Borrower or any of its Subsidiaries is conducted and to have access to their books of account and records and to their employees, agents, contractors and subcontractors, and (ii) provide to IFC such other information as IFC from time to time requests about the Borrower or any of its Subsidiaries, their respective assets and their respective Operations, provided that (A) no such reasonable prior notice shall be necessary if an Event of Default or Potential Event of Default is continuing or if special circumstances so require and (B) i n the case of the CAO, such access shall be for the purpose of carrying out the CAO's role;

(g) (i) obtain, renew, maintain in force, and comply with all Authorizations including the Authorizations set forth in Annex C which are material and necessary for the Borrower's business and Operations and compliance by the Borrower with all its obligations under the Transaction Documents; (ii) renew or maintain in full force and effect all leasehold interest and lease agreements relating to the premises subject to the Security; and (iii) create, perfect, renew, maintain perfected and in force, and comply with the terms of, the Security;

(h) apply the proceeds of the Loan to finance the Borrower's capital expenditures or working capital requirements in the Philippines;

(i) undertake its Operations in compliance with (i) the Action Plan, and (ii) the applicable requirements of the Performance Standards;

(j) periodically review the form of Annual Monitoring Report and advise IFC as to whether revision of the form is necessary or appropriate in light of changes to the Borrower's or its Subsidiaries' business or Operations, or in light of environmental or social risks identified by the Borrower's S&E Management System; and revise the form as agreed with IFC;

(k) use all reasonable efforts to (i) implement the S&E Management System in accordance with the timetable specified in the Action Plan and (ii) ensure the continuing implementation and operation of the S&E Management System to assess and manage the social and environmental performance of the Borrower's and its Subsidiaries' Operations in a manner consistent with the Performance Standards;

(l) maintain a control and monitoring plan to ensure performance in compliance with emission standards as described in the Action Plan. The established standards

shall also form the basis for revising the compliance and reporting requirements for emissions to the environment in the Annual Monitoring Report submitted to IFC;

(m) (i) insure and keep insured with financially sound and reputable insurers and reinsurers, all its assets and business against all insurable losses, including the insurances specified in Annex D , with IFC (and any contractor during construction works) being named as additional named insured on all liability policies and as beneficiary or loss payee on those insurance policies relating to assets covered by the Security and business interruption; (ii) promptly notify the relevant insurer of all claims and IFC of any claim by the Borrower in excess of two million Dollars ($2,000,000) under the applicable policy; (iii) not terminate, cancel or materially change any insurance policy; and (iv) ensure that every insurance policy cannot expire or be cancell ed, suspended, terminated or changed by the insurer or the Borrower for any reason (including failure to renew the policy or to pay the premium or any other amount) unless both IFC and the Borrower receive at least forty-five (45) days' prior written notice;

(n) maintain the Debt Service Reserve Account and ensure that the balance on deposit in the Debt Service Reserve Account is at all times sufficient to pay all principal and interest due to IFC under this Agreement for the next succeeding 6 months;

(o) from time to time, execute, acknowledge and deliver or cause to be executed, acknowledged and delivered any and all further agreements, instruments, supplements or filings which may be required under any applicable law or as may reasonably be requested by IFC in order to grant, preserve, protect, perfect the validity or priority of, or maintain in full force and effect the Security, or for amending, supplementing, registering or re-registering the Security and, if necessary or if requested by IFC, ensure that the value of the Security is at all times twice the aggregate principal amount outstanding of the Loan; provided that, if the value of the Security is less than twice the aggregate principal amount outstanding of the Loan and if the Borrower h as additional assets in the form of equipment in the Philippines, IFC may request, and the Borrower shall grant and perfect additional Security over such equipment that the Borrower owns as of the date of such request in order to meet such shortfall; and

(p) adopt and implement, and cause SPML Land to likewise adopt and implement *pro tanto*, each action item set forth in the SPML Land Action Plan and deliver to IFC documentary evidence of the completion of such action within the applicable deadline set forth therein.

Section 4.02. *Negative Covenants*. Unless IFC otherwise agrees, the Borrower shall not:

(a) declare or pay any dividend or make any cash distribution on its share capital (other than dividends or distributions payable in shares of the Borrower), or purchase, redeem or otherwise acquire any shares of the Borrower or any option over them or make a payment under any inter-company payable or subordinated Financial Debt (including shareholder loans) unless, after giving effect to any such action, no Event of Default or Potential Event of Default has occurred and is continuing;

(b) incur any expenditures or commitments for expenditure for fixed or other non-current assets, other than those required for repairs, replacements and maintenance of essential satisfactory operating conditions (the "Capital Expenditures"), in an aggregate amount not exceeding the equivalent of ten million Dollars ($10,000,000) in any Financial Year, provided that, if the Borrower purchases a new solar cell manufacturing line or upgrades an existing solar cell manufacturing line, the limitation set forth above shall be increased to forty million Dollars ($40,000,000) in any Financial Year, and provided further, that, in calendar year 2010, the Borrower may incur Capital Expenditures in an aggregate amount not to exceed the equivalent of si xty-five million Dollars ($65,000,000);

(c) incur or maintain any Financial Debt other than (i) the Loan, (ii) the Subordinated Promissory Note and (iii) other Financial Debt if, after the incurrence of any such other Financial Debt, the Borrower's Peak Debt Service Coverage Ratio shall not be less than 1.5;

(d) lease any property or equipment of any kind, except (i) Financial Leases to the extent (if any) permitted under subsection (c) above, and (ii) otherwise only to the extent the aggregate payments in respect of all such leases do not exceed the equivalent of five million Dollars ($5,000,000) in any Financial Year;

(e) enter into or maintain any Derivative Transaction that are (i) speculative or (ii) outside what is normal, customary, prudent and in the ordinary course of business, including, in the case of clauses (i) and (ii) above, transactions to hedge foreign exchange, interest rate, commodity price and credit risks of the Borrower;

(f) guarantee, assume or become obligated for any obligation of another Person, except with respect to the guarantee by the Borrower of the obligations of First Philec, which guaranteed amount shall not at any time exceed twenty-five million Dollars ($25,000,000) in the aggregate;

(g) create or permit to exist any Lien (other than the Security) on any property, revenues or other assets, present or future, of the Borrower, except for:

(i) any Tax or other Lien arising by operation of law while the obligation underlying that Lien is not yet due or, if due, is being contested in good faith by appropriate proceedings and so long as the Borrower has set aside adequate cash reserves sufficient to promptly pay in full any amounts that the Borrower may be ordered to pay on final determination of any such proceedings;

(ii) Liens in existence on the date hereof which are listed, and the property subject thereto described, in Annex G, without giving effect to any extension or renewal thereof; and

(iii) Liens on assets other than assets covered by the Security to secure Financial Debt permitted under Section 4.02 (c) (ii);

(h) enter into any transaction except (i) with the Guarantor and wholly-owned Subsidiaries of the Guarantor in the ordinary course of business on ordinary commercial terms and

(ii) with any non-wholly owned Subsidiary of the Guarantor or any Affiliate (other than the Guarantor and wholly-owned Subsidiaries of the Guarantor) in the ordinary course of business on ordinary commercial terms and on the basis of arm's length arrangements;

(i) form or have any Subsidiary or joint ventures other than Subsidiaries or joint ventures existing as of the date hereof and any new Subsidiaries or joint ventures; provided that (i) the aggregate amount of all investments, loans and advances by the Borrower from and after the date hereof in or to all such Subsidiaries and joint ventures shall not exceed eight million Dollars ($8,000,000) in any Financial Year or twenty-five million Dollars ($25,000,000) in the aggregate and (ii) before and after giving effect to the formation of any new Subsidiary or joint venture (or any investment, loan or advance by the Borrower in or to such new Subsidiary or joint venture), no Event of Default or Potential Events of Default shall exist or be continuing;

(j) make or permit to exist loans or advances to, or deposits (except bank deposits in the ordinary course of business and the Debt Service Reserve Account) with, other Persons or investments in any Person or enterprise other than the following:

(i) the Borrower may make loans and advances to its Subsidiaries and to First Philec;

(ii) the Borrower may make loans and advances to its officers and employees in the ordinary course of business;

(iii) the Borrower may make advances in the form of a prepayment of expenses to vendors, suppliers and trade creditors, so long as such expenses were incurred in the ordinary course of business of the Borrower; and

(iv) the Borrower may make loans and advances to the Guarantor or any wholly owned Subsidiary of the Guarantor;

provided that before and after giving effect to such loan or advance, no Event of Default or Potential Event of Default shall exist or be continuing; and provided further that the amount of such loans and advances specified in items (i) and (ii) above shall not exceed eight million Dollars ($8,000,000) in the aggregate;

(k) change its organizational documents in any manner which would be inconsistent with the provisions of any Transaction Document, or change its Financial Year;

(l) change in any material respect its business or its Operations;

(m) undertake or permit any merger, spin-off, consolidation or reorganization; or sell, transfer, lease or otherwise dispose of all or a substantial part of its assets (other than inventory), whether in a single transaction or a series of transactions, related or otherwise;

(n) (i) terminate, amend or grant any waiver with respect to any provision of any of the Transaction Documents or (ii) amend the Action Plan in any material respect;

(o) prepay (whether voluntarily or involuntarily) or repurchase any Long-term Debt (other than the Loan) unless the Borrower gives IFC at least thirty (30) days' advance notice of its intention to make the proposed prepayment and, if IFC so requires, contemporaneously makes a proportionate prepayment of the Loan in accordance with the provisions of Section 2.06 (*Prepayment*) (including any amounts due under Section 2.10 (*Increase Costs*) and Section 2.11 (*Unwinding Costs*)) except that there shall be no minimum amount, p repayment premium or advance notice period for that prepayment;

(p) use the proceeds of any Disbursement in the territories of any country that is not a member of the World Bank or for reimbursements of expenditures in those territories or for goods produced in or services supplied from any such country;

(q) engage in (and neither the Borrower nor any of its Subsidiaries shall authorize or permit any Affiliate or any other Person acting on its behalf to engage in) with respect to its Operations or any transaction contemplated by this Agreement, any Sanctionable Practices. The Borrower further covenants that should IFC notify the Borrower of its concerns that there has been a violation of the provisions of this Section or of Section 3.01(s) of this Agreement, it shall cooperate, and it shall cause each relevant Subsidiary to cooperate, in good faith with IFC and its representatives in determining whether such a violation has occurred, and shall respond promptly and in reasonable detail to any notice from IFC, and shall furnish documentary sup port for such response upon IFC's request;

(r) engage, directly or indirectly, in any business other than the business engaged in by the Borrower and its Subsidiaries as of the date hereof and generally within the solar and other renewable (excluding nuclear) energy generation and management business, and businesses ancillary or complementary thereto; or engage in any business or own any significant assets or have any material liabilities relating to any Prohibited Activity;

(s) enter into, nor allow its Subsidiaries to enter into, any transaction or engage in any activity prohibited by any resolution of the United Nations Security Council under Chapter VII of the United Nations Charter;

(t) conduct business or enter into, nor allow its Subsidiaries to conduct business or enter into, any transaction with or transmit any funds through, a Shell Bank; or

(u) amend or modify, or consent to the amendment or modification of, the Subordinated Promissory Note without IFC's prior written consent.

Section 4.03. *Reporting Requirements*. Unless IFC otherwise agrees, the Borrower shall:

(a) within ninety (90) days after the end of each Financial Year, deliver to IFC the corresponding Annual Monitoring Report, confirming compliance with the Action Plan, the social and environmental covenants set forth in Sections 4.01 (*Affirmative Covenants*) and 4.02 (*Negative Covenants*) and Applicable S&E Law, or, as the case may be, identifying any non-compliance or failure, and the actions being taken to remedy it;

(b) within sixty (60) days after the end of each quarter of its Financial Year, deliver to IFC a copy of the financial statements for such quarter prepared in accordance with the Accounting Standards, certified by an officer of the Borrower, and a report on any factors that have or could reasonably be expected to have a Material Adverse Effect;

(c) within one hundred and twenty (120) days after the end of each Financial Year, deliver to IFC copies of: (i) its complete annual financial statements for such Financial Year prepared in accordance with the Accounting Standards, together with its auditors' audit report thereon, all in form satisfactory to IFC; (ii) a management letter and any other communication from its auditors commenting, *inter alia*, on the adequacy of the Borrower's financial control procedures and accounting systems and management information system; and (iii) a report of its operations during that Financial Year in the form of, and addressing the topics listed in, Schedule 5;

(d) within five (5) days after its occurrence, notify IFC of any social, labor, health and safety, security or environmental incident, accident or circumstance having, or which could reasonably be expected to have, a Material Adverse Effect or a material adverse impact on its or any of its Subsidiaries' Operations in accordance with the Performance Standards, specifying in each case the nature of the incident, accident or circumstance and any effects resulting or likely to result therefrom, and the measures the Borrower or the relevant Subsidiary is taking or plans to take to address them and to prevent any future similar event; and keep IFC informed of the on-going implementation of those measures and plans;

(e) as soon as available, deliver to IFC copies of (i) all notices, reports and other communications of the Borrower to its shareholders; and (ii) the minutes of all shareholders' meetings;

(f) promptly upon becoming aware of any litigation or administrative proceedings before any Authority or arbitral body which has or may reasonably be expected to have a Material Adverse Effect, notify IFC by facsimile specifying the nature of that litigation or proceedings and the steps the Borrower is taking or proposes to take with respect thereto;

(g) promptly upon the occurrence of an Event of Default or Potential Event of Default, notify IFC by facsimile specifying the nature of that Event of Default or Potential Event of Default and any steps the Borrower is taking to remedy it;

(h) promptly provide to IFC such information about the Borrower or its Subsidiaries, their respective assets and their respective Operations that IFC requests from time to time on behalf of any Participant for such Participant to satisfy requirements under applicable law and regulations, including those concerning anti-money laundering and combating the financing of terrorism (AML/CFT); and

(i) promptly provide to IFC such other information as IFC from time to time reasonably requests about the Borrower, any of its Subsidiaries, their respective assets and their respective Operations.

ARTICLE V

Events of Default

Section 5.01. *Acceleration After Default*. If any Event of Default occurs and is continuing, IFC may, by notice to the Borrower, require the Borrower to repay the Loan immediately. On receipt of any such notice, the Borrower shall immediately repay the Loan and pay all accrued interest on it, the prepayment premium specified in Section 2.07 (*Prepayment*) and any other amounts payable under this Agreement. The Borrower waives any right that it might have to further notice, presentment, demand or protest with respect to that demand for immediate paym ent.

Section 5.02. *Events of Default* . It shall be an Event of Default if:

(a) the Borrower fails to pay when due any principal of or interest on the Loan and such failure continues for five (5) days;

(b) the Borrower, the Guarantor or any of the Guarantor's Subsidiaries fails to pay when due any part of the principal of, or interest on, any loan from IFC other than the Loan and any such failure continues for the relevant period of grace provided for in the agreement providing for that loan;

(c) the Borrower or any party to a Transaction Document fails to comply with any of its obligations under this Agreement or any other Transaction Document or any other agreement between the Borrower and IFC (other than for the payment of principal of, or interest on, the Loan or any other loan from IFC to the Borrower) and such failure continues for a period of thirty (30) days after the earlier of (i) the date the Borrower becomes aware of such failure and (ii) the date IFC notifies the Borrower;

(d) any representation or warranty made in Article III or any other Transaction Document in connection with the execution of, or any request (including a request for Disbursement) under, this Agreement or any other Transaction Document is found to be incorrect in any material respect;

(e) any Authority condemns, nationalizes, seizes, expropriates or otherwise assumes custody or control of (i) all or any substantial part of the business, Operations, property, land or other assets of the Borrower or of its share capital, or (ii) at least thirty million Dollars ($30,000,000) in fair market value of the assets of the Borrower or Guarantor, or takes any action for the dissolution of the Borrower or any action that would prevent the Borrower or its officers from carrying on all or a substantial part of its business or Operations;

(f) a court finds the Borrower bankrupt or insolvent, or approves as properly filed a petition seeking reorganization, arrangement, adjustment or composition of or in respect of the Borrower under any applicable law, or appoints a receiver, liquidator, trustee, sequestrator (or similar official) of the Borrower or of any substantial part of its property or other assets, or orders the winding up or liquidation of its affairs or any petition is filed seeking any of the foregoing and is not dismissed within ninety (90) days; the Borrower itself institutes proceedings to be adjudicated bankrupt or insolvent, or consents to the institution of bankruptcy or insolvency

proceedings against it, or files a petition or answer or consent seeking reorganization or relief under any applicable law, or consents to the filing of any such petition or to the appointment of a receiver, liquidator, trustee, sequestrator (or other similar official) of the Borrower or of any substantial part of its property, or makes a general assignment for the benefit of creditors, or admits in writing its inability to pay its debts generally as they become due; or any other event occurs which under any applicable law would have an effect similar to any of those events listed above in this subsection;

(g) (i) the Borrower fails to make any payment in respect of or fails to perform any obligation under any agreement pursuant to which there is outstanding

(A) any Financial Debt (other than the Loan) described in clause (i), (ii) or (vi) of the definition of "Financial Debt", and any Financial Debt described in clause (viii) or (xii) of such definition which secures or guarantees or indemnifies any Financial Debt described in clause (i), (ii) or (vi) of such definition;

(B) any Financial Debt (other than the Loan) described in clause (v) of the definition of "Financial Debt", and any Financial Debt described in clause (viii) or (xii) of such definition which secures or guarantees or indemnifies any Financial Debt described in clause (v) of such definition, in an amount, individually or in the aggregate for all such non-payment and/or Financial Debt, in excess of five million Dollars ($5,000,000); or

(C) any other Financial Debt (other than the Loan), in an amount, individually or in the aggregate for all such non-payment and/or Financial Debt, in excess of ten million Dollars ($10,000,000);

(provided that, with respect to clause (A), (B) or (C) above, such failure is other than due to administrative oversight or clerical error and if the holders of such Financial Debt have not yet exercised any rights or remedies with respect to such non payment or non performance), and

(ii) any such failure continues for more than any applicable period of grace or any such Financial Debt becomes prematurely due and payable or is placed on demand;

(h) any Transaction Document or any of its provisions for any reason ceases to be in full force and effect (or in the case of any Security Document, ceases to provide the security intended) or is repudiated or its validity or enforceability at any time is challenged by any Person unless such repudiation or challenge is withdrawn within thirty (30) days of IFC's notice to the

Borrower, except that no such notice shall be required or, as the case may be, the notice period shall terminate if and when that repudiation or challenge becomes effective;

(i) any Authorization necessary for the Borrower to comply with its obligations under any Transaction Document or to carry out its Operations for any reason ceases to be in full force and effect and is not restored or reinstated within thirty (30) days of notice by IFC to the Borrower;

(j) (i) the Borrower fails to make any payment in respect of any of its Liabilities (other than the Loan or any Financial Debt) in an amount, individually or in the aggregate for all such non-payment and/or Liabilities, in excess of ten million Dollars ($10,000,000) or to perform any of its obligations under any agreement pursuant to which there is outstanding any Liability (other than the Loan or any Financial Debt) in an amount, individually or in the aggregate for all such non-payment and/or Liabilities, in excess of ten million Dollars ($10,000,000), and (ii) any such failure continues for more than any applicable period of grace or any such Liability becomes prematurely due and payable or is placed on demand;

(k) a final judgment, order or arbitral award for the payment of money in excess of the equivalent of ten million Dollars ($10,000,000) is rendered against the Borrower or any of its properties and that judgment, order or arbitral award continues to be unsatisfied for a period of thirty (30) consecutive days;

(l) any event described in Sections 5.02 (e), (f) or (g) above has occurred with respect to any other Loan Party or any of its property, assets or share capital; or

(m) any Event of Default (as such term is defined in the Mortgage Agreement) has occurred.

Section 5.03. *Bankruptcy*. If the Borrower is liquidated or declared bankrupt, the Loan, all interest accrued on it and any other amounts payable under this Agreement will become immediately due and payable without any presentment, demand, protest or notice of any kind, all of which the Borrower waives.

ARTICLE VI

Miscellaneous

Section 6.01. *Saving of Rights*. (a) The rights and remedies of IFC in relation to any misrepresentation or breach of warranty on the part of the Borrower shall not be prejudiced by any investigation by or on behalf of IFC into the affairs of the Borrower, by the execution or the performance of this Agreement or any Transaction Document or by any other act or thing by or on behalf of IFC which might, apart from this Section, prejudice such rights or remedies.

(b) No course of dealing and no failure or delay by IFC in exercising any power, remedy, discretion, authority or other right under this Agreement or any other Transaction Document shall impair, or be construed to be a waiver of or an acquiescence in, that or any other power, remedy, discretion, authority or right under this Agreement or any other Transaction Document, or in any manner preclude its additional or future exercise.

Section 6.02. *Notices*. Any notice, request or other communication to be given or made under this Agreement to IFC or to the Borrower shall be in writing and (subject to Section 4.03 (f) and (g) (*Reporting Requirements*) and Section 6.04 (*Applicable Laws and Jurisdiction*)) shall be deemed to have been duly given or made when it is delivered by hand, airmail, established courier service or facsimile to the party to which it is required or permitted to be given or made at such party's address specified below o r at such other address as such party has from time to time designated by notice to the other party hereto, and shall be effective upon receipt.

For the Borrower:

SunPower Manufacturing Philippines Ltd.
c/o SunPower Corporation
Attn: Treasurer
3939 North First Street
San Jose, CA 95134

With a copy to:

SunPower Corporation
Attn: General Counsel
3939 North First Street
San Jose, CA 95134

Alternative address for communications by facsimile: 408-240-5400

For IFC:

International Finance Corporation
2121 Pennsylvania Ave., N.W.
Washington, D.C. 20433
United States of America

Facsimile: (202) 974-4320
Attn: Director, Global Manufacturing and Services Department

With a copy (in the case of communications relating to payments) sent to the attention of the Director, Department of Financial Operations, at:

Facsimile: 202-522-7419.

Section 6.03. *English Language*. All documents to be provided or communications to be given or made under this Agreement or any other Transaction Document shall be in English and, where the original version of any such document or communication is not in English, shall be accompanied by an English translation certified by an authorized representative to be a true and correct translation of the original. IFC may, if it so requires, obtain an English translation of any document or communication received in any other language

at the cost and expense of the Borrower; and in either case IFC may deem any such translation to be the governing version.

Section 6.04. *Applicable Law and Jurisdiction*. (a) This Agreement shall be governed by and construed in accordance with the laws of the State of New York, United States of America.

(b) For the exclusive benefit of IFC, the Borrower irrevocably agrees that any legal action, suit or proceeding arising out of or relating to this Agreement may be brought in any federal or state court located in the City and State of New York. By the execution of this Agreement, the Borrower irrevocably submits to the non-exclusive jurisdiction of any such court (and of the appropriate appellate courts therefrom) in any such action, suit or proceeding and irrevocably waives, to the fullest extent permitted by law, any objection that it may now or hereafter have to the laying of the venue of any action, suit or proceeding in any such court or that such action, suit or proceeding brought in any such court has been brought in an inconvenient f orum.

(c) The Borrower hereby irrevocably designates, appoints and empowers *C T Corporation System, with offices currently located at 111 Eighth Avenue, New York, New York 10011,* as its authorized agent solely to receive for and on its behalf service of any summons, complaint or other legal process in any action, suit or proceeding IFC may bring in the State of New York in respect of this Agreement. The Borrower also irrevocably consents to the service of process of summons, complaint and other legal process in any action, suit or proceeding being made out of federal and state courts located in the State of New York by mailing copies of the papers by registered Un ited States air mail, postage prepaid, or by any other method of delivery specified in Section 6.02 (*Notices*), to the Borrower at its address specified pursuant to such Section, whether within or without the jurisdiction of any court, and the Borrower agrees that service of process on it as so specified shall be deemed effective service of process.

(d) THE BORROWER HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHTS TO A TRIAL BY JURY IN ANY ACTION, SUIT OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

(e) The Borrower hereby explicitly and irrevocably waives any immunity it may have in respect of its obligations under this Agreement or any other Transaction Document to which it is a party, or its assets, under the laws of any jurisdiction, including laws purporting to grant sovereign immunity, to the fullest extent permitted now or in the future by the laws of such jurisdiction.

(f) The Borrower hereby irrevocably waives, to the fullest extent now or in the future permitted under the laws of the jurisdiction in which the relevant court is located, the benefit of any provision of law requiring IFC in any action, suit or proceeding arising out of or in connection with this Agreement or any other Transaction Document to which the Borrower is a party to post security for the costs of the Borrower, or to post a bond or to take similar action.

Section 6.05. *Disclosure of Information*. IFC may, notwithstanding the terms of any other agreement between the Borrower and IFC, disclose any documents, records or information about any Transaction Document, or the assets, business or affairs, other than trade secrets (which trade secrets are permitted to be disclosed if an Event of Default or Potential Event of Default has occurred and is continuing, or pursuant to clauses (b) and (c)(iii) below), of the Borrower to (a) its outside counsel, auditors and rating agencies, (b) any Person who intends to purchase a Participation, and (c) any other Person as IFC may deem appropr iate (i) in connection with the administration of the Loan, including for purposes of exercising any power, remedy, right, authority, or discretion relevant to any Transaction Document, (ii) in connection with any proposed sale, transfer, assignment or other disposition of IFC's rights as contemplated by Section 6.09 (*Successors and Assignees)*, or (iii) to the extent requested by any governmental authority or representative thereof, or required by applicable law or pursuant to legal or judicial process; provided that IFC may not make any such disclosure to a competitor of the Borrower in the solar or other renewable energy generation and management industry unless IFC has requested the Borrower to prepay the Loan pursuant to Section 5.01 (*Acceleration After Default*) and the Borrower has not repaid the Loan and all other amounts due.

Section 6.06. *Financial Calculations*. (a) All financial calculations to be made under, or for the purposes of, this Agreement and any other Transaction Document shall be made in accordance with the Accounting Standards and, except as otherwise required to conform to any provision of this Agreement, shall be calculated from the then most recently issued quarterly financial statements which the Guarantor is obligated to furnish to IFC under the Guarantee Agreement.

(b) Where quarterly financial statements from the last quarter of a Financial Year are used for the purpose of making certain financial calculations then, at IFC's option, those calculations may instead be made from the audited financial statements for such Financial Year.

(c) If a financial calculation is to be made under or for the purposes of this Agreement or any other Transaction Document on a Consolidated Basis, that calculation shall be made by reference to the sum of all amounts of similar nature reported in the relevant financial statements of each of the entities whose accounts are to be consolidated with the accounts of the Guarantor or the Borrower plus or minus the consolidation adjustments customarily applied to avoid double counting of transactions among any of those entities, including, in the case of the Guarantor, the Borrower.

Section 6.07. *Interpretation*. In this Agreement, unless the context otherwise requires:

(a) a reference to an Annex, Article, party, Schedule or Section is a reference to that Article or Section of, or that Annex, party or Schedule to, this Agreement;

(b) words importing the singular include the plural and vice versa;

(c) a reference to a document includes an amendment or supplement to, or replacement or novation of, that document but disregarding any amendment, supplement, replacement or novation made in breach of this Agreement; and

(d) the words “include” or “including”, when following any general statement, term or matter, shall not be construed to limit such statement, term or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not non-limiting language (such as “without limitation” or “but not limited to” or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that fall within the broadest possible scope of such general statement, term or matter.

Section 6.08. *Indemnification; No Consequential Damages*. (a) The Borrower shall indemnify IFC and its officers, directors, employees, agents and representatives (each, an “Indemnitee”) against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities, and expenses (including fees, charges and disbursements of counsel) incurred by or asserted against any Indemnitee arising out of, in connection with, or related to (i) the execution, delivery or performance of any Transac tion Document or any other agreement or instrument contemplated thereby or the consummation of the transactions contemplated hereby, (ii) the Loan or the use of proceeds thereof, (iii) non-compliance with any law or regulation, including any environmental law or regulation, or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory and regardless of whether any Indemnitee is party thereto; provided that such indemnity will not be available to any Indemnitee to the extent that such losses, claims, damages, liabilities or expenses resulted directly from such Indemnitee’s gross negligence or willful misconduct as determined by a final judgment of a court of competent jurisdiction.

(b) To the maximum extent permitted by applicable law, the Borrower shall not assert, and hereby agrees to waive, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages arising out of, in connection with, or relating to, this Agreement or any agreement or instrument contemplated hereby, the Loan or the use of the proceeds thereof.

Section 6.09. *Successors and Assignees*. This Agreement binds and benefits the respective successors and assignees of the parties. However, the Borrower may not assign or delegate any of its rights or obligations under this Agreement without the prior written consent of IFC.

Section 6.10. *Amendments, Waivers and Consents*. Any amendment or waiver of, or any consent given under, any provision of this Agreement shall be in writing and, in the case of an amendment, signed by the parties to this Agreement.

Section 6.11. *Counterparts*. This Agreement may be executed in several counterparts, each of which is an original, but all of which constitute one and the same agreement.

IN WITNESS WHEREOF, the duly authorized signatories of the following parties have executed this Part 2 of this Mortgage Loan Agreement on May 6, 2010, in Taguig City, Philippines.

SUNPOWER PHILIPPINES MANUFACTURING LTD.

By: /s/ Gregory D. Reichow
Name: GREGORY D. REICHOW
Title: Attorney-in-Fact

INTERNATIONAL FINANCE CORPORATION

By: /s/Jesse O. Ang
Name: JESSE O. ANG
Title: Resident Representative

ACKNOWLEDGMENT

REPUBLIC OF THE PHILIPPINES)

TAGUIG CITY) S.S.

BEFORE ME, a Notary Public for and in the above jurisdiction this 6th day of May, 2010 personally appeared the following individual/s, representing the respective corporation/s indicated below his/their names:

Name	Community Tax Certificate No. & Passport No.	Issued at/on
SunPower Philippines Manufacturing Ltd.		
represented by: Gregory D. Reichow		
SPML Land, Inc.		
represented by:		
International Finance Corporation		
represented by:		

personally known to me or identified by me through competent evidence of identity to be the same person[s] who presented to me and signed in my presence Part 1 and Part 2 of this Mortgage Loan Agreement consisting of ____ pages, including this Acknowledgment Page, all of which were signed by them and their instrumental witnesses, and they represented that they executed this Agreement as their free and voluntary act and that they are duly authorized to sign for the corporations they respectively represent.

Parts 1 and 2 of this Mortgage Loan Agreement including the pages of this Acknowledgment and the Loan Agreement's annexes and exhibits are signed by the parties hereto and their instrumental witnesses on the signature page and on the left margin of the other pages hereof.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal this 6th day of May, 2010 at Taguig City, Philippines.

Doc No.
Page No.
Book No.
Series of 2010

DEFINITIONS

Section 1.01 *Definitions*. The definitions set forth in Article I of Part 1 of the Mortgage Loan Agreement shall apply herein, *mutatis mutandis*, as if set out in this Agreement in full. Additionally, wherever used in this Agreement, the following terms have the meanings opposite them:

"Accounting Standards"	(i) International Financial Reporting Standards (IFRS) promulgated by the International Accounting Standards Board ("IASB") (which include standards and interpretations approved by the IASB and International Accounting Standards issued under previous constitutions), together with its pronouncements thereon from time to time, and applied on a consistent basis, (ii) generally accepted accounting principles in the United States applied on a consistent basis, as applicable or (iii) Philippines Financial Reporting Standards, applied on a consistent basis;
"Action Plan"	the plan or plans developed by the Borrower, a copy of which is attached hereto as Annex H setting out specific social and environmental measures to be undertaken by the Borrower and its Subsidiaries to enable their respective Operations to comply with the Performance Standards, as such Action Plan may be amended or supplemented from time to time with IFC's consent;
"Affiliate"	(i) First Philec and (ii) any Person directly or indirectly controlling, controlled by or under common control with, the Borrower (for purposes of this definition, "control" means the power to direct the management or policies of a Person, directly or indirectly, whether through the ownership of shares or other securities, by contract or otherwise, provided that the direct or indirect ownership of twenty per cent (20%) or more of the voting share capital of a Person is deemed to constitute control of that Person, and "controlling" and "controlled" have corresponding meanings);

"Annual Monitoring Report"	the annual monitoring report substantially in the form attached as Annex E hereto setting out the specific social, environmental and developmental impact information to be provided by the Borrower in respect of its and its Subsidiaries' Operations as such form of Annual Monitoring Report may be amended or supplemented from time to time with IFC's consent;
"Applicable S&E Law"	all applicable statutes, laws, ordinances, rules and regulations of the Cayman Islands and the Philippines, including licenses, permits or other governmental Authorizations setting standards concerning environmental, social, labor, health and safety or security risks of the type contemplated by the Performance Standards or imposing liability for the breach thereof;
"Authorization"	any license or approval (howsoever evidenced), registration, filing or exemption from, by or with any Authority, and all corporate, creditors' and shareholders' approvals or consents;
"Authorized Representative"	any natural person who is duly authorized by the Borrower to act on its behalf for the purposes specified in, and whose name and a specimen of whose signature appear on, the Certificate of Incumbency and Authority most recently delivered by the Borrower to IFC;
"Calculation Period"	for any calculation, a period of four consecutive quarters most recently ended prior to the event requiring the calculation for which financial statements should have been delivered to IFC pursuant to the terms and conditions hereof;
"CAO"	Compliance Advisor Ombudsman, the independent accountability mechanism for IFC that impartially responds to environmental and social concerns of affected communities and aims to enhance outcomes;
"Certificate of Incumbency and Authority"	a certificate provided to IFC by the Borrower in the form of Schedule 1;
"Coercive Practice"	the impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;
"Collusive Practice"	an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;
"Consolidated" or	with respect to any Person (with respect to any financial

"Consolidated Basis"	statements to be provided, or any financial calculation to be made, under or for the purposes of this Agreement and any other Transaction Document) the method referred to in Section 6.06 (c) (*Financial Calculations*); and the entities whose accounts are to be consolidated with the accounts of such Person are all the Subsidiaries of such Person;
"Corrupt Practice"	the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;
"Current Assets"	with respect to any Person, the aggregate of such Person's cash, inventories, investments classified as "held for trading", investments classified as "available for sale", trade and other receivables realizable within one year, and prepaid expenses which are to be charged to income within one year;
"Current Liabilities"	with respect to any Person, the aggregate of all Liabilities of such Person falling due on demand or within one year (including the portion of Long-term Debt falling due within one year);
"Current Ratio"	with respect to any Person, the result obtained by dividing Current Assets (less prepaid expenses) by Current Liabilities, in each case, of such Person;
"Debt Service Reserve Account"	a debt service reserve cash account maintained by the Borrower with Wells Fargo Bank, National Association;
"Debt Service Reserve Account Agreement"	the agreement entitled "Debt Service Reserve Account Agreement" entered into or to be entered into among the Borrower, IFC and Wells Fargo Bank, National Association;
"Derivative Transaction"	any swap agreement, cap agreement, collar agreement, future contract, forward contract or similar arrangement with respect to interest rates, currencies or commodity prices;
"Disbursement"	any disbursement of the Loan;
"Event of Default"	any one of the events specified in Section 5.02 (*Events of Default*);
"Financial Debt"	of any Person, means any indebtedness of such Person for or in respect of: (i) borrowed money; (ii) the outstanding principal amount of any bonds,

debentures, notes, loan stock, commercial paper, acceptance credits, bills or promissory notes drawn, accepted, endorsed or issued by such Person;

(iii) the deferred purchase price of assets or services (except trade accounts incurred and payable in the ordinary course of business to trade creditors within one hundred eighty (180) days of the date they are incurred and which are not overdue);

(iv) non-contingent obligations of such Person to reimburse any other person for amounts payable by that person under a letter of credit or similar instrument (excluding any letter of credit or similar instrument issued for the account of such Person with respect to trade accounts incurred and payable in the ordinary course of business to trade creditors within ninety (90) days of the date they are incurred and which are not overdue);

(v) the amount of any obligation in respect of any Financial Lease;

(vi) amounts raised under any other transaction having the financial effect of a borrowing and which would be classified as a borrowing (and not as an off-balance sheet financing) under the Accounting Standards;

(vii) the amount of such Person's obligations under derivative transactions entered into in connection with the protection against or benefit from fluctuation in any rate or price (but only the net amount owing by such Person after marking the relevant derivative transactions to market);

(viii) all indebtedness of the types described in the foregoing items secured by a Lien on any property owned by such Person, whether or not such indebtedness has been assumed by such Person;

(ix) all obligations of such Person to pay a specified purchase price for goods and services, whether or not delivered or accepted (i.e., take or pay or similar obligations);

(x) any repurchase obligation or liability of such Person with respect to accounts or notes receivable sold by such Person, any liability of such Person under any

sale and leaseback transactions that do not create a liability on the balance sheet of such Person, any obligation under a "synthetic lease" or any obligation arising with respect to any other transaction which is the functional equivalent of or takes the place of borrowing but which does not constitute a liability on the balance sheet of such Person;

(xi) any premium payable on a redemption or replacement of any of the foregoing items; and

(xii) the amount of any obligation in respect of any guarantee or indemnity for any of the foregoing items incurred by any other Person;

"Financial Lease" any lease or hire purchase contract which would, under the Accounting Standards, be treated as a finance or capital lease;

"Financial Year" with respect to the Borrower or the Guarantor, the 52- or 53- week period commencing each year on the first Monday and ending on the following Sunday closest to December 31 or such other period as the Borrower or the Guarantor (as applicable) from time to time designates as its accounting year;

"First Philec" First Philec Solar Corporation, a company organized under the laws of the Philippines;

"Fraudulent Practice" any action or omission, including misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial benefit or to avoid an obligation;

"Guarantee Agreement" the agreement entitled "Guarantee Agreement" entered or to be entered into between the Guarantor and IFC;

"Guarantor" SunPower Corporation, a corporation organized under the laws of the State of Delaware;

"Increased Costs" the amount certified in an Increased Costs Certificate to be the net incremental costs of, or reduction in return to, IFC, or any Participant in connection with the making or maintaining of the Loan or its Participation that result from:

(i) any change in any applicable law or regulation or directive (whether or not having force of law) or in its interpretation or application by any Authority charged

with its administration; or

(ii) compliance with any request from, or requirement of, any central bank or other monetary or other Authority;

which, in either case, after the date of this Agreement:

(A) imposes, modifies or makes applicable any reserve, special deposit or similar requirements against assets held by, or deposits with or for the account of, or loans made by, IFC or that Participant;

(B) imposes a cost on IFC as a result of IFC having made the Loan or on that Participant as a result of that Participant having acquired its Participation or reduces the rate of return on the overall capital of IFC or that Participant that it would have achieved, had IFC not made the Loan or that Participant not acquired its Participation;

(C) changes the basis of taxation on payments received by IFC in respect of the Loan or by that Participant with respect to its Participation (otherwise than by a change in taxation of the overall net income of IFC or that Participant imposed by the jurisdiction of its incorporation or in which it books its Participation or in any political subdivision of any such jurisdiction); or

(D) imposes on IFC or on that Participant any other condition regarding the making or maintaining of the Loan or that Participant's Participation in the Loan but excluding any incremental costs of making or maintaining a Participation that are a direct result of that Participant having its principal office in the Philippines or having or maintaining a permanent office or establishment in the Philippines, if and to the extent that permanent office or establishment acquires that Participation;

"Increased Costs Certificate" a certificate provided from time to time by IFC (based on a certificate to IFC from any Participant) certifying:

(i) the circumstances giving rise to the Increased Costs;

(ii) that the costs of IFC or, as the case may be, the Participant, have increased or the rate of return of either of them has been reduced;

(iii) that, IFC or, as the case may be, the Participant has, in its opinion, exercised reasonable efforts to minimize or eliminate the relevant increase or reduction, and

(iv) the amount of Increased Costs;

"Interest Determination Date" except as otherwise provided in Section 2.03 (d) (ii) (*Interest*), the second Business Day before the beginning of each Interest Period;

"Interest Payment Date" January 15 and July 15 in each year;

"Interest Period" each period of six (6) months in each case beginning on an Interest Payment Date and ending on the day immediately before the next following Interest Payment Date, except in the case of the first period applicable to each Disbursement when it means the period beginning on the date on which that Disbursement is made and ending on the day immediately before the next following Interest Payment Date;

"Interest Rate" for any Interest Period, the rate at which interest is payable on the Loan (or any portion thereof) during that Interest Period, determined in accordance with Section 2.03 (*Interest*);

"Liabilities" of any Person, means the aggregate of all obligations of such Person to pay or repay money, including:

(i) Financial Debt;

(ii) the amount of all liabilities of such Person (actual or contingent) under any conditional sale or a transfer with recourse or obligation to repurchase, including by way of discount or factoring of book debts or receivables;

(iii) Taxes (including deferred taxes);

(iv) trade accounts incurred and payable in the ordinary course of business to trade creditors within one hundred eighty (180) days of the date they are incurred and which are not overdue (including letters of credit

or similar instruments issued for the account of such Person with respect to such trade accounts);

(v) accrued expenses, including wages and other amounts due to employees and other services providers;

(vi) the amount of all liabilities of such Person howsoever arising to redeem any of its shares; and

(vii) to the extent (if any) not included in the definition of Financial Debt, the amount of all liabilities of any person to the extent such Person guarantees them or otherwise obligates itself to pay them;

"LIBOR"	the British Bankers' Association ("BBA") interbank offered rates for deposits in the Loan Currency which appear on the relevant page of the Reuters Service (currently page LIBOR01) or, if not available, on the relevant pages of any other service (such as Bloomberg Financial Markets Service) that displays such BBA rates; provided that if BBA for any reason ceases (whether permanently or temporarily) to publish interbank offered rates for deposits in the Loan Currency, "LIBOR" shall mean the rate determined pursuant to Section 2.03 (d) (*Interest*);
"Loan"	has the meaning set out in Section 2.01 (*The Loan*);
"Loan Party"	the Borrower, the Guarantor or SPML Land;
"Loan Currency"	Dollars;
"Long-term Debt"	Financial Debt whose final maturity falls due more than one year after the date it is incurred (including the current maturities thereof);
"Market Disruption Event"	before the close of business in London on the Interest Determination Date for the relevant Interest Period, the cost to IFC or Participants whose Participations in the Loan represent in the aggregate 30% or more of the outstanding principal amount of the Loan (as notified to IFC by such Participants), of funding the Loan or such Participations (as applicable) would be in excess of LIBOR;
"Material Adverse Effect"	with respect to any Loan Party (but in the case of SPML Land, only in respect of clauses (i), (iv) (v) and (vi) below), a material adverse effect on:

(i) such Person, its assets or properties;

(ii) such Person's business prospects or financial condition;

(iii) the carrying on of such Person's business or operations;

(iv) the ability of such Person to comply with its obligations under this Agreement, or under any other Transaction Document or Project Document to which it is a party;

(v) the rights, interests or remedies of IFC under or in connection with any of the Transaction Documents; or

(vi) the Security or IFC's Lien on the Security or the priority of such Lien;

"NAPOCOR"	National Power Corporation, a government owned corporation, created by virtue of Republic Act No. 6395 of the Philippines;
"Net Income"	for any Financial Year, the excess (if any) of gross income over total expenses (provided that income taxes shall be treated as part of total expenses) appearing in the audited financial statements for such Financial Year;
"Non-Cash Items"	for any Financial Year, the net aggregate amount (which may be a positive or negative number) of all non-cash "income" (as a negative item) and non-cash "expense" (as a positive item) items which (under accrual accounting) were added or subtracted in calculating Net Income during that Financial Year; "Non-Cash Items" including equity earnings in Subsidiaries, asset revaluations, depreciation, amortization, deferred taxes and provisions for severance pay of staff and workers;
"Obstructive Practice"	(i) deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making of false statements to investigators, in order to materially impede a World Bank Group investigation into allegations of a Corrupt Practice, Fraudulent Practice, Coercive Practice or Collusive Practice, and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation, or (ii) acts intended to materially impede the exercise of IFC's access to contractually required information

in connection with a World Bank Group investigation into allegations of a Corrupt Practice, Fraudulent Practice, Coercive Practice or Collusive Practice;

"Operations" — the operations, activities and facilities of any Person and its Subsidiaries (including the design, construction, operation, maintenance, management and monitoring thereof, as applicable);

"Participant" — any Person who acquires a Participation in the Loan;

"Participation" — a participating interest in the Loan, or as the context requires, in any Disbursement (for the avoidance of doubt, a Participant is not a direct lender to the Borrower but only has a contractual relationship with IFC with respect to its participating interest in the Loan or any Disbursement);

"Peak Debt Service Coverage Ratio" — the ratio obtained by dividing:

(i) the aggregate, for the Financial Year most recently ended prior to the relevant date of calculation for which audited financial statements are available, of the Borrower's (A) Net Income, (B) Non-Cash Items and (C) the amount of all payments that were due during that Financial Year on account of interest and other charges on Financial Debt (to the extent deducted from Net Income);

by

(ii) the aggregate of (A) the highest aggregate amount, in any Financial Year after the Financial Year described in clause (i) above until the final scheduled maturity of the Loan, of all scheduled payments (including balloon payments) falling due on account of principal of Long-term Debt and interest and other charges on all Financial Debt and (B) without double counting any payment already counted in the preceding sub-clause (A), any payment required to be made to any debt service account in such Financial Year under the terms of any agreement providing for Financial Debt;

where, for the purposes of clause (ii) above:

(x) subject to sub-clause (y), for the computation of interest payable during any period for which the applicable rate is not yet determined, that interest shall be computed at the rate in effect at the time of the

relevant date of calculation; and

(y) interest on Short-term Debt in such Financial Year shall be computed by reference to the aggregate amount of interest thereon paid during the Financial Year in which the relevant date of calculation falls up to the end of the period covered by the latest quarterly financial statements prepared by the Borrower multiplied by a factor of 4, 2 or 4/3 depending on whether the computation is made by reference to the financial statements for the first quarter, the first two quarters or the first three quarters, respectively;

"Performance Standards"	IFC's Performance Standards on Social & Environmental Sustainability, dated April 30, 2006, copies of which have been delivered to and receipt of which has been acknowledged by the Borrower;
"Potential Event of Default"	any event or circumstance which would, with notice, lapse of time, the making of a determination or any combination thereof, become an Event of Default;
"Power Agreement with Napocor"	the National Power Corporation-Manila Electric Company Power Supply Contract for the power requirements of the Borrower and any agreements and supplements related thereto as approved by the Energy Regulatory Commission of the Philippines;
"Prohibited Activity"	an activity specified in Annex F;
"Project Documents"	(i) Solar Cell and Module Contract Manufacturing Agreement, dated January 1, 2004 between SPML and SPTL; (ii) Solar Cell and Module Contract Manufacturing Agreement, dated January 1, 2005 between SPTL and SunPower Systems Sarl; (iii) Supply Agreement, dated July 21, 2008 between SPML and SunPower Systems Sarl; (iv) Amended and Restated Agreement to Share Costs and Risks of Intangibles Development dated January 5, 2009 among SunPower Corporation, SunPower Corporation, Systems and SunPower Technology, Ltd.; (v) Power Agreement with Napocor;

(vi) Registration Agreement dated August 13, 2003 between Philippine Economic Zone Authority and SunPower Philippines Manufacturing Ltd. (Branch Office);

(vii) Supplemental Agreement dated October 11, 2006 between Philippine Economic Zone Authority and SunPower Philippines Manufacturing Ltd. (Branch Office); and

(viii) Supplemental Agreement dated May 30, 2007 Philippine Economic Zone Authority and SunPower Philippines Manufacturing Ltd. (Branch Office).

"Prospective Debt Service Coverage Ratio"

with respect to the Borrower or the Guarantor, the ratio obtained by dividing:

(i) the aggregate, for the Financial Year most recently ended prior to the relevant date of calculation for which audited financial statements are available, of such Person's (A) Net Income, (B) Non-Cash Items and (C) the amount of all payments that were due during that Financial Year on account of interest and other charges on Financial Debt (to the extent deducted from Net Income);

by

(ii) the aggregate of (A) all scheduled payments (including balloon payments) that fall due during the Financial Year in which the relevant date of calculation falls on account of principal of Long-term Debt and interest and other charges on all Financial Debt and (B) without double counting any payment already counted in the preceding sub-clause (A), any payment made or required to be made to any debt service account under the terms of any agreement providing for Financial Debt;

where, for the purposes of clause (ii) above:

(x) subject to sub-clause (y) below, for the computation of interest payable during any period for which the applicable rate is not yet determined, that interest shall be computed at the rate in effect at the time of the relevant date of calculation; and

(y) interest on Short-term Debt payable in the Financial Year in which the relevant date of calculation falls shall be computed by reference to the aggregate

amount of interest thereon paid during that Financial Year up to the end of the period covered by the latest quarterly financial statements prepared by the Borrower multiplied by a factor of 4, 2 or 4/3 depending on whether the computation is made by reference to the financial statements for the first quarter, the first two quarters or the first three quarters, respectively;

"S&EA"	the social and environmental assessment prepared by the Borrower in respect of its and its Subsidiaries' Operations in accordance with the Performance Standards;
"S&E Management System"	the Borrower's social and environmental management system enabling it to identify, assess and manage risks relating to its and its Subsidiaries' Operations on an ongoing basis;
"Sanctionable Practice"	any Corrupt Practice, Fraudulent Practice, Coercive Practice, Collusive Practice, or Obstructive Practice, as those terms are defined herein and interpreted in accordance with the Anti-Corruption Guidelines attached to this Agreement as Annex B;
"Securities Laws"	(i) the Securities Act of 1933, (ii) the Securities Exchange Act of 1934, (iii) the Sarbanes-Oxley Act of 2002 and (iv) the applicable accounting and auditing principles, rules, standards and practices promulgated, approved or incorporated by the U.S. Securities and Exchange Commission or the Public Company Accounting Oversight Board, as each of the foregoing may be amended and in effect on any applicable date hereunder;
"Security"	the security created by or pursuant to the Security Documents to secure all amounts owing by the Borrower to IFC under this Agreement and the Security Documents;
"Security Documents"	the documents providing for the Security consisting of: (i) the Debt Service Reserve Account Agreement; (ii) the Mortgage Agreement; and (iii) any other agreement or document which IFC and the Borrower agree is a "Security Document";
"Share Retention Agreement"	the agreement entitled "Share Retention Agreement" entered or to be entered into among the Borrower, the Guarantor and

	IFC;
“Shell Bank”	a bank incorporated in a jurisdiction in which it has no physical presence and which is not an Affiliate of a regulated (i) bank or (ii) financing group;
“Short-term Debt”	all Financial Debt other than Long-term Debt;
“SPML Land Action Plan”	the action plan relating to the corporate restructuring of SPML Land as set forth in Annex I hereto;
“Spread”	three per cent (3%) per annum;
“Subordinated Promissory Note”	the Revolving Promissory Note entered or to be entered into between the Borrower, as subordinated debtor, and the Guarantor, as subordinated creditor;
“Subordination Agreement”	the agreement entitled “Subordination Agreement” entered or to be entered into among the Borrower, the Guarantor and IFC;
“Subsidiary”	with respect to any Person, an Affiliate over 50% of whose capital is owned, directly or indirectly by such Person; and
“World Bank”	the International Bank for Reconstruction and Development, an international organization established by Articles of Agreement among its member countries.

SANCTIONABLE PRACTICES

ANTI-CORRUPTION GUIDELINES FOR
IFC TRANSACTIONS

The purpose of these Guidelines is to clarify the meaning of the terms "Corrupt Practices", "Fraudulent Practices", "Coercive Practices", "Collusive Practices" and "Obstructive Practices" in the context of IFC operations.

1. CORRUPT PRACTICES

A "Corrupt Practice" is the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party.

INTERPRETATION

A. Corrupt practices are understood as kickbacks and bribery. The conduct in question must involve the use of improper means (such as bribery) to violate or derogate a duty owed by the recipient in order for the payor to obtain an undue advantage or to avoid an obligation. Antitrust, securities and other violations of law that are not of this nature are excluded from the definition of corrupt practices.

B. It is acknowledged that foreign investment agreements, concessions and other types of contracts commonly require investors to make contributions for bona fide social development purposes or to provide funding for infrastructure unrelated to the project. Similarly, investors are often required or expected to make contributions to bona fide local charities. These practices are not viewed as Corrupt Practices for purposes of these definitions, so long as they are permitted under local law and fully disclosed in the payor's books and records. Similarly, an investor will not be held liable for corrupt or fraudulent practices committed by entities that administer bona fide social development funds or charitable contributions.

C. In the context of conduct between private parties, the offering, giving, receiving or soliciting of corporate hospitality and gifts that are customary by internationally-accepted industry standards shall not constitute corrupt practices unless the action violates applicable law.

D. Payment by private sector persons of the reasonable travel and entertainment expenses of public officials that are consistent with existing practice under relevant law and international conventions will not be viewed as Corrupt Practices.

E. The World Bank Group does not condone facilitation payments. For the purposes of implementation, the interpretation of "Corrupt Practices" relating to facilitation payments will take into account relevant law and international conventions pertaining to corruption.

2. FRAUDULENT PRACTICES

A "Fraudulent Practice" is any action or omission, including misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial benefit or to avoid an obligation.

INTERPRETATION

A. An action, omission, or misrepresentation will be regarded as made recklessly if it is made with reckless indifference as to whether it is true or false. Mere inaccuracy in such information, committed through simple negligence, is not enough to constitute a "Fraudulent Practice" for purposes of this Agreement.

B. Fraudulent Practices are intended to cover actions or omissions that are directed to or against a World Bank Group entity. It also covers Fraudulent Practices directed to or against a World Bank Group member country in connection with the award or implementation of a government contract or concession in a project financed by the World Bank Group. Frauds on other third parties are not condoned but are not specifically sanctioned in IFC, MIGA, or PRG operations. Similarly, other illegal behavior is not condoned, but will not be considered as a Fraudulent Practice for purposes of this Agreement.

3. COERCIVE PRACTICES

A "Coercive Practice" is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party.

INTERPRETATION

A. Coercive Practices are actions undertaken for the purpose of bid rigging or in connection with public procurement or government contracting or in furtherance of a Corrupt Practice or a Fraudulent Practice.

B. Coercive Practices are threatened or actual illegal actions such as personal injury or abduction, damage to property, or injury to legally recognizable interests, in order to obtain an undue advantage or to avoid an obligation. It is not intended to cover hard bargaining, the exercise of legal or contractual remedies or litigation.

4. Collusive Practices

A “Collusive Practice” is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party.

Interpretation

Collusive Practices are actions undertaken for the purpose of bid rigging or in connection with public procurement or government contracting or in furtherance of a Corrupt Practice or a Fraudulent Practice.

5. Obstructive Practices

An “Obstructive Practice” is (i) deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making of false statements to investigators, in order to materially impede a World Bank Group investigation into allegations of a corrupt, fraudulent, coercive or collusive practice, and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation, or (ii) acts intended to materially impede the exercise of IFC’s access to contractually required information in connection with a World Bank Group investigation into allegations of a corrupt, fraudulent, coercive or collusive practice .

Interpretation

Any action legally or otherwise properly taken by a party to maintain or preserve its regulatory, legal or constitutional rights such as the attorney-client privilege, regardless of whether such action had the effect of impeding an investigation, does not constitute an Obstructive Practice.

General Interpretation

A person should not be liable for actions taken by unrelated third parties unless the first party participated in the prohibited act in question.

AUTHORIZATIONS

(See Section 4.01 (g) of the Loan Agreement)

1. Securities and Exchange Commission (SEC) Certificate of Registration of the Articles of Incorporation and By-Laws of the Borrower, as amended

2. SEC Certificate of Registration of the Articles of Incorporation and By-Laws of SPML Land, as amended

3. Philippine Economic Zone Authority (PEZA) Registration Agreements and Certificates of Registration, with amendments and supplements as applicable, for all production lines of the Borrower

4. Bureau of Internal Revenue Registration of the Borrower, and all tax registrations, certificates of exemption, and authorizations, including importation licenses and clearances

5. Business Permits issued by the Philippine Local Government Units where the operations of the Borrower are located

6. Certificates of Title to the Premises (as defined in Part 3 of the Mortgage Loan Agreement) and all Real Assets (as defined in Part 3 of the Mortgage Loan Agreement) ,as applicable, issued by the Register of Deeds where such properties are located

7. Certificates of Tax Declaration of Real Property over the Real Assets not otherwise covered by a Certificate of Title issued by the local government units where such properties are located

8. Borrower’s Board authorization and approval of the Transaction Documents

9. SPML Land’s Board authorization and approval of the Mortgage (to the extent of the mortgage of its land and building in Batangas)

10. SPML Land’s Shareholder Approval of the Mortgage (to the extent that the mortgaged assets constitute all or substantially all of its assets)

11. SunPower Corporation’s Board authorization and approval of the Transaction Documents (to the extent applicable to it)

12. Certificate of Good Standing of the Borrower issued by the SEC and the Registrar of Companies in the Cayman Islands

13. Certificate of Good Standing of the Guarantor issued by the Secretary of State of the State of Delaware

14. Written consent from SPML Land for the Borrower to assign by way of security its leasehold rights to the buildings in Batangas

15. Written waiver, consent, or confirmation from the Philippine Economic Zone Authority (PEZA) that the first lien constituted upon the Borrower's real properties or personal properties existing or located inside the Special Economic Zones to answer for any outstanding obligations due and payable to the PEZA has been either waived or is not applicable to the Borrower or any of its assets

16. A written authorization from PEZA acknowledging the Mortgage (as forming part of the Transaction Documents) and consenting to any transfer of the mortgaged equipment to the winning bidder in the event of a foreclosure sale under the Mortgage

17. Written consent of each of Union Bank, N.A. and Wells Fargo Bank, National Association, approving and consenting to the Transaction Documents

18. Entry into the Register of Mortgages and Charges of the Borrower in respect of the mortgages and charges created under the Transaction Documents.

INSURANCE REQUIREMENTS

1. CONSTRUCTION

a) Construction All Risks, based on full contract value and including:

i) Strike, Riots and Civil Commotion
ii) Debris Removal
iii) Extra Expenses
iv) Extended Maintenance Period
v) Third Party Liability

b) Marine Cargo (including war) in respect of all critical shipments.

2. OPERATIONAL PHASE

a) Fire and named perils or Property All Risk, based on new replacement cost of assets (provided that with respect to earthquake coverage for the Philippines operations (i) a PML study be undertaken and completed no later than six months after the date of this Agreement by a competent surveyor engaged by the Borrower and acceptable to IFC; and (ii) after such study, the Borrower and IFC in consultation with each other both agree that such coverage is available on commercially reasonable terms. Only to the extent both IFC and the Borrower, each in their sole discretion, agree such earthquake cover is available on commercially reasonable terms will there be an obligation on the Borrower to include earthquake cover in its Property All Risk coverage.

b) Machinery Breakdown

c) Business Interruption

d) Third Party Liability, including Products Liability

3. AT ALL TIMES

All insurance required by applicable laws and regulations

FORM OF ANNUAL MONITORING REPORT

[See next page]

ENVIRONMENTAL AND SOCIAL PERFORMANCE ANNUAL MONITORING REPORT (AMR)

Philippines

SunPower

Philippines
27807

REPORTING PERIOD: (0/year) through (month/year)

AMR COMPLETION DATE: (day/month/year)

Environment and Social Development Department
2121 Pennsylvania Avenue, NW
Washington, DC 20433 USA
www.ifc.org/enviro

INTRODUCTION

The Annual Monitoring Report

IFC's Investment Agreement requires SunPower to prepare a comprehensive Annual Monitoring Report (AMR) for SunPower facilities and operations in the Philippines. This document comprises IFC's and SunPower's agreed format for environmental and social performance reporting. The AMR informs the Environment and Social Development Department about the environmental and social state of the investment.

Preparation Instructions

The following points should assist you in completing this form. Please be descriptive in your responses and attach additional information as needed.

- IFC's Loan Agreement requires designated SunPower personnel to complete and submit annual environmental and social monitoring reports in compliance with the schedule stipulated in the Loan agreement.
- SunPower must report qualitative and quantitative project performance data each year of the investment for the environmental and social monitoring parameters included in this report format.
- The main purpose of completing this form is to provide the following information:

1. Environmental and Social Management
2. Occupational Health and Safety (OHS) Performance
3. Significant Environmental and Social Events
4. General Information and Feedback
5. Sustainability of Project and Associated Operations
6. Compliance with World Bank Group and local environmental requirements as specified in the Loan Agreement
7. Compliance with World Bank Group and local social requirements as specified in the Loan Agreement
8. Data Interpretation and Corrective Measures

Specialist Contact Information

If you have any questions regarding the AMR or wish to discuss completion of the AMR please contact the following Investment Officer or Portfolio Manager.

Investment Officer	Name: Faheen Allibhoy Telephone Number: +1 (202) 458-4961 Facsimile Number: +1 (202) 974-4392 Email: fallibhoy@ifc.org

Portfolio Manager	Name: Colin Warren Telephone Number: +852-2509-8146 Email: cwarren@ifc.org

1 ENVIRONMENTAL AND SOCIAL MANAGEMENT

1.1 AMR Preparer

To be completed by SunPower authorized representative	Name and Title: Phone: Fax: Email:
SunPower Information	SunPower office physical address: SunPower web page address:

I certify that the data contained in this AMR completely and accurately represents SunPower operations during this reporting period. I further certify that analytical data summaries[1] incorporated in Section 6 are based upon data collected and analyzed in a manner consistent with the IFC EHS Guidelines.

SunPower Employee Name Signature

Name of Third Party Organization and Representative Certifying This Document Signature

1.2 Environmental Responsibility Chart

Please name the individuals in the company who hold responsibility for environmental and social performance (e.g. Environment Manager, Occupational Health and Safety Manager, Community Relations Manager) and give their contact information (Name, Address, Telephone Number, Fax Number, E-mail Address).

1.3 Summary of Current Operations

Describe any significant changes since the last report in the company or in day-to-day operations that may affect environmental and social performance. Describe any management initiatives (e.g. ISO 14001, ISO 9001, OHSAS 18001, or equivalent Quality, Environmental and Occupational Health and Safety certifications). Provide summary reports for each country where SunPower has operations, which should include:

[1] Raw analytical data upon which summaries are based should not be submitted with this AMR but must be preserved by Arabesque and presented to IFC upon demand.

2 OCCUPATIONAL HEALTH AND SAFETY PERFORMANCE (OHS)

SunPower personnel are required to monitor, record, and report occupational health and safety incidents and workplace conditions throughout the reporting period.

2.1 Host Country Compliance

Please list any reports submitted to Host Country authorities, e.g. on OHS, fire and safety inspections, compliance monitoring, emergency exercises, as well as comments received and corrective actions taken. Host Country authority monitoring and inspections with subsequent actions taken shall also be summarized and reported. Provide summary reports for each country where SunPower has operations.

If any of the information requested in the AMR is contained in reports sent to Host Country authorities, please submit the applicable section of the report.

2.2 Workplace Monitoring

Please prepare an Occupational Health and Safety Monitoring Report. Workplace monitoring must take place while SunPower facilities are in operation. Please complete a workplace table for each monitoring station in your operations.

2.3 Incident Statistics Monitoring

Please report on incidents during the reporting year for SunPower. Contractor employees are required to adhere to comparable occupational health and safety standards. If SunPower uses contractor employees, please also report any contractor employee incidents. Provide summary reports for each country where SunPower has operations. Expand or shrink the tables as needed.

1. Total Amounts

	This reporting period		**Reporting period- 1 year ago**		**Reporting period- 2 years ago**	
Report TOTAL numbers for each parameter	SunPower employees	Contractor employees	SunPower employees	Contractor employees	SunPower employees	Contractor employees
Employees						
Man-hours worked						
Fatalities						
Non-fatal injuries[2]						
Lost workdays[3]						
Vehicle collisions[4]						
Incidence[5]						

[2] Incapacity to work for at least one full workday beyond the day on which the accident or illness occurred.
[3] Lost workdays are the number of workdays (consecutive or not) beyond the date of injury or onset of illness that the employee was away from work or limited to restricted work activity because of an occupational injury or illness.
[4] Vehicle Collision: When a vehicle (device used to transport people or things) collides (comes together with violent force) with another vehicle or inanimate or animate object(s) and results in injury (other than the need for First Aid) or death.
[5] Calculate incidence using the following equation: incidence= total lost workdays/ 100,000 man-hours worked.
Use the total lost workdays to calculate the incidence for this reporting period, reporting periods 1 year ago and 2 years ago, as required above.

2. Fatality details for this reporting period

SunPower employees or contractor employees?	Time of death after accident (e.g. immediate, within a month, within a year)	Cause of fatality	Corrective measures to prevent reoccurrence

3. Non-fatal injuries details for this reporting period

SunPower employees or contractor employees?	Total workdays lost	Description of injury	Cause of accident	Corrective measures to prevent reoccurrence

4. Vehicle collision details for this reporting period

SunPower employees or contractor employees?	Cause of collision	Corrective measures to prevent reoccurrence

5. Training[6] for this reporting period

SunPower employees or contractor employees?	Description of training	Number of employees that attended

[6] SunPower personnel should be trained in environmental, health and safety matters including accident prevention, safe lifting practices, the use of Material Safety Data Sheets (MSDS), safe chemical handling practices, proper control and maintenance of equipment and facilities, emergency response, personal protective equipment (PEP), emergency response, etc.

2.4 Life and Fire Safety

Please complete the following table for SunPower's operations. Provide summary reports for each country where SunPower has operations.

SunPower Fire Safety Verification Activities	Mandatory Frequency	Date(s) Performed	Observed Deficiencies[7]	Corrective Actions and Schedule For Implementation[8]
Fire Drills	Minimum: three (3)/year			
Inspect and certify fire detection and suppression electrical and mechanical systems.	Minimum: one (1)/year			
Inspect, refill/recharge portable fire extinguisher	Minimum: two (2) inspections/ year			

2.5 Significant OHS Events

If applicable, please explain any significant Occupational Health and Safety events not covered in the above OHS tables. The report could include proposed revision of the OHS Management System (if applicable), revised quantitative objectives, action plans for technical improvements, and planned training activities. Provide summary reports for each country where SunPower has operations.

[7] Attach additional sheets as needed to fully describe observed deficiencies.
[8] Attach additional sheets as needed to fully describe corrective actions and implementation.

3 SIGNIFICANT ENVIRONMENTAL AND SOCIAL EVENTS

SunPower personnel are required to report all environmental and social events[9] that may have caused damage; caused health problems; attracted the attention of outside parties; affected project labor or adjacent populations; affected cultural property; or created SunPower and/or SunPower liabilities.

Attach photographs, plot plans, newspaper articles and all relevant supporting information that IFC will need to be completely familiar with the incident and associated environmental and social issues.

Please report on the following topics, expanding or collapsing the table where needed.

Date of event	Event description	Affected people/environment	Reports sent to IFC and/or local regulatory agencies	Corrective actions (including cost and time schedule for implementation)

[9] Examples of significant incidents follow. Chemical and/or hydrocarbon materials spills; fire, explosion or unplanned releases; industrial injuries; fatalities including transportation; ecological damage/destruction; local population disruption; disruption of emissions or effluent treatment; legal/administrative notice of violation; penalties, fines, or increase in pollution charges; negative media attention; chance cultural finds; labor unrest or disputes.

4 GENERAL INFORMATION AND FEEDBACK

Provide any additional information including the following:

1. Describe print or broadcast media attention given to SunPower during this reporting period related to Environmental, Social or Health and Safety performance of the company.

2. Describe interactions with non-governmental organizations (NGOs) or public scrutiny of SunPower.

3. Describe any SunPower public relations efforts in the context of communicating environmental and social aspects to external interested parties (e.g. establishment of a web page, hiring of community liaison officer, etc.).

5 SUSTAINABILITY OF PROJECT AND ASSOCIATED OPERATIONS

IFC has developed a framework to help assess the development impacts of our investments. Many of our projects take on initiatives, develop processes, or install equipment that exceeds IFC's environmental and social requirements. This framework permits us to rate project performance in various areas. Over the past year, has Project Sponsor made changes to operations or participated in any efforts that have impacted Project Sponsor's organization in the following areas?

- q Implemented an environmental and social management system (if not already established)
- q Published an environment/sustainability or a corporate social responsibility report (please send copy or provide web link)
- q Established formal and regular consultation with local community and other stakeholders
- q Decreased use of resources, increased emission controls, or increased by-product recycling
- q Marketing of products or services that are specifically environmentally friendly
- q Worked to improve local supplier relationships or provided technical assistance to suppliers
- q Programs to benefit the local community
- q Employee programs - training, health, safety

If so, please offer details so we can assess your performance beyond our compliance criteria.

§ **Emissions Monitoring** – Emission Control, Monitoring and Reporting requirements will be established after completion of the study as per agreed Environment and Social Action Plan (ESAP). At a minimum SunPower is required to report on compliance with applicable Philippine regulatory requirements and applicable IFC guideline standards shown in Tables 1 and 2 shown below.

Table 1. Effluent levels

Pollutants	Units	Guideline Value
pH	—	6–9
COD	mg/L	160
BOD_5	mg/L	50
Total suspended solids	mg/L	50
Oil and grease	mg/L	10
Total phosphorus	mg/L	2
Fluoride	mg/L	5
Ammonia	mg/L	10
Cyanide (total)	mg/L	1
Cyanide (free)	mg/L	0.1
AOX (adsorbable organic bound halogens)	mg/L	0.5
Arsenic	mg/L	0.1
Chromium (hexavalent)	mg/L	0.1
Chromium (total)	mg/L	0.5
Cadmium	mg/L	0.1
Copper	mg/L	0.5
Lead	mg/L	0.1
Mercury	mg/L	0.01
Nickel	mg/L	0.5
Tin	mg/L	2
Silver	mg/L	0.1
Selenium	mg/L	1
Zinc	mg/L	2
Temperature increase	°C	<3[a]

[a] At the edge of a scientifically established mixing zone which takes into account ambient water quality, receiving water use, potential receptors and assimilative capacity.

Table 2. Air emission levels[c]

Pollutants	Units	Guideline Value
VOC[a]	mg/Nm^3	20
Organic HAP[b]	Ppmv	20
Inorganic HAP[b]	Ppmv	0.42
HCl	mg/Nm^3	10
HF	mg/Nm^3	5
Phosphine	mg/Nm^3	0.5
Arsine and As compounds	mg/Nm^3	0.5
Ammonia	mg/Nm^3	30
Acetone	mg/Nm^3	150

NOTES:
[a] Applicable to surface cleaning processes.
[b] Industry-specific hazardous air pollutants (HAPs) include: antimony compounds, arsenic compounds, arsine, carbon tetrachloride, catechol, chlorine, chromium compounds, ethyl acrylate, ethylbenzene, ethylene glycol, hydrochloric acid, hydrofluoric acid, lead compounds, methanol, methyl isobutyl ketone, methylene chloride, nickel compounds, perchloroethylene, phosphine, phosphorous, toluene, 1,1,1-trichloroethane, trichloroethylene (phased-out), xylenes. Current industry practice is not to use ethylbenzene, toluene, xylene, methylene chloride, carbon tetrachloride, chromium compounds, perchloroethylene, 1,1,1-trichloroethane, or trichloroethylene.
[c] At 3 percent O_2.

§ **Solid and Hazardous Waste Management** – Monitor generation and disposal of solid and hazardous waste from each of SunPower's operating facilities in relation to host country requirements and IFC/WBG environmental guidelines and report the results of each. Include summaries listing vendors used, quantities, cost and location of disposal. For areas of non-compliance, indicate corrective actions to be taken.

- **Community Engagement** – Provide brief descriptions of any public consultation and disclosure activities with local communities and other stakeholders conducted (including that done in coordination with government authorities) at various facilities over the reporting period. Report on any SunPower programs intended to benefit the local communities.

- **Status report on implementation of the Environmental and Social Action Plan (ESAP)**

PROHIBITED ACTIVITIES

- Production or activities involving harmful or exploitative forms of force labor and/or harmful child labor.
- Production or trade in any product or activity deemed illegal under host country laws or regulations or international conventions and agreements.
- Production or trade in weapons and munitions.
- Production or trade in alcoholic beverages (excluding beer and wine).
- Production or trade in tobacco.
- Gambling, casinos and equivalent enterprises.
- Trade in wildlife or wildlife products regulated under Convention on International Trade in Endangered Species of Wild Fauna and Flora.
- Production or trade in radioactive materials.
- Production or trade in or use of unbonded asbestos fibers.
- Commercial logging operations or the purchase of logging equipment for use in primary tropical moist forest (prohibited by the Forestry policy).
- Production or trade in products containing PCBs.
- Production or trade in pharmaceuticals subject to international phase outs or bans.
- Production or trade in pesticides/herbicides subject to international phase out.
- Production or trade in ozone depleting substances subject to international phase out.
- Drift net fishing in the marine environment using nets in excess of 2.5 km in length.
- Knowingly provide or permit to be provided any product or services (or any text, pictures, graphics, sound, video, or other data in connection with any services) that:

  (i) infringe on any third party’s copyright, patent, trademark, trade secret or other proprietary rights or rights or publicity of privacy;

(ii) violate any law, statute, ordinance or regulation (including, without limitation, the laws and regulations governing export control);

(iii) are defamatory, trade libelous, unlawfully threatening or harassing;

(iv) are obscene or pornographic or contain child pornography;

(v) violate any laws regarding competition, privacy, anti-discrimination or false advertising; or

(vi) contain any viruses, Trojan horses, worms, time-bombs, cancel bots or other computer routines that are intended to damage, detrimentally interfere with, surreptitiously intercept or expropriate any system, data or personal information

EXISTING LIENS

- Chattel mortgage dated September 26, 2008 granted by the Borrower to NorSun AS.

ANNEX H

ACTION PLAN

	Action	Deliverable	Implementation Date
Labor and Working Conditions			
1.	**Review of Compliance of Workplace Safety** Review (a) solid and hazardous materials and waste management practices (training, handling, storage and emergency procedures) at its operations, and (b) workplace air quality against relevant standards such as those established by OSHA for exposure to industrial chemicals and vapor, and implement remedial action as necessary. Specific milestones are: (i) Initiate review by qualified professional and complete in 30 days (ii) Action plan for implementation of any remedial measures.	Documentary Evidence Review Report and Recommendation w/schedule for implementation	(i) COD[10] (ii) LS[11]+ 30 days
Pollution Prevention and Abatement			
2.	**Emission Standards** Consistent with IFC Environmental Health and Safety Guidelines, establish emission standards for (a) all liquid effluents (process wastewater, stormwater, utilities, etc. and (b) air emissions. Specific requirements are: (i) Retain consultant to establish / confirm applicability of existing regulatory standards for (a) emissions to air and (b) discharge to surface water – based on assimilative capacity of ambient environment from cumulative impact. Terms of Reference for consultant to be established in consultation with IFC. (ii) Agree with IFC on implementation schedule and resource allocation for any remedial measures that may be required.	Documentary Evidence (i) Cumulative Impact Assessment (CIA) from LLDA[12] confirming use of CIA for establishment of permit parameters/levels for emissions. Or	(i) COD (ii) LS+180 days

[10] COD – Condition of Disbursement

[11] LS – Loan Signature

[12] Laguna Lake Development Authority

3.	**GHG Emissions** SunPower will monitor and quantify GHG emissions annually in accordance with internationally recognized methodologies. Specifically, SunPower will: (i) Evaluate technically and financially feasible and cost-effective options to reduce or offset project-related GHG emissions during the design and operation of the project. (ii) Develop an implementation plan based on assessment.	(i) Contract with consultant Alternatives Assessment Report and Schedule	(i) and (ii) LS+180 days

SPML Land Action Plan

Action	**Deadline**
A. Organize the retirement fund which qualifies as a Philippine national	Within 4 weeks of the date of the Mortgage Loan Agreement
B. Obtain tax-exempt status for the retirement fund	Within 3 months of the date of the Mortgage Loan Agreement
C. Revise capital and ownership structure of SPML Land to achieve the following: (i) increase equity capitalization level based on a total debt-to-equity ratio of 4:1. (ii) increase Filipino stake in the equity capitalization, not only in terms of number of shares but also in par value of shares, based on a Filipino-to-foreigner-shareholder ratio of 60:40. The revised capital and ownership structure specified in this Item C is subject to acceptance by IFC and shall include delivery to IFC of (1) the resolutions of SMPL Land's Board of Directors and shareholders approving such restructuring and (2) approval by the Philippine Securities and Exchange Commision of the amendment to the Articles of Incorporation of SPML Land.	Within 5 months of the date of the Mortgage Loan Agreement
D. Transfer Filipino shares to and in the name of the retirement fund	Within 5 months of the date of the Mortgage Loan Agreement

FORM OF CERTIFICATE OF INCUMBENCY AND AUTHORITY

[LETTERHEAD OF THE BORROWER]

[Date]

International Finance Corporation
2121 Pennsylvania Ave., N.W.
Washington, D.C. 20433
United States of America
Attention: Director, Global Manufacturing & Services Group

Ladies and Gentlemen:

Certificate of Incumbency and Authority

With reference to the Loan Agreement between us, dated May 6th, 2010 (the "Loan Agreement"), I the undersigned [Chairman/ Director] of SunPower Philippines Manufacturing Ltd. (the "Borrower") duly authorized to do so, hereby certify that the following are the names, offices and true specimen signatures of the persons [each] [any two] of whom are and will continue to be (until you receive authorized written notice from the Borrower that they, or any of them, no longer continue to be) authorized:

(a) to sign on behalf of the Borrower the request for the disbursement of funds provided for in the Loan Agreement and such other certificates, requests and documents required or permitted to be made thereunder on behalf of the Borrower; and

(b) to take, in the name of the Borrower, any other action required or permitted to be taken, done, signed or executed under the Loan Agreement or any other agreement to which IFC and the Borrower may be parties:

Name*	Office	Specimen Signature

You may assume that any such person continues to be so authorized until you receive written notice from an Authorized Representative of the Borrower that they, or any of them, is no longer so authorized.

* As many, or as few, names may be included as the Borrower shall desire.

Yours truly,

SUNPOWER PHILIPPINES MANUFACTURING LTD.

By _____
[Chairman / Director]

FORM OF REQUEST FOR DISBURSEMENT

[LETTERHEAD OF THE BORROWER]

[Date]

International Finance Corporation
2121 Pennsylvania Ave., N.W.
Washington, D.C. 20433
United States of America

Ladies and Gentlemen:

Re: Investment No. 27807
Request for Loan Disbursement No. [__]

1. Please refer to the Loan Agreement dated May 6, 2010 (the "Loan Agreement") between SunPower Philippines Manufacturing Ltd. (the "Borrower") and International Finance Corporation ("IFC"). All terms defined in the Loan Agreement shall bear the same meanings herein.

2. The Borrower hereby requests the disbursement on _____ (or as soon as practicable thereafter) of the amount of _____under the Loan (the "Disbursement") in accordance with the provisions of Section 2.02 of the Loan Agreement.

You are requested to pay such amount to the account in [New York] of SunPower Philippines Manufacturing Ltd. with [Name of correspondent Bank], Account No. _____ at [Name and Address of Bank] [for further credit to the Borrower's Account No. _____ at [Name and address of Bank] in [city and country].

3. For the purposes of Section 2.16 of the Loan Agreement, the Borrower hereby certifies as follows:

(a) no Event of Default or Potential Event of Default has occurred and is continuing;

(b) the proceeds of the Disbursement are at the date of this request needed by the Borrower in connection with its capital expenditures and/or working capital requirements in the Philippines;

(c) since the date of the Loan Agreement, nothing has occurred which has or could reasonably be expected to have a Material Adverse Effect;

(d) the representations and warranties made in Article III of the Loan Agreement and in the other Transaction Documents are true and correct in all material respects on and as of the date of this request and will be true and correct in all material respects on and as of the date of the Disbursement with the same effect as if such representations and warranties had been made on and as of each such date;

(e) the proceeds of the Disbursement are not in reimbursement of, or to be used for, expenditures in the territories of any country which is not a member of the World Bank or for goods produced in or services supplied from any such country;

(f) after giving effect to the Disbursement, the Borrower will not be in violation of:

(i) its organizational documents;

(ii) any provision contained in any document to which the Borrower is a party (including the Loan Agreement) or by which the Borrower is bound; or

(iii) any law, rule, regulation, Authorization or agreement or other document binding on the Borrower directly or indirectly, limiting or otherwise restricting the Borrower's borrowing power or authority or its ability to borrow.

The above certifications are effective as of the date of this request for Disbursement and shall continue to be effective as of the date of the Disbursement. If any of these certifications is no longer valid as of or prior to the date of the requested Disbursement, the Borrower will immediately notify IFC and will repay the amount disbursed upon demand by IFC if Disbursement is made prior to the receipt of such notice.

Yours faithfully,

SUNPOWER PHILIPPINES MANUFACTURING LTD.

By _____
Authorized Representative

Copy to: Director, Department of Financial Operations
International Finance Corporation

FORM OF DISBURSEMENT RECEIPT

[LETTERHEAD OF THE BORROWER]

[Date]

International Finance Corporation
2121 Pennsylvania Ave., N.W.
Washington, D.C. 20433
United States of America
Attention: Director, Department of Financial Operations

Ladies and Gentlemen:

Re: Investment No. 27807
Disbursement Receipt No. [__]

We, SunPower Philippines Manufacturing Ltd., hereby acknowledge receipt, on the date hereof, of the sum of _____ (_____) disbursed to us by International Finance Corporation ("IFC") under the Loan of _____(__) provided for in the Loan Agreement dated May 6, 2010 signed between our company and IFC.

Yours faithfully,

SUNPOWER PHILIPPINES MANUFACTURING LTD.

By _____
Authorized Representative

FORM OF LETTER TO BORROWER'S AUDITORS

[LETTERHEAD OF THE BORROWER]

[Date]

[Auditors]
[Address]

Dear Sirs:

We hereby authorize and request you to give to International Finance Corporation ("IFC") of 2121 Pennsylvania Ave., N.W. Washington, D.C. 20433, United States of America, all such information as IFC may reasonably request with regard to (i) the financial statements (both audited and unaudited), accounts and operations of the undersigned company, and (ii) any management letter and other communications from you to our company or its management, all of which we have agreed to supply under the terms of the Loan Agreement between the undersigned Company and IFC dated May 6, 2010 (the "Loan Agreement"). For your information, we enclose a copy of the Loan Agreement.

For our records, please ensure that you send us (i) a copy of all written communications you receive from IFC immediately upon receipt thereof and (ii) a copy of all communications made by you to IFC immediately upon the issue thereof.

Yours faithfully,

SUNPOWER PHILIPPINES MANUFACTURING LTD.

By _____
Authorized Representative

Enclosure

cc: International Finance Corporation
2121 Pennsylvania Ave., N.W.
Washington, D.C. 20433
United States of America
Attention: Director, Global Manufacturing & Services Group

INFORMATION TO BE INCLUDED IN ANNUAL REVIEW OF OPERATIONS

(See Section 4.03 (c) (iii) of the Loan Agreement)

(1) Sponsors and Shareholdings. Information on significant changes in share ownership of Borrower, the reasons for such changes, and the identity of major new shareholders.

(2) Country Conditions and Government Policy. Report on any material changes in local conditions, including government policy changes, that directly affect the Borrower (e.g. changes in government economic strategy, taxation, foreign exchange availability, price controls, and other areas of regulations.)

(3) Management and Technology. Information on significant changes in (i) the Borrower's senior management or organizational structure, and (ii) technology used by the Borrower, including technical assistance arrangements.

(4) Corporate Strategy. Description of any changes to the Borrower's corporate or operational strategy, including changes in products, degree of integration, and business emphasis.

(5) Markets. Brief analysis of changes in Borrower's market conditions (both domestic and export), with emphasis on changes in market share and degree of competition.

(6) Operating Performance. Discussion of major factors affecting the year's financial results (sales by value and volume, operating and financial costs, profit margins, capacity utilization, capital expenditure, etc.).

(7) Financial Condition. Key financial ratios for previous year, compared with ratios covenanted in the Loan Agreement.

FORM OF SERVICE OF PROCESS LETTER

[Letterhead of Agent for Service of Process]

(See Section 2.16 (a) of the Loan Agreement)

[Date]

International Finance Corporation
2121 Pennsylvania Avenue, N.W.
Washington, D.C. 20433
United States of America

Attention: _____

Dear Sirs:

Reference is made to (i) Section 6.04(c) of the Loan Agreement dated May 6, 2010 (the "**Loan Agreement**") between SunPower Philippines Manufacturing Ltd. (the "**Borrower**") and International Finance Corporation ("**IFC**"), which constitutes Part 2 of the Mortgage Loan Agreement dated May 6, 2010 among the Borrower, SPML Land, Inc. and IFC, (ii) Section 7.05(c) of the Guarantee Agreement dated May 6, 2010 (the "**Guarantee Agreement**") between SunPower Corporation (the "**Guarantor**") and IFC, (iii) Section 4.10(c) of the Share Retention Agreement dated May 6, 2010 (the "**Share Retention Agreement**") among the Borrower, the Guarantor and IFC, (iv) Section 17(c) of the Subordination Agreement dated May 6, 2010 (the "**Subordination Agreement**") among the Borrower, the Guarantor and IFC and (v) Section 7.7(c) of the Debt Service Reserve Account Agreement dated May [__], 2010 among the Borrower, IFC and Wells Fargo Bank, National Association (all of the forgoing, as each may be amended, supplemented or otherwise modified from time to time, the "**New York Law Agreements**"). Unless otherwise defined herein, capitalized terms used herein shall have the meaning specified in the Loan Agreement.

Pursuant to each of the New York Law Agreements, the Borrower or the Guarantor, as applicable, has irrevocably designated and appointed the undersigned, C T Corporation System with offices currently located at 111 Eighth Avenue, New York, New York 10011, as its authorized agent to receive for and on its behalf service of process in any legal action or proceeding with respect to each of the New York Law Agreements in any federal or state court located in the City and State of New York.

The undersigned hereby informs you that it has irrevocably accepted that appointment as process agent as set forth in each of the New York Law Agreements, in each case from the date hereof until [_____, 20__] and agrees with you that the undersigned (i) shall inform the Guarantor promptly in writing of any change of its address in New York, (ii) shall perform its obligations as such process agent in accordance with the relevant provisions of each New York Law Agreement, and (iii) shall forward promptly to the Borrower or the Guarantor, as applicable, any legal process received by the undersigned in its capacity as process agent. The Guarantor hereby agrees that it shall promptly notify IFC in writing of any change of address received from the undersigned referred to in clause (i) above.

The undersigned acknowledge receiving $[ ] as payment of our charges for this [ ] year appointment. Unless we are notified to the contrary, our services will terminate on [state the date through which we have been paid]. Our services are limited to the receipt and forwarding of service of process

As process agent, the undersigned and its successor or successors agree to discharge the above-mentioned obligations.

Very truly yours,

C T Corporation System

By: _____
Name:
Title:

Acknowledged and Agreed:

SunPower Corporation

By: _____
Name:
Title:

PART 3

MORTGAGE AGREEMENT

This Mortgage Agreement ("**Mortgage Agreement**") is made by and among:

SunPower Philippines Manufacturing Ltd., a foreign corporation duly licensed to do business under the laws of the Philippines with office address at 100 Trade Avenue, Phase 4, Special Economic Zone, Laguna Technopark, Biñan Laguna ("***SPML***");

SPML Land, Inc., a corporation organized and existing under the laws of the Philippines with principal address at 100 East Main Ave., LTI Biñan Laguna ("***SPML Land***" or, together with SPML, the "***Mortgagors***", or, individually, each the "***Mortgagor***"); and

International Finance Corporation, an international organization established by the Articles of Agreement among its member countries including the Republic of Philippines ("***IFC***" or the "***Mortgagee***").

WITNESSETH:

WHEREAS, SPML desires to avail of a loan from IFC under the Loan Agreement for the purpose of financing SPML's capital expenditures or working capital requirements, in each case, in the Philippines;

WHEREAS, for valuable consideration received from SPML, SPML Land has agreed to act as accommodation mortgagor by mortgaging certain of its properties identified below in favor of the Mortgagee to secure the loan granted by the Mortgagee to SPML; and

WHEREAS, in consideration of IFC entering into the Loan Agreement and to induce it to grant the Loan thereunder, SPML and SPML Land have agreed to enter into this Mortgage Agreement and be bound by all covenants and obligations provided for herein.

NOW, THEREFORE, the parties hereto agree as follows:

ARTICLE I
DEFINITIONS AND RULES OF INTERPRETATION

Section 1.01. *Certain Defined Terms*. Unless otherwise defined herein, all capitalized terms used in this Mortgage Agreement (including the recitals hereto) constituting Part 3 of this Mortgage Loan Agreement that are defined in the Loan Agreement constituting Part 2 of this Mortgage Loan Agreement shall have the respective meanings assigned to them in the Loan

Agreement, or that are defined in the General Agreement constituting Part 1 of this Mortgage Loan Agreement shall have the respective meanings assigned to them in the General Agreement .

Section 1.02. *Additional Definitions*. In addition to the terms defined pursuant to Section 1.01 (*Certain Defined Terms*), whenever used in this Mortgage Agreement, and unless the context otherwise requires, the following terms have the following meanings:

"**Action**"	means any litigation, claim, demand, action, suit, allegation, arbitration, inquiry, investigation, discovery, audit, assessment, or proceeding by or before any Governmental Authority;
"**Applicable Law**"	means any applicable statute, law, ordinance, regulation, rule, code, order, requirement, or rule of law of a Governmental Authority or other Authority;
"Assets"	means the Real Assets and the Chattel owned and to be owned by any of the Mortgagors;
"Authorization"	means any license or approval (howsoever evidenced), registration, filing or exemption from, by or with any Governmental Authority or other Authority, and all corporate, creditors' and shareholders' approvals or consents;
"Chattels"	means all the Present Chattel listed in Annex "B" (*Description of Present Chattel*) and all the Future Chattel as may be listed in Annex "B-1" (*Description of Future Chattel*);
"Chattel Mortgage"	means the mortgage or mortgages created and to be created by the Mortgagor over the Chattel pursuant to this Mortgage Agreement;
"Event of Default"	means an Event of Default as defined under the Loan Agreement and any of the events of default enumerated under Section 6.05 (*Events of Default*);
"Financing Documents"	means any Transaction Document other than the Project Documents;
"Future Chattels"	means such Chattel at any time hereafter owned or acquired by Mortgagors, wherever located, and all products thereof, whether in the possession of Mortgagor, any warehousemen, any bailee or any other Person, or in process of delivery, and whether located at Mortgagors' places of business or elsewhere, including all improvements, replacements, substitutions, increases, additions, accessories, and accretions thereto, all such goods after they have been severed and removed from any of said real property, whether or not covered by a separate list or supplemental mortgage

and whether or not separately registered, and all additional properties or collateral hereafter mortgaged or deemed mortgaged under the terms hereof other than those classified as Present Chattels and as may be **included in Annex "B-1"** (*Description of Future Chattel*);

"Future Real Assets" means the Real Assets, including those listed in Annex "A-1" (*Description of Future Real Assets*), other than those classified as Present Real Assets;

"**Governmental Authority**" means the Philippine government, or any political subdivision or department of such government or political subdivision, or any Philippine regulatory, self-regulatory, or administrative authority, agency, instrumentality, department, bureau, board, or commission, or any Philippine court, tribunal, or judicial or arbitral body, or any arbitral tribunal, whether Philippine or otherwise.

"Insurance Contracts" means any and all agreements between any of the Mortgagors and any Person, the latter as insurer, whereby the insurer undertakes, for a consideration, to indemnify any of the Mortgagors (or Mortgagee, as the Mortgagor's designated loss-payee) against loss, damage or liability in respect of the Premises, or the Assets, or the ownership or operation thereof, arising from an unknown or contingent event;

"Lease Rights" means the rights of SPML under the Contract of Lease between SPML and SPML Land dated August 2006 (Doc. No. 90, Page No. 18, Book No. IX, Series of 2006 dated 5 September 2006 of Notary Public Basilio B. Pooten for Sta. Rosa, Laguna), including any and all renewals and extensions thereof, covering the lease by SPML of the Premises from SPML Land;

"Loan Parties" means SPML, SPML Land, and SunPower Corporation;

"Mortgage" means the Real Estate Mortgage and the Chattel Mortgage, together with the rights, benefits and remedies of the Mortgagee inherent therein or provided for herein;

"Mortgage Supplements" means Mortgage Supplements in the form of Exhibit "A" *(Form of Mortgage Supplement)* hereof to be executed by the Mortgagor(s) and the Mortgagee, each of which shall be a "Mortgage Supplement" and numbered consecutively;

"**Mortgagors"** means SMPL and SPML Land, and "Mortgagor" means either of them, as the context requires;

"Obligations"	means any payment, performance, or other obligation of any Loan Party of any kind, including, without limitation, any liability of any Loan Party on any claim, whether or not the right of any creditor to payment in respect of such claim is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, disputed, undisputed, legal, equitable, secured, or unsecured, and whether or not such claim is discharged, stayed, or otherwise affected by any proceeding referred to in Section 5.02(f) of the Loan Agreement; provided that, without limiting the generality of the foregoing, the Obligations of the Loan Parties under the Financing Documents include (a) the obligation to pay principal, interest, commissions, charges, expenses, fees, attorneys' fees and disbursements, indemnities, and other amounts payable by any of the Loan Parties under any such Financing Documents and (b) the obligation of the Loan Parties to reimburse any amount in respect of any of the foregoing that IFC, in its sole discretion, may elect to pay or advance on behalf of the Loan Parties;
"Order"	means any order, writ, judgment, injunction, decree, stipulation, determination, or award entered by or with any Governmental Authority or other Authority;
"Premises"	means (i) the parcel of land covered by Transfer Certificate of Title No. T-117960 located at Municipality of Tanauan, Province of Batangas with an area of 60,000 square meters and the building upon such parcel covered by Tax Declaration of Real Property No. 047-01263 (Property Identification No. 024-29-047-12-0010B1), (ii) the parcel of land covered by Transfer Certificate of Title No. T-132528 and Tax Declaration of Real Property No. 047-01260 (Property Identification No. 024-29-047-12-0011) located at the Municipality of Tanauan, Province of Batangas with an area of 20,000 square meters, and (iii) the parcel of land covered by Transfer Certificate of Title No. T-132527 and Tax Declaration No. 047-01261 (Property Identification No. 024-29-047-12-0047) located at the Municipality of Tanauan, Province of Batangas with an area of 6,456 square meters each of (i), (ii), and (iii) being registered in the name of SPM L Land;
"Present Chattels"	means the Chattels that exist and are owned by any of the Mortgagors at the time of the execution of this Mortgage Agreement, including those listed on Annex "B" (*Description of Present Chattel*);
"Present Real Assets"	means the Real Assets that exist and are owned by any of the Mortgagors at the time of the execution of this Mortgage Agreement, including those listed on Annex "A" (*Description of*

Present Real Assets);

"Property" means any right or interest in or to property of any kind whatsoever, whether real, personal or mixed and whether tangible or intangible, and regardless of whether owned or in existence at the date of the execution of the Loan Agreement, or thereafter acquired or created;

"Real Assets" means all the Present Real Assets listed in Annex "A" (*Description of Present Real Assets*) and all the Future Real Assets listed in Annex "A-1" (*Description of Future Real Assets*);

"Real Estate Mortgage" means the mortgage created and to be created by the Mortgagors over the Real Assets pursuant to this Mortgage Agreement; and

"Termination Date" means the date upon which all of the following shall have occurred: (i) all Obligations shall have been irrevocable and unconditional paid in full, (ii) the Loan shall have been fully disbursed or any undisbursed portion of the Loan shall have been cancelled in accordance with the Loan Agreement, and (iii) the Loan Agreement shall have been terminated in accordance with its terms.

Section 1.03. *Rules of Interpretation*. In this Mortgage Agreement, unless the context otherwise requires, the rules of interpretation set forth in the General Agreement or in the Loan Agreement shall govern *mutatis mutandis*, as if this Mortgage Agreement were the "Agreement" referred to therein.

Section 1.04. *Conflict*. For purposes of this Mortgage Agreement, unless otherwise expressly stipulated herein, in case of conflict between the defined terms in this Mortgage Agreement and the defined terms in the General Agreement or Loan Agreement, the defined terms in this Mortgage Agreement shall prevail.

ARTICLE II
REAL ESTATE MORTGAGE

Section 2.01. *Creation of the Real Estate Mortgage*.

(a) As security for the timely payment, discharge, observance, and performance by the Loan Parties of all of the Obligations to the extent set forth in Section 2.01(d) (*Creation of the Real Estate Mortgage*), each of the Mortgagors, to the extent of its respective right, title and interest in and to the Real Assets, hereby:

(i) creates, establishes, and constitutes a first ranking Real Estate Mortgage in favor of the Mortgagee on the Present Real Assets;

(ii) agrees to and does create, establish, and constitute a first ranking Real Estate Mortgage in favor of the Mortgagee on the Future Real Assets, subject to the same terms and conditions of this Mortgage Agreement as are applicable to the Real Estate Mortgage on the Real Assets, upon their coming into existence and/or the acquisition by either of the Mortgagors of ownership of such Future Real Assets, and

(iii) agrees that, without prejudice to the obligation of the Mortgagor to execute and register the Mortgage Supplements, a first ranking Real Estate Mortgage on the Future Real Assets shall be created, established, and constituted upon the execution of the corresponding Mortgage Supplement under Section 2.03 (*Execution and Registration of Mortgage Supplements*), in respect of each such Future Real Asset over which a first ranking Real Estate Mortgage is not created under the immediately preceding sub-clause (ii), subject to the same terms and conditions of this Mortgage Agreement as are applicable to the Real Estate Mortgage on the Present Real Assets.

(b) For the avoidance of doubt, in addition to the inclusion of SPML's Lease Rights to the Premises in the enumeration of Present Real Assets in Annex A (*Registration and Execution of Mortgage Supplements*) covered by the Real Estate Mortgage, SPML hereby cedes, transfers, and conveys, through an assignment by way of security, all its rights, title, and interests over the Lease Rights in favor of the Mortgagee. Furthermore, SPML Land hereby (i) consents to the registration of the Real Estate Mortgage over such Lease Rights on any title to the Premises that SPML Land may have, including Transfer Certificate No. T-117960 (formerly Transfer Certificate No. T-103232) and Declaration of Real Property No. 047-01263 (Property Identification No. 024-29-047-12-0010B1), and (ii) undertakes to cooperate with SPML and/or IFC to effect such registration and perform al l other acts necessary to perfect and otherwise make effective the assignment by way of security and Real Estate Mortgage over such Lease Rights.

(c) The Real Estate Mortgage constituted herein shall extend to the Mortgagors' interests from time to time in any of the Real Assets which are not fully paid for by the Mortgagors at the time of their coming into existence and/or upon the acquisition by the Mortgagors of ownership thereof, and shall include all Property of every nature and description taken in exchange, substitution, or replacement of the Real Assets, which shall be subject to the Lien of such mortgage in the same manner and to the same extent as if now existing and included in the Real Estate Mortgage on the Real Asset.

(d) The Real Estate Mortgage is and shall be constituted in favor of the Mortgagee and shall stand as security for the Obligations to the extent of the principal amount of up to US$75,000,000.00 plus interests, fees, charges, and such other amounts that may be due under the Transaction Documents.

Section 2.02. *Registration of Real Estate Mortgage*. Prior to the first Disbursement of the Loan, the Mortgagors shall, at their own cost and expense,

(a) cause the Real Estate Mortgage on the Present Real Assets to be registered with the appropriate Governmental Authority with jurisdiction over the place where such Present Real Assets are located,

(b) perform such other acts, deeds, registrations, deposits, and formalities necessary or advisable to give full effect to, ensure the validity, perfection, and first ranking priority of, and render enforceable against the Mortgagors and all third parties, such Real Estate Mortgage and this Mortgage Agreement,

(c) furnish the Mortgagee with evidence, reasonably satisfactory to the Mortgagee, that such registrations and all acts, deeds, deposits, and formalities, as required under the preceding subsections (a) and (b) of this Section 2.02 (*Registration of Real Estate Mortgage*) have been made and performed. For the avoidance of doubt, the documents referred to in Part 1 of Annex "C" (*Sufficient Evidence of Registration*) hereof shall be considered as reasonably satisfactory evidence that the Mortgagors have complied with their obligations under this Section 2.02 (*Registration of Real Estate Mortgage*), and,

(d) where any machinery, equipment, or other property which may be considered a movable is covered by the Real Estate Mortgage, make all necessary notices to, and secure all necessary consents from, the appropriate Government Authority or other Authority, including the First Philippine Industrial Park Special Economic Zone, to ensure that any transfer of the Present Real Assets out of the Premises, including a transfer following a foreclosure on the Real Estate Mortgage, shall not be prevented or delayed or otherwise frustrated by any Governmental Authority or other Authority; provided, that in the event of any transfer out of the Premises, the Mortgagors hereby undertake to pay all the necessary Taxes and duties due upon the Present Real Assets that may arise by virtue of such transfer out of the Premises.

Section 2.03. *Execution and Registration of Mortgage Supplements*. The Mortgagors shall execute and deliver each Mortgage Supplement within 10 Business Days upon the acquisition of any Future Real Assets and shall, within 10 Business Days of the execution of each Mortgage Supplement,

(a) cause the registration of such Mortgage Supplement with the appropriate Registry with jurisdiction over the place where the property covered by such Mortgage Supplement is located,

(b) perform such other acts, deeds, registrations, deposits, and formalities necessary or advisable to give full effect to, ensure the validity, perfection, and first ranking priority of, and render enforceable against the Mortgagor and all third parties

such Real Estate Mortgage,

(c) furnish the Mortgagee with evidence reasonably satisfactory to the Mortgagee that such registration and all acts, deeds, deposits, and formalities, as required under the preceding subsections (a) and (b) of this Section 2.03 (*Execution and Registration of Mortgage Supplements*), have been made and performed, and

(d) where any machinery, equipment, or other property which may be considered a movable is covered by the Real Estate Mortgage, make all necessary notices to, and secure all necessary consents from, the appropriate Government Authority or other Authority, including the First Philippine Industrial Park Special Economic Zone, to ensure that any transfer of the Future Real Assets out of the Premises, including a transfer following a foreclosure on the Real Estate Mortgage, shall not be prevented or delayed or otherwise frustrated by any Governmental Authority or other Authority; provided, that in the event of any transfer out of the Premises, the Mortgagors hereby undertake to pay all the necessary Taxes and duties due upon the Future Real Assets that may arise by virtue of such transfer out of the Premises.

For the avoidance of doubt, the documents referred to in Part 3 of Annex "C" (*Sufficient Evidence of Registration*) shall be considered as reasonably satisfactory evidence that the Mortgagors have complied with their obligations under this Section 2.03 (*Execution and Registration of Mortgage Supplements*).

ARTICLE III
CHATTEL MORTGAGE

Section 3.01. *Creation of the Chattel Mortgage*.

(a) As security for the timely payment, discharge, observance, and performance by Loan Parties of all of the Obligations to the extent set forth in Section 3.01(c) (*Creation of the Chattel Mortgage*), each of the Mortgagors, to the extent of its right, title, and interest in and to the Chattel, hereby:

(i) creates, establishes, and constitutes a first ranking Chattel Mortgage in favor of the Mortgagee on the Present Chattel;

(ii) agrees to and does create, establish, and constitute a first ranking Chattel Mortgage in favor of the Mortgagee on the Future Chattel, subject to the same terms and conditions of this Mortgage Agreement as are applicable to the Chattel Mortgage on the Present Chattel, upon their coming into existence and/or the acquisition by either of the Mortgagors of ownership of such Future Chattel, and

(iii) agrees that, without prejudice to the obligation of the Mortgagors

to execute and register the Mortgage Supplements, a first ranking Chattel Mortgage on the Future Chattel shall be created, established, and constituted upon the execution of the corresponding Mortgage Supplement under Section 3.03 (*Execution and Registration of Mortgage Supplements*) in respect of each such Future Chattel over which a first ranking Chattel Mortgage is not created under the immediately preceding sub-clause (ii), subject to the same terms and conditions of this Mortgage Agreement as are applicable to the Chattel Mortgage on the Present Chattel.

(b) The Chattel Mortgage shall extend to any of the Mortgagors' interests from time to time in any of the Chattel which are not fully paid for by such Mortgagor at the time of their coming into existence and/or upon the acquisition by the Mortgagor of ownership thereof.

(c) The Chattel Mortgage is and shall be constituted in favor and for the benefit of the Mortgagee and shall stand as security for the Obligations to the extent of the principal amount of up to US$65,000,000.00 plus interests, fees, charges, and such other amounts that may be due under the Transaction Documents.

Section 3.02. *Registration of Chattel Mortgage.* Prior to the first Disbursement of the Loan, the Mortgagors shall, at their own cost and expense,

(a) cause the Chattel Mortgage on the Present Chattels to be registered with the appropriate Governmental Authority with jurisdiction over the place where such Present Chattels are located and the principal place of business of the relevant Mortgagor,

(b) perform such other acts, deeds, registrations, deposits, and formalities necessary or advisable to give full effect to, ensure the validity, perfection, and first ranking priority of, and render enforceable against the Mortgagor and all third parties, such Chattel Mortgage and this Mortgage Agreement,

(c) furnish the Mortgagee with evidence, reasonably satisfactory to the Mortgagee, that such registrations and all acts, deeds, deposits, and formalities, as required under the preceding subsections (a) and (b) of this Section 3.02 (*Registration of Chattel Mortgage*), have been made and performed. For the avoidance of doubt, the documents referred to in Part 2 of Annex "C" (*Sufficient Evidence of Registration*) hereof shall be considered as reasonably satisfactory evidence that the Mortgagors have complied with their obligations under this Section 3.02 (*Registration of Chattel Mortgage*), and

(d) make all necessary notices to, and secure all necessary consents from, the appropriate Government Authority or other Authority, including the First Philippine Industrial Park Special Economic Zone, to ensure that any transfer of the Present Chattels out of the Premises, including a transfer following a foreclosure on the Chattel Mortgage, shall not be prevented or delayed or

otherwise frustrated by any Governmental Authority or other Authority; provided, that in the event of any transfer out of the Premises, the Mortgagors hereby undertake to pay all the necessary Taxes and duties due upon the Present Chattels that may arise by virtue of such transfer out of the Premises.

Section 3.03. *Execution and Registration of Mortgage Supplements*. The Mortgagors shall execute and deliver each Mortgage Supplement within 15 days upon the acquisition of any any Future Chattel, and, within 15 days of the execution of each Mortgage Supplement,

(a) cause the registration of such Mortgage Supplement with the appropriate Registry with jurisdiction over the place where the Chattel covered by such Mortgage Supplement is located and the principal place of business of the Mortgagor concerned,

(b) perform such other acts, deeds, registrations, deposits, and formalities necessary or advisable to give full effect to, ensure the validity, perfection, and first ranking priority of, and render enforceable against the Mortgagor and all third parties, such Chattel Mortgage,

(c) furnish the Mortgagee with evidence reasonably satisfactory to the Mortgagee that such registration and all acts, deeds, deposits, and formalities, as required under the preceding subsections (a) and (b) of this Section 3.03 (*Execution and Registration of Mortgage Supplements*), have been made and performed, and

(d) make all necessary notices to, and secure all necessary consents from, the appropriate Government Authority or other Authority, including the First Philippine Industrial Park Special Economic Zone, to ensure that any transfer of the Future Chattels out of the Premises, including a transfer following a foreclosure on the Chattel Mortgage, shall not be prevented or delayed or otherwise frustrated by any Governmental Authority or other Authority; provided, that in the event of any transfer out of the Premises, the Mortgagors hereby undertake to pay all the necessary Taxes and duties due upon the Future Chattels that may arise by virtue of such transfer out of the Premises.

For the avoidance of doubt, the documents referred to in Part 3 of Annex "C" (*Sufficient Evidence of Registration*) shall be considered as reasonably satisfactory evidence that the Mortgagors have complied with their obligations under this Section 3.03 (*Execution and Registration of Mortgage Supplements*).

ARTICLE IV
REPRESENTATIONS AND WARRANTIES

Section 4.01. *Representations and Warranties of the Mortgagors*. Without limiting the generality of the representations and warranties of SPML under the Loan Agreement and the Financing Documents, each of the Mortgagors further represents and warrants as of the date hereof and during the lifetime of this Mortgage Agreement that:

(a) *Legal Binding Force*.

(i) This Mortgage Agreement and all Mortgage Supplements, when duly registered pursuant to Articles II and III, shall constitute the legal, valid, and binding obligations of the Mortgagors, enforceable in accordance with their respective terms, and shall create a valid, perfected, and enforceable first lien and mortgage of first rank on the Assets in favor of IFC.

(ii) There is no provision in the Mortgagors' articles of incorporation, by-laws, or other constitutive documents, and no provision of any Authorization or any other agreement or instrument to which either of the Mortgagors are parties or by which either of the Mortgagors or any of their property, including all the Real Assets and Chattels, may be bound, and no statute, rule, regulation, judgment, decree, or order of any court or agency applicable to Mortgagors which would be contravened by the execution and delivery of the Mortgage Agreement, or by the performance of any provision, any covenant, or the terms and conditions of this Mortgage Agreement.

(b) *Corporate Existence*. Each of the Mortgagors is duly incorporated, validly existing, and in good standing, has their principal office at the addresses indicated in this Mortgage Agreement, and is registered and/or qualified to do business in every jurisdiction where such registration or qualification is necessary.

(c) *Corporate Power*. Each of the Mortgagors has the power to enter into and perform this Mortgage Agreement and has taken or will take all necessary actions to authorize the execution and delivery of this Mortgage Agreement and the performance of the terms and conditions hereof, including having secured or securing the consent of its stockholders if required under its charter; each of the Mortgagors has full legal right, power, and authority to carry on its present businesses and Operations, own properties and assets, incur the obligations provided for in this Mortgage Agreement, and execute, deliver, perform, and observe the terms and conditions of this Mortgage Agreement; and this Mortgage Agreement has been duly executed by each of the Mortgagors.

(d) *Corporate Authorization*. All corporate actions taken by each of the Mortgagors have been duly authorized, and each of the Mortgagors has not taken any action that in any respect conflict with, constitute a default under, or result in a violation of any provision of their respective articles of incorporation, by-laws, or other constitutive documents. Each of the Mortgagors has taken all appropriate and necessary corporate and legal actions to authorize the execution, delivery, and performance of this Mortgage Agreement.

(e) *Consents and Registrations*. Except for the registration with the appropriate Governmental Authority of the Mortgage over the Present Real Assets and the Present Chattel after the execution of this Mortgage Agreement and the

registration with the appropriate Governmental Authority of the Mortgage over the Future Real Assets and the Future Chattel after the execution of the Mortgage Supplements and the payment of documentary stamp taxes due on the Mortgage Agreement and the Mortgage Supplements, no other Authorization, including any consent, approval, license, authorization, or validation of, or filing, recording, or registration with, or exemption by, any Governmental Authority or other Authority is required to authorize the execution, delivery, and performance of this Mortgage Agreement, or for the legality, validity, binding effect, enforceability against the Mortgagors, and the admissibility into evidence of this Mortgage Agreement;

(f) *No Conflict*. The execution, delivery, and performance of this Mortgage Agreement by the Mortgagor does not and will not (i) violate, conflict with, or result in the breach of any provision of each of the Mortgagor's articles of incorporation, by-laws, or other constitutive documents; (ii) violate any indenture, agreement, mortgage, contract, or other undertaking or instrument to which either of the Mortgagors is a party or which is binding upon the either of the Mortgagors or any of their respective properties or assets, nor result in the creation or imposition of any security interest, Lien, charge, or encumbrance on any of the assets or properties of either of the Mortgagors pursuant to the provisions of any such indenture, agreement, mortgage, contract, or other undertaking or instrument; (iii) give rise to a ny preemptive or similar right on behalf of any Person; (iv) conflict with or violate any law or Order applicable to either of the Mortgagors or any of their respective assets, real property, or businesses; or (v) conflict with, result in any breach of, constitute a default (or event which, with the giving of notice or lapse of time, or both, would become a default) under, require any consent under, or give to others any rights of termination, amendment, acceleration, suspension, revocation, or cancellation of, or result in the creation of any Lien on, any of the shares of either of the Mortgagors or on any of their respective assets, real property, or rights pursuant to any note, bond, mortgage, or indenture, contract, agreement, lease, sublease, license, permit, franchise, or other instrument or arrangement to which either of the Mortgagors is a party or by which the Mortgagor or any such assets, real property, or rights are bound or affected.

(g) *Ownership of Assets*. Each of the Mortgagors (i) is the legal and beneficial owner of, has good, legal, valid, indefeasible title to (free and clear of all Liens), has marketable rights, interest, and/or title to, and has full power and authority to transfer, convey, mortgage, and give a security interest of first rank in, the Present Real Assets and the Present Chattel owned by it; and (ii) will be the legal and beneficial owner of, will have good, legal, valid, indefeasible title to (free and clear of all Liens), and will have full power and authority to transfer, convey, mortgage, and give a security interest of first rank in, the Future Real Assets and the Future Chattel at the time of such Mortgagor's acquisition thereof;

(h) *Real Assets*. (i) Each of the Mortgagors has good fee simple or title of lease to all of their, respective real property, including the Premises. Each parcel of such real property is zoned properly for such Mortgagor to conduct its business as currently conducted, as evidenced by validly issued Authorizations required for operations. In the case of any parcel of real property under construction or in the process of alteration, the respective Mortgagor has all requisite Approvals for such construction or alteration, as the case may be, and such Authorizations have been validly issued or obtained and are current. (ii) Each parcel of real property owned or leased by the Mortgagors, including the Premises, is owned or leased free and clear of all Liens, not subject to any Order to be sold, and not bei ng condemned, expropriated, or otherwise taken by any Governmental Authority with or without payment of compensation therefore and no such condemnation, expropriation, or taking has been proposed. (iii) All leases relating to the real property of the Mortgagors, including the Premises, and all amendments and modifications to such leases are in full force and effect and have not been modified or amended, and there exists no default under any such leases by the Mortgagors, nor any event which with notice or lapse of time or both would constitute a default thereunder by the Mortgagors. As of the execution of this Agreement, for all leases that have lapsed or been terminated, the Mortgagors have entered into new leases at terms no less favorable to the Mortgagors than prevailing market terms. (iv) The Mortgagors have the full right to exercise any renewal options running to it contained in the leases and subleases pertaining to the real property, including the Premises, on the terms and con ditions contained therein, and upon due exercise would be entitled to enjoy the use of such real property for the full term of such renewal options, subject to the terms and conditions pertaining thereto.

(i) *Priority of Mortgages*. Subject to the registrations stated in Section 2.02 (*Registration of Real Estate Mortgage*) and Section 3.02 (*Registration of Chattel Mortgage*), the Mortgage constitutes a Lien of first rank in favor of the Mortgagee in and to the Assets, enforceable as such against the Mortgagors, their creditors, and all third parties, prior and superior to all other Liens, except for liens that are mandatorily preferred under the laws of the Philippines.

(j) *No Default*. No event has occurred and is continuing or would result from the making of the Mortgage Agreement which constitutes an Event of Default or which, with notice or lapse of time or any other condition or any combination of the foregoing, would become such an Event of Default under this Mortgage Agreement or any other agreement.

(k) *No Litigation*. (i) There are no Actions by or against either of the Mortgagors or affecting any of the Assets, assets, real property, rights, businesses, or other properties (tangible or intangible) of either of the Mortgagors pending before any Governmental Authority, other Authority, or tax authority. (ii) There are no Actions involving any other Person that threaten to and there are no circumstances existing which make it likely that an Action will be brought by or before any Governmental Authority, or other Authority, or other Person against either of the

Mortgagors or affecting any of the Assets, real property, rights, businesses, Operations, or other properties (tangible or intangible) of the Mortgagors. (iii) There are no Actions by or against the Mortgagor or that threaten to delay or prevent, or obtain damages or other relief with respect to, the performance of this Mortgage Agreement. (iv) Neither of the Mortgagors are subject to any Order and there are no Orders threatened to be imposed on the either of the Mortgagors.

(l) *No Immunity*. Neither of the Mortgagors nor any of their respective properties or assets or the Assets enjoy any right of immunity from suit, jurisdiction of any competent court, attachment prior to judgment, attachment in aid of execution, execution of judgment, or set-off in respect of the Mortgagor's obligations under this Mortgage Agreement.

(m) *No Prohibition*. Neither of the Mortgagors are restricted or prohibited in any way from the payment, deduction, or withholding of any income Tax, withholding Tax, or any other Tax arising out of this Mortgage Agreement and required by any Governmental Authority or other Authority to be paid, withheld, or deducted; and neither of the Mortgagors are restricted or prohibited from performing their other obligations with respect to such Taxes under this Mortgage Agreement.

(n) *Environmental Matters*. To their knowledge, the Mortgagors are not in violation of any Applicable Laws regarding the environment and no condition exists with respect to the Mortgagors or their property that, with notice or the passage of time, or both, has resulted or is reasonably likely to result in a material claim, loss, or liability under any Applicable Laws regarding the environment. The Mortgagors have not received any notice from any Person that the either of the Mortgagors or the operation or condition of any property leased or operated by the Mortgagors are or were in material violation of or otherwise are alleged to have liability under any Applicable Laws regarding the environment, including responsibility (or potential responsibility) for the cleanup or other remediation of any pollutants, contaminants, or hazardous or toxic wastes, substances, or materials at, on, beneath, or originating from, any of their property.

(o) *Solvency*. The Mortgagors are not subject to liquidation, dissolution, work-out, composition, reorganization, or bankruptcy proceedings, are not generally unable to pay their debts as they become due, have not made a general assignment for the benefit of their creditors, and have not taken any action in furtherance of, or have not indicated their consent to or acquiescence in, any of the foregoing.

(p) *Certain Payments*. None of the Mortgagors, any director of the Mortgagors, or any agent of the Mortgagors have unlawfully or illegally offered or made any payment to a government official or an official of a company owned or controlled by a government to obtain or retain a business or obtain any advantage for the Mortgagors.

(q) *Disclosure*. None of the documents, certificates, or written statements that have been furnished to the Mortgagee by or on behalf of the Mortgagors in connection with this Mortgage Agreement and the transactions contemplated by this Mortgage Agreement, including the representations and warranties in this Section 4.01 (*Representations and Warranties of the Mortgagors*), contain any untrue statement of a fact or omit to state a fact necessary in order to make the statements contained herein not misleading, in light of the circumstances then existing, and all copies of such documents so furnished are and will be true, complete, and correct copies. To the best knowledge of the Mortgagors after due inquiry, there is no fact that has specific application to a ny of the Mortgagors (other than general economic or industry conditions) other than as set forth in this Mortgage Agreement, the Loan Agreement, or the other Financing Documents.

Section 4.02. *Continuing Representations*. The representations and warranties contained in Section 4.01 (*Representations and Warranties of the Mortgagor*) shall survive the execution of this Mortgage Agreement.

ARTICLE V

COVENANTS AND UNDERTAKINGS OF THE MORTGAGORS

Section 5.01. *Compliance with the Loan Agreement*. Each of the Mortgagors undertakes and agrees with the Mortgagee that, throughout the continuance of this Mortgage Agreement and until the Termination Date, and unless the Mortgagee otherwise agrees in writing, the Mortgagors shall comply with all of its duties, obligations, covenants, and undertakings as set forth in the Loan Agreement and the Financing Documents, all of which are incorporated by reference herein as if fully set forth herein, in accordance with the terms thereof.

Section 5.02. *Execution and Registration in General*. The Mortgagors shall, from time to time and at their own cost and expense, execute, deliver, and register such renewals, amendments, supplements, addendums, and instruments, reasonably satisfactory to the Mortgagee, as may be required by the Mortgagee, for the purpose of:

(a) perfecting, confirming, and/or maintaining the validity, first priority, and enforceability of the Mortgage;

(b) mortgaging (with first ranking priority) to the Mortgagee for its benefit, any Property of every nature and description taken in exchange, substitution, or replacement of the Assets in accordance with Article II (*Real Estate Mortgage*) and Article III (*Chattel Mortgage*) in the same manner and to the same extent as if now existing and included in the Mortgage on the Assets; and

(c) otherwise effectuating the purposes and intent of this Mortgage Agreement.

All expenses in the execution, notarization, recording, registration, and cancellation thereof, such as documentary stamp taxes and registration fees, shall be defrayed by the Mortgagors. If the Mortgagors shall fail to comply with the foregoing, the Mortgagee may, in its sole discretion and

without any obligation to do so, upon prior notification to the Mortgagors, advance expenses of execution, notarization, registration, and cancellation of contracts or instruments, and all sums so advanced shall be reimbursed by the Mortgagors on demand with interest at the rate of 12% per annum from date of disbursement to date of reimbursement, and until so reimbursed, shall form part of the Obligations secured hereby.

Section 5.03. *Affirmative Covenants*. Unless the Mortgagee shall otherwise agree in writing and so long as the Termination Date has not occurred:

(a) *Defense of Title and Possession*. The Mortgagors shall, at their own expense, warrant and defend their title to, interest in, and/or possession of the Assets against the claims and demands of all Persons whomsoever, except the claims of the Mortgagee pursuant to this Mortgage Agreement. The Mortgagors shall promptly, and in any case within three Business Days after they or their officers obtain knowledge of any litigation or governmental or other proceedings which could materially and adversely affect the Assets, furnish the Mortgagee a notice of such litigation or proceedings, giving full details thereof and containing a description of the action that either of the Mortgagors has taken or proposes to take with respect thereto. In the event the Mortgagee becomes involved in any litigation relating to or conn ected with any or all of the Assets, all expenses of the Mortgagee in such litigation, including attorney's fees, shall be for the account of the Mortgagor who shall pay for them upon demand. In the event that the Mortgagee intends to initiate litigation relating to or connected with any or all of the Assets against third parties other than any of the Mortgagors, the Mortgagee shall, before initiating any such litigation, exert reasonable efforts to consult with the relevant Mortgagor. If the Mortgagor fails to pay the abovementioned litigation expenses, the Mortgagee may, in its sole discretion and without any obligation to do so, advance the same, and all sums so advanced shall be reimbursed by the Mortgagor on demand with interest at the rate of 12% per annum from date of disbursement to date of reimbursement, and until so reimbursed, shall form part of the Obligations secured hereby.

(b) *Repair and Maintenance*. The Mortgagors shall at all times keep the Assets in good condition, and shall promptly make or cause to be made repairs, restorations, replacements, or, in general, do or cause to be done all such acts and things as may be required or necessary for the care, preservation, and maintenance of the Assets. If any of the Mortgagors fail to do so, the Mortgagee may, in its discretion and without any obligation to do so, upon prior notice to the relevant Mortgagor, keep the Assets in good repair and condition, and all expenses which the Mortgagee may incur in connection therewith shall be reimbursed by the Mortgagors on demand, plus interest thereon at the rate of 12% per annum, and such amounts shall form part of the Obligations secured hereby.

(c) *Appraisal*. SPML shall submit financial statements as provided in the Loan Agreement and the Mortgagors shall, if required by the Mortgagee, at the Mortgagors own cost and expense, cause the Assets to be appraised by an

independent appraiser acceptable to the Mortgagee annually, for the first three years from the first Disbursement, and every two years, thereafter for the remainder of the term of the Loan, commencing one year after the signing of this Mortgage Agreement, and promptly after every such appraisal provide the Mortgagee with a copy of the appraisal report.

(d) *Defense of Lien*. At all times, and at their own expense, the Mortgagors shall do everything necessary in the judgment of the Mortgagee to:

(i) maintain in full force and effect and protect and preserve the Lien over the Assets, including the priority thereof, in favor of the Mortgagee created pursuant under this Mortgage Agreement;

(ii) promptly inform the Mortgagee in writing of any material loss or damage affecting the Assets, together with details of the extent of such loss and damage, and of any event which is likely to materially reduce its value;

(iii) promptly notify the Mortgagee of any levy, assessment, imposition, or charge on, or the filing of any Liens on, the Assets, or of any event which may lead to the loss, forfeiture, or sale of the Assets.

(e) *Inspections*. The Mortgagors shall provide the Mortgagee with any information pertaining to this Mortgage Agreement as may be requested by the Mortgagee, and shall, upon thee Mortgagee's request and with reasonable prior notice to the Mortgagors, permit, at the Mortgagors' own cost and expense, the officers or designated representatives of the Mortgagee and CAO, at such times during regular business hours, and to such extent as the Mortgagee may request, to visit and inspect the Premises and to inspect and examine the records of the Mortgagors relating to the Assets, and promptly furnish the Mortgagee such information relating to the Assets as the Mortgagee may, from time to time, request; provided that (A) no such reasonable prior notice shall be necessary if an Event of Default or Potential Event of Default is conti nuing or if special circumstances so require, and (B) in the case of the CAO, such access shall be for purpose of carrying out CAO's role.

(f) *Taxes*, *Duties*, *Fees*. The Mortgagors shall pay and discharge on time:

(i) all Taxes (including stamp taxes, value-added taxes, transfer taxes), assessments, governmental charges, fees, expenses, or other charges payable on, or in connection with, the execution, issue, delivery, registration, or notarization, or for the legality, validity, or enforceability, of this Mortgage Agreement and any other documents related thereto, and provide the Mortgagee with copies of the official receipts for such payments;

(ii) all Taxes, assessments and governmental charges levied or assessed, and non-governmental fees, dues, charges or levies imposed, on the Assets, and provide the Mortgagee with copies of the official receipts for such payments; and

(iii) all Taxes, assessments and governmental charges or levies imposed upon it or upon its income or profits or upon any properties belonging to it; provided that each such Mortgagor shall not be required to pay any such Tax, assessment, charge, levy or claim which is being contested in good faith and by proper proceedings if it has maintained adequate reserves with respect thereto in accordance with the Accounting Principles;

The Mortgagors shall, upon request of the Mortgagee, surrender to the Mortgagee copies of the official receipts for all payments made pursuant to subparagraphs (i), (ii) or (iii) of this Section 5.03(f) (*Affirmative Covenants*). Should the Mortgagor fail to pay such Taxes, assessments, and charges enumerated under subparagraphs (i), (ii) or (iii) of Section 5.03(f) (*Affirmative Covenants*), the Mortgagee may, in its discretion and without any obligation to do so, upon prior notice to the relevant Mortgagor, pay such Taxes, assessments, and charges. All payments made by the Mortgagee in connection therewith shall be reimbursed by the Mortgagors on demand, plus interest thereon at the rate of 12% per annum, and such amoun ts shall form part of the Obligations secured hereby. In advancing money as herein authorized for the purpose of paying Taxes, assessments, or governmental charges, the Mortgagee shall not be obligated to inquire into the validity of such Taxes, assessments, or charges before making payment and nothing herein contained shall be construed as requiring the Mortgagee to advance or expend money for any of the purposes abovementioned.

(g) *Insurance*. The Mortgagors shall insure or cause to be insured at all times and at their own expense the Assets covered by or to be included in this Mortgage Agreement, to the Assets' full insurable value, with responsible and reputable insurers acceptable to the Mortgagee, covering such risks as are usually carried by companies engaged in similar business (including insurance against fire, lightning, and earthquakes) or by companies owning similar properties in the area in which the Mortgagor operates and maintain such insurance in force until the Obligations shall have been paid in full. The Mortgagors shall endorse and assign in favor of the Mortgagee the corresponding insurance policy or policies under a "Simple Loss Payable Clause". In case the risk or risks insured against shall occur, the Mortgagee shall have the right and authority to demand and accept payment on such insurance policy or policies and to apply the proceeds thereof to the payment of the Obligations; provided, that the loss or destruction of the Assets or any part thereof shall not release the Mortgagor from its liabilities hereunder. The Mortgagors shall make an annual report on the status and amounts of such insurance, and shall furnish the Mortgagee satisfactory evidence of payment of premiums for such insurance. Should the Mortgagor fail to procure insurance or to maintain such insurance in force during the existence of this Mortgage

Agreement, the Mortgagee may, in its discretion and without any obligation to do so, after prior notice to the Mortgagor, procure and maintain said insurance, and any premiums paid for such insurance shall be promptly reimbursed by the Mortgagor with interest at the rate of 12% per annum from date of disbursement to date of reimbursement, and shall, until so reimbursed, form part of the Obligations secured hereby.

(h) *Additional Security in Case of Damage*. If at any time during the existence of this Mortgage Agreement and so long as the Obligations or any part thereof are outstanding and unpaid, any Assets shall be lost, damaged, or suffer an appreciable depreciation in value, then the Mortgagee shall have the right to require the Mortgagor to give, within 10 Business Days from demand, additional security acceptable to the Mortgagee in accordance with the requirements set forth in Section 4.01(o) of the Loan Agreement.

(i) *Expropriation*. Should the Assets or any part thereof be condemned, seized, or otherwise appropriated or expropriated by the Philippine Government, any department, branch, subdivision, or instrumentality thereof, or by any province, city, municipality, or barangay, or by any Person duly authorized by law to acquire property by eminent domain, all moneys paid or payable on account or in consideration of such condemnation, seizure, appropriation, or expropriation of such Assets and/or any piece or pieces of real property or personal property given in exchange for the Assets so condemned, seized, appropriated, or expropriated shall be delivered to the Mortgagee from whomsoever they may be properly due and payable. The Mortgagors hereby agree that, in the event any such funds or properties should come into their possession, they shal l deliver the same to the Mortgagee immediately. The Mortgagors further covenant and bind themselves not to agree to any purchase price or exchange in consideration of the property so condemned, seized, appropriated, or expropriated without the previous written consent of the Mortgagee.

(j) *SPML Land Action Plan*. SPML Land shall adopt and implement each action item set forth in the SPML Land Action Plan attached as Annex I of the Loan Agreement and deliver to IFC documentary evidence of the completion of such action within the applicable deadline set forth therein.

(k) *Compliance with Law*. SPML Land shall comply in all material respects with all Applicable Law, statutes, regulations and orders of, and all applicable restrictions imposed by, all Authorities in respect of its Operations and the ownership of its property (including Applicable Law, statutes, regulations, orders and restrictions relating to environmental standards and controls).

Section 5.04. *Negative Covenants*. Unless the Mortgagee shall otherwise agree in writing and as long as the Termination Date has not occurred:

(a) *Sale or Disposition of Assets*. The Mortgagors shall not sell, assign, transfer, alienate, encumber, lease, or otherwise dispose of or create any security interest on any of the Assets without consultation with and consent of the Mortgagee, to the extent permissible under Applicable Law. In the event that the Mortgagee consents to, and any Mortgagor proceeds with, such sale, assignment, alienation, encumbrance, lease, or otherwise, the Mortgagors shall assign or create a security interest over all the proceeds of any sale, assignment, transfer, alienation, lease, or disposition of the Assets or any unit therein to the Mortgagee as security for the Obligations;

(b) *Transfer of Assets*. The Mortgagors shall at no time remove or transfer any of the Assets from the premises where such Assets were installed, situated, or used at the time of the establishment of the Lien pursuant to this Mortgage Agreement, or from the place where such Assets shall be installed, situated, or used, as the case may be, at the time of the purchase or acquisition thereof by the relevant Mortgagor.

(c) *Alteration or Demolition of Assets*. The Mortgagors shall not, without the Mortgagee's prior written consent, make any major or material alteration upon or demolish any Assets nor do or permit to be done upon the Assets anything that may impair the value thereof or the security intended to be established by virtue of this Mortgage Agreement;

(d) *Liens on the Assets*. The Mortgagors shall not create, incur, assume, or permit to exist any Lien, other than the Mortgage, on or with respect to the Assets;

(e) *Use of the Assets*. The Mortgagors shall not use or permit to be used the Assets other than for the intended purpose thereof and shall not use, maintain, operate, or occupy, or allow the use, maintenance, operation, or occupancy of any part of the Assets for any purpose which may be dangerous, unless safeguarded as required by law; violates any legal requirement; may constitute a public or private nuisance that could reasonably be expected to result in a Material Adverse Effect; or may render void, voidable, or cancelable, or increase the premium of, any insurance then in force with respect to the Asset or any part thereof.

ARTICLE VI
RIGHTS AND REMEDIES OF THE MORTGAGEE

Section 6.01. *Right to Act for the Mortgagor*. Each of the Mortgagors hereby irrevocably appoints the Mortgagee as its attorney-in-fact, with right of substitution, for the purpose of carrying out the provisions of this Mortgage Agreement and taking any action and executing any instruments which the Mortgagee may deem necessary or advisable, to create and perfect, and preserve the validity, perfection, and priority of the Liens in favor of the Mortgagee

under this Mortgage Agreement, including without limitation registering the Mortgage. The Mortgagee shall, in the exercise of its rights and remedies hereunder, have the right, but not the obligation, to advance such sums of money as are necessary to give full effect to the provisions of this Section 6.01 (*Rights to Act for the Mortgagor*), and interest shall accrue on any such sums so advanced by the Mortgagee from the time so advanced until fully paid by the Mortgagor at the default rate prescribed under the Loan Agreement.

Section 6.02. *Rights in Eminent Domain*. In the event that any Governmental Authority or any Person duly authorized by law to acquire property by eminent domain shall expropriate, condemn, confiscate, seize, or requisition the title to or use of any of the Assets, then (i) all sums of money paid and payable to any of the Mortgagors on account or in consideration of any such expropriation, condemnation, confiscation, seizure, or requisition of the Assets owned by any Mortgagor, or any part thereof, shall be delivered to the Mortgagee for application against the Obligations in accordance with the Financing Documents, and (ii) all rights and benefits accruing to any of the Mortgagors, or any movable or immovable assets g iven in exchange for the Assets so expropriated, condemned, confiscated, seized, or requisitioned, to the extent permitted by Applicable Law, shall be deemed part of the Assets and covered by the Mortgage. Except as aforesaid, this Section shall be without prejudice to any other rights and remedies that the Mortgagee may have hereunder, under any Financing Documents, or under any Applicable Law. Each of the Mortgagors hereby agrees and undertakes not to agree to any settlement or any compensation whatsoever in lieu of expropriation, condemnation, seizure, or requisition of any of the Assets, without the prior written consent of the Mortgagee. If, for any reason and notwithstanding the provisions of this Section, any such monies, rights, benefits, and/or assets are directly received by any Mortgagor, such Mortgagor shall hold or cause the same to be held for the Mortgagee, in trust, as security for the payment of the Obligations and, promptly thereafter, and without prejudice to an y other rights and remedies that the Mortgagee may have hereunder, under any Financing Documents or under any Applicable Law, deliver the same or cause the same to be delivered to the Mortgagee and, in the case of monies, for application against the Obligations in accordance with the Financing Documents.

Section 6.03. *Unauthorized Sale and other Disposition of Assets*. To the extent permitted by Applicable Law, if notwithstanding the provisions of Section 5.04 (*Negative Covenants*) or of any other provision of any Financing Documents prohibiting or restricting the same, any of the Assets shall be sold, assigned, transferred, alienated, leased, or in any other manner disposed of otherwise than in accordance with the terms hereof or with the prior written consent of the Mortgagee, any third party who may have acquired title to or possession of any such Assets shall be deemed not to have acquired the same in good faith, and the Mortgagee shall be entitled to exercise such rights and remedies as may be available to it by Applicable Law under the circumstances to recover possession of such Assets. The foregoing shall be without prejudice to any other rights and remedies of the Mortgagee under the Financing Documents. For all intents and purposes, the Mortgage shall continue in full force and effect under the terms and conditions hereof as long as the Loan Agreement has not been terminated pursuant to the terms thereof, notwithstanding any unauthorized sale, assignment, transfer, alienation, lease, or other disposition of any Assets.

Section 6.04. *Unauthorized Liens*. If, notwithstanding the provisions of Section 5.04

(*Negative Covenants*) hereof, any of the Mortgagors shall create or permit to exist any Lien, other than the Mortgage, on any of the Assets in favor of any third party without the prior written consent of the Mortgagee, the same shall, without prejudice to any rights and remedies that the Mortgagee may have hereunder, under any Financing Documents, or under Applicable Law, be and remain junior in rank to the Mortgage hereby created until termination of the Loan Agreement pursuant to the terms thereof, notwithstanding any extension of the term or amendment and modification of any of the terms, provisions, and conditions hereof and notwithstanding any additional mortgages or other Liens at any time created as security for the same amounts hereby secured or any other amounts at a later date advanced by IFC to SPML, all of which shall be and at all times remain a first ranking and senior security in relation to such Lien created by any Mortgagor in favor of such third party.

Section 6.05. *Events of Default*. In addition to the Events of Default enumerated under the Loan Agreement, the following shall be considered an Event of Default:

(a) *Covenant Default.* Any Mortgagor defaults in the due performance of, observance of, or compliance with any covenant contained in this Mortgage Agreement, and such default remains unremedied for a period of 30 days from receipt by the relevant Mortgagor of notice from the Mortgagee or from the time any of the Mortgagors have knowledge of such default, whichever is earlier;

(b) *Representation Default*. Any statement, representation, or warranty made by any Mortgagor in this Mortgage Agreement or in any certificate, opinion, or document issued pursuant to or in connection with this Mortgage Agreement, proves to be incorrect, untrue, or misleading as of the time it was made or deemed to have been made;

(c) *Security Default*. The Liens created pursuant to this Mortgage Agreement are not or cease to be in full force and effect, or cease to be an adequate full security for IFC for any reason whatsoever;

(d) *Indenture Defaults*. The Mortgage cannot be registered for any reason whatsoever; and the priority of the Lien or security interest granted by the Mortgage is impaired or the Mortgage ceases to be a first direct lien and mortgage of the first rank upon the Assets;

(e) *License Default*. Any Authorization, registration, or Authorization now or after the execution of this Agreement necessary to enable the Mortgagors to comply with their obligations under this Mortgage Agreement are modified, cancelled, withdrawn, or withheld and such modification, withdrawal or withholding is not cancelled or otherwise remedied within 30 days from its occurrence or imposition; and

(f) *Expropriation Default*. Any act, deed, or judicial or administrative proceeding in the nature of an expropriation, sequestration, confiscation, nationalization, intervention, acquisition, seizure, or condemnation of or with respect to the Assets, or any substantial portion thereof, is undertaken or instituted by any Governmental Authority and such act, deed, or proceeding continues undismissed or unstayed for a period of more than 60 days.

Section 6.06. *Foreclosure*. If an Event of Default shall occur and be continuing, the Mortgagee shall have the right to immediately commence proceedings to foreclose either of the Real Estate Mortgage or the Chattel Mortgage or both, upon advance written notice to the Mortgagor, and such foreclosure may be carried out, at the option of the Mortgagee, either judicially or extra-judicially, in accordance with Applicable Law.

(a) *Judicial Foreclosure*. In case the Mortgagee opts for judicial foreclosure, the Mortgagors hereby consent to the appointment of the Mortgagee as receiver, without bond, to take charge and possession of the Assets at once.

(b) *Extra-Judicial Foreclosure*. In case the Mortgagee opts for extrajudicial foreclosure, in addition to the remedies herein provided, the Mortgagee is hereby appointed attorney-in-fact of the Mortgagor, with full power and authority to take actual possession of the Assets, to sell or dispose of the same, to lease the same and collect rents therefor, to execute such bills of sale or other instruments, to make and pay for repairs or improvements thereon, and to perform any other act which the Mortgagee may deem convenient for the proper administration thereof.

(c) *Delivery of Possession of Assets*. Promptly upon receipt of notification that foreclosure proceedings have been commenced by the Mortgagee, the Mortgagor shall turn over possession of the Assets being foreclosed upon to the Mortgagee or as the Mortgagee shall otherwise direct; provided, that if any Mortgagor shall fail to turn over possession of any of such Assets as required hereunder, the Mortgagee shall be entitled and authorized to the extent permitted by Applicable Law to repossess the same by whichever means the Mortgagee shall determine, and to enter for that purpose the premises where such Assets may be located and transport them, at the expense of the Mortgagors, to the place otherwise determined by the Mortgagee for turning over possession thereof.

(d) *Waiver of Benefits in General*. Each of the Mortgagors agrees, to the full extent that it may lawfully so agree, that neither it nor anyone claiming through or under it, will set up, claim or seek to take advantage of any appraisal, valuation, stay, extension, period, redemption, or any other benefit under any Applicable Law in the locality where the Assets are situated, in order to prevent, hinder, or delay the enforcement or foreclosure of the Mortgage pursuant to this Mortgage Agreement, or the absolute sale of the Assets or any part thereof, or the final and absolute transfer or possession thereof, immediately after such sale, to the purchasers of any such Assets; and the Mortgagor, for itself and all who may at any time claim through or under it, hereby waives, to the fullest extent that it and

they may lawfully do so, the benefit of all such Applicable Laws.

(e) *Foreclosure Sale*. In the event that the either of the Real Estate Mortgage or the Chattel Mortgage shall be foreclosed, whether judicially or extra-judicially, any sheriff conducting the sale at public auction, or where a direct sale is permitted by law, the Mortgagee or its duly appointed representative shall, at its option and in a commercially reasonable manner, sell the Assets individually, in groups, or as a whole lot.

Section 6.07. *Application of Proceeds*. All moneys realized by the Mortgagee in the exercise of its rights, powers, and remedies under this Section 6.06 (*Foreclosure*) hereof shall be applied as payment to IFC for: (i) reimbursement of all expenses and costs of litigation or foreclosure, including attorney's fees and expenses incurred in receivership, collection, maintenance, improvement, and other acts of administration and/or sale of the Assets; and (ii) all Obligations of the Loan Parties under the Loan Agreement and Financing Documents. Only after the payment of the foregoing shall the balance of the moneys, if any, be given to the Mortgagors or whomsoever may be lawfully ent itled thereto.

It is understood that the Assets stand only as partial security for the payment of the Obligations, and should the sums realized by the Mortgagee in the judicial or extrajudicial foreclosure of the Assets and/or, in the exercise of its rights, powers, and remedies hereunder, be not sufficient to pay and discharge said obligations, the Mortgagors shall pay the deficiency to the Mortgagee within 15 days after the sale of the Assets, and upon failure of the Mortgagors to pay, the Mortgagee may immediately institute any action or pursue any other legal remedy for the collection thereof.

Section 6.08. *Authority to Disclose*. The Mortgagors hereby authorize the Mortgagee to disclose to any Governmental Authority including but not limited to the Bureau of Internal Revenue or to any other Authority, any and all matters relating to the Mortgagors, the Obligations, the Assets, the Loan Agreement, and this Mortgage Agreement for the purpose of transferring title over the Assets to the IFC or any other Person entitled to a transfer of such title in its favor after the foreclosure authorized hereunder and if perforce by the provisions hereof and of applicable laws, rules, and regulations the Mortgagor has ceased to have the right to own the Assets.

Section 6.09. *Waiver of Right and/or Equity of Redemption*. The Mortgagors hereby waive and relinquish, to the extent permitted by Applicable Law, all rights, present and future, that they may have by law or otherwise to redeem any of the Assets that may have been sold, whether in a judicial or extra-judicial foreclosure, and whether the sale took place at public auction or was a direct sale**;** and the Mortgagee is hereby expressly authorized and empowered to execute and deliver, on behalf of the Mortgagor, such deeds of conveyance as may be necessary or proper for the purpose of vesting in the purchaser in such sale full, complete, and absolute title to the A ssets, free from any and all claims and rights of the Mortgagors.

Section 6.10. *Non-Revocation and Ratification.* Such powers herein granted shall not be revoked during the life of this Mortgage Agreement, and all acts taken by the Mortgagee by virtue of said powers are hereby ratified.

ARTICLE VII
POWER OF ATTORNEY

Section 7.01. *Appointment and Authority of Attorney-in-fact.* Each of the Mortgagors, with respect to its Assets, hereby irrevocably and to the fullest extent permitted by Applicable Law, appoints the Mortgagee as its attorney-in-fact, with right of substitution, so that the Mortgagee or any other Person empowered and duly authorized by the Mortgagee shall, upon the occurrence and during the continuance of an Event of Default, be authorized, without need of further authorization from the Mortgagor, and in preservation and/or for the enforcement of the rights of the Mortgagee hereunder:

(a) *Sale of Assets*. To effect the sale of any of the Assets owned by the Mortgagor in one or more transactions, and, to the extent permitted by Applicable Law, in such other manner as may reasonably be determined by such attorney-in-fact, including the direct sale without public auction of any such Assets at such price, and upon such terms as may be determined by such attorney-in-fact;

(b) *Entry of Premises*. To lawfully enter upon any premises where the Assets or any of them may be located without the need for a court order or other form of authority otherwise than upon the authority granted herein;

(c) *Possession of Assets*. To take and retain actual possession and control of any such Assets as receivers without bond or otherwise, and transport any of them to any location as determined by such attorney-in-fact;

(d) *Repairs and Improvements*. To make any reasonable repairs, additions, and improvements on and to the Assets owned by any Mortgagor at the expense of the Mortgagor as such attorney-in-fact shall deem proper or necessary;

(e) *Administration of Assets*. To perform acts of administration over any or all of the Assets;

(f) *Conclusion of Agreements*. To conclude any agreement and collect any monies under such agreements or otherwise due to the Mortgagor in respect of, or generated through the usage of, any of the Assets;

(g) *Exercise of Rights*. To exercise any of the rights of either of the Mortgagors arising under or in connection with this Mortgage Agreement and the Mortgage, and to designate or delegate to another Person in substitution of such attorney-in-fact, the exercise of such rights of the Mortgagor, and under such terms as such attorney-in-fact shall deem proper or necessary;

(h) *Collection of Monies*. To collect, claim, and receive all monies in accordance with this Mortgage Agreement and avail of all benefits that accrue, and that may

become due and payable to either of the Mortgagors under this Mortgage Agreement and the Mortgage;

(i) *Institution of Suits*. To institute or defend, and maintain such suits and proceedings as such attorney-in-fact shall deem expedient to prevent any impairment of the Assets or to preserve and protect the interest therein of the Mortgagee;

(j) *Execution of Deed of Sale*. To execute and deliver such deeds of conveyance or sale as may be necessary or proper for the purpose of conveying full title and ownership, free from any claims and rights of any Mortgagor, to the Assets, after foreclosure thereof; and

(k) *Other Acts*. In general, to sign such agreements and documents and perform such acts and things required, necessary or, in the opinion of such attorney-in-fact, advisable, to fully enforce the rights of the Mortgagee under this Mortgage Agreement and the Mortgage.

Section 7.02. *Ratification of Attorney's Acts*. Each of the Mortgagors agrees to and hereby ratifies any and all acts and things performed or done, or to be performed and done, by the Mortgagee or any of its representatives in each case, whether as the Mortgagors' attorney-in-fact or otherwise, in the exercise of any or all powers granted to the Mortgagee hereunder.

Section 7.03. *Power of Attorney Coupled with Interest*. This special power of attorney shall be deemed coupled with an interest and cannot be revoked by either of the Mortgagors until the Termination Date. Upon the occurrence of an Event of Default and for so long as such Event of Default is continuing, the Mortgagors shall abstain from exercising any rights under any of the Financing Documents which shall be inconsistent with the exercise of the rights and functions herein granted to the Mortgagee as the Mortgagors' attorney-in-fact, provided, however, that nothing herein shall prevent the Mortgagors, prior to the exercise by the Mortgagee of any such rights, powers, remedies, and functions in a ccordance with this Mortgage Agreement, from undertaking the Mortgagors' operations in the ordinary course of its business to the extent not prohibited or restricted by the Financing Documents. To the extent that any of the Mortgagors shall receive any monies in respect of any of the Assets, notwithstanding the provisions of this Section 7.03 (*Power of Attorney Coupled with Interest*), it shall be deemed to have received such funds for the account of the Mortgagee and shall hold the same in trust and promptly pay the same to the Mortgagee.

Section 7.04. *Expenses of Attorney-in-Fact*. All costs, expenses, charges, and fees paid or incurred, or to be paid or incurred, by the Mortgagee and/or its representatives, successors, and assignees in the exercise of any of the powers herein granted shall be for the account of the Mortgagors, and the Mortgagors undertake, promptly on demand, to reimburse the Mortgagee and/or its representatives, successors, and assignees, as the case may be, for any monies paid by any of them with interest at the default rate prescribed in the Loan Agreement, from the date the same shall have been incurred until actually paid.

ARTICLE VIII
TERMINATION/RELEASE OF MORTGAGE

Section 8.01. *Termination/Release*. Subject to Section 9.04 (*Rescission of Payment*), upon the occurrence of the Termination Date, the Mortgage shall automatically terminate and the Mortgagee, at the written request of any of the Mortgagors, will promptly:

(a) execute and deliver to the Mortgagors the proper instrument (in substantially the form in Exhibit "B" (*Form of Release of Mortgage*)) acknowledging the termination of this Mortgage Agreement; and

(b) duly assign, transfer, and deliver to the Mortgagors (without recourse and without any representation or warranty), free from interests of the Mortgagee or any Lien granted hereunder, such of the Assets as may be in possession or subject to the interests of the Mortgagee and has not theretofore been sold or otherwise applied or released pursuant to this Mortgage Agreement, together with (i) such notices to third parties as may be necessary to countermand any notices previously sent to them pursuant hereto, and (ii) such other documentation as shall be reasonably requested by the Mortgagors to effect or confirm the termination and release of the Liens granted hereunder on the Assets.

Notwithstanding the foregoing, all indemnities of the Mortgagors herein shall survive such release and any termination of this Mortgage Agreement. All Taxes, fees, and other costs and expenses imposed in connection with such release and termination shall be for the account of the Mortgagor, and the payment thereof shall form part of the Obligations.

ARTICLE IX
MISCELLANEOUS PROVISIONS

Section 9.01 *Mortgagors Solidary Undertaking.* Each Mortgagor agrees to bind itself solidarily for all obligations of each Mortgagor under this Mortgage Agreement; all representations, warranties, covenants, and other statements made by each Mortgagor pursuant to this Mortgage Agreement; and all other obligations undertaken by each Mortgagor pursuant to this Mortgage Agreement.

Section 9.02. *Effectivity; Continuing Security*. The Mortgagors hereby duly note and agree that the Liens hereby created in favor of the Mortgagee in the form of the Real Estate Mortgage and the Chattel Mortgage in accordance with the provisions of this Mortgage Agreement shall be a continuing security and shall remain in full force and effect until the Termination Date. Accordingly, the validity and enforceability of the Mortgage shall not be affected or impaired by:

(a) any extension of time, forbearance, or concession given to any of the Mortgagors;

(b) any assertion of, or failure to assert, or delay in asserting, any right, power, or remedy against any of the Mortgagors, or in respect of any other security for any of the Obligations;

(c) any modification, amendment, waiver, or amplification of the provisions of the Loan Agreement, the Financing Documents, or this Mortgage Agreement or of any other agreements between either of the Mortgagors, on one hand, and IFC, on the other hand;

(d) any failure of any Mortgagor to comply with any requirement of any Applicable Law;

(e) the dissolution, liquidation, reorganization, or any other alteration of the legal structure of any of the Mortgagors;

(f) any purported or actual assignment of the Loan by IFC to any other Person; or

(g) any other circumstance (other than complete, unconditional, and irrevocable payment and performance by the Mortgagors of all the Obligations) which might otherwise constitute a legal or equitable discharge of a security.

Section 9.03. *Partial Security*. It is hereby agreed that the Liens created in accordance with the provisions of this Mortgage Agreement shall be construed as a partial security for the Obligations, and is in addition to any other Lien that IFC may, now or in the future, obtain to secure the Obligations. Accordingly, in the event that the monies at any time realized by the Mortgagee in the judicial or extra-judicial foreclosure of the Real Estate Mortgage on any of the Real Assets or the Chattel Mortgage on any of the Chattel and/or in the exercise of any of its rights and powers hereunder shall not be sufficient to pay and discharge all the Obligations to IFC, any remaining unpaid balance thereof shall remain due and payab le on demand by IFC, until fully paid and all rights, powers, and remedies of IFC in respect thereof are hereby reserved.

Section 9.04. *Rescission of Payment*. This Mortgage Agreement shall continue to be effective or be reinstated, as the case may be, if at any time payment of the Obligations, or a part thereof, is rescinded or must otherwise be restored or returned by the Mortgagee, upon the insolvency, bankruptcy, or reorganization of either of the Mortgagors or otherwise, all as though such payment had not been made.

Section 9.05. *Conversion to Required Currency*. To the extent that the amounts due and payable to the Mortgagee hereunder are in a currency or currencies other than Dollars, such currency or currencies shall for the purposes hereof be converted into Dollars at the then prevailing rate or rates for purchase of Dollars, at the Mortgagors' own cost and expense.

Section 9.06. *Rights and Remedies Cumulative*. The rights, powers and remedies of the Mortgagee provided for in this Mortgage Agreement are not exclusive of, but are in addition to, any other rights and remedies that the Mortgagee may have under Applicable Law, the Loan

Agreement, or any Financing Documents. In addition, such rights, powers, and remedies of the Mortgagee hereunder are granted for the exclusive benefit of the Mortgagee, and it is the Mortgagee's prerogative to exercise any of such rights, powers, and remedies in its absolute discretion, but it shall have no obligation to do so; nor shall the Mortgagee be liable to the any of the Mortgagors or any other Person for any action taken or not taken by it pursuant to this Mortgage Agreement. One or more exercises of the powers and rights herein granted shall not extinguish or exhaust such powers until the Assets and all other property now or hereafter subject hereto or to any instrument now or hereafter evidencing, securing, or relating to the Obligations, are sold or the Termination Date occurs. If the Obligations are now or hereafter further s ecured by any real estate mortgage, chattel mortgages, pledges, contracts of guaranty, assignments or other security, the Mortgagee may exhaust the remedies granted under any of the said security instruments, either concurrently or independently, and in such order as the Mortgagee, in the exercise of its absolute discretion, may determine.

Section 9.07. *No Waiver*. No course of dealing and no delay in exercising, or omission to exercise, any right, power, or remedy accruing to the Mortgagee or its attorney-in-fact upon any default or other circumstance under the Real Estate Mortgage and/or the Chattel Mortgage and/or this Mortgage Agreement shall impair any such right, power, or remedy or be construed to be a waiver thereof or an acquiescence therein; nor shall the action of the Mortgagee or its attorney-in-fact in respect of such default or circumstance, or any acquiescence by it thereto, affect or impair any right, power, or remedy of the Mortgagee or its attorney-in-fact in respect of any other default or circumstance, whether similar or not.< /div>

Section 9.08. *Amendments with respect to the Loan*. The Mortgagors shall remain obligated hereunder, and the Assets shall remain subject to the Lien created hereunder, notwithstanding that, without any reservation of rights against any of the Mortgagors, the Loan Agreement, the Financing Documents, and any other documents executed and delivered in connection therewith may be amended, supplemented, or terminated, in whole or in part from time to time, and any guarantee or other collateral security at any time held by the Mortgagee for the payment of the Obligations may be sold, exchanged, waived, surrendered, or released. The Mortgagee shall not have any obligation to the Mortgagors to protect, secure, or perfect any other Lien at any time held by it as security for the Obligations or any property subject thereto.

Section 9.09. *Severability.* If any provision, term, or condition of this Mortgage Agreement or the application thereof to any Person or circumstance shall for any reason be held invalid or unenforceable, then, without prejudice to the provisions of Section 9.06 (*Rights and Remedies Cumulative*) and Section 9.07 (*No Waiver*) hereof, the same shall not adversely affect or impair the validity and enforceability of the other provisions, terms, and conditions hereof nor the application of any such provisions, terms, and conditions to any other Person or in any other circumstance.

Section 9.10. *Notice*. Any notice, request, or other communication to be given or made under this Mortgage Agreement shall be given in accordance with the Loan Agreement. For the purposes of notices, requests, or other communications to SPML Land, its details are as follows or at such other address as SPML Land has from time to time designated by notice to the SPML and IFC:

SPML Land, Inc.
100 East Main Ave., LTI Biñan, Laguna
Attn: Suzanne Mondonedo

Section 9.11. *Benefit of Mortgage Agreement*. This Mortgage Agreement shall be binding upon and inure to the benefit of each party hereto, its successors, assigns, and transferees; provided, however, that the Mortgagors may not assign or otherwise transfer all or any of their respective rights and obligations under this Mortgage Agreement without the prior written consent of the Mortgagee. The Mortgagee may, at any time in conjunction with the assignment and transfer of any part of the Loan, transfer by way of assignment or novation, if not automatically occurring by operation of law, all or any part of its rights, benefits, or obligations under the Real Estate Mortgage or the Chattel Mortgage, and/or this Mortga ge Agreement, without the Mortgagors being in any way discharged from their obligations hereunder and without this Mortgage Agreement or the Mortgage created hereunder being deemed cancelled or terminated.

Section 9.12. *Without Obligations on the Assets*. Notwithstanding anything contained herein, the Mortgage is only intended as security for the Obligations and the Mortgagee shall not be obligated to perform or discharge, nor does the Mortgagee undertake to perform or discharge, any obligation, duty, or liability of the Mortgagors under or relating to any of the Assets.

Section 9.13. *Governing Law*. This Mortgage Agreement and the rights and obligations of the parties hereunder shall be construed in accordance with and be governed by the laws of the Philippines.

Section 9.14. *Applicability of the Loan Agreement*. In amplification of, and notwithstanding any other provisions of this Mortgage Agreement, nothing herein shall be deemed to restrict or curtail rights, powers, privileges, exculpations, protections, and indemnities of or in favor of IFC, as are provided for or referred to in the Loan Agreement.

Section 9.15. *Venue of Actions*. Each of the Mortgagors hereby submits to the exclusive jurisdiction of the proper court of the City of Makati for all actions of proceedings arising out of or in connection with this Mortgage Agreement with each of the Mortgagors waiving for this purpose any other venue provided by Applicable Law.

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IN WITNESS WHEREOF, the duly authorized signatories of the following parties have executed this Part 3 of this Mortgage Loan Agreement on May 6, 2010, in Taguig City, Philippines:

SunPower Philippines Manufacturing Ltd.
By: /s/ Gregory D. Reichow
Name: GREGORY D. REICHOW
Position: Attorney-in-Fact

SPML Land, Inc.
By: /s/ Telesforo P. Alfelor
Name: TELESFORO P. ALFELOR
Position: President

International Finance Corporation
By: /s/ Jesse O. Ang
Name: JESSE O. ANG
Position: Resident Representative

Signed in the presence of

/s/ Alain Charles J. Veloso

/s/ signature unintelligible

AFFIDAVIT OF GOOD FAITH

We swear that the Chattel Mortgage embodied in Part 3 of this Mortgage Loan Agreement is made for the purpose of securing the obligations specified therein, and for no other purpose, and that the same are just and valid obligations not entered into for the purpose of fraud.

SunPower Philippines Manufacturing Ltd.
By: /s/ Gregory D. Reichow

Name: GREGORY D. REICHOW
Position: Attorney-in-Fact

SPML Land, Inc.
By: /s/ Telesforo P. Alfelor

Name: TELESFORO P. ALFELOR
Position: President

International Finance Corporation
By: /s/ Jesse O. Ang

Name: JESSE O. ANG
Position: Resident Representative

Signed in the presence of

/s/ Alain Charles J. Veloso

/s/ signature unintelligible

ACKNOWLEDGMENT AND CERTIFICATION OF OATH

REPUBLIC OF THE PHILIPPINES)

TAGUIG CITY) S.S.

BEFORE ME, a Notary Public for and in the above jurisdiction this 6th day of May, 2010 personally appeared the following individual/s, representing the respective corporation/s indicated below his/their names:

Name	Community Tax Certificate No. & Passport No.	Issued at/on

SunPower Philippines Manufacturing Ltd.

represented by:

SPML Land, Inc.

represented by:

International Finance Corporation

represented by:

personally known to me or identified by me through competent evidence of identity to be the same person[s] who presented to me and signed in my presence this Part 3 of this Mortgage Loan Agreement consisting of ____ pages, including the Affidavit of Good Faith and this Acknowledgment Page, all of which were signed by them and their instrumental witnesses, and they represented that they executed this Agreement as their free and voluntary act and that they are duly authorized to sign for the corporations they respectively represent.

This Part 3 of this Mortgage Loan Agreement including the pages of this Acknowledgment, the Affidavit of Good Faith, and the Mortgage Agreement's annexes and exhibits is signed by the parties hereto and their instrumental witnesses on the signature page and on the left margin of the other pages hereof.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal this 6th day of May, 2010 at Taguig City, Philippines.

Doc No.
Page No.
Book No.
Series of 2010

DESCRIPTION OF PRESENT REAL ASSETS

The following shall constitute the Present Real Assets:

1. The Premises, which consist of SPML Land's real property consisting of a parcel of land covered by Transfer Certificate of Title No. T-117960 (formerly T-103232) located at the Municipality of Tanauan, Province of Batangas with an area of 60,000 square meters, and the building upon such parcel of land covered by Declaration of Real Property No. 047-01263 (Property Identification No. 024-29-047-12-0010B1).

2. A parcel of land covered by Transfer Certificate of Title No. T-132528 and Tax Declaration of Real Property No. 047-01260 (Property Identification No. 024-29-047-12-0011) located at the Municipality of Tanauan, Province of Batangas with an area of 20,000 square meters.

3. A parcel of land covered by Transfer Certificate of Title No. T-132527 and Tax Declaration No. 047-01261 (Property Identification No. 024-29-047-12-0047) located at the Municipality of Tanauan, Province of Batangas with an area of 6,456 square meters.

4. The Lease Rights of SPML over the Premises under the Contract of Lease between SPML and SPML Land dated August 2006 (Doc. No. 90, Page No. 18, Book No. IX, Series of 2006 dated 5 September 2006 of Notary Public Basilio B. Pooten for Sta., Rosa, Laguna).

5. The Mortgagors' rights to possess or otherwise use the Premises, including any easements or rights of way pertaining thereto, pursuant to any other document or agreement granting such right to the Mortgagors.

6. All machinery, equipment, and other assets owned by either of the Mortgagors and located in the Premises attached to the Present Real Assets in such a way so as to become immovable by incorporation or by destination.

[Nothing Follows]

DESCRIPTION OF FUTURE REAL ASSETS

The following shall constitute the Future Real Assets:

1. The Lease Rights of SPML arising from any renewal or extension of the Contract of Lease between SPML and SPML Land dated August 2006 (Doc. No. 90, Page No. 18, Book No. IX, Series of 2006 dated 5 September 2006 of Notary Public Basilio B. Pooten for Sta., Rosa, Laguna).

2. The Lease Rights of SPML over the Premises covered by any contract replacing the Contract of Lease between SPML and SPML Land dated August 2006 (Doc. No. 90, Page No. 18, Book No. IX, Series of 2006 dated 5 September 2006 of Notary Public Basilio B. Pooten for Sta., Rosa, Laguna) that may be entered into between SPML and SPML Land regarding the lease granted by SPML Land to SPML.

3. Improvements owned by any of the Mortgagors which may be made on the Real Assets after the date of this Mortgage Agreement.

4. Property owned by any Mortgagor of every nature and description taken in exchange, substitution, or replacement of the Real Assets after the date of this Mortgage Agreement.

5. All rights, benefits, loss proceeds, indemnities, insurance payments, and other payments received by or due to any of the Mortgagors in lieu of, or inherent to, or in connection with, the Real Assets.

6. All machinery, equipment, and other assets owned or acquired by either of the Mortgagors and located in, on, or upon the Real Assets (regardless of whether initially covered by the Chattel Mortgage) which are at any time in the future attached to such property so as to become immovable by incorporation or by destination by reason of their attachment to the Real Assets.

7. All of the Mortgagors' rights, title, and interests in, to and under insurance contracts, to the extent that such rights, title, and interests constitute Real Assets.

[Nothing Follows]

DESCRIPTION OF PRESENT CHATTELS

The following shall constitute the Present Chattels:

Description	Acquisition Date	Oracle Asset Number	Class
Printer 1	25-Oct-07	437	Mfg. Eqt
Metal Anneal	25-Oct-07	438	Mfg. Eqt
Automation 2	25-Oct-07	439	Mfg. Eqt
Etch Tool #2	25-Oct-07	440	Mfg. Eqt
Etch Tool #3	25-Oct-07	441	Mfg. Eqt
Sputter Tool	25-Oct-07	442	Mfg. Eqt
Wafer Transfer System	25-Oct-07	443	Mfg. Eqt
Automated Tester	25-Oct-07	444	Mfg. Eqt
Direct Feeder	25-Oct-07	445	Mfg. Eqt
Back Side Tool	28-Mar-08	446	Mfg. Eqt
Back Side Automation	28-Mar-08	447	Mfg. Eqt
Inspection System 1	28-Mar-08	448	Mfg. Eqt
Inspection System 2	28-Mar-08	449	Mfg. Eqt
Inspection System 3	28-Mar-08	450	Mfg. Eqt
Printer 3	28-Mar-08	451	Mfg. Eqt
Printer 2	28-Mar-08	452	Mfg. Eqt
Printer 1	25-Mar-09	2022	Mfg. Eqt
Printer 1	23-Jul-09	5631	Mfg. Eqt
Etch Tool #1	28-Mar-08	453	Mfg. Eqt
Deposition Tool # 1	28-Mar-08	454	Mfg. Eqt
Deposition Tool # 2	28-Mar-08	455	Mfg. Eqt
Etch Tool #2	28-Mar-08	456	Mfg. Eqt
Etch Tool #4	28-Mar-08	457	Mfg. Eqt
Etch Tool #3	28-Mar-08	458	Mfg. Eqt
Diffusion Banks	28-Mar-08	459	Mfg. Eqt
Elevator System	28-Mar-08	460	Mfg. Eqt
Frontside Tool	28-Mar-08	461	Mfg. Eqt
Printer 2	28-Mar-08	462	Mfg. Eqt
Sputter Tool	28-Mar-08	463	Mfg. Eqt
Metal Anneal	28-Mar-08	464	Mfg. Eqt
Direct Feeder	28-Mar-08	465	Mfg. Eqt
Etch Tool	28-Mar-08	466	Mfg. Eqt
Etch Tool Automation 2	28-Mar-08	467	Mfg. Eqt
Etch Tool Automation 1	28-Mar-08	468	Mfg. Eqt
Automated Tester	28-Mar-08	469	Mfg. Eqt

Wafer Transfer System	28-Mar-08	470	Mfg. Eqt
Printer 1	28-Mar-08	471	Mfg. Eqt
Inspection System 1	28-Mar-08	472	Mfg. Eqt
Inspection System 2	28-Mar-08	473	Mfg. Eqt
Inspection System 3	28-Mar-08	474	Mfg. Eqt
Printer 3	28-Mar-08	475	Mfg. Eqt
Automation 2	28-Mar-08	476	Mfg. Eqt
Back Side Tool	29-Jun-08	1105	Mfg. Eqt
Back Side Automation	29-Jun-08	1106	Mfg. Eqt
Printer 3	29-Jun-08	1109	Mfg. Eqt
Inspection System 1	29-Jun-08	1123	Mfg. Eqt
Inspection System 2	29-Jun-08	1124	Mfg. Eqt
Inspection System 3	29-Jun-08	1125	Mfg. Eqt
Printer 1	24-Jan-09	4373	Mfg. Eqt
Elevator System	25-Mar-09	4705	Mfg. Eqt
Back Side Tool	29-Jun-08	1107	Mfg. Eqt
Back Side Automation	29-Jun-08	1108	Mfg. Eqt
Sputter Tool	29-Jun-08	1110	Mfg. Eqt
Deposition Tool # 1	29-Jun-08	1111	Mfg. Eqt
Deposition Tool # 2	29-Jun-08	1112	Mfg. Eqt
Diffusion Banks	29-Jun-08	1113	Mfg. Eqt
Diffusion Banks	29-Jun-08	1114	Mfg. Eqt
Elevator System	29-Jun-08	1115	Mfg. Eqt
Metal Anneal	29-Jun-08	1116	Mfg. Eqt
Wafer Transfer System	29-Jun-08	1117	Mfg. Eqt
Etch Tool #1	29-Jun-08	1118	Mfg. Eqt
Etch Tool #3	29-Jun-08	1119	Mfg. Eqt
Automated Tester	29-Jun-08	1120	Mfg. Eqt
Automation 2	29-Jun-08	1121	Mfg. Eqt
Printer 2	29-Jun-08	1122	Mfg. Eqt
Printer 3	24-Aug-08	1149	Mfg. Eqt
Inspection Systems1~3	24-Aug-08	1217	Mfg. Eqt
Deposition Tool # 1	24-Aug-08	1186	Mfg. Eqt
Deposition Tool # 2	24-Aug-08	1187	Mfg. Eqt
Etch Tool #1	24-Aug-08	1306	Mfg. Eqt
Etch Tool #3	24-Aug-08	1309	Mfg. Eqt
Etch Tool	24-Aug-08	1839	Mfg. Eqt
Direct Feeder	24-Aug-08	1903	Mfg. Eqt
Diffusion Banks	24-Aug-08	2147	Mfg. Eqt
Elevator System	24-Aug-08	2350	Mfg. Eqt
Sputter Tool	24-Aug-08	1955	Mfg. Eqt
Etch Tool #4	24-Aug-08	1282	Mfg. Eqt
Etch Tool #2	24-Aug-08	1283	Mfg. Eqt
Metal Anneal	24-Aug-08	1397	Mfg. Eqt
Printer 2	24-Aug-08	2394	Mfg. Eqt

Back Side Tool	24-Aug-08	1470	Mfg. Eqt
Back Side Automation	24-Aug-08	1673	Mfg. Eqt
Automated Tester	24-Aug-08	2221	Mfg. Eqt
Printer 3	24-Aug-08	1147	Mfg. Eqt
Inspection System 1~3	24-Aug-08	1788	Mfg. Eqt
Automation	24-Aug-08	1491	Mfg. Eqt
Printer 3	28-Sep-08	3367	Mfg. Eqt
Wafer Transfer System	28-Sep-08	1471	Mfg. Eqt
Printer 3	28-Sep-08	3365	Mfg. Eqt
Etch Tool #1	28-Sep-08	2325	Mfg. Eqt
Etch Tool #3	28-Sep-08	2326	Mfg. Eqt
Sputter Tool	28-Sep-08	3504	Mfg. Eqt
Deposition Tool # 1	28-Sep-08	1615	Mfg. Eqt
Deposition Tool # 2	28-Sep-08	1665	Mfg. Eqt
Diffusion Banks	28-Sep-08	2529	Mfg. Eqt
Printer 2	28-Sep-08	2393	Mfg. Eqt
Automated Tester	28-Sep-08	2222	Mfg. Eqt
Automation	28-Sep-08	2552	Mfg. Eqt
Back Side Tool	28-Sep-08	1555	Mfg. Eqt
Printer 1	28-Sep-08	2500	Mfg. Eqt
Inspection System	28-Sep-08	3552	Mfg. Eqt
Inspection System AOI	24-Jan-09	1404	Mfg. Eqt
Etch Tool #1	26-Dec-08	2135	Mfg. Eqt
Deposition Tool # 1	26-Dec-08	2047	Mfg. Eqt
Deposition Tool # 2	26-Dec-08	2052	Mfg. Eqt
Etch Tool #3	26-Dec-08	2138	Mfg. Eqt
Frontside Tool	26-Dec-08	1496	Mfg. Eqt
Back Side Tool	26-Dec-08	3437	Mfg. Eqt
Printer 2	26-Dec-08	3557	Mfg. Eqt
Etch Tool #4	26-Dec-08	2134	Mfg. Eqt
Etch Tool #2	26-Dec-08	2137	Mfg. Eqt
Sputter Tool	26-Dec-08	2114	Mfg. Eqt
Metal Anneal	26-Dec-08	3619	Mfg. Eqt
Direct Feeder	26-Dec-08	2075	Mfg. Eqt
Etch Tool	26-Dec-08	2237	Mfg. Eqt
Printer 1	26-Dec-08	3436	Mfg. Eqt
Automated Tester	26-Dec-08	2220	Mfg. Eqt
Automated Tester	26-Dec-08	1480	Mfg. Eqt
Inspection System	26-Dec-08	3364	Mfg. Eqt
Printer 3	26-Dec-08	3561	Mfg. Eqt
Diffusion Banks	26-Dec-08	2553	Mfg. Eqt
Elevator System	26-Dec-08	4283	Mfg. Eqt
Automation	26-Dec-08	3382	Mfg. Eqt
Inspection System AOI	24-Jan-09	3863	Mfg. Eqt
Etch Tool Automation	25-Mar-09	1467	Mfg. Eqt

Direct Feeder	25-Mar-09	4745	Mfg. Eqt
Wafer Transfer System	25-Mar-09	3755	Mfg. Eqt
Inspection System	23-Apr-09	5641	Mfg. Eqt
Etch Tool #1	24-Jan-09	2136	Mfg. Eqt
Deposition Tool # 1	24-Jan-09	2048	Mfg. Eqt
Deposition Tool # 2	24-Jan-09	2053	Mfg. Eqt
Etch Tool #3	24-Jan-09	2139	Mfg. Eqt
Frontside Tool	24-Jan-09	1498	Mfg. Eqt
Back Side Tool	24-Jan-09	3438	Mfg. Eqt
Printer 2	24-Jan-09	3556	Mfg. Eqt
Sputter Tool	24-Jan-09	2115	Mfg. Eqt
Metal Anneal	24-Jan-09	3624	Mfg. Eqt
Automated Tester	24-Jan-09	1479	Mfg. Eqt
Inspection System	24-Jan-09	3562	Mfg. Eqt
Diffusion Banks	24-Jan-09	3615	Mfg. Eqt
Elevator System	24-Jan-09	4284	Mfg. Eqt
Automation	24-Jan-09	3378	Mfg. Eqt
Inspection System AOI	24-Jan-09	3871	Mfg. Eqt
Etch Tool Automation	25-Mar-09	1349	Mfg. Eqt
Inspection System	23-Apr-09	5657	Mfg. Eqt
Printer 3	23-Apr-09	5636	Mfg. Eqt

[Nothing Follows]

DESCRIPTION OF FUTURE CHATTELS

The following shall constitute the Future Chattels:

1. Property owned by any Mortgagor of every nature and description taken in exchange, substitution, or replacement of the Chattels or otherwise acquired by any of the Mortgagors and used and/or located in the Premises.

2. All rights, benefits, loss proceeds, indemnities, insurance payments, and other payments received by or due to any of the Mortgagors in lieu of, or inherent to, or in connection with, the Chattels.

3. All machinery, equipment, and other assets which are covered by the Real Estate Mortgage, but are at any time in the future, for any reason, dismantled or removed or otherwise become mobilized.

4. All of the Mortgagors' rights, title, and interests in, to, and under insurance contracts, to the extent that such rights, title, and interests do not constitute Real Assets.

[Nothing Follows]

ANNEX "C"

SUFFICIENT EVIDENCE OF REGISTRATION

1. Registration of Real Estate Mortgage

   (a) Official receipt from the appropriate Register of Deeds confirming the payment of the registration fees

   (b) Computation (from the Mortgagors) of the registration fees

   (c) Certified copy of the title to the property/ies with the Mortgage annotated thereon

   (d) (i) Where a Real Estate Mortgage is contemplated by the relevant Mortgage Supplement and registered property is covered by the Real Estate Mortgage, either a certified true copy of the day book of the appropriate Register of Deeds showing the entry of the Mortgage or a certification from the Register of Deeds that the Mortgage has been entered in the day book

   (ii) Where a Real Estate Mortgage is contemplated by the relevant Mortgage Supplement and unregistered property is covered by the Real Estate Mortgage, either a certified true copy of the entry book for Act No. 3344 or a certification from the Register of Deeds that the Mortgage has been entered in the entry book for Act No. 3344

   (e) Original copy of the Mortgage Agreement with the Mortgage duly stamped by the appropriate Register of Deeds confirming the registration of the Real Estate Mortgage

   (f) Official Receipt of a Bureau of Internal Revenue associated agent bank for the payment of documentary stamp taxes on the Mortgage Loan Agreement

2. Registration of the Chattel Mortgage

   (a) Official receipt of the appropriate Register of Deeds confirming the payment of the registration fees

   (b) Computation (from the Mortgagors) of the registration fees

   (c) Either a certified true copy of the registry for the Chattel Mortgages or a certification from the Register of Deeds that the Chattel Mortgage has been entered in the registry for Chattel Mortgages

(d) Original copy of the Mortgage Loan Agreement with the Mortgage duly stamped by the appropriate Register of Deeds confirming the registration of the Chattel Mortgage

(e) Official Receipt of a Bureau of Internal Revenue associated agent bank for the payment of documentary stamp taxes on the Mortgage Loan Agreement

3. Registration of the Mortgage Supplements

(a) Official receipt of the appropriate Register of Deeds confirming the payment of the registration fees

(b) Computation (from the Mortgagors) of the registration fees

(c) (i) Where a Real Estate Mortgage is contemplated by the relevant Mortgage Supplement and registered property is covered by the Real Estate Mortgage, either a certified true copy of the day book of the appropriate Register of Deeds showing the entry of the Mortgage or a certification from the Register of Deeds that the Mortgage has been entered in the day book

(ii) Where a Real Estate Mortgage is contemplated by the relevant Mortgage Supplement and unregistered property is covered by the Real Estate Mortgage, and either a certified true copy of the entry book for Act No. 3344 confirming registration of the relevant Mortgage Supplement or a certification from the Register of Deeds that the relevant Mortgage Supplement has been entered in the entry book for Act No. 3344

(iii) Where a chattel mortgage is contemplated by the relevant Mortgage Supplement, either a certified true copy of the registry for the Chattel Mortgages or a certification from the Register of Deeds that the Chattel Mortgage has been entered in the registry for Chattel Mortgages

(d) Original copy of the Mortgage Supplement duly stamped by the appropriate Register of Deeds confirming its registration as a Real Estate Mortgage and/or Chattel Mortgage

(e) In the event that the amount secured under the Mortgage Agreement is increased by virtue of the Mortgage Supplement or the term of the Loan is increased under the Loan Agreement, an Official Receipt of a Bureau of Internal Revenue associated agent bank for the payment of documentary stamp taxes on the Mortgage Supplement or the Mortgage Loan Agreement

MORTGAGE SUPPLEMENT

Mortgage Supplement No. [*]

This ● Mortgage Supplement No. ● (the "***Supplement***"), is entered into by and among **SunPower Philippines Manufacturing Ltd.**, a foreign corporation duly licensed to do business under the laws of the Philippines with office address at 100 Trade Avenue, Phase 4, Special Economic Zone, Laguna Technopark, Biñan Laguna ("***SPML***"), **SPML Land, Inc.**, a corporation organized and existing under the laws of the Philippines with principal address at 100 East Main Ave., LTI Biñan Laguna ("***SPML Land***" or, together with SPML, the "***Mortgagors***", or, individually, each the "***Mortgagor***"); and the **International Finance Corporation**, an international organization established by the Articles of Agreement among its member countries including the Republic of Philippines ("***IFC***" or the "***Mortgagee***").

WHEREAS, the Mortgagors and Mortgagee have executed and registered a Mortgage Agreement dated as of ● (the "***Mortgage Agreement***"), to secure the Obligations of the Mortgagors referred to in such agreement;

WHEREAS, the Mortgage Agreement provides that the Mortgagors and Mortgagee shall execute and register Mortgage Supplements for the purposes stated therein; and

WHEREAS, in fulfillment of the continuing obligation of the Mortgagors under the Mortgage Agreement, Loan Agreement, and Financing Documents each of the Mortgagors desires to execute this Mortgage Supplement with the Mortgagee.

NOW, THEREFORE, the parties hereto agree as follows:

1. Unless otherwise defined in this Mortgage Supplement, (i) capitalized terms shall have the meanings set forth in the Loan Agreement and the Mortgage Agreement unless the context otherwise requires, and (ii) the principles of construction set forth in the Loan Agreement and the Mortgage Agreement shall apply.

2. The Mortgagors hereby confirm that (i) certain of the Assets identified and described as **[Future Real Assets and/or Future Chattel, as may be applicable,]** in the Mortgage Agreement have come into existence and/or have been acquired in ownership by a Mortgagor as of the date hereof (those certain assets to be herein called the "New Assets"), and (ii) the New Assets are now identified and more fully described in Schedule A to this Mortgage Supplement.

3. The Mortgagors hereby acknowledge and agree (i) that the **[Real Estate Mortgage and/or** the **Chattel Mortgage, as may be applicable],** has been granted, created, established, and constituted on the New Assets in favor of Mortgagee and (ii) that such **[Real Estate Mortgage and/or** the **Chattel Mortgage, as may be applicable,]** are subject to the same provisions, terms, and conditions of the Mortgage Agreement as are applicable to the Mortgage on the **[Present Real Assets and/or Present Chattel]** thereunder, as fully and completely for all legal intents and purposes as if owned by the relevant Mortgagor on the date of execution of the Mortgage Agree ment.

4. The parties hereto confirm that the New Assets serve as security for payment of the Obligations to the extent of the amount stated in **[Section 2.01(d)(*Creation of Real Estate Mortgage*) and/or Section 3.01(c)(*Creation of Chattel Mortgage*), as may be applicable]** of the Mortgage Agreement, including interests, fees, and charges that may be due thereon.

5. Each of the Mortgagors undertakes, at Mortgagors' cost and expense, to register this Mortgage Supplement with the appropriate Registry of Deeds and, where necessary, other appropriate government agencies, in the Philippines in accordance with the Mortgage Agreement.

IN WITNESS WHEREOF, the parties hereto have caused their duly authorized representative to execute and deliver this Supplement as of [date].

SunPower Philippines Manufacturing Ltd.
By:

Name:
Position:

SPML Land, Inc.
By:

Name:
Position:

International Finance Corporation
By:

Name:
Position:

Signed in the presence of

[[AFFIDAVIT OF GOOD FAITH

We swear that the Chattel Mortgage embodied in the Mortgage Agreement, as amended and/or supplemented by the foregoing Mortgage Supplement, is made for the purpose of securing the obligations specified therein, and for no other purpose, and that the same are just and valid obligations not entered into for the purpose of fraud.

SunPower Philippines Manufacturing Ltd.
By:

Name:
Position:

SPML Land, Inc.
By:
Name:
Position:

International Finance Corporation
By:
Name:
Position:]]

ACKNOWLEDGMENT AND CERTIFICATION OF OATH

REPUBLIC OF THE PHILIPPINES)

●) S.S.

BEFORE ME, a Notary Public for and in the above jurisdiction this ● day of ● personally appeared the following individual/s, representing the respective corporation/s indicated below his/their names:

Name	Community Tax Certificate No. & Passport No.	Issued at/on
SunPower Philippines Manufacturing Ltd.		
represented by:		
SPML Land, Inc.		
represented by:		
International Finance Corporation		
represented by:		

personally known to me or identified by me through competent evidence of identity to be the same person[s] who presented to me and signed in my presence this Mortgage Supplement No. ● consisting of ● pages, including [the Affidavit of Good Faith and] this Acknowledgment Page, all of which were signed by them and their instrumental witnesses, and they represented that they executed this Agreement as their free and voluntary act and that they are duly authorized to sign for the corporations they respectively represent.

This Mortgage Supplement No. ● relates to the Mortgage Agreement dated as of ● among the same parties and consists of ● pages, including the pages of this Acknowledgment[[, the Affidavit of Good Faith,]] and Schedule A attached hereto, and is signed by the parties hereto and their instrumental witnesses on the signature page and on the left margin of the other pages hereof.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal this ● day of ●, 201● at ●, Philippines.

Doc No.
Page No.
Book No.
Series of 201●

[Attach Schedule A of the Mortgage Supplement]

EXHIBIT "B"

FORM OF RELEASE OF MORTGAGE

This Release of Mortgage is made as of ● by the International Finance Corporation (the "***Mortgagee***") in favor of SunPower Philippines Manufacturing Ltd. and SPML Land, Inc. (the "***Mortgagors***").

WHEREAS, each of the Mortgagors and Mortgagee have executed and registered a Mortgage Agreement (as supplemented) dated as of ● (the "***Mortgage Agreement***"), to secure the Obligations of the Mortgagors referred to in such agreement;

WHEREAS, as security for the timely payment, discharge, observance, and performance of the Obligations, the Mortgagors conveyed to Mortgagee, by way of mortgage, Assets as defined and described in said Mortgage Agreement;

WHEREAS, Mortgagee confirms the release and discharge of the mortgage lien on the properties described in the attached Annex "1";

NOW, THEREFORE, for and in consideration of the foregoing premises, Mortgagee hereby confirms the release and discharge of **[the Real Estate Mortgage and/or the Chattel Mortgage]**, and authorizes the respective Register of Deeds to cancel the relevant mortgage annotation/s, in respect of the properties referred to in the Third Whereas Clause above, provided that the Mortgage shall continue to subsist in respect of all other Assets (as defined in the Mortgage Agreement) in accordance with all of the terms and conditions of the Mortgage Agreement, which shall remain in force and effect in respect of such other Assets.

IN WITNESS WHEREOF, Mortgagee has caused this instrument to be signed this ● day of ●, 20● at ●.

International Finance Corporation
By:

Name:
Position:

[NOTARIAL ACKNOWLEDGEMENT]

[Attach Annex "1" of the Release of Mortgage]

EXHIBIT 10.14

INVESTMENT NUMBER 27807

Guarantee Agreement

between

SUNPOWER CORPORATION

and

INTERNATIONAL FINANCE CORPORATION

Dated May 6, 2010

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GUARANTEE AGREEMENT

GUARANTEE AGREEMENT (this "Agreement") dated May 6, 2010 between SUNPOWER CORPORATION, a corporation organized and existing under the laws of the State of Delaware (the "Guarantor"), and INTERNATIONAL FINANCE CORPORATION, an international organization established by Articles of Agreement among its member countries ("IFC").

WHEREAS:

(A) By a loan agreement (the "Loan Agreement") dated May 6, 2010 between IFC and SunPower Philippines Manufacturing Ltd. (the "Borrower") and which constitutes Part 2 of the Mortgage Loan Agreement dated May 6, 2010 (the "Mortgage Loan Agreement") among IFC, the Borrower and SPML Land, Inc., IFC has agreed to extend to the Borrower a loan (the "Loan") in the principal amount of seventy-five million Dollars ($75,000,000), on the terms and subject to the conditions set forth in the Mortgage Loan Agreement.

(B) By virtue of Section 2.15 (a) (i) of the Loan Agreement, it is a condition of the first disbursement of the Loan that the Guarantor has guaranteed the obligations of the Borrower in respect of the Loan and the other Transaction Documents.

(C) The Borrower is a wholly-owned indirect subsidiary of the Guarantor.

(D) The Guarantor will obtain benefits as a result of the Loan being made to the Borrower and, accordingly, desires to guarantee such obligations of the Borrower in order to satisfy the condition described in Recital B above and to induce IFC to make the Loan and, in particular, the first disbursement of the Loan.

NOW, THEREFORE, the parties agree as follows:

ARTICLE I

Definitions and Interpretation

Section 1.01. *Defined Terms*. (a) Each capitalized term used and not otherwise defined herein, unless the context otherwise requires, has the meaning assigned to such term in the Loan Agreement or Part 1 of the Mortgage Loan Agreement.

(b) As used in this Agreement, unless the context otherwise requires, the following terms have the meanings specified below:

"Adjusted Financial Debt"	any Financial Debt other than (i) indebtedness relating to take or pay contracts for the purchase of silicon and other raw materials, (ii) Non-Recourse Debt and (iii) any mark to market adjustment (but not covering, for the avoidance of doubt, the principal amount thereof, which principal amount shall be included as Financial Debt) with respect to the Guarantor's 4.5% Senior Cash Convertible Debentures due 2015 (the "Convertible Debentures") so long as the holders of such debentures may not exercise any Conversion Right at such time of determination (it being understood that any such mark to market adjustment, to the extent any holder of such debentures may exercise a Conversion Right at such time, shall be considered "Adjusted Financial Debt" to the extent of the net cash payment obligations of the Guarantor upon such conversion, taking into account, and assuming full settlement under, tho se certain Convertible Debenture Hedge Transaction Confirmations between the Guarantor and each of Bank of America, N.A, Barclays Bank PLC, Credit Suisse International and Deutsche Bank AG, each dated March 25, 2010 or April 5, 2010, as applicable, or any assumption or

assignments thereof and those certain Issuer Warrant Transaction Confirmations entered into between Guarantor and each of Bank of America, N.A, Barclays Bank PLC, Credit Suisse International and Deutsche Bank AG, each dated March 25, 2010 or April 5, 2010, as applicable, or any assumption or assignments thereof, in respect of such debentures, as filed with the Securities and Exchange Commission on March 29, 2010 or April 9, 2010, as applicable, under the Guarantor's Current Report on Form 8-K);

"Conversion Right" — any right of a holder of the Guarantor's 4.5% Senior Cash Convertible Debentures due 2015 to convert the principal amount of the debentures held by such holder into cash in accordance with the terms of the indenture pursuant to which such debentures were issued, as it is in effect from time to time and as more particularly described therein, including such holder's right to convert such debentures into cash after December 31, 2010 but prior to December 15, 2014 if the volume weighted average price of the class A common stock of the Guarantor, for at least 20 trading days in the period of 30 consecutive trading days ending on the last trading day of the fiscal quarter immediately preceding the fiscal quarter in which the conversion occurs, is more than 130% of conversion price of the debentures in effect on that last trading day of the fiscal quart er;

"EBITDA" — for the relevant Calculation Period for any Person or specified group of Persons, Net Income for such period (without giving effect to (x) any extraordinary gains, (y) any non-cash income, and (z) any gains or losses from sales of assets other than inventory sold in the ordinary course of business) adjusted by adding thereto (in each case to the extent deducted in determining Net Income for such period), without duplication, the amount of (i) total interest expense (inclusive of amortization of

deferred financing fees and other original issue discount and banking fees, charges and commissions (e.g., letter of credit fees and commitment fees)) of such Person or specified group of Persons determined on a Consolidated Basis for such period, (ii) tax expense based on income and foreign withholding taxes for such Person or specified group of Persons determined on a Consolidated Basis for such period, and (iii) all depreciation and amortization expense of such Person or specified group of Persons determined on a Consolidated Basis for such period;

"Equity" with respect to any Person, the aggregate of:

(i) (A) the amount paid up on the share capital of such Person; and

(B) the amount standing to the credit of the reserves (excluding asset revaluation reserves and including, without limitation, any share premium account, capital redemption reserve funds and any credit balance on the accumulated profit and loss account);

after deducting from the amounts in (A) and (B):

(w) any debit balance on the profit and loss account or impairment of the issued share capital of such Person (except to the extent that deduction with respect to that debit balance or impairment has already been made);

(x) amounts set aside for dividends to the extent not already deducted from equity;

(y) amounts of deferred tax assets; and

(z) amounts attributable to capitalized items such as goodwill, trademarks, deferred charges, licenses, patents and other intangible assets; and

(ii) if applicable, that part of the net results of operations and the net assets of any subsidiary of such Person attributable to interests that are not owned, directly or indirectly, by such Person;

"Financial Year" the 52- or 53- week periods, ending on the Sunday closest to December 31, or such other period as the Guarantor, with IFC's consent, from time to time designates as its accounting year;

"Guarantee" the guarantee given pursuant to this Agreement;

"Guaranteed Obligations" all debts and monetary liabilities of the Borrower to IFC under or in relation to the Mortgage Loan Agreement and any other Transaction Document, and in any capacity irrespective of whether the debts or liabilities are:

(i) now existing or hereafter arising;

(ii) actual or contingent;

(iii) at any time ascertained or unascertained;

(iv) direct or indirect;

(v) joint or several or whether IFC's corresponding rights are joint or several;

(vi) secured or unsecured;

(vii) owed or incurred as principal, interest, fees, charges, taxes, duties or other imposts, damages, losses, costs or expenses, or on any other account;

(viii) owed based on contract, tort, operation of law or otherwise; or

(ix) comprised of any combination of the above;

including all extensions, renewals, replacements and modifications of any of the foregoing;

"Non-Recourse Debt" indebtedness of any special purpose vehicle Subsidiary of the Guarantor engaged in the solar power plant business:

(i) as to which neither the Guarantor nor any of its other Subsidiaries (i) provides credit support of any kind (including any undertaking, agreement or instrument that would constitute indebtedness) other than any arrangement to provide or guarantee to provide goods and services on an arm's length basis, (ii) is directly or indirectly

liable as a guarantor or otherwise, or (iii) constitutes the lender; and

(ii) no default with respect to which would permit, upon notice, lapse of time or both, any holder of any other indebtedness of the Guarantor or any of its other Subsidiaries to declare a default on such other indebtedness or cause the payment of such other indebtedness to be accelerated or payable prior to its stated maturity;

"Termination Date" the meaning given in Section 2.01 (b) (*Guarantee*); and

"Unrestricted Cash" with respect to any Person, (i) the aggregate of: (A) cash and cash equivalents; and (B) marketable securities and investments, whether long term or short term in tenor, *minus* (ii) the aggregate amount of cash and cash equivalents subject to any Liens other than Liens granted to IFC and/or which are listed as "restricted" on the consolidated balance sheet of the Guarantor and its Subsidiaries as of such date.

Section 1.02. ***Interpretation***. In this Agreement, unless the context otherwise requires:

(a) headings are for convenience only and do not affect the interpretation of this Agreement;

(b) words importing the singular include the plural and vice versa;

(c) a reference to an Annex, Article, party, Schedule or Section is a reference to that Article or Section of, or that Annex, party or Schedule to, this Agreement;

(d) a reference to a document includes an amendment or supplement to, or replacement or novation of, that document but disregarding any amendment,

supplement, replacement or novation made in breach of this Agreement or the Mortgage Loan Agreement;

(e) a reference to a party to any document includes that party's successors and permitted assigns; and

(f) the words "include" or "including", when following any general statement, term or matter, shall not be construed to limit such statement, term or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not non-limiting language (such as "without limitation" or "but not limited to" or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that fall within the broadest possible scope of such general statement, term or matter.

ARTICLE II

Guarantee

Section 2.01. *Guarantee*. (a) The Guarantor irrevocably, absolutely and unconditionally:

(i) guarantees to IFC the punctual and complete payment when due and payable (whether at stated maturity or upon prepayment, acceleration or otherwise) of the Guaranteed Obligations; and

(ii) undertakes with IFC that whenever the Borrower does not pay any amount of the Guaranteed Obligations when so due the Guarantor will immediately, and in any event forthwith upon demand by IFC, pay that amount to IFC, in the currency prescribed in the Mortgage Loan Agreement or the relevant Transaction Document, and otherwise in the same manner in all respects as the Guaranteed Obligations are required to be paid by the Borrower.

(b) The Guarantee is a continuing obligation of the Guarantor (and all Guaranteed Obligations are, or when created will be, conclusively presumed to

have been created in reliance on this Agreement) and will remain in full force and effect until the day on which:

(i) the Loan has been fully disbursed or any undisbursed portion thereof has been cancelled; and

(ii) all Guaranteed Obligations have been irrevocably and unconditionally paid in full in cash

(such day, the "Termination Date").

(c) The Guarantee is a guarantee of payment and not of collection and constitutes an additional, separate and independent obligation of the Guarantor which will survive the termination of the Mortgage Loan Agreement, any other Transaction Document and any other agreement or instrument pursuant to which any Guaranteed Obligation is or may become outstanding.

(d) The Guarantor's obligations under this Agreement can be discharged only by performance and then only to the extent of such performance.

Section 2.02. *No Set-off*. All payments which the Guarantor is required to make under this Agreement shall be made without any set-off, counterclaim or condition.

Section 2.03. *Taxes*. (a) The Guarantor shall pay or cause to be paid all Taxes (other than Taxes, if any, payable on the overall income of IFC) on or in connection with the payment of any and all amounts due under this Agreement, that are now or in the future levied or imposed by any Authority of the United States or any jurisdiction through or out of which a payment is made on or in connection with the payment of any and all amounts due under this Agreement.

(b) All payments due under this Agreement shall be made without deduction for or on account of any such Taxes.

(c) If the Guarantor is prevented by operation of law or otherwise from complying with subsection (b) above, the amount due under this Agreement shall be increased to such amount as may be necessary so that IFC receives the full amount it would have received (taking into account any Taxes payable on the amount payable by the Guarantor under this subsection) had those payments been made without deduction as set forth in subsection (b) above.

(d) If subsection (c) above applies and IFC so requests, the Guarantor shall deliver to IFC official tax receipts evidencing payment of such Taxes (or certified copies of them) within thirty (30) days of the date of that request.

Section 2.04. *Certificate Conclusive*. A certificate of IFC stating:

(a) the amount of the Guaranteed Obligations (whether currently due and payable or not); or

(b) any amount due and payable by the Guarantor under this Agreement;

when delivered will be conclusive in the absence of manifest error.

Section 2.05. *Application of Payments*. IFC may apply any monies received by it or recovered under:

(a) any Security; and

(b) any other document or agreement which is a security for any of the Guaranteed Obligations,

in such manner as it determines in its absolute discretion.

Section 2.06. *Allocation*. If the Guarantor at any time pays to IFC an amount less than the full amount then due and payable to IFC under this Agreement, IFC may allocate and apply such payment in any way or manner and for such purpose or purposes as IFC in its sole discretion determines, notwithstanding any instruction that the Guarantor, the Borrower or any other Person may give to the contrary.

ARTICLE III

Waivers; Savings Provisions

Section 3.01. *Waiver of Defenses*. The Guarantor's obligations under this Guarantee will not be affected or impaired by any act, omission, circumstance (other than complete payment of the Guaranteed Obligations), matter or thing

which, but for this Section or any of the other provisions in this Article III, would reduce, release or prejudice any of its obligations under this Agreement or which might otherwise constitute a legal or equitable discharge or defense of the Guarantor under any applicable law.

Section 3.02. *Waiver of Notices, Claims and Prior Action*. The Guarantor hereby waives to the fullest extent permitted by any applicable law:

(a) notice of acceptance of the Guarantee;

(b) notice of the creation, extension or accrual of any of the Guaranteed Obligations;

(c) notice of presentment, demand, dishonor, non-payment, protest, or other default with respect to any of the Guaranteed Obligations;

(d) notice of any other nature whatsoever to any Person (including the Guarantor and any other guarantor);

(e) any requirement that IFC take any action whatsoever against the Borrower or any other Person (including the Guarantor or any other guarantor) or file any claim in the event of the bankruptcy of the Borrower, Guarantor or any other Person; and

(f) any claims based on IFC's failure to protect, perfect, preserve, or resort to the Security or any other collateral securing the Guaranteed Obligations.

Section 3.03. *Consent*. The Guarantor hereby irrevocably consents that from time to time, and without further notice to or consent of the Guarantor, IFC may take any or all of the following actions without affecting or impairing the Guarantee or any of the Guarantor's obligations under this Agreement:

(a) extend, renew, modify, amend, compromise, settle or release the Guaranteed Obligations, or agree to any composition, forbearance or concession in respect thereof;

(b) release or compromise any liability of any Person or Persons with respect to the Guaranteed Obligations;

(c) release the Security or exchange, surrender, realize upon or otherwise deal with the Security as IFC may determine in its sole discretion;

(d) exercise or refrain from exercising any of its rights or remedies under this Agreement, any other Transaction Document or under law or equity; and

(e) act or fail to act in any manner which may deprive the Guarantor of its right to subrogation against the Borrower or its right to contribution against any co-guarantor.

Section 3.04. *Absolute Guarantee*. The Guarantee is absolute and unconditional and will not be affected or impaired by:

(a) any failure of the Borrower or the Guarantor to comply with any requirement of any law, regulation or order;

(b) the dissolution, liquidation, reorganization or other alteration of the legal status or structure of the Borrower or the Guarantor;

(c) any purported or actual assignment of the Loan or any part thereof by IFC to any other Person;

(d) the Mortgage Loan Agreement, any other Transaction Document or any of the Guaranteed Obligations being in whole or in part illegal, void, voidable, avoided, invalid, unenforceable or otherwise of limited force and effect; or

(e) any other circumstance or occurrence whatsoever that might otherwise constitute a defense available to, or discharge of, the Guarantor or any other guarantor or surety.

Section 3.05. *Additional Security*. This Agreement is in addition to and is and will not be in any way prejudiced by any collateral or other security now or in the future held by IFC, nor is nor will any such collateral or other security held by IFC or the liability of any Person for all or any part of the Guaranteed Obligations be in any manner prejudiced or affected by this Agreement.

ARTICLE IV

Non-Competition; Bankruptcy; Reinstatement

Section 4.01. *Non-Competition*. (a) Until the Termination Date, the Guarantor shall not in respect of any amounts that have become payable or have been paid by the Guarantor under this Agreement, seek to enforce repayment or contribution, obtain the benefit of any security or exercise any other rights or legal remedies of any kind which may accrue to the Guarantor against the Borrower, whether by way of subrogation, offset, counterclaim or otherwise, in respect of the amount so payable or so paid.

(b) The Guarantor shall hold in trust for, and forthwith pay or transfer to, IFC any payment or distribution or benefit of security received by it contrary to subsection (a) above.

(c) Upon the Termination Date:

(i) the Guarantor, if it has made any payment under this Agreement, will be entitled to exercise its rights of subrogation to its proportion of all relevant rights of IFC against the Borrower pursuant to the Mortgage Loan Agreement and the other Transaction Documents; and

(ii) IFC shall, if requested by the Guarantor and at the expense of the Guarantor, execute and deliver to the Guarantor appropriate documents, without recourse and without representation and warranty, necessary to evidence the transfer by subrogation to the Guarantor of such interest in the Guaranteed Obligations as may result from any payment under this Agreement.

Section 4.02. *Bankruptcy or Liquidation of Borrower*. If the Borrower is adjudged bankrupt or insolvent, or a receiver, liquidator, assignee, trustee, sequestrator (or other similar official) of the Borrower, or any substantial part of its property or other assets, is appointed, or the Borrower makes any arrangement with its creditors, or is liquidated or wound up, the Guarantor shall not claim, rank, prove or vote as a creditor of the Borrower or its estate in competition with IFC in respect of any amounts owing to the Guarantor by the Borrower on any account whatsoever, but instead shall give IFC the benefit of any such proof and

of all amounts to be received in respect of that proof until all Guaranteed Obligations have been fully paid.

Section 4.03. *Appropriation and Application of Monies*. Until the Termination Date, IFC (or any trustee, agent or other Person acting on its behalf) may:

(a) refrain from applying or enforcing any other monies, security or rights held or received by IFC (or such trustee, agent or other Person) in respect of the Guaranteed Obligations, or apply and enforce the same in such manner and order as it determines in its absolute discretion (whether against the Guaranteed Obligations or otherwise) and the Guarantor shall not be entitled to the benefit of the same; and

(b) hold and keep for such time as it thinks prudent any monies received, recovered or realized under this Agreement, to the credit either of the Guarantor or such other Person or Persons as it determines in its sole discretion or in a suspense account.

Section 4.04. *Reinstatement*. (a) The Guarantee will be automatically reinstated if and to the extent that for any reason any payment by or on behalf of the Borrower or the Guarantor in respect of the Guaranteed Obligations is avoided, rescinded or must otherwise be restored or returned by any recipient thereof, whether as a result of any proceedings in bankruptcy or reorganization, insolvency, dissolution, receivership, liquidation, arrangement, composition or assignment for the benefit of creditors of the Borrower, the Guarantor or any other Person, or upon or as a result of the appointment of a receiver, intervenor or conservator of, or trustee or similar officer for, the Borrower, the Guarantor or any substantial pa rt of their respective property, or otherwise, all as though such payment had not been made.

(b) IFC (or any trustee, agent or other Person acting on its behalf) may concede or compromise any claim that any payment, security or other disposition is liable to avoidance or restoration, and any such action will not preclude reinstatement pursuant to subsection (a) above.

ARTICLE V

Representations and Warranties

Section 5.01. *Representations and Warranties*. The Guarantor represents and warrants that as of the date of this Agreement:

(a) it is a corporation duly organized and validly existing under the laws of the State of Delaware, and has the corporate power to conduct its business as currently conducted and to enter into, and perform its obligations under, this Agreement;

(b) the execution and delivery by it of this Agreement and the performance by it of its obligations hereunder have been duly authorized by all necessary actions, corporate or otherwise;

(c) this Agreement has been duly executed and delivered by it and constitutes its valid and legally binding obligation, enforceable in accordance with its terms;

(d) neither the execution and delivery by it of this Agreement nor the performance by it of its obligations under this Agreement conflicts or will conflict with or results or will result in any breach of any of the terms, conditions or provisions of, or violates or will violate or constitutes or will constitute a default under or requires or will require any consent under:

(i) any indenture, mortgage, contract, agreement or other instrument or arrangement to which it is a party or which purports to be binding upon it or any of its property or assets, and will not result in the imposition or creation of any lien, charge, or encumbrance on, or security interest in, any part thereof pursuant to the provisions of any such agreement, instrument or arrangement; or

(ii) any of the terms or provisions of its articles of association or by-laws; or

(iii) any statute, rule or regulation or any judgment, decree or order of any court, governmental authority, bureau or agency binding on or applicable to it;

(e) all Authorizations required for the execution and delivery of this Agreement by it and the performance by it of its obligations hereunder have been duly obtained or granted and are in full force and effect;

(f) neither the Guarantor nor any of its property enjoys any right of immunity from set-off, suit or execution with respect to its assets or its obligations under this Agreement;

(g) the Guarantor has adequate means to obtain from the Borrower, on a continuing basis, information concerning the financial condition of the Borrower, and it does not rely on IFC to provide such information, now or in the future;

(h) the Guarantor has received a copy of the Mortgage Loan Agreement and each other Transaction Document;

(i) neither it, nor any of its respective officers, directors, employees, agents or Affiliates, in each case acting on its behalf, has taken any action in connection with the Project that violates the anti-graft laws of the Philippines, including the Anti-Graft and Corrupt Practices Act (Republic Act No. 3019) or any similar law of any other jurisdiction;

(j) neither the Guarantor nor any of its Subsidiaries has entered into any transaction or engaged in any activity prohibited by any resolution of the United Nations Security Council under Chapter VII of the United Nations Charter; and

(k) neither the Guarantor, nor any of its Subsidiaries, nor any of their respective Affiliates, nor any Person acting on its or any of their behalf, has committed or engaged in, with respect to any of their respective Operations or any transaction contemplated by the Mortgage Loan Agreement, this Agreement or any other Transaction Document, any Sanctionable Practice.

Section 5.02. *IFC Reliance*. (a) The Guarantor acknowledges that it makes the representations in Section 5.01 with the intention of inducing IFC to enter into this Agreement and the Mortgage Loan Agreement and that IFC enters into this Agreement and the Mortgage Loan Agreement on the basis of, and in full reliance on, each of such representations.

(b) The Guarantor warrants to IFC that each of such representations is true and correct in all material respects as of the date of this Agreement and that none of them omits any matter the omission of which makes any of such representations misleading.

Section 5.03. *Rights and Remedies not Limited*. IFC's rights and remedies in relation to any misrepresentation or breach of warranty on the part of the Guarantor are not prejudiced:

(a) by any investigation by or on behalf of IFC into the affairs of the Guarantor;

(b) by the execution or the performance of this Agreement; or

(c) by any other act or thing which may be done by or on behalf of IFC in connection with this Agreement and which might, apart from this Section 5.03, prejudice such rights or remedies.

ARTICLE VI

Covenants

Section 6.01. *Guarantor's Covenants*. The Guarantor shall:

(a) when requested by IFC, do or cause to be done anything which aids the exercise of any power, right or remedy of IFC under this Agreement including, but not limited to, the execution of any document or agreement;

(b) obtain, maintain and renew when necessary all Authorizations required under any law or document or agreement:

(i) to enable it to perform its obligations under this Agreement; or

(ii) for the validity or enforceability of this Agreement;

(c) comply in all respects with the terms of the Authorizations referred to in subsection (b) above;

(d) as soon as available, but, in any event, within forty-five (45) days after the end of each quarter of each Financial Year, furnish to IFC:

(i) two (2) copies of its financial statements for such quarter period prepared in accordance with generally accepted accounting principles in the United States applied on a consistent basis;

(ii) a report on any factors materially and adversely affecting or which are likely to materially and adversely affect its financial condition; and

(iii) a report (in a form pre-agreed by IFC), signed by the Guarantor's chief financial officer, concerning compliance with the financial covenants in the Guarantee Agreement (using the methodology of calculation in respect of such covenants set forth in Annex A), which report shall also include the value of any mark-to-market adjustment with respect of the Convertible Debentures for such quarter;

(e) as soon as available, but, in any event, within ninety (90) days after the end of each Financial Year, furnish to IFC:

(i) two (2) copies of its financial statements for such Financial Year (which are in agreement with its books of account and prepared in accordance with the generally accepted accounting principles in the United States applied on a consistent basis), together with an audit report on them, all in form satisfactory to IFC;

(ii) a report on any factors materially and adversely affecting or which are likely to materially and adversely affect its financial condition; and

(iii) a report by the chief financial officer certifying that, on the basis of its financial statements, the Guarantor was in compliance with the covenants in Section 6.01 (f) of the Guarantee Agreement (using the methodology of calculation in respect of such covenants set forth in Annex A);

(f) maintain the following ratios on a Consolidated Basis:

(i) Current Ratio of the Guarantor of at least 1.1;

(ii) a ratio of (a) Adjusted Financial Debt, to (b) the sum of Adjusted Financial Debt and Equity, of not more than (I) 0.60:1.00, as of the last day of each fiscal quarter of the Guarantor ending on or before January 3, 2011, (II) 0.55:1.00, as of the last day of each fiscal quarter, in Financial Year 2011, and (III) 0.50:1.00, as of the last day of each fiscal quarter thereafter; and

(iii) as of the last day of each fiscal quarter of the Guarantor, a Prospective Debt Service Coverage Ratio of the Guarantor, of at least 1.25; provided that if, in the computation of such ratio, any convertible debt bullet payments are included in the denominator of the Prospective Debt Service Coverage Ratio, the numerator of such ratio shall also include Unrestricted Cash of the Guarantor;

(g) maintain at all times 100% legal and beneficial ownership of the Borrower, either directly or indirectly;

(h) not engage in (and neither the Guarantor nor any Subsidiary shall authorize or permit any Affiliate or any other Person acting on its behalf to engage in) with respect to its operations or any transaction contemplated by this Agreement, any Sanctionable Practices. The Guarantor further covenants that should IFC notify the Guarantor of its concerns that there has been a violation of the provisions of this Section or of Section 5.01 (j) (*Sanctionable Practices*), it shall cooperate and it shall cause each relevant Subsidiary to cooperate, in good faith with IFC and its representatives in determining whether such a violation has occurred, and shall respond promptly and in reasonable detail to any notice from IFC, and shall furnish documentary support for such response upon IFC's request; and

(i) not (and cause its Subsidiaries to not) enter into any transaction or engage in any activity prohibited by any resolution of the United

Nations Security Council under Chapter VII of the United Nations Charter.

ARTICLE VII

Miscellaneous

Section 7.01. *Notices*. Any notice, request, or other communication to be given or made under this Agreement shall be in writing. The notice, request or other communication may be delivered by hand, airmail, facsimile or established courier service to the party's address specified below or at such other address as such party notifies to the other party from time to time and will be effective upon receipt or, in the case of delivery by hand or by established courier service, upon refusal to accept delivery.

For the Guarantor:

3939 North First Street
San Jose, CA 95134

Attention: Treasurer with a copy to the same address for the attention of the General Counsel

Facsimile: +1 (408) 240-5400

For IFC:

International Finance Corporation
2121 Pennsylvania Avenue, N.W.
Washington, D.C. 20433
United States of America

Attention: Director, Global Manufacturing and Services Department

Facsimile: +1 (202) 974-4320

With a copy (in the case of notices relating to payments) to:

Director, Financial Operations Unit

Facsimile: +1 (202) 974-4371

Section 7.02. *English Language*. All documents to be furnished or communications to be given or made under this Agreement shall be in the English language or, if in another language, shall be accompanied by a translation into English satisfactory to IFC certified by a representative of the Guarantor, which translation shall be the governing version between the Guarantor and IFC.

Section 7.03. *Expenses*. The Guarantor shall pay to IFC or as IFC may direct:

(a) the fees and expenses of IFC's counsel incurred in connection with:

(i) the preparation and/or review, execution and, where appropriate, stamping or registration of this Agreement;

(ii) the giving of any legal opinions required by IFC under this Agreement; and

(iii) any amendment, supplement or modification to, or waiver under, this Agreement; and

(b) the costs and expenses incurred by IFC in relation to the enforcement or protection or attempted enforcement or protection of its rights under this Agreement, including legal and other professional consultants' fees.

Section 7.04. *Remedies and Waivers*. No failure or delay by IFC in exercising any power, remedy, discretion, authority or other right under this Agreement shall waive or impair that or any other right of IFC. No single or partial exercise of such a right shall preclude its additional or future exercise. All waivers or consents given under this Agreement shall be in writing. No such waiver shall waive any other right under this Agreement.

Section 7.05. *Governing Law; Jurisdiction and Enforcement*. (a) This Agreement shall be governed by and construed in accordance with the laws of the State of New York.

(b) For the exclusive benefit of IFC, the Guarantor irrevocably agrees that any legal action, suit or proceeding arising out of or relating to this Agreement may be brought in any federal or state court located in the City and State of New York. By the execution of this Agreement, the Guarantor irrevocably submits to the non-exclusive jurisdiction of any such court (and of the appropriate appellate courts therefrom) in any such action, suit or proceeding and irrevocably waives, to the fullest extent permitted by law, any objection that it may now or hereafter have to the laying of the venue of any action, suit or proceeding in any such court or that such action, suit or proceeding brought in any such court has been brought in an inconvenient forum.< /font>

(c) The Guarantor hereby irrevocably designates, appoints and empowers C T Corporation System, with offices currently located at 111 Eighth Avenue, New York, New York 10011, as its authorized agent solely to receive for and on its behalf service of any summons, complaint or other legal process in any action, suit or proceeding IFC may bring in the State of New York in respect of this Agreement. The Guarantor also irrevocably consents to the service of process of summons, complaint and other legal process in any action, suit or proceeding being made out of federal and state courts located in the State of New York by mailing copies of the papers by registered United States air mail, postage prepaid, or by any other method of delivery specified in Sect ion 7.01 (*Notices*), to the Guarantor at its address specified pursuant to such Section, whether within or without the jurisdiction of any court, and the Guarantor agrees that service of process on it as so specified shall be deemed effective service of process.

(d) THE GUARANTOR HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHTS TO A TRIAL BY JURY IN ANY ACTION, SUIT OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

(e) The Guarantor hereby explicitly and irrevocably waives immunity it may have in respect of its obligations under this Agreement or any other Transaction Document to which it is a party, or its assets, under the laws of any jurisdiction now or in the future by the laws of such jurisdiction.

(f) The Guarantor hereby irrevocably waives, to the fullest extent now or in the future permitted under the laws of the jurisdiction in which the relevant court is located, the benefit of any provision of law requiring IFC in any action, suit or proceeding arising out of or in connection with this Agreement or any other Transaction Document to which the Guarantor is a party to post security for the costs of the Guarantor, or to post a bond or to take similar action.

Section 7.06. *Successors and Assigns*. This Agreement binds and inures to the benefit of the respective successors and permitted assigns of the parties. The Guarantor may not assign or otherwise transfer all or any part of its rights or obligations under this Agreement, voluntarily or involuntarily, whether by merger, consolidation, reorganization, dissolution, operation of law or any other manner, without the prior written consent of IFC. The benefit of this Agreement may be freely and unconditionally assigned, transferred or otherwise disposed of, in whole or in part, by IFC to any other Person. Any purported assignment or other transfer in violation of this Section shall be void.

Section 7.07. *Integration; Effectiveness*. This writing is intended by the parties as a final expression of this Agreement, and is intended as a complete and exclusive statement of the terms of this Agreement. No course of dealing, course of performance or trade usage, and no parol evidence of any nature, may be used to supplement or modify its terms. There are no conditions to the full effectiveness of this Agreement.

Section 7.08. *Amendment*. Any amendment of any provision of this Agreement must be in writing and signed by the parties.

Section 7.09. *Counterparts*. The parties may execute this Agreement in several counterparts, each of which is an original, and all of which together constitute one and the same agreement. The signatures of all the parties need not appear on the same counterpart, and delivery of an executed counterpart signature page by facsimile or other electronic means will constitute effective execution and delivery of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

SUNPOWER CORPORATION

By: /s/ Dennis V. Arriola
Name: Dennis V. Arriola
Title: EVP & CFO

INTERNATIONAL FINANCE CORPORATION
By: /s/Jesse O. Ang
Name: Jesse O. Ang
Title: Resident Representative

METHODOLOGY FOR FINANCIAL RATIO CALCULATIONS

[See Next Page]

Methodology For Financial Ratio Calculation

SunPower Corporation

Based on the Company's annual filing for the financial year ended Jan 3, 2010, the ratios were

Current Assets (less prepaid expenses)					
Current Liabilities	1,178,900	From B/S		=	**2.20**
	535,096	From B/S			
Adjusted Financial Debt (AFD)*					
AFD + Equity					
Borrowed money**	248,959	ST Debt and LT Debt from B/S		=	**0.42**
Bonds etc.	536,574	ST and LT convertible bonds			
Leases	48,904	from Contractual Obligations table on page 60			
Derivatives***	14,928	from Consolidated statement of Comprehensive Income			
	849,365				
Equity	1,375,521	From B/S			
minus intangibles	24,974	From B/S			
minus goodwill	198,163	From B/S			
	1,152,384				

* Excludes take or pay contracts related to silicon contracts, non-recourse debt of subsidiaries that operate solar farms the mark-to-market portion of the CB due in 2015 and the non-cash liability associated with the mark-to-market derivative portion of the convertible bond due 2015

** The "borrower money" line would include the Company's non-recouse debt in the future though there is no such debt as of the end of 2009

*** The mark-to-market cash liability associated with the convertible debenture due in 2015 will be reported directly by the Company to IFC and will also be documented in the GAAP to non-GAPP reconciliation documented in the Company's quarterly press release with respect to its earnings. The Company is also working with its auditors to see if this number can be included as a segregated line item in its quarterly / annual filings.

Prospective DSCR****					
Net Income	33,173	From I/S	For FY 2009	=	**3.35**
plus depreciation	84,630	Depreciation on C/F statement			
plus amortization	16,474	Amortization of intangibles on C/F statement			
Net Interest	33,526	Interest expense minus interest income on I/S statement			
Unrestricted Cash adjustment*****	615,879	From B/S			
	783,682				
Convertible bonds due (includes interest)	212,645	from Contractual Obligations table on page 60	For FY 2010		
Other debt due	11,848	from Contractual Obligations table on page 60			
Lease commitments	9,519	from Contractual Obligations table on page 60			
	234,012				

**** Excludes take or pay contracts related to silicon contracts as long as they are excluded from net income and also excludes the non-cash liability associated with the mark-to-market derivative portion of the convertible bond due in 2015

***** Unrestricted cash is included in the numerator when the principal amount of a convertible bond is due in the denominator

Exhibit 10.15

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

JOINT VENTURE AGREEMENT

This JOINT VENTURE AGREEMENT (this "***Agreement***") is made and entered into as of May 27, 2010, by and among (i) SunPower Technology, Ltd., a company organized under the laws of the Cayman Islands ("***SPTL***"); (ii) AU Optronics Singapore Pte. Ltd., a company organized under the laws of Singapore ("***AUO***"); (iii) solely for purpose of Section 18 below, AU Optronics Corporation, a company organized under the laws of Taiwan, R.O.C. ("***AUO Taiwan***"); and (iv) SunPower Malaysia Manufacturing SDN.BHD., a company organized under the laws of Malaysia (the "***JVC***").

RECITALS

A. Among various businesses, SPTL and its affiliates are engaged in the business of developing, manufacturing, selling and distributing flat plate solar cells using high-efficiency backside-contact, back-junction technology.

B. Among various businesses, AUO and its affiliates are engaged in the business of developing, manufacturing, selling and distributing thin film transistor liquid crystal displays.

C. SPTL and AUO wish to establish the JVC (i) to manufacture solar flat plate solar cells using high-efficiency backside-contact, back-junction technology and (ii) to sell such solar cells to SPTL and AUO, or their respective applicable affiliates, who in turn will market the solar cells under their respective brands, in each case on terms and subject to conditions mutually agreeable to the Parties.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the parties hereto, intending to be legally bound, hereby agree as follows:

1. Definitions

As used in this Agreement, the following terms shall have the following meanings:

1.1 "***Affiliate***" shall mean, with respect to any Person, (i) another Person directly or indirectly Controlling, Controlled by or under common Control with such Person or (ii) an officer, director or partner of such Person. When the Affiliate is an officer, director or partner of such Person, any other Person for which such Affiliate acts in that capacity shall also be considered an Affiliate. Notwithstanding the foregoing, for purposes of this Agreement, (i) neither the JVC nor any of its subsidiaries shall be deemed to be an Affiliate of AUO or SPTL and (ii) neither AUO nor SPTL shall be deemed to be an Affiliate of the JVC.

1.2 "***Agreement***" has the meaning given to it in the preamble of this Agreement.

1.3 "***Appointing Party***" has the meaning given to it in Section 8.3(c) of this Agreement.

1.4 "***Arbitration Rules***" has the meaning given to it in Section 18.2(a) of this Agreement.

1.5 "***Assumption Agreement***" has the meaning given to it in Section 6.2(a)(vii) of this Agreement.

1.6 "***AUO***" has the meaning given to it in the preamble of this Agreement.

1.7 "***AUO Allocated Solar Cells***" has the meaning given to it in Section 17.1(a) of this Agreement.

1.8 "***AUO Subscription Agreement***" has the meaning given to it in Section 2.4(a) of this Agreement.

1.9 "***AUO Supply Agreement***" has the meaning given to it in Section 6.2(a)(iv) of this Agreement.

1.10 "***AUO Taiwan***" has the meaning given to it in the preamble of this Agreement.

1.11 "***Bankruptcy Event***" shall mean, with regard to any Party, (i) such Party commencing a voluntary case or other proceeding, or an involuntary case or other proceeding being commenced against such Party and remaining undismissed and unstayed for a period of ten (10) days, in either case seeking liquidation, reorganization or other relief with respect to such Party or its debts under any applicable bankruptcy, reorganization, composition, insolvency or other similar Law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of such Party or any substantial part of its property, (ii) such Party consenting to any such re lief or to the appointment of or taking possession by any such official in an involuntary case or other proceeding commenced against it, and (iii) such Party admitting in writing its inability to pay its debts generally as they become due or generally failing to pay such debts as they become due or becoming subject to disposition of a clearing-house to suspend transactions.

1.12 "***Board***" shall mean the board of the directors of the JVC.

1.13 "***Board Observer***" has the meaning given to it in Section 8.4 of this Agreement.

1.14 "***Budget***" shall mean a two-year budget of the JVC as approved by a Required Board Majority, which shall include (i) an annual capital expenditures budget for each year under the two-year budget and (ii) an annual operating expenditures budget for each year under the two-year budget.

1.15 "***Business Day***" shall mean any day other than a Saturday, Sunday or other day on which commercial banks in Taiwan, Singapore, the Cayman Islands, Kuala Lumpur, Malaysia and San Jose, California are authorized or required to close under the applicable Laws.

1.16 "***Business Plan***" shall mean a five-year business and operations plan of the JVC as approved by a Required Board Majority.

1.17 "***Cash Cost***" shall mean *** in each case as determined under U.S. GAAP. For clarity, Cash Costs excludes ***, in each case as determined under U.S. GAAP.

1.18 "***Chief Executive Officer***" has the meaning given to it in Section 8.2(a) of this Agreement.

1.19 "***Chief Financial Officer***" has the meaning given to it in Section 8.2(b) of this Agreement.

1.20 "***Closing***" has the meaning given to it in Section 6.1 of this Agreement.

1.21 "***Closing Date***" has the meaning given to it in Section 6.1 of this Agreement.

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

1.22 "***Closing JVC Documents***" shall mean, with respect to any sale of Shares, the following documents: (i) evidence reasonably satisfactory to the seller of such Shares of the release of any and all then-outstanding personal guarantees of the obligations of the JVC or any of its subsidiaries made by the seller of such Shares; and (ii) evidence reasonably satisfactory to the seller of such Shares of the repayment of any and all outstanding notes payable to such seller along with any accrued interest thereon.

1.23 "***Closing Seller Documents***" shall mean, with respect to any sale of Shares, the following documents: (i) a general release, in form and substance mutually agreeable to the Parties, pursuant to which (among other things) the seller of such Shares will release the JVC and the buyer of such Shares from any and all claims or causes of action it may have against them for any event, act or omission occurring prior to the sale of such Shares, duly executed by the seller of such Shares; (ii) letters of resignation, effective as of the date of the sale of such Shares, in form and substance mutually agreeable to the Parties, pursuant to which (among other things) the seller of such Shares and/o r the representatives, officers or members of the board nominated by such seller, according to the provisions of this Agreement, will resign from any and all of its positions at the JVC and any of its subsidiaries (including as an officer, director, employee, managing member and/or trustee of the JVC or any of its subsidiaries or any retirement plan of the JVC or any of its subsidiaries), duly executed by such Persons; (iii) such documents and instruments, if any, that require the signature of the seller of such Shares and that are necessary to remove it as an authorized signatory to, or trustee of, any depository account or retirement plan of the JVC any of its subsidiaries; (iv) a writing whereby the seller of such Shares represents to the buyer of such Shares that (A) such Shares are being sold free and clear of any and all liens, security interests, adverse claims, restrictions and other encumbrances, other than those imposed pursuant to the terms of this Agreement or the Organizational Documents and (B) such seller's ownership of such Shares; (v) a confidentiality agreement, in form and substance mutually agreeable to the Parties, duly executed by the seller of such Shares; (vi) a non-disparagement agreement, in form and substance mutually agreeable to the Parties, duly executed by the seller of such Shares; and (vii) such other documents and instruments, if any, as the buyer of such Shares or any financing source of the buyer of such Shares shall reasonably request to consummate the transactions contemplated hereby if the buyer of such Shares elects to finance part or all of the purchase price for such Shares.

1.24 "***Complicit Shareholder***" shall mean, with respect to any material breach by the JVC of any of the covenants contained in any agreement, a Shareholder that nominated a Director who, prior to such material breach by the JVC, (i) actually knew that the JVC would, without complying with the terms of such agreement, take the action causing such material breach and did not attempt to stop the JVC from taking such action and promptly notify the other Directors or (ii) affirmatively encouraged the JVC to take, without complying with the terms of such agreement, the action causing such material breach.

1.25 "***Confidential Information***" has the meaning given to it in Section 10.1 of this Agreement.

1.26 "***Control***" shall mean the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether it is by the ownership of voting securities, by contract or otherwise.

1.27 "***controlled Affiliate***" shall mean, with respect to any Person, any Affiliate of such Person that is (i) a direct or indirect parent company of such Person or (ii) any direct or indirect subsidiary of any direct or indirect parent company of such Person.

1.28 "***Counsel***" has the meaning given to it in Section 18.11(d) of this Agreement.

1.29 "***Deadlock Decision Notice***" has the meaning given to it in Section 12.2 of this Agreement.

1.30 "***Deadlock Notice***" has the meaning given to it in Section 12.1 of this Agreement.

1.31 "***Deadlock Purchasing Shareholder***" has the meaning given to it in Section 12.4 of this Agreement.

1.32 "***Deadlock Selling Shareholder***" has the meaning given to it in Section 12.4 of this Agreement.

1.33 "***Defaulting Shareholder***" has the meaning given to it in Section 13.1(b).

1.34 "***Directors***" shall mean the members of the Board.

1.35 "***Disclosing Party***" has the meaning given to it in Section 10.1 of this Agreement.

1.36 "***Distribution***" shall mean the transfer of cash or other property (including shares of the JVC) whether by way of dividend or otherwise to one or more of the Shareholders, or the purchase or redemption of Shares for cash or other property.

1.37 "***Electing Shareholder***" has the meaning given to it in Section 13.1(b).

1.38 "***Entire Enterprise Value of the JVC***" shall mean the valuation of the JVC determined by using the Valuation Approaches, with a discount for any business risks applicable to the JVC (including, but not limited to, any over-reliance on a few key customers; any threats from competitors; any over-dependence on the efforts of a few key employees; and any potential obsolescence of products). In determining the Entire Enterprise Value of the JVC (including, but not limited to, in construing, performing and applying the Valuation Approaches), the Independent Financial Expert shall have sole and absolute discretion to make any assumptions, estimations or conclusions (including, but not li mited to, assigning weight to any of the conclusions reached under the Valuation Approaches when making its conclusions as to the valuation of the JVC) that it believes are reasonable in connection therewith (but without any control premium or minority discount) and the determination of the Entire Enterprise Value of the JVC by the Independent Financial Expert shall be final, binding and not subject to challenge.

1.39 "***Event of Default***" has the meaning given to it in Section 13.1(a).

1.40 "***Event of Default Date***" has the meaning given to it in Section 13.2.

1.41 "***Event of Default Notice***" has the meaning given to it in Section 13.2.

1.42 "***Exchange Act***" shall mean the Securities Exchange Act of 1934, as amended.

1.43 "***Existing Confidentiality Agreement***" shall mean that certain letter agreement, dated November 18, 2009, as amended, between the Shareholders.

1.44 "***Fab 3***" shall mean the fabrication plant of SPTL located in Malaysia that is currently in development as of the date of this Agreement with an expected annual production capacity of up to 1.5 gigawatts of Solar Cells.

1.45 "***Fair Market Value***" shall mean the price which could be negotiated in an arm's-length, free market transaction, for cash, between a willing seller and a willing and able buyer, each having knowledge of the relevant facts, neither of whom is under undue pressure or compulsion to complete the transaction (but without any control premium or minority discount). In determining the Fair Market Value of any Shares, the standard of value to be used by the Independent Financial Expert shall be (i) the fair market value of such Shares as of the date in question, taking into account all relevant factors (but without any control premium or minority discount), and (ii) on the basis of the Entire Enterprise Value of the JVC multiplied by the percentage ownership interest of the holder of such Shares in the JVC. In determining the Fair Market Value of any Shares (including, but not limited to, in determining the amount of any applicable premium or discount), the Independent Financial Expert shall have sole and absolute discretion to make any assumptions, estimations and conclusions that it believes are reasonable in connection therewith and the determination of the Fair Market Value of such Shares by the Independent Financial Expert shall be final, binding and not subject to challenge.

1.46 "***FCPA***" has the meaning given to it in Section 18.8(a) of this Agreement.

1.47 "***General Knowledge***" has the meaning given to it in Section 10.6 of this Agreement.

1.48 "***Generation C Solar Cells***" shall mean the p-n junction configuration, passivation, contact structure and other cell construction specifics produced by SPTL's Fab 2 factory in the Philippines for use in its standard module products (e.g. its E18 230 solar panel) as of the date of this Agreement.

1.49 "***Governmental Authority***" shall mean any United States, Taiwan or Malaysia, federal, national, supranational, state, provincial, municipal, local, or similar government, governmental, regulatory or administrative authority, agency or commission or any court, tribunal, or judicial or arbitral body.

1.50 "***Governmental Order***" shall mean any order, writ, judgment, injunction, decree, stipulation, determination or award entered by or with any Governmental Authority.

1.51 "*** ***Arrangement***" has the meaning given to it in Section 6.2(a)(vii) of this Agreement.

1.52 "***Imparted Information***" has the meaning given to it in Section 18.11(d) of this Agreement.

1.53 "***Independent Financial Expert***" shall mean an internationally recognized investment banking firm or an internationally recognized accounting firm, in each case that (i) does not (and whose directors, officers, employees and Affiliates do not) have a direct or indirect material financial interest in the JVC, any Shareholder or any of their respective Affiliates, (ii) has not been, and, at the time it is called upon to serve as an Independent Financial Expert under this Agreement is not (and none of whose directors, officers, employees or Affiliates is) a promoter, director or officer of the JVC, any Shareholder or any of their respective Affiliates, and (iii) has not been retained by the Board, any Shareholder or any of their respective Affiliates for any purpose within the preceding twelve months.

1.54 "***Investment Book Value***" shall mean, with respect to any Shareholder, the book value of such Shareholder's Shares, as determined in accordance with U.S. GAAP.

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

1.55 "***IP Services Agreement***" has the meaning given to it in Section 6.2(a)(vi) of this Agreement.

1.56 "***IPO***" shall mean the listing of any Shares on a stock exchange as approved by a Required Board Majority.

1.57 "***JVC***" has the meaning given to it in the preamble of this Agreement.

1.58 "***JVC Change of Control***" shall mean any of the following events occurring after the date of this Agreement: (i) a consolidation or merger of the JVC with or into any other entity in which the shareholders of the JVC as of immediately prior to such transaction do not continue to hold at least 50% of the voting power of the surviving entity as of immediately after such transaction; (ii) the sale, lease or other disposition, in a single transaction or in a series of related transactions, of all or substantially all of the assets of the JVC to any Person or group of Persons; or (iii) any Person becoming the beneficial owner of 100% of the JVC's outstanding equity interests.

1.59 "***Law***" shall mean any United States, Taiwan, Singapore, Malaysia or Cayman Islands, federal, national, supranational, state, provincial, municipal, local or similar statute, law, ordinance, regulation, rule, code, order, requirement or rule of law.

1.60 "***License and Technology Transfer Agreement***" has the meaning given to it in Section 6.2(a) of this Agreement.

1.61 "***Malaysia GAAP***" shall mean the generally accepted accounting principles in Malaysia.

1.62 "***Materially Underperforming***" has the meaning given to it in Section 8.14 of this Agreement.

1.63 "***Non-Competition Period***" has the meaning given to it in Section 17.1(f) of this Agreement.

1.64 "***Non-Permitted Countries***" has the meaning given to it in Section 17.1(a) of this Agreement.

1.65 "***OEE***" shall mean intellectual property regarding improvement of operation equipment efficiency.

1.66 "***Organizational Documents***" shall mean the Memorandum and Articles of Association of the JVC, as amended from time to time.

1.67 "***Parties***" shall mean the parties to this Agreement, from time to time, other than AUO Taiwan, and a "***Party***" shall mean either the JVC, SPTL or AUO (or their respective permitted assigns), as applicable; provided, however, that solely in connection with the enforcement of the provisions contained in Section 18.24(a), AUO Taiwan shall be deemed to be a Party for purposes of references to "Party" or "Parties" that are contained in Section 18.

1.68 "***Permitted Countries***" has the meaning given to it in Section 17.1(a) of this Agreement.

1.69 "***Person***" shall mean any individual, partnership, corporation, association, trust, unincorporated organization or other entity, including any government authority.

1.70 "***Post-Closing Straddle Period***" has the meaning given to it in Section 11.6 of this Agreement.

1.71 "***Post-Closing Tax Period***" shall mean any Tax period (or portion thereof) beginning after the Closing Date.

1.72 "***Pre-Closing Straddle Period***" has the meaning given to it in Section 11.6 of this Agreement.

1.73 "***Pre-Closing Tax Period***" shall mean any Tax period (or portion thereof) ending before the Closing Date.

1.74 "***Pre-Closing Taxes***" shall mean any Tax liability resulting from the operations of the JVC for the Pre-Closing Tax Period and any Pre-Closing Straddle Period.

1.75 "***Post-Deadlock SPTL Allocated Supply Percentage***" has the meaning given to it in Section 12.4(g) of this Agreement.

1.76 "***Receiving Party***" has the meaning given to it in Section 10.1 of this Agreement.

1.77 "***Representatives***" shall mean, with respect to any Party, such Party's directors, officers, employees, subsidiaries, controlled affiliates, agents and advisors (including attorneys, accountants, consultants and financial advisors).

1.78 "***Required Board Majority***" shall mean, with respect to any approval, the approval of a majority of the directors of the Board, with the approval of at least one director nominated solely by SPTL (other than any director that is a resident of Malaysia and not an employee of SPTL or any of its controlled Affiliates) and the approval of at least one director nominated solely by AUO (other than any director that is a resident of Malaysia and not an employee of AUO or any of its controlled Affiliates).

1.79 "***Right of First Refusal***" has the meaning given to it in Section 17.1(b) of this Agreement.

1.80 "***Right of First Refusal Notice***" has the meaning given to it in Section 17.1(b) of this Agreement.

1.81 "***RM***" shall mean the lawful currency of Malaysia for the time being.

1.82 "***Seconded Employee***" has the meaning given to it in Section 18.11(a) of this Agreement.

1.83 "***Securities Act***" shall mean the Securities Act of 1934, as amended.

1.84 "***Shareholder***" shall mean each Person (other than the JVC and AUO Taiwan) that is a party to or otherwise bound by this Agreement, which initially is AUO and SPTL.

1.85 "***Shareholder Exit***" shall mean the earlier to occur of (i) the time, after the Closing Date, when less than two Persons (other than the JVC and AUO Taiwan) who are parties to this Agreement or otherwise bound by its provisions beneficially own any Shares and (ii) the liquidation or dissolution of the JVC.

1.86 "***Shares***" shall mean ordinary shares of the JVC with the par value of RM1.00 per share.

1.87 "***Solar Cells***" shall mean flat plate solar cells using high-efficiency backside-contact, back-junction technology.

1.88 "***SPTL***" has the meaning given to it in the preamble of this Agreement.

1.89 "***SPTL Subscription Agreement***" has the meaning given to it in Section 2.4(a) of this Agreement.

1.90 "***SPTL Supply Agreement***" has the meaning given to it in Section 6.2(a)(v) of this Agreement.

1.91 "***Step-In Notice***" has the meaning given to it in Section 8.14 of this Agreement.

1.92 "***Step-In Objection Notice***" has the meaning given to it in Section 8.14 of this Agreement.

1.93 "***Straddle Period***" has the meaning given to it in Section 11.6 of this Agreement.

1.94 "***Tax***" or, collectively, "***Taxes***" shall mean any and all federal, provincial, state, local and other taxes, assessments and other governmental charges, duties, impositions and liabilities, including taxes based upon or measured by gross receipts, income, profits, sales, use and occupation, and value added, ad valorem, transfer, franchise, withholding, payroll, recapture, employment, excise and property taxes, together with all interest, penalties and additions imposed with respect to such amounts, and any obligations with respect to such amounts arising as a result of being a member of an affil iated, consolidated, combined or unitary group for any period or under any agreements or arrangements with any other Person and including any liability for taxes of a predecessor or transferor entity.

1.95 "***Tax Matter***" has the meaning given to it in Section 11.8 of this Agreement.

1.96 ***"Taxing Authority"*** shall mean any Governmental Authority responsible for the imposition of any Tax.

1.97 "***Tax Return***" shall mean any return, statement, declaration, notice, certificate or other document that is or has been filed with or submitted to, or required to be filed with or submitted to, any Governmental Authority in connection with the determination, assessment, collection or payment of any Tax or in connection with the administration, implementation or enforcement of or compliance with any applicable Law related to any Tax.

1.98 "***Teleconferencing***" has the meaning given to it in Section 8.9 of this Agreement.

1.99 "***Trade Secrets***" shall mean trade secret rights and corresponding rights in Confidential Information and other non-public information (whether or not patentable), including ideas, formulas, compositions, inventor's notes, discoveries and improvements, know how, manufacturing and production processes and techniques, testing information, research and development information, inventions, invention disclosures, unpatented blueprints, drawings, specifications, designs, plans, proposals and technical data, business and marketing plans, market surveys, market know-how and customer lists and information.

1.100 "***Transfer***" and "***Transferred***" shall mean and include any sale, assignment, encumbrance, hypothecation, pledge, conveyance in trust, gift, transfer by bequest, devise or descent, or other transfer or disposition of any kind, including but not limited to transfers to receivers, levying creditors, trustees or receivers in bankruptcy proceedings or general assignees for the benefit of creditors, whether voluntary or by operation of Law, directly or indirectly, except for:

(a) any transfer of Shares by a Shareholder to another Shareholder pursuant to the provisions of this Agreement;

(b) any pledge, mortgage or other encumbrance of any Shares pursuant to any security agreement or any securities pledge agreement, in each case pursuant to, required by or in connection with any agreement to which the JVC and holders of at least 75% of the JVC's voting securities are parties;

(c) any transfer of Shares upon a sale of the JVC by merger, consolidation or combination approved in accordance with the super-majority provisions set forth in this Agreement;

(d) any transfer of Shares by a Shareholder made (i) pursuant to the winding up and dissolution of the JVC or (ii) at, and pursuant to, an IPO, in each case approved in accordance with the super-majority provisions set forth in this Agreement; or

(e) any transfer of Shares by a Shareholder to any Person that is a direct or indirect, wholly-owned subsidiary of such Shareholder, provided that (i) such Shareholder provides at least ten (10) days written notice of such transfer to the JVC and the other Shareholders (which notice shall include the name of such Person), (ii) such Person executes a counterpart signature page to this Agreement and agrees to be bound by the provisions hereof, and (iii) any subsequent transfer of such Shares by such Person shall be conducted in the manner set forth in this Agreement.

1.101 "***U.S. GAAP***" shall mean the generally accepted accounting principles in the United States.

1.102 "***Valuation Approaches***" shall mean the following three commonly used approaches to valuing a privately-held business: (i) the "discounted cash flow" method, whereby the cash flow that the JVC is expected to generate in the future is estimated and then discounted to a present value taking into account the time value of money and any risks that could impact expected cash flow; (ii) the "relative value" or "market comparables" method, whereby publicly traded companies that appear "comparable" to the JVC in terms of market, business description and one or more financial characteristics are identified, the market values of those companies are measured against their revenue, EBITDA (Earnings Before Interest Taxes Depreciation and Amortization) and assets (in each case, determined in accordance with generally accepted accounting practices) to obtain a "price to revenue multiple," a "price to EBITDA multiple" and a "price to assets" multiple and then those multiples are multiplied against the applicable financial data of the JVC; and (iii) the "liquidation value" method, whereby any intangible value of the JVC is disregarded and the JVC's total liabilities are subtracted from an estimate of the aggregate price that the JVC would receive for its tangible assets in a liquidation context where the JVC is under compulsion to sell all of its assets.

1.103 "***Video Conferencing***" has the meaning given to it in Section 8.9 of this Agreement.

2. Formation of the JVC

2.1 Organization of JVC. The JVC has been incorporated as a private limited company under the Companies Act 1965 of Malaysia pursuant to the terms of the Organizational Documents provided to AUO prior to the date of this Agreement.

2.2 JVC Capital on the Signing Date. On the date of this Agreement, (i) the JVC's total authorized share capital consists of RM5,000,000.00 divided into 5,000,000 ordinary shares with par value of RM1.00 per share and (ii) of such authorized share capital, SPTL has

subscribed for 750,000 Shares (which constitutes 100% of the equity interest in the JVC on the date of this Agreement).

2.3 Necessary Reports and Approvals. As soon as possible after the execution of this Agreement, the Parties shall cooperate with each other in preparing and filing the necessary reports with, and obtaining the approvals from, the governmental agencies, public authorities and/or other third parties required for the subscriptions, contributions and grants contemplated by Section 2.4.

2.4 Share Issuances, Contributions and Grants on the Closing Date.

(a) On the Closing Date, (i) pursuant to a Subscription Agreement, in a form mutually agreed upon in writing by the JVC and the Shareholders (the "***SPTL Subscription Agreement***"), SPTL shall subscribe for, and the JVC shall issue to SPTL, an additional number of Shares mutually agreed upon in writing by the JVC and the Shareholders (which, together with the Shares beneficially owned by SPTL on the date of this Agreement, will constitute fifty percent (50%) of the equity interest in the JVC, measured on a fully-diluted basis, on the Closing Date), and (ii) pursuant to a Subscription Agreement, in a form mutually agreed upon in writing by the JVC and the Shareholders (the "***AUO Subscription Agreement***"), AUO shall subscribe for, and the JVC shall issue to AUO, 750,000 Shares plus an additional number of Shares mutually agreed upon in writing by the JVC and the Shareholders (which 750,000 Shares, together with such additional Shares, will constitute fifty percent (50%) of the equity interest in the JVC, measured on a fully-diluted basis, on the Closing Date). For the avoidance of doubt, the Parties acknowledge and agree that (i) on the Closing Date, the Shareholders will subscribe for, and the JVC will issue to the Shareholders, all of the Shares contemplated by this Section 2.4(a), even though not all of the purchase price for such Shares will have been paid by the Shareholders on the Closing Date, (ii) the cash payments to be contributed by the Shareholders after the Closing Date in accordance with Section 2.4(b)(i) and Section 2.4(c)(i) represent the only portion of the purchase price for such Shares that will n ot be paid by the Shareholders on the Closing Date, (iii) the making of such additional cash payments by the Shareholders will not represent additional purchases of Shares, and (iv) no additional representations or warranties will be made after the Closing Date with respect to the Shares contemplated by this Section 2.4(a).

(b) In return for such additional Shares being issued to SPTL:

(i) SPTL shall cause to be contributed to the JVC cash contributions in an aggregate amount equal to $349,775,000, with an initial portion of such contributions being paid to the JVC on the Closing Date and the remaining portions paid to the JVC over time, in each case in the amounts and on the dates mutually agreed in writing by the JVC and the Shareholders (as may be adjusted and amended from time to time by mutual written agreement of both Shareholders);

(ii) SPTL shall ensure that the JVC retains, as of the Closing Date, the existing Fab 3 debt of RM1,000,000,000, as mutually agreed in writing by the JVC and the Shareholders;

(iii) SPTL shall ensure that the JVC retains, as of the Closing Date, the existing Fab 3 land, buildings and improvements, in each case as mutually agreed in writing by the JVC and the Shareholders; and the foregoing shall be deemed to be contributions by SPTL for purposes of this Agreement;

(iv) SPTL shall ensure that the JVC retains, as of the Closing Date, the existing manufacturing equipment and existing orders and deposits for future equipment, in each case as mutually agreed in writing by the JVC and the Shareholders; and the foregoing shall be deemed to be contributions by SPTL for purposes of this Agreement;

(v) SPTL shall cause to be granted to the JVC, on or prior to the Closing Date, a royalty-free, non-exclusive, non-transferable license to manufacture Generation C Solar Cells, pursuant to the License and Technology Transfer Agreement, and SPTL hereby undertakes, at its expense, to indemnify, defend, protect and hold harmless AUO and/or its controlled Affiliates from and against any and all losses, costs, damages and expenses, including reasonable attorneys' fees and costs resulting from all proceedings, threats of proceedings or claims against the JVC, AUO or any controlled Affiliates of AUO, by any third party for infringement or alleged infringement by the Solar Cells manufactured by the JVC or the use thereof, solely to the extent such infringement or alleged i nfringement is based on Solar Cells manufactured by the JVC conforming to the construction and all relevant specifications of Generation C Solar Cells, as licensed to the JVC by SPTL under the License and Technology Transfer Agreement without modification. For the avoidance of doubt, SPTL shall have no obligations to indemnify, defend, protect and hold harmless AUO and/or its controlled Affiliates pursuant to this Section 2.4(b)(v) for (1) Solar Cells manufactured by the JVC which do not conform, completely and entirely, to the construction and all applicable specifications of Generation C Solar Cells, as licensed to the JVC by SPTL pursuant to the License and Technology Transfer Agreement without modification, or (2) any matter for which AUO is obligated to indemnify SPTL or the JVC pursuant to Section 2.4(c)(iii); and

(vi) SPTL shall use commercially reasonable efforts to ensure that the JVC retains, as of the Closing Date, the existing Fab 3 employees and shall cause to be contributed to the JVC certain engineering resources, in each case as mutually agreed in writing by the JVC and the Shareholders; and the foregoing shall be deemed to be contributions by SPTL for purposes of this Agreement.

(c) In return for such Shares being issued to AUO:

(i) AUO shall cause to be contributed to the JVC cash contributions in an aggregate amount equal to RM750,000 plus $349,775,000, with an initial portion of such contributions being paid to the JVC on the Closing Date and the remaining portions paid to the JVC over time, in each case in the amounts and on the dates mutually agreed in writing by the JVC and the Shareholders (as may be adjusted and amended from time to time by mutual written agreement of both Shareholders);

(ii) AUO shall make best efforts to ensure that, subject to (i) the necessary cooperation of the JVC, (ii) the lenders' necessary legal due diligence

of the JVC, (iii) the written consent or approval of SPTL, and (iv) the written consent or approval of the Malaysian Ministry of Finance, within *** after the Closing Date or such other date as mutually agreed in writing by the Parties, at least $*** of additional debt financing from a third-party lender with a term of at least *** is available to be drawn upon, in one single draw or in multiple draws from time to time *** of the term of the debt financing, by the JVC on terms and conditions that are commercially reasonable to the JVC for loans to companies similar to that of the JVC (including such debt financing being non-recourse to SPTL and its intellectual property); provided, however, that if suc h additional debt financing is not available to the JVC within ten (10) Business Days after the Closing Date, then, in addition to AUO' obligations above in this Section 2.4(c)(ii), AUO shall ensure that, subject to (a) the necessary cooperation of the JVC, (b) the written consent or approval of SPTL, (c) the written consent or approval of the Malaysian Ministry of Finance, and (d) the lenders' necessary legal due diligence of the JVC within *** after the Closing Date, at least $*** of debt financing, from a third-party lender, with a term of at least *** is available to be drawn upon, in one single draw or in multiple draws from time to time over the *** of the term of the debt financing, by the JVC on terms and conditions that are commercially reasonable to the JVC for loans to companies similar to that of the JVC (including such debt financing being non-recourse to SPTL and its intellectual property); provided, further, however, that, if a third-party financing source does not provide any such debt financing contemplated by this Section 2.4(c)(ii), then AUO shall procure or provide, on an interim basis, the debt financing reasonably necessary to fund in a timely manner the JVC's Business Plan approved by the Parties at the time of Closing, or as may be properly amended from time to time, ***, until such time as a third party financing source provides such debt financing in replacement thereof, and the JVC, AUO and SPTL shall use reasonable best efforts to procure debt financing for the JVC on terms and conditions that are commercially reasonable to the JVC for loans to companies similar to that of the JVC (including such debt financing being non-recourse to SPTL and its intellectual property), which may require refinancing of the JVC's existing debt, collateral sharing by lenders or other customary financing terms and conditions;

(iii) AUO shall cause to be granted to the JVC, on or prior to the Closing Date, a royalty-free, non-exclusive, non-transferable license to the JVC to assist the JV in industrial process streamlining and manufacturing engineering, pursuant to the License and Technology Transfer Agreement, and AUO hereby undertakes, at its expense, to indemnify, defend, protect and hold harmless SPTL and/or its controlled Affiliates from and against any and all losses, costs, damages and expenses, including reasonable attorneys' fees and costs resulting from all proceedings, threats of proceedings or claims against the JVC, SPTL or any controlled Affiliates of SPTL, by any third party for infringement or alleged infringement by the Solar Cells manufactured by the JVC or use thereof to the extent on account of any methods, processes or tools relating to industrial process streamlining and manufacturing engineering introduced by AUO to the JVC as

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part of their transfer of AUO Background Intellectual Property (as such term is defined in the License and Technology Transfer Agreement). For the avoidance of doubt, AUO shall have no obligations to indemnify, defend, protect and hold harmless SPTL and/or its controlled Affiliates pursuant to this Section 2.4(c)(iii) for any matter for which SPTL is obligated to indemnify AUO or the JVC pursuant to Section 2.4(b)(v); and

(iv) AUO shall cause to be contributed to the JVC certain management and engineering resources, in each case mutually agreed in writing by the JVC and the Shareholders.

2.5 Option for AUO to Purchase One Additional Share. SPTL hereby grants AUO the right, exercisable by AUO delivering written notice to SPTL of such exercise at any time during which AUO and/or its permitted transferees (if any) hold Shares representing fifty percent (50%) of the total issued and outstanding Shares, to purchase one (1) Share held by SPTL for a purchase price of RM1.00 Within ten (10) Business Days after receipt of any such written notice, (i) SPTL shall sell one (1) Share held by SPTL, free and clear of any and all liens, security interests, adverse claims, restrictions and other encumbrances, other than those imposed pursuant to the terms of this Agreement or the Organizational Documents, and (ii) AUO shall purchase such one (1) Share by paying RM1.00 to SPTL by wire transfer of immediately available funds to an account designated in writing by SPTL. The Parties acknowledge and agree that neither SPTL nor AUO will be required to make any representations or warranties in connection with such sale. The Parties shall take any such actions as may be reasonably requested in writing by any Party to effect such sale in accordance with applicable Law.

2.6 Shares. Each Party shall take all actions to ensure that any and all Shares shall be ordinary shares of one class, in non-bearer form evidenced by share certificates.

2.7 Head Office and Manufacturing Facility of the JVC. The head office and manufacturing facility of the JVC shall be located at Kawasan Perindustrian Rembia, Mukim Sungai Petai Rembia, Alor Gajah, 76100 Melaka in Malaysia. Branches and other business offices may be established anywhere as necessary, if and to the extent approved by a Required Board Majority.

2.8 Change of JVC Name. Promptly after the Closing, the Parties shall take such actions as are necessary under applicable Law to change the legal name of the JVC to a name to be mutually agreed by the Parties after the date of this Agreement.

3. Business Purpose. The business purposes of the JVC are to manufacture, sell and distribute Generation C Solar Cells to SPTL, AUO and their respective applicable Affiliates and to engage in any and all acts, things, businesses and activities that are related, incidental or conducive, directly or indirectly, to the achievement of the foregoing businesses. The JVC's business shall exclude polysilicon, ingot, wafer and module manufacturing and downstream systems business.

4. Organizational Documents of the JVC; Prevalence of the Agreement. The JVC shall be governed by the Organizational Documents and this Agreement. The Organizational Documents shall be amended so as to adapt them according to the revisions made by the Shareholders in the future and to the resolutions which may be adopted by the shareholders' meeting of the JVC, in accordance with the provisions of this Agreement. Should any contradiction arise with regard to

the provisions of this Agreement and the Organizational Documents, or in the event that any of the provisions of the Agreement are not reflected in the Organizational Documents due to a prohibition of applicable Law, this Agreement shall prevail over the Organizational Documents with regard to the internal relations between the Parties, and the Parties shall (to the maximum extent permitted under the applicable Law) do their utmost to amend the Organizational Documents to accurately reflect the terms of this Agreement. The Organizational Documents shall be interpreted by the parties on the strength of the provisions of this Agreement.

5. Additional Financing.

5.1 Required Financings. From and after the Closing Date, upon the written request of the JVC or any Shareholder, the Shareholders shall promptly provide to the JVC equity financing above and beyond the financing contemplated by Section 2.4 and the then most recent Business Plan and Budget approved by a Required Board Majority, as and to the extent the JVC or such Shareholder determines is reasonably necessary to fully purchase and install the initial capacity as defined in the Business Plan in a form mutually agreed upon in writing by the JVC and the Shareholders, or as amended and agreed to in the then most recent Business Plan or Budget approved by a Required Board Majority. Within thirty (3 0) days after delivery of any such written request, each Shareholder shall purchase an additional amount of the Shares for its pro rata portion (with each Shareholder's pro rata portion being determined with reference to such Shareholder's shareholding in the JVC relative to all Shareholders' shareholdings in the JVC, in each case immediately prior to such capital increase and on a fully-diluted basis) of the total amount of financing so requested by the JVC or the applicable Shareholder at the times and in the amounts set forth in such written request. For purposes of calculating how many Shares will be purchased by each Shareholder, the price per share for each Share shall be the last stated fair market value of a Share as set forth in the then most recent Business Plan or Budget approved by a Required Board Majority (or as otherwise determined by both Shareholders). To the extent necessary, the Shareholders shall promptly approve an increase in the share capital of the JVC to permit the JVC to make such issuances. Notwithstanding the foregoing, with respect to any equity financing requested pursuant to this Section 5.1, (i) each Shareholder shall only be required to provide equity financing to the extent such Shareholder's portion of such requested equity financing, when combined with all other equity financing provided by such Shareholder pursuant to this Section 5.1, would not exceed $50,000,000 and (ii) to the extent one Shareholder does not purchase all of the Shares requested to be purchased by it pursuant to this Section 5.1 because it is not required to do so pursuant to clause (i) above, the other Shareholder shall have the right to purchase all or any portion of such Shares not purchased by the non-purchasing Shareholder; it being understood that any such purchase by the purchasing Shareholder shall be dilutive to the non-purchasing Shareholder's ownership interests in the JVC.

5.2 No Additional Obligation. Except as expressly set forth in Section 5.1, no Party shall be required to provide loan financing, equity contributions or any form of guarantee or credit support for repayment for any funding obtained by the JVC, above their respective obligations set forth in Section 2.4.

6. Closing and Closing Conditions.

6.1 Closing. The closing of the principal transactions contemplated by this Agreement (the "***Closing***") shall take place on the later of (i) July 5, 2010 or (ii) the third (3rd) Business Day after the satisfaction or waiver of each of the conditions set forth in this Section 6

(excluding conditions that, by the terms, are not expected to be satisfied until the Closing Date, but subject to the satisfaction or waiver of such conditions) or at such other time as the parties agree in writing. The Closing shall take place remotely via the electronic exchange of documents. The date on which the Closing actually occurs is herein referred to as the "***Closing Date***." Subject to the conditions set forth in this Section 6, each of the Parties shall use its reasonable best efforts to take, or cause to be taken, all actions, and to do, or cause to be done, and to assist and cooperate with the other Parties in doing, all things necessary, proper or advisable to consummate and make effective, in the most expeditious manner practicable, the principal transactions contemplated by this Agreement, including using its reasonable best efforts to accomplish the following: (i) the taking of all reasonable acts necessary to cause the conditions precedent set forth in this Section 6 to be satisfied in the most expeditious manner practicable; (ii) the furnishing of information to any Party necessary in connection with any requirements imposed upon such Party in connection with the consummation of the principal transactions contemplated by this Agreement; and (iii) the execution or delivery of any additional instruments necessary to consummate the principal transactions contemplated by, and to fully carry out the purposes of, this Agreement.

6.2 Conditions to the Obligations of SPTL. The obligation of SPTL to fulfill its obligations under this Agreement shall be subject to the satisfaction of each of the following conditions on or prior to the Closing Date, any of which may be waived, in writing, exclusively by SPTL:

(a) Receipt of Agreements. SPTL shall have received a copy of each of the following agreements:

(i) the AUO Subscription Agreement, duly executed by the JVC and AUO, pursuant to which AUO will subscribe for Shares as contemplated by Section 2.4;

(ii) the SPTL Subscription Agreement, duly executed by the JVC, pursuant to which SPTL will subscribe for additional Shares as contemplated by Section 2.4;

(iii) a License and Technology Transfer Agreement, in substantially the form attached hereto as Exhibit A (the "***License and Technology Transfer Agreement***"), duly executed by the JVC and AUO, pursuant to which AUO and SPTL will license intellectual property to the JVC;

(iv) a Supply Agreement, in a form mutually agreed upon in writing by the JVC and the Shareholders (the "***AUO Supply Agreement***"), duly executed by the JVC and AUO (or an Affiliate thereof), pursuant to which the JVC will supply Solar Cells to AUO (or applicable Affiliate thereof);

(v) a Supply Agreement, in substantially the form attached hereto as Exhibit B (the "***SPTL Supply Agreement***"), duly executed by the JVC and AUO, pursuant to which the JVC will supply Solar Cells to SPTL (or applicable Affiliate thereof);

(vi) an IP Services Agreement, in a form mutually agreed upon in writing by the JVC and the Shareholders (the "***IP Services Agreement***"), duly executed by the JVC and AUO; and

(vii) either (A) an Assumption Agreement, in form and substance reasonably satisfactory to the Parties (the "***Assumption Agreement***"), duly executed by the JVC and ***, pursuant to which the JVC will assume certain obligations of SunPower Corporation under a certain polysilicon contract provided that the total prepayment obligations of such contract shall not exceed $*** and the total obligations regarding the committed purchase quantity shall not exceed *** kilograms, together with any other documents required by *** in connection therewith, or (B) another agreement, in form and substance r easonably satisfactory to the Parties, duly executed by the JVC, that provides the JVC and SunPower Corporation with a commercial arrangement at least as favorable to SunPower Corporation as the commercial arrangement that would reasonably be likely to be in effect if the Assumption Agreement were finalized and executed (the arrangement under the Assumption Agreement, any such other agreement, or any agreements entered into by the JVC with *** in connection thereto being referred to in this Agreement as the "***").

(b) Board Composition. The authorized size of the Board of the JVC shall have been established at six (6) positions and the three (3) SPTL nominees shall have been appointed to the Board.

(c) Consents and Approvals. All of the consents and approvals mutually agreed in writing by the JVC and the Shareholders shall have been obtained.

(d) No Injunctions or Restraints; Illegality. No temporary restraining order, preliminary or permanent injunction or other order issued by any court of competent jurisdiction or other legal or regulatory restraint or prohibition preventing the consummation of the transactions contemplated by this Agreement shall be in effect, nor shall any proceeding brought by a governmental authority seeking any of the foregoing be pending. No action taken by any governmental authority, and no statute, rule, regulation or order shall have been enacted, entered, enforced or deemed applicable, and be in full force and effect on the Closing Date, to the transactions contemplated by this Agreement, which makes the consummation of the tra nsactions contemplated by this Agreement illegal.

(e) Business Plan and Budget. The Business Plan and Budget in forms mutually agreed upon in writing by the JVC and the Shareholders shall have been approved by a Required Board Majority.

(f) Contributions and Grants. Each of AUO and the JVC shall have fulfilled all of its obligations under Section 2.4 required to be performed and complied with by it on or prior to the Closing Date.

(g) Representations and Warranties. Each of the representations and warranties of AUO contained in or made pursuant to this Agreement shall be true and correct in all material respects on and as of the date of this Agreement and on and as of the Closing Date with the same effect as though such representations and warranties had been made on and as of the Closing Date; provided, however, that if a representation or warranty is qualified by "materiality" or "material adverse effect" or a similar qualifier, such representation or warranty (as so qualified) shall be true and correct in all respects.

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(h) Covenants. Each of AUO and the JVC shall have performed and complied in all material respects with all covenants, obligations and conditions of this Agreement required to be performed and complied with by it on or prior to the Closing Date.

(i) Amendment of Organizational Documents. The Organizational Documents in effect on the Closing Date shall be the Memorandum and Articles of Association of the JVC in a form mutually agreed upon in writing by the JVC and the Shareholders.

6.3 Conditions to Obligations of AUO. The obligation of AUO to fulfill its obligations under this Agreement shall be subject to the satisfaction of each of the following conditions on or prior to the Closing Date, any of which may be waived, in writing, exclusively by AUO:

(a) Receipt of Agreements. AUO shall have received a copy of each of the following agreements:

(i) the AUO Subscription Agreement, duly executed by the JVC;

(ii) the SPTL Subscription Agreement, duly executed by the JVC and SPTL;

(iii) the License and Technology Transfer Agreement, duly executed by the JVC and SPTL;

(iv) the AUO Supply Agreement, duly executed by the JVC and SPTL;

(v) the SPTL Supply Agreement, duly executed by the JVC and AUO;

(vi) the IP Services Agreement, duly executed by the JVC and SPTL; and

(vii) either (A) the Assumption Agreement, duly executed by the JVC and *** or (B) another agreement, in form and substance reasonably satisfactory to the Parties, duly executed by the JVC and SunPower Corporation, that provides the JVC and SPTL with a commercial arrangement at least as favorable to SunPower Corporation as the commercial arrangement that would be in effect if the Assumption Agreement were executed.

(b) Board Composition. The authorized size of the Board of the JVC shall have been established at six (6) positions and the three (3) AUO nominees shall have been appointed to the Board.

(c) No Injunctions or Restraints; Illegality. No temporary restraining order, preliminary or permanent injunction or other order issued by any court of competent jurisdiction or other legal or regulatory restraint or prohibition preventing the consummation of the transactions contemplated by this Agreement shall be in effect, nor shall any proceeding brought by a governmental authority seeking any of the foregoing be pending. No action taken by any governmental authority, and no statute, rule, regulation or order shall have been enacted, entered, enforced or deemed applicable, and be in full force and effect on the Closing Date, to the transactions contemplated by this Agreement, which makes the consummation of the tra nsactions contemplated by this Agreement illegal.

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(d) Contributions and Grants. Each of SPTL and the JVC shall have fulfilled all of its obligations under Section 2.4 required to be performed and complied with by it on or prior to the Closing Date.

(e) Business Plan and Budget. The Business Plan and Budget in forms mutually agreed upon in writing by the JVC and the Shareholders shall have been approved by a Required Board Majority.

(f) Representations and Warranties. Each of the representations and warranties of SPTL contained in or made pursuant to this Agreement shall be true and correct in all material respects on and as of the date of this Agreement and on and as of the Closing Date with the same effect as though such representations and warranties had been made on and as of the Closing Date; provided, however, that if a representation or warranty is qualified by "materiality" or "material adverse effect" or a similar qualifier, such representation or warranty (as so qualified) shall be true and correct in all respects.

(g) Covenants. Each of SPTL and the JVC shall have performed and complied in all material respects with all covenants, obligations and conditions of this Agreement required to be performed and complied with by it on or prior to the Closing Date.

(h) Amendment of Organizational Documents. The Organizational Documents in effect on the Closing Date shall be the Memorandum and Articles of Association of the JVC in a form mutually agreed upon in writing by the JVC and the Shareholders.

7. General and Special Meetings of Shareholders

7.1 Meetings of Shareholders. The JVC shall hold an Annual General Meeting of shareholders within three (3) months after the end of each fiscal year of the JVC. The date, time and place of such Annual General Meeting shall be determined by the Board. The JVC may hold an extraordinary general meeting of shareholders from time to time as determined by the Board.

7.2 Notice. In convening any meeting of shareholders, a written notice thereof (including electronic-mail and transmission by other electronic means) shall be given by the Chief Executive Officer or any Director at least fourteen (14) days prior to the date set for such meeting to all the shareholders and other Persons entitled to receive notice. The above period may be shortened or omitted with the written consent of both Shareholders before any such meeting. The notice shall state the agenda, date, time and place for the meeting. Any meeting of shareholders shall resolve only those matters stated in the notice of the meeting, unless both Shareholders, whether present or not, agree otherwise.< /font>

7.3 Resolution. Except as otherwise required by the mandatory provisions of applicable Law, this Agreement or the Organizational Documents, (i) resolutions of the shareholders at any meeting of shareholders shall be adopted by an affirmative vote of at least 55% of the Shares represented at such meeting, provided that such affirmative votes are at least 55% of the total issued and outstanding Shares and (ii) resolutions of the shareholders by written consent shall be adopted by the approval of Shareholders holding at least 75% of the Shares then held by all Shareholders.

7.4 Matters Requiring Shareholder Resolution by Agreement. In addition to any other approval required by this Agreement or the Organizational Documents, notwithstanding any provision to the contrary, except for the actions required or contemplated to be taken by one or

more of the Parties under Section 2 and Section 6, the JVC shall not, and shall cause its subsidiaries (if any) not to, and each Shareholder shall neither authorize nor knowingly permit the JVC or any of its subsidiaries (if any) to, directly or indirectly, take any action in respect of any of the following matters (or incur any obligation, commitment or promise with respect to any such items or matters) without the prior approval or written consent of Shareholders holding at least 75% of the Shares then held by all Shareholders:

(i) amending or modifying any of the Organizational Documents then in effect, other than as expressly contemplated by this Agreement;

(ii) changing or causing to be changed the general scope of the business or objectives of the JVC or any of its subsidiaries (if any) or entering into, or engaging in any transaction in a line of business other than the business of the JVC as contemplated by Section 3;

(iii) changing or proposing to change the total number of the members of the Board;

(iv) appointing or removing any Director other than pursuant to a decision of the Shareholder which nominated such Director and as contemplated by this Agreement;

(v) borrowing money or creating, incurring or assuming any indebtedness, obligation or liability (whether accrued, absolute, contingent or otherwise), in each case otherwise than pursuant to this Agreement or any agreement contemplated hereunder to be delivered at the Closing;

(vi) investing funds or approving contracts in which any Shareholder (or any of its controlled Affiliates), Director or employee is an interested party, in each case otherwise than pursuant to this Agreement or any agreement contemplated hereunder to be delivered at the Closing;

(vii) making any loans or advances to any Shareholder (or any of its controlled Affiliates) out of the funds of the JVC or any of its subsidiaries (if any), in each case otherwise than pursuant to this Agreement or any agreement contemplated hereunder to be delivered at the Closing or as expressly contemplated in the then most recent Business Plan or Budget approved by a Required Board Majority;

(viii) sell, grant or convey any rights or security interests with respect to, or assigning, licensing, sublicensing, selling, pledging or otherwise transferring, encumbering or disposing of, any intellectual property or product of any Shareholder, the JVC or any of their respective subsidiaries, or use any intellectual property licensed by any Shareholder pursuant to any agreement by which the JVC and both Shareholders are parties or any improvements thereon, except in each case as expressly provided in any agreements by which the JVC and both Shareholders are parties;

(ix) increasing or reducing the authorized share capital, in each case other than as expressly contemplated by this Agreement or with respect to any equity incentives to employees or other service providers of the JVC or any of its subsidiaries (if any) within the guidelines under any equity incentive plan approved by both Shareholders;

(x) issue, redeeming or repurchasing Shares or changing the class or series designation and/or rights attaching to any class or series of the issued and outstanding Shares, whether by way of recapitalizations, reclassifications, stock splits, stock combinations or otherwise, in each case other than as expressly contemplated by this Agreement or with respect to any equity incentives to employees or other service providers of the JVC or any of its subsidiaries (if any) within the guidelines under any equity incentive plan approved by both Shareholders;

(xi) creating or issuing or causing to be created and issued any other share capital of the JVC or any of its subsidiaries (if any) or securities exercisable or exchangeable for or convertible into equity securities of the JVC or any of its subsidiaries (if any), in each case other than as expressly contemplated by this Agreement or with respect to any equity incentives to employees or other service providers of the JVC or any of its subsidiaries (if any) within the guidelines under any equity incentive plan approved by both Shareholders;

(xii) creating or amending any equity incentive plan of the JVC or any of its subsidiaries (if any);

(xiii) listing or recommending to list any securities of the JVC or any of its subsidiaries (if any) on any stock exchange;

(xiv) merging or consolidating with any Person;

(xv) selling, assigning or otherwise transferring any assets or properties during any fiscal year if the aggregate market value of all such assets or properties sold during such fiscal year by the JVC or any of its subsidiaries (if any) is in excess of 10% of the total assets of the JVC as of the end of the most recently completed fiscal year (or the Closing Date with respect to 2010), except for such sales, assignments or transfers that are expressly contemplated by the AUO Supply Agreement, the SPTL Supply Agreement or any other agreements by which the JVC and both Shareholders are parties or that are determined by a Required Board Majority to be in the ordinary course of the business;

(xvi) taking any action to dissolve or liquidate or commence any bankruptcy proceeding, take any analogous action in any jurisdiction, or enter into or amend any arrangement with the creditors of the JVC or any of its subsidiaries (if any) with respect to any liquidation, dissolution or bankruptcy;

(xvii) selling any products to any Person other than the Shareholders, except as may be expressly contemplated by the AUO Supply Agreement, the SPTL Supply Agreement or any other agreements by which the JVC and both Shareholders are parties; and

(xviii) incurring any obligation, commitment or promise with respect to any of the foregoing.

7.5 Minutes. The proceedings of any meetings of shareholders and the results thereof shall be recorded in the minutes of the meetings of shareholders, which shall be signed by the Directors present and kept at the registered head office of the JVC. All minutes of the meetings of shareholders shall be prepared in English.

8. Governance Matters

8.1 General. Except as otherwise required by mandatory provisions of Law, this Agreement or the Organizational Documents, ultimate responsibility for the management, direction and control of the JVC shall be vested in the Board. The Board may delegate its authorities to one or more officers of the JVC in accordance with resolutions duly adopted and consistent with this Agreement and the Organizational Documents.

8.2 Officers.

(a) The JVC shall have a chief executive officer, nominated by AUO and approved and appointed by the Board. The chief executive officer of the JVC (the "***Chief Executive Officer***") shall supervise, manage and be responsible for the day-to-day operations of the JVC, and shall report to the Board. The Chief Executive Officer shall serve at the discretion of the Board and shall have such specific powers, duties and responsibilities as are designated by the Board from time to time. The Chief Executive Officer shall act in full accordance with any business or operating plan or Budgets approved by the Board and shall have no authority to ta ke any action with respect to any of the matters enumerated in Section 7.4 or Section 8.10 without first obtaining the approval of the requisite Shareholder approval or a Required Board Majority, as the case may be, with respect to the matter in question. If and to the extent invited by the Board, the Chief Executive Officer or his designee shall attend the meetings of the Board. In performing his duties, the Chief Executive Officer's authority and responsibilities shall include, but not be limited to, the following: (i) with the Chief Financial Officer, the preparation and submission to the Board of an annual Business Plan and Budget; (ii) the preparation of operating plans for the JVC; (iii) with the Chief Financial Officer, keeping the Board fully informed of the activities and operations of the JVC through the preparation and submission of periodic reports, including the monthly and annual financial statements described in Section 11.1; (iv) representing the JVC; (v) executing the corporate matters in compliance with and within the limits permitted under applicable Law; and (vi) executing such other matters in accordance with the decisions made by the Board and /or the general meeting of shareholders. The extent and scope of the Chief Executive Officer's powers to make a decision or to take any action for and on behalf of the JVC or in connection with or related to the JVC shall be determined by and subject to the conditions, restrictions and stipulations established by the Board and/or the general meeting of shareholders. Each Party shall direct the Chief Executive Officer to follow any decision or determination made by the Board and/or the general meeting of shareholders.

(b) The JVC shall have a chief financial officer, nominated by SPTL and approved and appointed by the Board. The chief financial officer of the JVC (the "***Chief Financial Officer***") shall report to the Chief Executive Officer. The Chief Financial Officer shall serve at the discretion of the Chief Executive Officer and shall have such specific powers, duties and responsibilities as are designated by the Board from time to time. In performing his duties, the Chief Financial Officer's authority and responsibilities shall include, but not be limited to, the following: (i) with the Chief Executive Officer, the preparation and submission to the Board of an annual Business Plan and Budget ; and (ii) with the Chief Executive Officer, keeping the Board fully informed of the activities and operations of the JVC through the preparation and submission of periodic reports, including the monthly and annual financial statements described in Section 11.1.

(c) The JVC shall have such other officers as a Required Board Majority may authorize by Board resolution. The powers, duties, responsibilities and terms of the office of all such other officers of the JVC shall be as defined by the relevant Board resolution authorizing such officer, and shall be appointed and serve at the pleasure of the Chief Executive Officer and the Board.

(d) The initial offices of the JVC, and the individuals serving as the initial officers of the JVC, will those mutually agreed upon in writing by the JVC and the Shareholders.

(e) The JVC shall have a Director of Internal Audit, nominated by mutual written agreement of both Shareholders and approved and appointed by the Board. Such Director of Internal Audit shall report directly to the Board, shall serve at the discretion of the Board and shall be responsible for the oversight of internal audit activities of the JVC.

8.3 Directors. Each Shareholder shall exercise its respective voting rights in the JVC and take such other steps as are necessary to ensure that:

(a) The authorized number of members of the Board shall be six (6).

(b) Of the members of the Board, three (3) members will be nominated by SPTL and three (3) members will be nominated by AUO.

(c) Each Shareholder shall vote its Shares of the JVC to secure that the Directors of the JVC nominated by the Shareholder(s) entitled to appoint the Director under this Agreement (the "***Appointing Party***") are elected, appointed, removed or replaced as the Appointing Party may from time to time require; provided, however, that if such removal or replacement is without cause, the Shareholder proposing the removal or replacement shall indemnify and hold the JVC and the other Shareholder harmless for any and all damages and other expenses that may arise from such action.

(d) The individuals serving as the initial Directors will those mutually agreed upon in writing by the JVC and the Shareholders.

(e) The Shareholders and the JVC shall promptly take all actions which may be reasonably necessary to carry out the terms of this Section 8.3, including executing a voting agreement consistent with the foregoing, voting their Shares, executing and delivering written consents of Shareholders, calling an extraordinary special shareholders meeting and executing any necessary amendments to the Organizational Documents.

8.4 Board Observation Rights. From and after the Closing, so long as a Shareholder continues to hold any Shares, the JVC shall permit one (1) representative of such Shareholder, designated from time to time by such Shareholder delivering written notice to the other Parties and the Board of the name of such representative, to attend all meetings of the Board during such period, and shall provide such representative (a "***Board Observer***") with such notice and other information with respect to such meetings as are delivered to the Directors during such period. Notwithstanding the foregoing, the JVC (i) may condition the right of any Board Observer to attend meetings of the Board and receive notice and other information with respect to such meetings on the execution of a confidentiality agreement reasonably acceptable to the JVC, and (ii) may prevent any Board Observer from attending a Board meeting (or portion thereof) or receiving certain information with respect thereto if the JVC believes, after consultation with

counsel, that it is necessary to do so to ensure preservation of the attorney-client privilege. Notwithstanding the foregoing, the initial Board Observers of the Shareholders will be will those mutually agreed upon in writing by the JVC and the Shareholders.

8.5 Indemnification of Directors. To the fullest extent permitted by applicable Law, the JVC shall indemnify and hold harmless each Director designated to the Board nominated by any Shareholder from all losses, liabilities, costs and expenses arising out of or relating to such Director's actions in connection with any action taken within their authority and in their capacity as a Director, except to the extent that such losses, liabilities, costs or expenses are caused by such Director's fraud, bad faith or willful misconduct, and except to the extent that such Director's actions comprised or caused breach of this Agreement by the Shareholder who nominated that Director. Upon the election of any individual as a Director, the JVC shall promptly deliver to such individual a Indemnification Agreement, in a form mutually agreed upon in writing by the JVC and the Shareholders, duly executed by the JVC.

8.6 Meetings of Board. Meetings of the Board shall be held at least once every quarter. Meetings of the Board may be called by the Chief Executive Officer or any Director.

8.7 Notice of Board Meetings. In convening a meeting of the Board, a written notice stating the agenda, date, time and place of such meeting shall be given by the Chief Executive Officer or the Director convening the meeting of the Board at least two (2) Business Days prior to the date set for such meeting to all the Directors. The above period may be shortened or omitted with the written consent of all the Directors prior to any such meeting. Unless a Required Board Majority waive such restriction, no matter may be voted upon at any Board meeting unless such matter is included in the agenda.

8.8 Quorum for Board Meetings. A quorum for a meeting of the Board shall be the presence of a majority of all Directors then in office. No meeting of the Board shall be validly convened or constituted unless a quorum is present at such meeting.

8.9 Resolutions of the Board. Unless otherwise provided by applicable Law, this Agreement or the Organizational Documents, all actions taken and resolutions adopted by the Board shall be (i) taken or adopted at a meeting of the Board by the affirmative vote of a majority of the Directors present at a meeting at which a quorum is present or (ii) taken or adopted by an action by unanimous written consent signed by all of the Directors. Without limiting the foregoing, with respect to any meeting of the Board, any Director may take part in the adoption of a resolution by means of a communication system of transmitting and receiving sounds simultaneously ("*Teleconferencing*") or a communication system transmitting and receiving visual images and sounds simultaneously ("***Video Conferencing***"), without the personal attendance of all or part of them at the meeting. Any Director may appear at a meeting of the Board by means of Teleconferencing or Video Conferencing. A Director appearing by Teleconferencing or Video Conferencing shall be deemed to have attended the meeting at which the Director has so appeared.

Matters Requiring Board Resolution by Agreement. In addition to any other approval required by this Agreement or the Organizational Documents, notwithstanding any provision to the contrary (other than the last sentence of this Section 8.10), except for the actions required or contemplated to be taken by one or more of the Parties under Section 2 and Section 6, the JVC shall not, and shall cause its subsidiaries (if any) not to, and each Shareholder shall neither authorize nor knowingly permit the JVC or any of its subsidiaries (if any) to, directly or indirectly, take any action in respect of any of the following matters (or incur any obligation,

commitment or promise with respect to any such items or matters) without the prior written approval or written consent of a Required Board Majority:

(a) creating any committee of the Board, establishing or altering the powers to be vested in any committee of the Board or the delegation or withdrawal of any power of the Board;

(b) appointing any Director to any committee of the Board;

(c) approving or amending any Business Plan or Budget;

(d) entering into, varying or waiving any right under any agreement between the JVC or any of its subsidiaries (if any) (on the one side) with any member of the Board, with any officer of the JVC or any of its subsidiaries (if any) or with any Person (other than any Shareholder) in which any member of the Board or an officer of the JVC or any of its subsidiaries (if any) has an equity interest other than as a passive 1% or less minority investor;

(e) entering into or amending any agreement with or commitment to any Shareholder or any Affiliate of any Shareholder, as well as any amendment, consent or waiver with respect to any such agreements or commitments; or allocating expenses of any Shareholder or its Affiliates charged to the JVC or any of its subsidiaries (if any), except as set forth in the then most recent Business Plan or Budget approved by a Required Board Majority;

(f) hiring, appointing, removing or dismissing, or entering into or amending any employment, consulting or independent contractor agreement with respect to, or fixing the compensation of (including bonuses), or granting any severance or termination pay to, any individual that is or would be an executive of the JVC or any of its subsidiaries (if any) or that would be a sales or marketing employee of the JVC or any of its subsidiaries (if any);

(g) except as may be required in an emergency situation endangering life or threatening serious injury or material physical damage, or except as contemplated as one or more of the reasons for any financing required by Section 5.1, making any single capital expenditure or series of related capital expenditures in any fiscal year in an aggregate amount exceeding $5,000,000 over the aggregate amount, if any, contemplated for such single capital expenditure or series of related capital expenditures in the capital expenditures budget for such fiscal year that is contained in the then most recent Budget approved by a Required Board Majority, provided that the amount of such excess, when combined with all other excess amounts under this Section 8.10(g) in such fiscal year, would not exceed $5,000,000;

(h) except as may be required in an emergency situation endangering life or threatening serious injury or material physical damage, or except as contemplated as one or more of the reasons for any financing required by Section 5.1, making any single operating expenditure or series of related operating expenditures in any fiscal year in an aggregate amount exceeding ten percent (10%) of the aggregate amount, if any, contemplated for such single operating expenditure or series of related operating expenditures in the operating expenditures budget for such fiscal year that is contained in the then most recent Budget approved by a Required Board Majority, provided that the amount of such excess, when combined with all other excess amounts under this

Section 8.10(h) in such fiscal year, would not exceed ten percent (10%) of the aggregate amount, if any, contemplated for all operating expenditure in the operating expenditures budget for such fiscal year that is contained in the then most recent Budget approved by a Required Board Majority;

(i) effecting any material, non-ordinary course business transaction or actions, except in each case as set forth in the then most recent Business Plan or Budget approved by a Required Board Majority, or entering into, amending or terminating any material contracts of the JVC or any of its subsidiaries (if any), or otherwise modifying or waiving any of the material terms of any of the material contracts of the JVC or any of its subsidiaries (if any);

(j) entering into, amending or terminating any transactions involving land, real property or buildings;

(k) changing any significant accounting principles or policies of the JVC or any of its subsidiaries (if any) or appointing, replacing, removing or compensating any financial auditors of the JVC or any of its subsidiaries (if any);

(l) instituting or settling any material legal or arbitration proceedings other than (i) routine debt collection, (ii) in such cases where the Board in good faith determines that failure to institute legal or arbitration proceedings would result in the material impairment of a valuable aspect of the business of the JVC or any of its subsidiaries (if any) (so long as the JVC or the applicable subsidiary, as applicable, notifies each Shareholder prior to the institution of such proceedings), or (iii) against any Shareholder for breach of any agreement to which the JVC and such Shareholder (or applicable Affiliate thereof) are parties, or indemnifying or advancing fees with respect to any legal claims;

(m) approving or granting of any equity incentives to employees or other service providers of the JVC or any of its subsidiaries (if any) within the guidelines under any equity incentive plan of the JVC approved by both Shareholders;

(n) creating any liens, security interests, adverse claims, restrictions and other encumbrances (other than those imposed pursuant to the terms of this Agreement or the Organizational Documents or in the ordinary course of business) upon or in respect of any property or assets of the JVC or any of its subsidiaries (if any), or, outside the ordinary course of business, making any loans or advances to any Person out of the funds of the JVC or any of its subsidiaries (if any), or making or furnishing any guarantee of the JVC or any of its subsidiaries (if any), in each case other than as expressly contemplated in the then most recent Business Plan or Budget approved by a Required Board Majority;

(o) making or declaring any Distribution, other than expressly contemplated by this Agreement;

(p) acquiring, through the purchase of securities or otherwise, another Person, or acquiring all or substantially all of the assets of another Person, in each case except as set forth in the then most recent Business Plan or Budget approved by a Required Board Majority;

(q) approving an acquisition (in one or a series of related transactions) of, or any investment (in one or a series of related transactions) in, assets or properties of any

Person (whether by acquiring shares or other equity securities, partnership interests or evidences of indebtedness of any Person, by contributing to the capital of any Person, by making a loan, advance or other extension of credit to any other Person), including approval of joint venture transactions, in each case except as set forth in the then most recent Business Plan or Budget approved by a Required Board Majority;

(r) forming, or disposing of, any subsidiary of the JVC or any of its subsidiaries (if any) or the investment/disinvestment by the JVC in any other Person;

(s) adopting or amending any pension, group compensation, profit sharing, phantom equity, bonus or other incentive or employee benefit plan;

(t) approving, amending or terminating any material policy of the JVC or any of its subsidiaries (if any); and

(u) incurring any obligation, commitment or promise with respect to any of the foregoing.

Notwithstanding anything to the contrary contained in this Agreement, (i) no Shareholder shall be entitled to exercise any right or power under this Agreement to prevent the JVC or any subsidiary of it from enforcing its rights under or taking any action against such Shareholder (or applicable Affiliate thereof) in relation to any matter arising under any contract to which the JVC and such Shareholder (or applicable Affiliate thereof) are parties or from defending itself in relation to any action taken against it by such Shareholder (or applicable Affiliate thereof) and (ii) no Party shall take any action that it is expressly prohibited from taking pursuant to this Agreement even if such Party would otherwise be permitted to exercise such right under applicable Law.

8.10 Minutes. Minutes of each meeting of the Board shall be signed by all of the Directors present at the meeting. Minutes of the meeting of the Board shall be prepared in English, and kept at the JVC's head office. Copies of the minutes shall be sent to each of the Directors as soon as practicable after each meeting of the Board.

8.11 No Compensation. The JVC shall not provide any remuneration, bonuses or severance pay to any of the Directors. Each Shareholder, and not the JVC, shall be responsible for reimbursing any expenses incurred by the Directors that such Shareholder nominated to be members of the Board.

8.12 Term. The term of office for each Director shall be for two (2) years (except that the first two (2) year term in connection with this Agreement shall end on December 31, 2012); it being understood that any Shareholder may re-appoint a Director for additional terms and that any Shareholder may remove and replace any of the Directors nominated by it at any time.

8.13 Right to Step-In. Notwithstanding anything to the contrary contained in this Agreement, if at any time, after July 1, 2013 or six (6) months after completion of installation of Fab 3, whichever is later, the JVC is then Materially Underperforming, then, subject to the provisions in this Section 8.14, upon the election of the Shareholder who does not then have the right to nominate the Chief Executive Officer, which election shall be exercisable by delivering written notice (a "***Step-In Notice***") to the other Parties of its election that the electing Shareholder shall have the right to nominate and replace any and all officers and other employees of the JVC and operate the JVC for one year, and the non-electing Shareholder shall take such actions as reasonably requested by the electing Shareholder to accomplish the

foregoing. For purposes of this Agreement, the term "***Materially Underperforming***" means the Cash Cost per watt of the Solar Cells manufactured by the JVC over *** consecutive quarters at Fab 3 is equal to or greater than *** of the then current Cash Cost per watt of ***. If one Shareholder delivers a Step-In Notice to the other Parties, then the other Shareholder shall have the right, exercisable by delivering written notice (a "***Step-In Objection Notice***") to the other Parties within five (5) Business Days thereafter, to object to the assertion that the JVC is then Materially Underperforming, prov ided that such objecting Shareholder specifies in such Step-In Objection Notice a good faith basis for such objection. If, within the five (5) Business Day time period set forth in the immediately preceding sentence, (i) any Shareholder fails to deliver a Step-In Objection Notice, then the JVC will be deemed for purposes of this Agreement to then be Materially Underperforming and the applicable Shareholder's exercise of the step-in rights in such instance shall be deemed to be valid and such Shareholder may proceed, without further objection from any Party, in the exercise of such step-in rights or (ii) any Shareholder delivers a Step-In Objection Notice, then the JVC shall, and the Shareholders shall cause the JVC to, promptly thereafter engage a single independent expert reasonably acceptable to both Shareholders, and otherwise cooperate with each other and such independent expert, to determine, as expeditiously as reasonably practicable, whether the JVC is then Materially Underperf orming, and the decision of such independent expert will be binding on the Parties in determining whether or not the applicable Shareholder's exercise of the step-in rights in such instance is valid and whether or not such Shareholder may proceed, without further objection from any Party, in the exercise of such step-in rights.

9. Restrictions on Transfers

9.1 Prohibited Transfers. No Shareholder may Transfer any Shares to any Person without the prior written consent of all Shareholders.

9.2 No Recognition of Prohibited Transfers. Any attempt by any Shareholder to Transfer any Shares in violation of any provision of this Agreement shall be null and void and shall not be binding on the JVC. The JVC will not (a) transfer on its books any Shares that has been sold, gifted or otherwise Transferred in violation of this Agreement or (b) treat as owner of such Shares, or accord the right to vote to, or pay dividends to, any purchaser, donee or other transferee to whom such Shares may have been so Transferred. In the case of a Transfer or attempted Transfer of Shares that is in contravention of the terms of this Agreement, the Shareholder engaging or attempting to engage in such Transf er shall be liable to indemnify and hold harmless the JVC and the other Shareholders in respect of all costs, liabilities and damages that any of such indemnified persons may incur (including attorneys' fees and expenses) as a result of such Transfer or attempted Transfer and efforts to enforce such indemnity. In addition, in the event that the transferring Shareholder does not retain voting power of the Shares Transferred as permitted pursuant to this Agreement, the voting power with respect to the Transferred Shares shall lapse with respect to such transferring Shareholder. For purposes of this Agreement, (i) references to a Shareholder's Shares shall be deemed to mean any Shares held by such Shareholder plus any Shares transferred in violation of this Section 9 and (ii) if such Shareholder is required to sell any of its Shares pursuant to this Agreement, then prior to such sale, such Shareholder shall repurchase any and all Shares transferred in violation of this Section 9 so that such Shareho lder, at the time of such sale, can sell all of its Shares free and clear of any and all liens, security interests, adverse claims, restrictions and other encumbrances, other than those imposed pursuant to the terms of this Agreement or the Organizational Documents.

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

9.3 Stop Transfer Instructions. Each Shareholder agrees, to ensure compliance with the restrictions referred to herein, that the JVC may issue appropriate "stop transfer" instructions with respect to any or all of the Shares.

10. Confidentiality.

10.1 Definitions. "***Confidential Information***" shall mean any information: (i) disclosed by one Party (the "***Disclosing Party***") to any other Party (the "***Receiving Party***"), which, if in written, graphic, machine-readable or other tangible form is marked as "Confidential" or "Proprietary", or which, if disclosed orally or by demonstration, is identified at the time of initial disclosure as confidential and reduced to writing and marked "Confidential" within thirty (30) days of such disclosure; or (ii) was disclosed pursuant to the Existing Confidentiality Agreement and constituted "Evaluation Material" thereunder; or (iii) which is otherwise referred to as Confidential Information under this Agreement or any other agreement to which the Disclosing Party and the JVC are parties.

10.2 Confidential Information and Exclusions. Notwithstanding Section 10.1 (Definitions) above, Confidential Information shall exclude information that: (i) was independently developed by the Receiving Party without using any of the Disclosing Party's Confidential Information; (ii) becomes known to the Receiving Party, without restriction, from a source other than the Disclosing Party that had a right to disclose it; (iii) was in the public domain at the time it was disclosed or becomes in the public domain through no act or omission of the Receiving Party; or (iv) was rightfully known to the Receiving Party, without restriction, at the time of disclosure.

10.3 Confidentiality Obligation. The Receiving Party shall treat as confidential all of the Disclosing Party's Confidential Information, shall not use such Confidential Information except as expressly permitted under this Agreement or any other agreement to which the Disclosing Party and the JVC are parties or in connection with the JVC's activities, and shall not disclose any such Confidential Information to any person (other than the Receiving Party's employees, officers and directors who need to know such Confidential Information for the Receiving Party to perform as expected under this Agreement or any other agreement to which the Disclosing party and the JVC are parties or in connect ion with the JVC's activities). Without limiting the foregoing, the Receiving Party shall use at least the same degree of care that it uses to prevent the disclosure of its own confidential information of like importance, but in no event with less than reasonable care, to prevent the disclosure of the Disclosing Party's Confidential Information, subject to Section 10.4.

10.4 Legal Disclosure. Notwithstanding anything herein to the contrary, a Receiving Party has the right to disclose Confidential Information without the prior written consent of the Disclosing Party: (i) as required by any court or other Governmental Authority, or by any stock exchange the shares of any Party are listed on; (ii) as otherwise required by applicable Law, or (iii) as advisable or required in connection with any government or regulatory filings, including filings with any regulating authorities covering the relevant financial markets. If a Receiving Party believes that it will be compelled by a court or other authority to disclose Confidential Information of the Disclosing Party, it shall give the Disclosing Party prompt written notice so that the Disclosing Party may take steps to oppose such disclosure.

10.5 Remedies. If a Receiving Party breaches any of its obligations under this Section 10.5, the Disclosing Party shall be entitled to seek equitable relief to protect its interest therein, including injunctive relief, as well as money damages.

10.6 General Knowledge. The Receiving Party shall have no obligation to limit or restrict the assignment of its employees or consultants as a result of their having had access to the Disclosing Party's Confidential Information. The restrictions regarding Confidential Information shall not be construed to limit any Party's right to independently develop or acquire products, processes or concepts without use of the Disclosing Party's Confidential Information, even if similar. Furthermore, notwithstanding the restrictions regarding Confidential Information, the Receiving Party shall be free to use for any purpose the General Knowledge resulting from access to work with or exposure to the Dis closing Party's Confidential Information, provided that the Receiving Party shall maintain the confidentiality of the Confidential Information as provided herein. The term "***General Knowledge***" means information in non-tangible form which may be retained by persons who have had access to Disclosing Party's Confidential Information, including ideas, concepts, know-how or techniques contained therein.

10.7 Compliance by Directors, etc. The Parties shall take all necessary steps to ensure that their directors, officers, employees, agents, advisors and subcontractors will comply in all respects with this Section 10.

10.8 Survival. The obligations undertaken by the Parties pursuant to this Section 10 shall survive termination of this Agreement and shall remain in effect and be binding on the Parties until ten (10) years after any termination of this Agreement; provided, however, that the obligations under this Section 10 shall continue in full force and effect with respect to each Trade Secret included among the Confidential Information of the disclosing Party until such time as it is no longer susceptible to being kept a Trade Secret.

11. Accounting, Tax and Financial Matters

11.1 Financial and Other Information. The JVC shall appoint an internationally well-known accounting firm to perform the accounting services for the JVC. The JVC shall, at the JVC's expense, prepare its financial reports in accordance with Malaysia GAAP and provide routine reports to the Shareholders as reasonably requested by them in formats they may reasonably specify. The Shareholders may also request the JVC to prepare and provide in a timely manner, at the JVC's expense, financial statements, audit reports and any other documents reasonably required for consolidated accounting or to satisfy any mandatory disclosure requirement, and the contents and formats of those do cuments shall be determined in each case through consultation between the JVC and the requesting Shareholder. The audited financial statements of the JVC shall be final and binding on the Parties as to the revenue, costs, fees, expenses, losses and profits of the JVC, in the absence of manifest error or fraud. The starting balance for the JVC's third fiscal quarter of 2010 will be SPTL' then existing financial statements for the JVC, which will reflect that interest in Construction in Progress (CIP) has been capitalized in the JVC financials.

11.2 Basic Financial Inspection Rights. During the regular office hours of the JVC, and upon twenty-four (24) hours' notice to the JVC, each Shareholder shall have (i) full access to all properties, books of account and records of the JVC, and (ii) the right to make copies from such books and records at their own expense. In addition, each Party shall have the right to inspection to the fullest extent permitted under applicable Law.

11.3 Business Plan and Budget. Not later than two (2) months prior to the end of each fiscal year of the JVC (other than fiscal year 2010), the Chief Executive Officer or Chief Financial Officer shall prepare and recommend to the Shareholders (i) a Business Plan covering the next succeeding five JVC fiscal years, with the first two years of the Business Plan prepared on a quarterly basis, and (ii) a Budget covering the next succeeding two JVC fiscal years. The Shareholders shall review each proposed Business Plan and Budget in a reasonable and expeditious manner. In the event that both Shareholders are unable to agree on any Business Plan and Budget prior to December 1 of the fiscal year in which such Busi ness Plan and Budget were submitted or required to be submitted, or such later date as both Shareholders may designate, either Shareholder may deliver a written notice to the Shareholders' respective chief executive officers (or their designees with binding authority to act on behalf of the applicable Shareholder, it being agreed that the Shareholders will attempt in good faith to involve directly their respective chief executive officers) for their review and resolution in such manner as they deem necessary or appropriate. Such resolution, if any, must occur prior to December 31 of the fiscal year in which such Business Plan and Budget were submitted or required to be submitted, or such later date as both Shareholders may designate. If the matter is resolved by the chief executive officers, the Shareholders shall, and shall cause the Directors solely nominated by them to, vote and/or take all other reasonable actions which may be necessary to cause the JVC to act in accordance with such resolution. If such matter is not resolved within such time period, the second year of the Business Plan and Budget last approved by a Required Board Majority shall become the default Business Plan and Budget for the next fiscal year.

11.4 Fiscal Year. If any Shareholder consolidates its interest in the JVC for accounting purposes, then, while such Shareholder continues to consolidate its interest in the JVC for accounting purposes, the fiscal year of the JVC shall match the fiscal year of such Shareholder. If neither Shareholder consolidates its interest in the JVC for accounting purposes, then the Parties shall discuss in good faith how to meet the reporting requirements of both Shareholders and agree upon the fiscal year of the JVC.

11.5 Tax Returns.

(a) SPTL shall prepare and timely file, or cause to be prepared and timely filed, on behalf of the JVC, all Tax Returns of the JVC that are due with respect to any Pre-Closing Tax Period that is not part of a Straddle Period. SPTL shall have authority to determine the manner in which any items of income, gain, deduction, loss or credit arising out of the income, properties and operations of the JVC shall be reported or disclosed in such Tax Returns; provided that such Tax Returns shall be prepared by treating items on such Tax Returns in a manner consistent with past practice with respect to such items, unless otherwise required by applicable Law. The JVC shall cause an appropria te, authorized person to sign such Tax Returns on behalf of the JVC. SPTL shall pay or cause to be paid all Taxes imposed on the JVC shown as due and owing on such Tax Returns.

(b) SPTL shall prepare and timely file, or cause to be prepared and timely filed, on behalf of the JVC, all Tax Returns of the JVC that are due with respect to a Straddle Period; provided that such Tax Returns shall be prepared by treating items on such Tax Returns in a manner consistent with past practice, unless otherwise required by applicable Law. The JVC shall cause an appropriate, authorized person to sign such Tax Returns on behalf of the JVC. SPTL shall pay or cause to be paid all Taxes attributable to the Pre-Closing Straddle Period imposed on the JVC shown as due and owing on

such Tax Returns, and the JVC shall pay or cause to be paid all Taxes attributable to the Post-Closing Straddle Period imposed on the JVC shown as due and owing on such Tax Returns.

(c) The JVC shall prepare and timely file, or cause to be prepared and timely filed, all Tax Returns of the JVC other than those described in Section 11.5(a) or Section 11.5(b); provided that such Tax Returns shall be prepared by treating items on such Tax Returns in a manner consistent with past practice, unless otherwise required by applicable Law. The JVC shall pay or cause to be paid all Taxes imposed on the JVC shown as due and owing on such Tax Returns.

(d) The JVC shall use commercially reasonable efforts to cause any such Tax Returns contemplated in Section 11.5(c) to be submitted to the Shareholders for their review at least ten (10) days prior to its due date (including extensions) unless otherwise agreed to by the Shareholders.

(e) The JVC shall cause to be provided to the Shareholders information concerning their respective Taxable income or loss, and each class of income, gain, loss, deduction or credit which is relevant to reporting their respective share of JVC income, gain, loss, deduction or credit, for purposes of any required Tax Returns. Information required for the preparation of each Shareholder's Tax Returns shall be furnished to each Shareholder, as the case may be, as soon as possible after the close of the JVC's fiscal year and, in any event, no later than the date on which the income Tax Return for such fiscal year is submitted to the Shareholders for review pursuant to Section 11.5(d).

11.6 Apportionment of Taxes. For purposes of this Agreement, all Taxes and Tax liabilities with respect to the income, property, employees or operations of the JVC, as the case may be, that relate to a taxable period that begins before and ends after the Closing Date (a "***Straddle Period***") shall be apportioned between the period of the Straddle Period that extends before the Closing Date through the day before the Closing Date (the "***Pre-Closing Straddle Period***") and the period of the Straddle Period that extends from the Closing Date to the end of the Straddle Period (the "***Post-Closing Straddle Period***") in accordance with this Section 11.6. The portion of such Tax related to the Pre-Closing Straddle Period shall: (a) in the case of Taxes other than sales and use taxes, value-added taxes, employment and payroll taxes and any Tax based on or measured by income, receipts or profits earned during a Straddle Period, be deemed to be the amount of such Tax for the entire taxable period multiplied by a fraction, the numerator of which is the number of days in the Pre-Closing Straddle Period and the denominator of which is the number of days in the entire Straddle Period and (b) in the case of any sales or use taxes, value-added taxes, employment and payroll taxes and any Tax based on or measured by income, receipts or profits earned during a Straddle Period, be deemed equal to the amount which would be payable if the relevant taxable period or Tax year in whi ch the income, receipts or profits were earned ended on and included the Closing Date. To the extent any income Tax is based on the greater of a Tax on net income, on the one hand, and a Tax measured by net worth or some other basis not otherwise measured by income, on the other, the portion of such Tax related to the Pre-Closing Straddle Period shall be deemed to be the greater of (i) the amount of such Tax measured by net worth or other basis determined as though the taxable values for the entire Straddle Period equal the respective values as of the end of the day on the Closing Date and multiplying the amount of such Tax by a fraction the numerator of which is the number of days during the Straddle Period that are in the Pre-Closing Straddle Period and denominator of which is the number of days in the Straddle Period or (ii) the amount of such Tax measured by net

income determined as though the applicable Tax period terminated as of the end of the day on the Closing Date. The portion of Tax related to the Post-Closing Straddle Period shall be calculated in a corresponding manner.

11.7 Cooperation; Audits. In connection with the preparation of Tax Returns, audit examinations, and any administrative or judicial proceedings relating to the Tax liabilities imposed on the JVC for all Pre-Closing Tax Periods, SPTL, on the one hand, and the JVC, on the other hand, shall cooperate fully with each other, including the furnishing or making available during normal business hours of records, personnel (as reasonably required), books of account, powers of attorney or other materials necessary or helpful for the preparation of such Tax Returns, the conduct of audit examinations or the defense of claims by Taxing Authorities as to the imposition of Taxes.

11.8 Controversies. The JVC shall promptly notify SPTL in writing upon receipt by the JVC of written notice of any inquiries, claims, assessments, audits or similar events with respect to Taxes relating to a Pre-Closing Tax Period for which SPTL may be liable under this Agreement (any such inquiry, claim, assessment, audit or similar event, a "***Tax Matter***"). SPTL, at the sole expense of SPTL, shall have the authority to represent the interests of the JVC with respect to any Tax Matter before any Governmental Authority and shall have the right to extend or waive the statute of limitations with respect to a Tax Matter and to control the defense, compromise or other resolution of any Tax Matter, including responding to inquiries and settling audits; provided, however, that SPTL shall not enter into any settlement of or otherwise compromise any Tax Matter that affects or may affect the Tax liability of the JVC for any Post-Closing Tax Period, including the portion of a period beginning before the Closing Date and ending after the Closing Date, without the prior written consent of AUO (which consent shall not be unreasonably withheld). SPTL shall keep AUO fully and timely informed with respect to the commencement, status and nature of any Tax Matter. SPTL shall, in good faith, consult with AUO regarding the conduct of or positions taken in any such proceeding that relates to any Post-Closing Tax Period or Post-Closing Straddle Period.

11.9 Other Tax Matters. The JVC has elected to be treated as a disregarded entity for United States federal income tax purposes, and following the issuance of any Shares to AUO will be treated as a partnership for such purposes. The JVC shall not, and each Shareholder shall neither authorize nor knowingly permit the JVC to, change such election without the prior written consent of both Shareholders. For United States federal income tax purposes, the JVC shall determine and allocate items of income, gain, loss, deduction, and credit to SPTL in accordance with United States Treasury Regulations section 1.704-1(b)(2)(ii)(i).

11.10 Insurance. The JVC shall obtain from and/or maintain with, as applicable, responsible and reputable insurance companies or associations, insurance in such amounts and covering such risks as the Board reasonably deems advisable. To the extent permitted by applicable Law, the JVC shall use its reasonable best efforts to obtain and maintain on reasonable business terms directors and officers' liability insurance in an amount requested by the Board, so long as such insurance may be obtained and maintained on commercially reasonable terms as determined by the Board.

11.11 Shareholder Services to the JVC. At the written request of any Party from time to time, the Parties shall cooperate with each other in identifying whether there are any services that the Parties mutually determine would be better provided by a Shareholder (or any of its controlled Affiliates) rather than by the JVC itself. If and to the extent the Parties mutually agree

on any such services and the terms and conditions of the provision of such services, the Parties shall cooperate with each other in memorializing such mutual agreement in writing. The Parties will agree in writing to a form that could be used from time to time for any such written agreement.

12. Deadlock

12.1 Determination of Deadlock. In the event (i) (A) SPTL and AUO, or Directors constituting a Required Board Majority, are unable after discussions with each other to resolve any matter, which if not resolved, would, in the good faith judgment of any Shareholder or any Director, as the case may be, substantially impair the JVC's ability to operate in accordance with the then most recent Business Plan approved by a Required Board Majority or would reasonably be likely to result in any event, effect or circumstance that would be materially adverse to the business, financial condition or results of operations of the JVC and its subsidiaries (if any) taken as a whole and (B) the JVC is not then in mater ial breach of any of the covenants contained in this Agreement with respect to such matter or (ii) if the Shareholders and their Affiliates do not purchase greater than *** percent (***%) of the total number of Solar Cells that the JVC and its subsidiaries (if any) are capable of manufacturing during any fiscal quarter and the Shareholders also do not purchase greater than *** percent (***%) of the total number of Solar Cells that the JVC and its subsidiaries (if any) are capable of manufacturing during the next fiscal quarter following thereafter, then, in either such case, any Shareholder may deliver a written notice to the Shareholders' respective chief executive officers (or their designees with binding authority to act on behalf of the applicable Shareholder, it being agreed that the Shareholders will attempt in good faith to involve directly their respective chief executive officers) for their review and resolution in such manner as they deem necessary or appropriate. Such resolution, if any, mus t occur within forty-five (45) days following the written submission to them of the matter. If the matter is resolved by the chief executive officers, the Shareholders shall, and shall cause the Directors solely nominated by them to, vote and/or take all other reasonable actions which may be necessary to cause the JVC to act in accordance with such resolution. If such matter is not resolved within such time period, each of AUO and SPTL shall be free to give the other a written notice (the "***Deadlock Notice***") specifying that such notice is a Deadlock Notice for purposes of this Section 12 and specifying that the notifying party desires to trigger the remedies contemplated by this Section 12. A Deadlock Notice must be given, if at all, within twenty (20) Business Days following the end of the forty five (45) day period referred to above.

12.2 Requirement to Make Decision. If a Deadlock Notice is given by at least one of the Shareholders in accordance with Section 12.1, each Shareholder may, not later than the 15th day following the giving of the Deadlock Notice, give written notice (a "***Deadlock Decision Notice***") to the other Shareholder specifying that such notice is a Deadlock Decision Notice for purposes of this Section 12 and specifying that the notifying Shareholder desires unconditionally either to:

(a) sell all of its Shares or liquidate the JVC (and whether it exercises its right to reduce all or any portion of its (or applicable Affiliate thereof) allocated supply pursuant to and in accordance with the applicable supply agreement to which it (or applicable Affiliate thereof) and the JVC are parties); or

(b) purchase all of the Shares of the other Shareholder.

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If, within the time period set forth in the immediately preceding sentence, any Shareholder fails to deliver a Deadlock Decision Notice to the other Shareholder, then any such Shareholder who failed to deliver a Deadlock Decision Notice shall be deemed for purposes of this Section 12 to (i) desire to sell all of its Shares or liquidate the JVC and (ii) not have elected to reduce all or any portion of its allocated supply pursuant to and in accordance with the applicable supply agreement to which it (or applicable Affiliate thereof) and the JVC are parties. For the avoidance of doubt, the Parties acknowledge and agree that if, within the time period set forth in the first sentence of this Section 12.2, both Shareholders fail to deliver a Deadlock Decision Notice to each other, then both Shareholders shall be deemed for purposes of this Section 12 to desire to sell all of its Shares or liquidate the JVC.

12.3 Both Desire to Sell or Liquidate. If (i) a Deadlock Notice has been given pursuant to Section 12.1 and (ii) each Shareholder desires (as set forth in its Deadlock Decision Notice) or is deemed to desire (pursuant to Section 12.2) to sell all of its Shares or liquidate the JVC, then the following provisions shall be operative:

(a) The Shareholders shall promptly thereafter use all reasonable efforts to cause the JVC to be dissolved and liquidated and to distribute the proceeds of such dissolution or liquidation as soon as reasonably practicable (but in an orderly and businesslike manner so as not to involve undue sacrifice) and shall cooperate in good faith with each other for such purpose. Without limiting the foregoing, subject to the approval Section 7.4, the JVC shall appoint a liquidator, who shall be independent of the JVC and the Shareholders, to oversee and lead the dissolution and liquidation of the JVC and the distribution of the proceeds of such dissolution in a timely manner.

(b) Subject to applicable Law, the Shareholders agree that the proceeds of such dissolution or liquidation shall be distributed to the Shareholders as follows and in the following order of priority: (i) first, repay all debts and liabilities of the JVC, including the fee to the independent liquidator and any other preferential claims arised in connection with the liquidation, (ii) second, repay, on a pro rata basis based upon the number of Shares then held by the Shareholders, all financial contributions and expenses incurred by the Shareholders, less any profits received by them, with respect to the JVC, and (iii) third, distribute, on a pro rata basis based upon the number of Shares then held by the Shareholders, all remaining proceeds, if any, to the Shareholders. At any Shareholder 217;s election, delivered in writing to the other Shareholder no later than five (5) Business Days after the giving of the Deadlock Notice, the Shareholders shall (A) work in good faith to agree upon an Independent Financial Expert (and if the Shareholders are not able to agree upon an Independent Financial Expert within five (5) days, each Shareholder shall appoint an Independent Financial Expert as a representative and cause it to jointly, together with such other representatives, select the single "Independent Financial Expert" hereunder) and (B) engage such selected Independent Financial Expert to determine the proper amounts due to each Shareholder pursuant to this Section 12. The fees and expenses of the Independent Financial Expert shall be borne equally by the Shareholders.

12.4 One Desires to Sell or Liquidate; One Desires to Purchase. If (i) a Deadlock Notice has been given pursuant to Section 12.1, (ii) one Shareholder (the "***Deadlock Selling Shareholder***") desires (as set forth in its Deadlock Decision Notice) or is deemed to desire (pursuant to Section 12.2) to sell all of its Shares or liquidate the JVC, and (iii) the other Shareholder (the "***Deadlock Purchasing Shareholder***") desires (as set forth in its Deadlock

Decision Notice) to purchase all of the Shares of the Deadlock Selling Shareholder, then the following provisions shall be operative:

(a) If the Deadlock Selling Shareholder has, in its Deadlock Decision Notice, elected to exercises its right to reduce all or any portion of its allocated supply pursuant to and in accordance with the terms of the supply agreement to which it (or applicable Affiliate thereof) and the JVC are parties, then as soon as practicable after the date that such Deadlock Decision Notice has been given pursuant to Section 12.2, the JVC and the Deadlock Purchasing Shareholder shall take such actions as are reasonably necessary to promptly provide that the allocation and associated obligations of the Deadlock Selling Shareholder (or applicable Affiliate thereof) under such supply agreement are so reduced pursuant to and in accordance with the terms of such supply agreement. In addition, if the Deadlock Selling Shareholder is AUO, then (i) SPTL shall have the right, exercisable by delivering written notice to AUO within ten (10) Business Days after the date of AUO' Deadlock Notice, to (A) reduce all or any portion of the allocated supply of AUO (or applicable Affiliate thereof), pursuant to and in accordance with the terms of the AUO Supply Agreement and (B) increase the allocated supply of SPTL (or applicable Affiliate thereof) by the amount which the allocated supply of AUO (or applicable Affiliate thereof) was so reduced, pursuant to and in accordance with the terms of the SPTL Supply Agreement, and (ii) if SPTL so exercises such right described in clause (i) of this sentence, then as soon as practicable thereafter, the Parties shall take such actions as are reasonably necessary to promptly provide that the allocation and associated obligations of AUO (or applicable Affiliate thereof) under the AUO Supply Agreement are so reduced, and that the allocation and associated obligations of S PTL (or applicable Affiliate thereof) under the SPTL Supply Agreement are so increased, in each case pursuant to and in accordance with the terms of such supply agreements; provided, however, that if the total amount of such reduction exceeds *** percent (***%) of the total percentage of the aggregate Solar Cell manufacturing capacity of the JVC and its subsidiaries (if any), then, in accordance with the applicable supply agreements, such reduction (and such corresponding increase to SPTL or applicable Affiliate thereof) shall be implemented over time at a rate per fiscal quarter equal to the lesser of (i) *** percent (***%) of the total percentage of the aggregate Solar Cell manufacturing capacity of the JVC and its subsidiaries (if any) or (ii) the total amount of such reduction then left remaining to be implemented.

(b) The Shareholders shall promptly (A) work in good faith to agree upon an Independent Financial Expert (and if the Shareholders are not able to agree upon an Independent Financial Expert within five (5) days, each Shareholder shall appoint an Independent Financial Expert as a representative and cause it to jointly, together with such other representatives, select the single "Independent Financial Expert" hereunder) and (B) engage such selected Independent Financial Expert to determine the Fair Market Value of the Deadlock Selling Shareholder's Shares. The fees and expenses of the Independent Financial Expert shall be borne equally by the Shareholders.

(c) The purchase and sale of the Deadlock Selling Shareholder's Shares shall be consummated as soon as practicable following such determination of Fair Market Value by the Independent Financial Expert, but in no event more than thirty (30) days thereafter (subject to any extension necessary to comply with any applicable governmental and/or regulatory requirement). Subject to the immediately preceding sentence, the date, time and location for the closing of the purchase and sale shall be mutually agreed upon by the Shareholders; provided, however, that if an agreement cannot be reached by the Shareholders within five (5) Business

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Days after such determinations are made by the Independent Financial Expert, then such closing shall take place at 10:00 a.m. (local time) at the principal office in Malaysia of the JVC's outside accounting firm referred to in Section 11.1, on the 15th Business Day following the date such determinations are made by the Independent Financial Expert (or, if later, the fifth Business Day following the expiration of any such extension necessary to comply with any applicable governmental and/or regulatory requirement).

(d) At such closing, the Deadlock Selling Shareholder shall sell, and the Deadlock Purchasing Shareholder shall purchase, the Deadlock Selling Shareholder's Shares. The Deadlock Selling Shareholder's Shares, including all evidences of ownership (including stock certificates endorsed in blank), shall be conveyed by the Deadlock Selling Shareholder to the Deadlock Purchasing Shareholder at such closing, free and clear of any and all liens, security interests, adverse claims, restrictions and other encumbrances, other than those imposed pursuant to the terms of this Agreement or the Organizational Documents. The Parties acknowledge and agree that the only representations and warranties made by the Deadlock Selling Shareholder with respect to such Deadlock Selling Shareholder 7;s Shares will be the matters set forth in the preceding sentence and the Deadlock Selling Shareholder's ownership of the Deadlock Selling Shareholder's Shares.

(e) The purchase price of the Deadlock Selling Shareholder's Shares shall be *** of the Deadlock Selling Shareholder's Shares as determined by the Independent Financial Expert. The purchase price shall, subject to all applicable government restrictions and regulations, be paid by the Deadlock Purchasing Shareholder at such closing by wire transfer of immediately available funds in a single payment to an account designated in writing and delivered by the Deadlock Selling Shareholder to the Deadlock Purchasing Shareholder no later than five (5) Business Days prior to the date of such closing.

(f) If such closing occurs at least five (5) years after the date of this Agreement, then (i) the Deadlock Purchasing Shareholder shall use its reasonable best efforts to assume any and all obligations of the Deadlock Selling Shareholder to the JVC under any guarantees that were made by the Deadlock Selling Shareholder to the JVC prior to the date of the Deadlock Notice and (ii) the Parties shall cooperate with each other, and take such actions as are reasonably necessary and requested by any Party to accomplish the foregoing.

(g) Upon the occurrence of such closing, if the Deadlock Selling Shareholder is SPTL, then the following additional provisions shall be operative:

(i) If the total percentage of the aggregate Solar Cell manufacturing capacity of the JVC and its subsidiaries (if any) that is required to be offered to SPTL (or applicable Affiliate thereof) under the SPTL Supply Agreement, as of such closing but after giving effect to the completion of any reductions in the allocated supply under the SPTL Supply Agreement due to Section 12.4(a) (ignoring for this purpose the proviso at the end of the last sentence of Section 12.4(a), such that it is assumed that the full amount of such reduction may be made immediately) (such total percentage being referred to the "***Post-Deadlock SPTL Allocated Supply Percentage***"), is at least *** percent (***%), then none of the provisions contained in this Section 12.4(g) shall have any force or effect.

(ii) If the Post-Deadlock SPTL Allocated Supply Percentage is less than *** percent (***%), then, from and after such closing and notwithstanding the provisions of Section 17.1(a), (A) the definition of "Non-Permitted Countries" shall automatically be amended

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to mean, and references to such term shall mean, the United States and (B) the definition of "Permitted Countries" shall automatically be amended to mean, and references to such term shall mean, any country other than the United States.

(iii) If the Post-Deadlock SPTL Allocated Supply Percentage is less than *** percent (***%), then, in addition to the provisions contained in clause (ii) of this Section 12.4(g) being binding on the Parties, the Parties shall cooperate with each other, and take such actions as are reasonably necessary and requested by any Party, to promptly terminate the *** Arrangement.

12.5 Both Desire to Purchase. If (i) a Deadlock Notice has been given pursuant to Section 12.1 and (ii) both Shareholders desire (as set forth in their respective Deadlock Decision Notices) to purchase all of the Shares of the other, then (A) the JVC will not be liquidated, (B) no Shareholder will have the right to purchase the other Shareholders' Shares with respect to such Deadlock Notice, and (C) no Shareholder may deliver any written notice pursuant to Section 12.1 until one (1) year after the date of the delivery of such Deadlock Notice.

13. Events of Default

13.1 Definitions.

(a) For purposes of this Agreement, the following shall each constitute an "***Event of Default***":

(i) a material breach by AUO (or applicable Affiliate thereof) of any of the covenants contained in Sections 5, 7, 8, 9, 10, 11, 12, 17 and 18 of this Agreement, Sections 2.1, 3.1(b)(ii) and 3.2(b) of the License and Technology Transfer Agreement, Sections 2, 4, 5, 7 and 8 of the AUO Supply Agreement or Sections 1.1, 2.1 and 2.2 of the IP Services Agreement, which breach has not been cured within thirty (30) Business Days of AUO receiving notice of such breach, if SPTL shall so elect in a writing delivered to AUO (which shall be deemed to be the "Defaulting Shareholder" for purposes of this Section 13) and the JVC within thirty (30) Business Days thereafter;

(ii) a material misstatement by AUO (or applicable Affiliate thereof) contained in or made pursuant to this Agreement, the License and Technology Transfer Agreement or the AUO Supply Agreement, which misstatements have not been cured within thirty (30) Business Days of AUO receiving notice of such misstatement, if SPTL shall so elect in a writing delivered to AUO (which shall be deemed to be the "Defaulting Shareholder" for purposes of this Section 13) and the JVC within thirty (30) Business Days thereafter;

(iii) material breach by SPTL (or applicable Affiliate thereof) of any of the covenants contained in Sections 5, 7, 8, 9, 10, 11, 12, 17 and 18 of this Agreement, Sections 2.2, 3.1(a)(i) and 3.3(b) of the License and Technology Transfer Agreement, Sections 2, 4, 5, 7 and 8 of the SPTL Supply Agreement or Sections 1.1, 2.1 and 2.2 of the IP Services Agreement, which breach has not been cured within thirty (30) Business Days of SPTL receiving notice of such breach, if AUO shall so elect in a writing delivered to SPTL (which shall be deemed to be the "Defaulting Shareholder" for purposes of this Section 13) and the JVC within thirty (30) Business Days thereafter;

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(iv) a material misstatement by SPTL (or applicable Affiliate thereof) contained in or made pursuant to this Agreement, the License and Technology Transfer Agreement or the SPTL Supply Agreement, which misstatement has not been cured within thirty (30) Business Days of SPTL receiving notice of such misstatement, if AUO shall so elect in a writing delivered to SPTL (which shall be deemed to be the "Defaulting Shareholder" for purposes of this Section 13) and the JVC within thirty (30) Business Days thereafter;

(v) a material breach by the JVC of any of the covenants contained in Sections 5, 7, 8, 9, 10, 11, 12, 17 and 18 of this Agreement, Sections 2.1-2.3, 3.2(a), 3.3(a), and 3.4-3.7 of the License and Technology Transfer Agreement, Sections 1, 2, 3, 4, 5, 6, 7, 8 and 11 of the AUO Supply Agreement, Sections 1, 2, 3, 4, 5, 6, 7, 8 and 11 of the SPTL Supply Agreement or Sections 1.1 and 2.2 of the IP Services Agreement, and there is a Complicit Shareholder with respect to such material breach, if the other Shareholder (so long as it is not a Complicit Shareholder with respect to such material breach) shall so elect in a writing delivered to such Complicit Shareholder (which shall be deemed to be the "Defaulting Shareholder" for purposes of this Section 13) an d the JVC within thirty (30) Business Days thereafter; provided, however, that with respect to any such material breach by the JVC, upon the written request of the other Shareholder that is not such Complicit Shareholder, the Complicit Shareholder shall cause a Board meeting to be called as soon as reasonably practicable (and in any event within five (5) days thereafter) for the Board to cause the JVC to cure such breach, and such breach by the JVC shall not be an Event of Default hereunder if (and only if) a Required Board Majority agree on a method of cure of such breach by the JVC and the JVC does so cure such breach as prescribed by such Required Board Majority within the time period allotted to the JVC by such Required Board Majority; it being understood and agreed that, if such meeting does not occur within such five (5) day period or if less than a Required Board Majority d o not so agree on a method of cure and/or the JVC does not so cure such breach within the period prescribed by such Required Board Majority, then, from and thereafter, such breach by the JVC shall in fact constitute an Event of Default hereunder;

(vi) a material breach by the JVC of any of the covenants contained in Sections 5, 7, 8, 9, 10, 11, 12, 17 and 18 of this Agreement, Sections 2.1-2.3, 3.2(a), 3.3(a), and 3.4-3.7 of the License and Technology Transfer Agreement, Sections 1, 2, 3, 4, 5, 6, 7, 8 and 11 of the AUO Supply Agreement, Sections 1, 2, 3, 4, 5, 6, 7, 8 and 11 of the SPTL Supply Agreement or Sections 1.1 and 2.2 of the IP Services Agreement, and there is not any Complicit Shareholder with respect to such material breach, if any Shareholder shall so elect in a writing delivered to the other Shareholder (which shall be deemed to be the "Defaulting Shareholder" for purposes of this Section 13) and the JVC within thirty (30) Business Days thereafter; provided, however, that with respect to any such material breach by the JVC, upon the written request of any Shareholder, the other Shareholder shall cause a Board meeting to be called as soon as reasonably practicable (and in any event within five (5) days thereafter) for the Board to cause the JVC to cure such breach, and such breach by the JVC shall not be an Event of Default hereunder if (and only if) a Required Board Majority agree on a

method of cure of such breach by the JVC and the JVC does so cure such breach as prescribed by such Required Board Majority within the time period allotted to the JVC by such Required Board Majority; it being understood and agreed that, if such meeting does not occur within such five (5) day period or if less than a Required Board Majority do not so agree on a method of cure and/or the JVC does not so cure such breach within the period prescribed by such Required Board Majority, then, from and thereafter, such breach by the JVC shall in fact constitute an Event of Default hereunder;

(vii) a material misstatement by the JVC contained in or made pursuant to the AUO Subscription Agreement, which misstatement has not been cured within thirty (30) Business Days of SPTL receiving notice of such misstatement, if AUO shall so elect in a writing delivered to SPTL (which shall be deemed to be the "Defaulting Shareholder" for purposes of this Section 13) and the JVC within thirty (30) Business Days thereafter;

(viii) a change of control (whether by means of a merger, consolidation, purchase of substantially all the stock or assets, reorganization or similar transaction or series of transactions) of any Shareholder (other than a change of control of such Shareholder involving only one or more controlled Affiliates of such Shareholder), if any other Shareholder shall so elect in a writing delivered to the other Shareholder (which shall be deemed to be the "Defaulting Shareholder" for purposes of this Section 13) and the JVC within thirty (30) Business Days thereafter; and

(ix) a Bankruptcy Event shall have occurred with respect to any Shareholder or a receiver is appointed for all of any Shareholder's property and assets or any Shareholder makes a general assignment for the benefit of creditors, or any Shareholder becomes a debtor in a case under any applicable statute relating to bankruptcy or becomes the subject of any other bankruptcy or similar proceeding for the general adjustment of its debts (and in the case of an involuntary proceeding filed against such Shareholder, such proceeding is not discharged or dismissed within sixty (60) days), in each case if the other Shareholder shall so elect in a writing delivered to the other Shareholder (which shall be deemed to be the "Defaulting Shareholder" for purposes of this Section 13) and the JVC within thirty (30) Business Days thereafter.

(b) For purposes of this Section 13, the Shareholder electing the Event of Default and delivering notice of such election to the other Parties shall sometimes be referred to hereinafter as the "***Electing Shareholder***" and the other Shareholder shall sometimes be referred to hereinafter as the "***Defaulting Shareholder***" as specified above.

13.2 Event of Default Notice. Upon the occurrence of an Event of Default, the Electing Shareholder shall give the Defaulting Shareholder a written notice (the "***Event of Default Notice***") which the Electing Shareholder specifies in such notice as being an Event of Default Notice for purposes of this Section 13 and a summary of the material details of the Event of Default then known to such Electing Shareholder. The date on which the Event of Default Notice is given shall sometimes be referred to hereinafter as the "***Event of Default Date.***R 21; The Electing Shareholder shall also specify in the Event of Default Notice which of the following remedies

that it elects with respect to such Event of Default (it being agreed that the Electing Shareholder may specify any single remedy, all remedies together, or any combination of remedies, in each case subject to the limitations contained within such remedies):

(a) replace certain management of the JVC (provided, however, this remedy shall only be available to the Electing Shareholder if the Event of Default is pursuant to Section 13.1(a)(v) or Section 13.1(a)(vi));

(b) undo the action or transaction that constituted the Event of Default, to the extent legally permissible (provided, however, this remedy shall only be available to the Electing Shareholder if the Event of Default is pursuant to Section 13.1(a)(v) or Section 13.1(a)(vi));

(c) AUO (or applicable Affiliate thereof) forfeiting certain of its allocated supply pursuant to and in accordance with the terms of the AUO Supply Agreement (provided, however, this remedy shall only be available to the Electing Shareholder if the Event of Default is with respect to material breach by AUO of any of the covenants contained in Section 17); and/or

(d) one of the following: (A) sell all of the Electing Shareholder's Shares to the Defaulting Shareholder (and whether it exercises its right to reduce all or any portion of its allocated supply pursuant to and in accordance with the applicable supply agreement to which the Electing Shareholder (or applicable Affiliate thereof) and the JVC are parties), (B) purchase all of the Defaulting Shareholder's Shares, as set forth in the Event of Default Notice, or (C) receive liquidated damages (provided, however, that none of the remedies described in this Section 13.2(d) shall be available to the Electing Shareholder if the Event of Default is pursu ant to Section 13.1(a)(vi); provided, further, that if the Event of Default is pursuant to Section 13.1(a)(v), the remedies described in this Section 13.2(d) shall only be available to the Electing Shareholder if such Event of Default is with respect to material breach by the JVC of any of the covenants contained in Section 7.4, Section 8.10(d), Section 8.10(i), Section 8.10(o), Section 8.10(p), Section 8.10(q) or Section 8.10(r); provided, further, that the portion of the remedies described in this Section 13.2(d) relating to receiving liquidated damages shall only be available to the Electing Shareholder if the Event of Default is with respect to material breach by the JVC of any of the covenants contained in Section 7.4(xvii) of this Agreement) ; and /or

(e) receive appropriate compensation (provided, however, this remedy shall only be available to the Electing Shareholder if the Event of Default is pursuant to Section 13.1(a)(vii)).

13.3 Desire to Replace Management. If (i) an Event of Default Notice has been given pursuant to Section 13.2, (ii) the Event of Default is pursuant to Section 13.1(a)(v) or Section 13.1(a)(vi), and (iii) the Electing Shareholder desires to replace certain management of the JVC (as set forth in the Event of Default Notice), then as soon as practicable after the date that such Event of Default Notice has been given pursuant to Section 13.2, the JVC and the Defaulting Shareholder shall take such actions as are reasonably necessary to promptly terminate the employment of the officers and/or other employees of the JVC that the Electing Shareholder desires to replace as set forth in the Event of Default Notice a nd to replace such officers and/or other employees with the individuals designated in the Event of Default Notice as replacement officers and/or employees.

13.4 Desire to Undo Action or Transaction. If (i) an Event of Default Notice has been given pursuant to Section 13.2, (ii) the Event of Default is pursuant to Section 13.1(a)(v) or Section 13.1(a)(vi), and (iii) the Electing Shareholder desires to undo the action or transaction that constituted the Event of Default, to the extent legally permissible (as set forth in the Event of Default Notice), then as soon as practicable after the date that such Event of Default Notice has been given pursuant to Section 13.2, the JVC and the Defaulting Shareholder shall take such actions as are reasonably necessary to promptly undo such action or transaction that constituted the Event of Default and otherwise to put the Parties in as close of the same place as possible as they would be had such action or transaction not been taken, in each case to the extent legally permissible.

13.5 Desire for AUO to Lose Certain of its Allocated Supply. If (i) an Event of Default Notice has been given pursuant to Section 13.2, (ii) the Event of Default is with respect to material breach by AUO of any of the covenants contained in Section 17 of this Agreement, and (iii) the Electing Shareholder desires for AUO (or applicable Affiliate thereof) to forfeit certain of its allocated supply pursuant to and in accordance with the AUO Supply Agreement (as set forth in the Event of Default Notice), then as soon as practicable after the date that such Event of Default Notice has been given pursuant to Section 13.2, the JVC and the Defaulting Shareholder shall take such actions as are reasonably necessary to promptly provide that AUO (or applicable Affiliate thereof) shall forfeit certain of its allocated supply pursuant to and in accordance with the terms of the AUO Supply Agreement.

13.6 Desire to Sell Shares. If (i) an Event of Default Notice has been given pursuant to Section 13.2 and (ii) the Electing Shareholder desires to sell all of the Electing Shareholder's Shares to the Defaulting Shareholder (as set forth in the Event of Default Notice), then the following provisions shall be operative:

(a) If the Electing Party has, in the Event of Default Notice, elected to exercises its right to reduce all or any portion of its allocated supply pursuant to and in accordance with the terms of the supply agreement to which the Electing Shareholder (or applicable Affiliate thereof) and the JVC are parties, then as soon as practicable after the date that such Event of Default Notice has been given pursuant to Section 13.2, the JVC and the Defaulting Shareholder shall take such actions as are reasonably necessary to promptly provide that the Electing Shareholder's allocation and associated obligations under such supply agreement are so reduced pursuant to and in accordance with the terms of such supply agreement.

(b) The Shareholders shall promptly (1) work in good faith to agree upon an Independent Financial Expert (and if the Shareholders are not able to agree upon an Independent Financial Expert within five (5) days, each Shareholder shall appoint an Independent Financial Expert as a representative and cause it to jointly, together with such other representatives, select the single "Independent Financial Expert" hereunder) and (2) engage such selected Independent Financial Expert to determine the Fair Market Value of the Electing Shareholder's Shares. The fees and expenses of the Independent Financial Expert shall be borne solely by the Defaulting Shareholder.

(c) The purchase and sale of the Electing Shareholder's Shares shall be consummated as soon as practicable following such determinations of Fair Market Value by the Independent Financial Expert, but in no event more than thirty (30) days thereafter (subject to any extension necessary to comply with any applicable

governmental and/or regulatory requirement). Subject to the immediately preceding sentence, the date, time and location for the closing of the purchase and sale shall be mutually agreed upon by the Shareholders; provided, however, that if an agreement cannot be reached by the Shareholders within five (5) Business Days after such determinations are made by the Independent Financial Expert, then such closing shall take place at 10:00 a.m. (local time) at the New York offices of Jones Day, special counsel for SPTL, on the fifteenth (15th) Business Day following the date such determinations are made by the Independent Financial Expert (or, if later, the fifth Business Day following the expiration of any such extension necessary to comply with any applicable governmental and/or regulatory requirement).

(d) At such closing, the Electing Shareholder shall sell, and the Defaulting Shareholder shall purchase, the Electing Shareholder's Shares. The Electing Shareholder's Shares, including all evidences of ownership (including stock certificates endorsed in blank), shall be conveyed by the Electing Shareholder to the Defaulting Shareholder at such closing, free and clear of any and all liens, security interests, adverse claims, restrictions and other encumbrances, other than those imposed pursuant to the terms of this Agreement or the Organizational Documents. The Parties acknowledge and agree that the only representations and warranties made by the Electing Shareholder with respect to such Electing Shareholder's Shares will be the matters set forth in the preceding se ntence and the Electing Shareholder's ownership of the Electing Shareholder's Shares. In addition, at such closing, (A) the Electing Shareholder shall deliver, or cause to be delivered, the Closing Seller Documents to the Defaulting Shareholder and (B) the JVC shall deliver, or cause to be delivered, the Closing JVC Documents to the Defaulting Shareholder.

(e) The purchase price of the Electing Shareholder's Shares shall be ***. The purchase price shall, subject to all applicable government restrictions and regulations, be paid by the Defaulting Shareholder at such closing by wire transfer of immediately available funds in a single payment to an account designated in writing and delivered by the Electing Shareholder to the Defaulting Shareholder (such account being designated and delivered by the Electing Shareholder no later than five (5) Business Days prior to the date of such closing).

13.7 Desire to Purchase Shares. If (i) an Event of Default Notice has been given pursuant to Section 13.2 and (ii) the Electing Shareholder desires to purchase all of the Defaulting Shareholder's Shares (as set forth in the Event of Default Notice), then the following provisions shall be operative:

(a) The Shareholders shall promptly (A) work in good faith to agree upon an Independent Financial Expert (and if the Shareholders are not able to agree upon an Independent Financial Expert within five (5) days, each Shareholder shall appoint an Independent Financial Expert as a representative and cause it to jointly, together with such other representatives, select the single "Independent Financial Expert" hereunder) and (B) engage such selected Independent Financial Expert to determine the Fair Market Value of the Defaulting Shareholder's Shares. The fees and expenses of the Independent Financial Expert shall be borne solely by the Defaulting Shareholder.

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(b) The purchase and sale of the Defaulting Shareholder's Shares shall be consummated as soon as practicable following such determination of Fair Market Value by the Independent Financial Expert, but in no event more than thirty (30) days thereafter (subject to any extension necessary to comply with any applicable governmental and/or regulatory requirement). Subject to the immediately preceding sentence, the date, time and location for the closing of the purchase and sale shall be mutually agreed upon by the Shareholders; provided, however, that if an agreement cannot be reached by the Shareholders within five (5) Business Days after such determinat ion is made by the Independent Financial Expert, then such closing shall take place at 10:00 a.m. (local time) at the New York offices of Jones Day, special counsel for SPTL, on the fifteenth (15^{th}) Business Day following the date such determination is made by the Independent Financial Expert (or, if later, the fifth Business Day following the expiration of any such extension necessary to comply with any applicable governmental and/or regulatory requirement).

(c) At such closing, the Defaulting Shareholder shall sell, and the Electing Shareholder shall purchase, the Defaulting Shareholder's Shares. The Defaulting Shareholder's Shares, including all evidences of ownership (including stock certificates endorsed in blank), shall be conveyed by the Defaulting Shareholder to the Electing Shareholder at such closing, free and clear of any and all liens, security interests, adverse claims, restrictions and other encumbrances, other than those imposed pursuant to the terms of this Agreement or the Organizational Documents. In addition, at such closing, (1) the Defaulting Shareholder shall deliver, or cause to be delivered, the Closing Seller Documents to the Electing Shareholder and (2) the JVC shall deliver, or cause to be delivered , the Closing JVC Documents to the Electing Shareholder.

(d) The purchase price of the Defaulting Shareholder's Shares shall be ***. The purchase price shall, subject to all applicable government restrictions and regulations, be paid by the Electing Shareholder at such closing by wire transfer of immediately available funds in a single payment to an account designated in writing and delivered by the Defaulting Shareholder to the Electing Shareholder (such account being designated and delivered by the Electing Shareholder no later than five (5) Business Days prior to the date of such closing).

13.8 Desire to Receive Liquidated Damages. If (i) an Event of Default Notice has been given pursuant to Section 13.2, (ii) the Event of Default is pursuant to Section 13.1(a)(v) and is with respect to material breach by the JVC of any of the covenants contained in Section 7.4(xvii) of this Agreement, and (iii) the Electing Shareholder desires to receive liquidated damages (as set forth in the Event of Default Notice), then within five (5) Business Days after the date that such Event of Default Notice has been given pursuant to Section 13.2, the Defaulting Shareholder shall pay to the Electing Shareh older an amount equal to the product of (A) $*** and (B) the aggregate number of watts of Solar Cells sold to third parties in violation of Section 7.4(xvii) of this Agreement, by wire transfer of immediately available funds in a single payment to an account designated in writing and delivered by the Electing Shareholder to the Defaulting Shareholder (such account being designated and delivered by the Electing Shareholder in such Event of Default Notice. For the avoidance of doubt, if the Electing Shareholder desires to receive liquidated damages (as set forth in the Event of Default Notice) with respect to such

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matter, then the receipt by the Electing Shareholder of such payment shall be deemed to be liquidated damages for any and all losses or damages suffered or incurred by the Electing Shareholder with respect to such matter.

13.9 Desire to Receive Appropriate Compensation. If (i) an Event of Default Notice has been given pursuant to Section 13.2, (ii) the Event of Default is pursuant to Section 13.1(a)(vii), and (iii) the Electing Shareholder desires to receive appropriate compensation (as set forth in the Event of Default Notice), then the Shareholders shall promptly (1) work in good faith to agree upon an Independent Financial Expert (and if the Shareholders are not able to agree upon an Independent Financial Expert within five (5) days, each Shareholder shall appoint an Independent Financial Expert as a representative and cause it to jointly, together with such other representatives, select the single "Independent Fin ancial Expert" hereunder) and (2) engage such selected Independent Financial Expert to determine the fair compensation amount incurred by the material misstatement by the JVC contained in or made pursuant to the AUO Subscription Agreement. The fees and expenses of the Independent Financial Expert shall be borne solely by the Defaulting Shareholder. After the fair compensation amount is determined pursuant to this Section, the Defaulting Shareholder shall pay to the Electing Shareholder such amount by wire transfer of immediately available funds in a single payment to an account designated in writing and delivered by the Electing Shareholder to the Defaulting Shareholder (such account being designated and delivered by the Electing Shareholder in such Event of Default Notice. For the avoidance of doubt, if the Electing Shareholder desires to receive appropriate compensation set forth herein (as set forth in the Event of Default Notice) with respect to such matter, then the receipt by the Electing Shareho lder of such payment shall be deemed to be liquidated damages for any and all losses or damages suffered or incurred by the Electing Shareholder with respect to such matter.

14. Term and Termination

14.1 Term. This Agreement shall be effective upon the date hereof, and shall continue in full force and effect until terminated in accordance with Section 14.2.

14.2 Termination by Mutual Consent; Termination Upon Certain Events.

(a) This Agreement may be terminated by mutual written consent of all Parties.

(b) This Agreement shall automatically terminate and be of no further force or effect at 5:00 p.m. (New York time) on September 30, 2010 if the Closing Date shall not have occurred by then.

(c) This Agreement shall automatically terminate and be of no further force or effect upon the occurrence of any of the following events: (i) immediately prior to the consummation of a JVC Change of Control and (ii) a Shareholder Exit.

(d) In the event of termination pursuant to Section 14.2(a), the consequences of termination shall be agreed among the Parties in writing.

14.3 Effect of Termination; Survival. The termination of this Agreement for any reason shall not release any Party from its liability to the other Parties for any accrued obligations and liabilities, and the provisions of this Section 14.3, Section 10, Section 17 and Section 18 shall survive such termination.

15. Representations and Warranties of AUO

In order to induce SPTL to enter into this Agreement, AUO represents and warrants to SPTL as follows as of the date of this Agreement and as of the Closing Date:

15.1 Organization and Standing. AUO is a corporation or other organization duly organized, validly existing and in good standing under the Laws of its jurisdiction of incorporation or organization, with full power and authority to own, lease, use and operate its properties and to conduct its business as and where now owned, leased, used, operated and conducted. AUO is duly qualified to do business and in good standing in each of the jurisdictions in which the nature the business conducted by it or the property it owns, leases or operates requires it to so qualify, except where the failure to be so qualified or be in good standing would not have a material adverse effect on AUO' ability to enter into this Agreement and to consummate the transactions contemplated by this Agreement.

15.2 Power and Authority. AUO has all requisite power and authority to enter into this Agreement and to consummate the transactions contemplated by this Agreement. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized by all necessary action on the part of AUO. This Agreement has been duly executed and delivered by AUO and constitutes the legal, valid and binding obligation of AUO enforceable against it in accordance with its terms.

15.3 Conflicts, Consents and Approval. Neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated hereby will:

(a) conflict with, or result in a breach of, any provision of its organizational documents;

(b) violate, or conflict with, or result in a breach of any provision of, or constitute a default (or an event which, with the giving of notice, the passage of time or otherwise, would constitute a default) under, or entitle any party (with the giving of notice, the passage of time or otherwise) to terminate, accelerate or call a default under, or result in the creation of any lien, security interest, charge or encumbrance upon any of the material properties or assets of AUO or any of its subsidiaries under, any of the terms, conditions or provisions of any material note, bond, mortgage, indenture, deed of trust, license, contract, undertaking, agreement, lease or other instrument or obligation to which AUO is a party; or

(c) violate any order, writ, injunction, decree, statute, rule or regulation applicable to AUO or any of its subsidiaries or properties or assets.

15.4 Litigation. Other than as disclosed in a written agreement executed by the JVC and the Shareholders, there is no suit, claim, action, proceeding or investigation pending or, to the best knowledge of AUO, threatened against AUO, which, individually or in the aggregate, is reasonably likely to have a material adverse effect on AUO. AUO is not subject to any outstanding order, writ, injunction or decree, which individually or in the aggregate, has a reasonable likelihood of having a material adverse effect on AUO.

15.5 Compliance with Law. To the best knowledge of AUO, AUO has complied and is in compliance in all material respects with all applicable Laws relating to AUO, or its business or properties, except for such noncompliance as would not have a material adverse effect on AUO' ability to enter into this Agreement and to consummate the transactions contemplated by this Agreement.

15.6 Contracts. AUO is not in violation of or in default in respect of any contract, agreement, instrument, arrangement or understanding and there are no facts or circumstances which would reasonably indicate that AUO will be or may be in violation of or in default in respect of any such contract, agreement, instrument, arrangement or understanding subsequent to the date hereof, which violation or default could reasonably be expected to have a material adverse effect on AUO. To the best knowledge of AUO, no contract, agreement, instrument or arrangement to which AUO is a party contains any unusual or burdensome provision that can reasonably be expected to have a material adverse effect on AUO.

15.7 Financial Condition. On the date hereof, AUO is in sound financial condition and is able or has made arrangements to meet its present and future obligations under this Agreement or otherwise as they become due and payable. AUO has not (i) been, nor threatened to be, declared bankrupt or placed in judicial liquidation, (ii) filed, nor intended to file a voluntary petition in bankruptcy or make an assignment for the benefit of creditors, or (iii) ceased or suspended payments to creditors, nor proposed to creditors a moratorium of payments or a friendly settlement thereof.

16. Representations and Warranties of SPTL

In order to induce AUO to enter into this Agreement, SPTL represents and warrants to AUO as follows as of the date of this Agreement and as of the Closing Date:

16.1 Organization and Standing. SPTL is a corporation or other organization duly organized, validly existing and in good standing under the Laws of its jurisdiction of incorporation or organization, with full power and authority to own, lease, use and operate its properties and to conduct its business as and where now owned, leased, used, operated and conducted. SPTL is duly qualified to do business and in good standing in each jurisdiction in which the nature of the business conducted by it or the property it owns, leases or operates requires it to so qualify, except where the failure to be so qualified or be in good standing would not have a material adverse effect on SPTL' ability to enter into th is Agreement and to consummate the transactions contemplated by this Agreement.

16.2 Power and Authority. SPTL has all requisite power and authority to enter into this Agreement and to consummate the transactions contemplated by this Agreement. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized by all necessary corporate action on the part of SPTL. This Agreement has been duly executed and delivered by SPTL and constitutes the legal, valid and binding obligation of SPTL enforceable against it in accordance with its terms.

16.3 Conflicts, Consents and Approval. Neither the execution and delivery by SPTL of this Agreement nor the consummation of the transactions contemplated hereby will:

(a) conflict with, or result in a breach of, any provision of its organizational documents;

(b) violate, or conflict with, or result in a breach of any provision of, or constitute a default (or an event which, with the giving of notice, the passage of time or otherwise, would constitute a default) under, or entitle any party (with the giving of notice, the passage of time or otherwise) to terminate, accelerate or call a default under, or result in the creation of any lien, security interest, charge or encumbrance upon any of the material properties or assets of SPTL or any of its subsidiaries under, any of the terms, conditions or provisions of any material note, bond, mortgage, indenture, deed of

trust, license, contract, undertaking, agreement, lease or other instrument or obligation to which SPTL is a party;

(c) violate any order, writ, injunction, decree, statute, rule or regulation applicable to SPTL or any of its subsidiaries or their respective properties or assets; or

(d) require any action or consent or approval of, or review by, or registration with any third party, court or governmental body or other agency, instrumentality or authority, other than such action, consent or approvals of third parties as have already been obtained.

16.4 Litigation. Other than as disclosed in a written agreement executed by the JVC and the Shareholders, there is no suit, claim, action, proceeding or investigation pending or, to the best knowledge of SPTL, threatened against SPTL which, individually or in the aggregate, is reasonably likely to have a material adverse effect on SPTL. SPTL is not subject to any outstanding order, writ, injunction or decree, which individually or in the aggregate, has a reasonable likelihood of having a material adverse effect on SPTL.

16.5 Compliance with Law. To the best of SPTL's knowledge, SPTL has complied and is in compliance in all material respects with all applicable Laws relating to SPTL or its business or properties, except for such noncompliance as would not have a material adverse effect on SPTL' ability to enter into this Agreement and to consummate the transactions contemplated by this Agreement.

16.6 Contracts. SPTL is not in violation of or in default of any material contract, agreement, instrument, arrangement or understanding and there are no facts or circumstances which would reasonably indicate that SPTL will be or may be in violation of or in default in respect of any such contract, agreement, instrument, arrangement or understanding subsequent to the date hereof, which default could reasonably be expected to have a material adverse effect on SPTL. To the best knowledge of SPTL, no contract, agreement, instrument or arrangement to which SPTL is a party contains any unusual or burdensome provision that can reasonably be expected to have a material adverse effect on SPTL.

16.7 Financial Condition. On the date hereof, SPTL is in sound financial condition and is able or has made arrangements to meet its present and future obligations under this Agreement or otherwise as they become due and payable. SPTL has not (i) been, nor threatened to be, declared bankrupt or placed in judicial liquidation, (ii) filed, nor intended to file a voluntary petition in bankruptcy or make an assignment for the benefit of creditors, or (iii) ceased or suspended payments to creditors, nor proposed to creditors a moratorium of payments or a friendly settlement thereof.

17. Market Rights and Restrictions

17.1 Shareholder Rights and Restrictions

(a) AUO shall not, and shall use reasonable best efforts to cause each of its direct and indirect subsidiaries and any other controlled Affiliates (other than the JVC) not to, directly or indirectly, either for themselves or for any other individual or entity, sell or sell for use any of the AUO Allocated Solar Cells, whether as standalone Solar Cells or modules or systems incorporating such Solar Cells, in any Non-Permitted Countries, except that, starting in 2013, AUO and its direct and indirect subsidiaries and any other controlled Affiliates (other than the JVC) shall be permitted in each year to

sell or sell for use up to *** percent (***%) of the AUO Allocated Solar Cells in such year in Europe and Australia for use in power plant projects that are owned or developed by direct or indirect subsidiaries of AUO or any other controlled Affiliates of AUO; provided that (i) AUO or its controlled Affiliates, directly or indirectly, owns no less than *** percent (***%) of the equity of such subsidiaries or the development companies overseeing development of such projects and (ii) such ownership is a bona fide investment negotiated at arms length and not a investment made for purposes of satisfying such minimum ownership requirement with the primary purpose of providing engineering, procurement and construction services or similar arrangement. As part of such oblig ation, AUO shall not, and shall cause each of its direct and indirect subsidiaries and any other controlled Affiliates (other than the JVC) not to, knowingly permit sales of any AUO Allocated Solar Cells to any Persons that will re-sell such AUO Allocated Solar Cells outside or for use outside of the Permitted Countries and AUO shall, and shall cause each of its direct and indirect subsidiaries and any other controlled Affiliates (other than the JVC) to, include as part of its sales contracts an obligation for the purchaser of any AUO Allocated Solar Cells not to so re-sell such Allocated Solar Cells outside of the Permitted Countries. For purposes of this Agreement, (i) the term "***AUO Allocated Solar Cells***" shall mean the Solar Cells manufactured by the JVC and purchased by AUO or its direct or indirect subsidiaries pursuant to the AUO Supply Agreement, (ii) subject to the provisions of Section 12.4(g)(ii), if applicable, the term "***Non-Permitted Countries***" shall mean each country or region in the world, other than any Permitted Countries; it being acknowledged for the avoidance of doubt that the United States, Japan and Australia shall be deemed to be Non-Permitted Countries, and (iii) subject to the provisions of Section 12.4(g)(ii), if applicable, the term "***Permitted Countries***" shall mean any country or region in Asia other than Japan and Australia. It is agreed that the restrictions on AUO set forth in this Section shall be applicable to output from only Fab 3. For so long as this Section 7.1(a) is in effect, (i) AUO shall maintain, and cause its direct and indirect subsidiaries and any other controlled Affiliates (other than the JVC) to maintain, books and records for all sales of AUO Allocated Solar Cells in accordance with normal and acceptable a ccounting practices, (ii) AUO shall maintain a master log that documents when and to whom each of the AUO Allocated Solar Cells were sold by AUO or any of its direct or indirect subsidiaries or any other controlled Affiliates (other than the JVC), (iii) during regular office hours of AUO or such other applicable entity holding such books and records, and upon twenty-four (24) hours' notice to AUO, but not more frequently than one audit per year, an independent third party that is selected from time to time by SPTL and reasonably acceptable to AUO, and that shall have entered into a customary confidentiality agreement with AUO (it being acknowledged, for the avoidance of doubt, that the confidentiality agreement will permit the disclosure contemplated under clause (iv) below), shall have full access to, and the right to inspect, audit and make copies at SPTL' expense of, such master log and the applicable portions of such books and records with respect to the sales of all of the AUO Allocated Sola r Cells, (iv) SPTL and such independent third party shall have the right to freely confer with each other, and such independent third party may disclose to SPTL the results of its audit, with the focus limited to only whether AUO is in compliance with the provisions contained in this Section 17.1(a), provided that, without the prior written consent of AUO, such independent third party may not disclose the identity of the Persons to whom such sales were made, and (v) if it is discovered in any such audit that AUO is not in compliance

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with the provisions contained in this Section 17.1(a), then in addition to all other rights and remedies available to SPTL under this Agreement or otherwise, AUO shall promptly reimburse SPTL for the fees and costs incurred by SPTL in connection with such audit.

(b) AUO agrees that, from and after the Closing Date until ten (10) years thereafter, before AUO or any of its direct and indirect subsidiaries and any other controlled Affiliates (other than the JVC) may, directly or indirectly, either for themselves or for any other individual or entity, produce or invest in any crystalline cell production with cell efficiency greater than 20% outside of the JVC, AUO shall (i) provide written notice (a "***Right of First Refusal Notice***") to SPTL and the JVC of such opportunity to produce or invest in such crystalline cell production and a description of the material terms of such opportunity and crystalline cell production and (ii) grant SPTL a right of first refu sal for the JVC to produce or invest, as the case may be, in such crystalline cell production (the "***Right of First Refusal***") and permit SPTL a period of one-hundred twenty (120) days to determine whether to exercise the Right of First Refusal with respect thereto. SPTL may exercise the Right of First Refusal by delivering written notice of such exercise to AUO within one-hundred twenty (120) days after AUO' delivery of the Right of First Refusal Notice. Only if SPTL fails to exercise the Right of First Refusal within such one-hundred twenty (120) day period may AUO and its direct and indirect subsidiaries and any other controlled Affiliates (other than the JVC) produce or invest in such crystalline cell production outside of the JVC, provided that the terms are no more favorable to AUO, the applicable subsidiaries and/or the other controlled Affiliates, as applicable, than were described in the Right of First Refusal Notice. If SPTL exercise the Right of First Refusal with respect to such opportunity, then (i) the Parties shall cooperate with each other in good faith in taking such actions as are reasonably necessary for the JVC to so produce or invest in such crystalline cell production on the terms described in the Right of First Refusal Notice and on other commercially reasonable terms mutually agreed in writing by the Parties, and (ii) if SPTL agrees to incorporate such high efficiency solar cell technology into the JVC and if such technology is not based on SPTL' core technology, then the Parties shall agree to renegotiate allocation and market rights for such technology. Notwithstanding the foregoing, in the event SPTL and its permitted transferees (if any) no longer own any Shares pursuant to a sale transaction contemplated by Section 12, then the ten (10)- year right of first refusal period in the first sente nce of this Section shall be changed to a *** year period commencing from the consummation of the sale transaction contemplated by Section 12.

(c) AUO shall not, and shall cause each of its direct and indirect subsidiaries and any other controlled Affiliates (other than the JVC) not to, directly or indirectly, either for themselves or for any other individual or entity, sell any UL - listed modules containing any of the Solar Cells manufactured by the JVC, except to the extent that one of the Permitted Countries adopts UL as the primary certification standard. In that case, AUO and SPTL will work together in good faith to determine the appropriate mechanisms to avoid potential resale of UL-listed modules to the U.S.

(d) For the avoidance of doubt, the Parties acknowledge and agree that SPTL and its direct and indirect subsidiaries and any other controlled Affiliates (other than the JVC) shall not be subject to any of the restrictions contained in Sections 17.1(a), 17.1(b)

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or 17.1(c), and may sell any Solar Cells manufactured by the JVC and any other solar cells (including those that compete with the Solar Cells manufactured by the JVC) in any country or region, including the Permitted Countries.

(e) Each Shareholder, in the event that either Shareholder sells all of its shares in the JVC to the other Shareholder, agrees that for three years following such sale, it shall not, and such Shareholder shall cause each of its direct and indirect subsidiaries and any other controlled Affiliates (other than the JVC) not to, directly or indirectly, either for themselves or for any other individual or entity, solicit or encourage any individual that is employed by the other Shareholder, the JVC or any of their respective controlled Affiliates to terminate his or her employment with the other Shareholder, the JVC or any of their respective controlled Affiliates. The foregoing restriction shall not affect any Shareholder's ability to (i) solicit or employ any employee of the other Shareholder, the JVC or any of their respective controlled Affiliates after such individual has separated or been separated from the service of the other Shareholder, the JVC or any of their respective controlled Affiliates, provided that such Shareholder did not induce such separation; (ii) solicit or recruit generally in the media; or (iii) employ any employee of the other Shareholder, the JVC or any of their respective controlled Affiliates who respond to public advertisement or any other general solicitation for employment or otherwise voluntarily applies for a position without having been initially solicited or recruited by such Shareholder.

17.2 JVC Restrictions.

(a) From and after the time, if any, when SPTL and its permitted transferees (if any) no longer own any Shares pursuant to a sale transaction contemplated by Section 12 or Section 13, the JVC shall not, the JVC shall cause its subsidiaries (if any) not to, and AUO shall cause the JVC and its subsidiaries (if any) not to, expand the aggregate production capacity of the JVC and its subsidiaries (if any) beyond the production capacity of the JVC and its subsidiaries (if any) as of immediately prior to the closing of such sale transaction.

(b) Without the prior written consent of SPTL (which consent may be withheld in its sole discretion), for a period extending from the Closing Date until January 2, 2012, the JVC shall not provide any specifications or other technical information with respect to any mono-crystalline silicon ingots to any supplier of ingots in the Republic of Korea other than Woongjin Energy Co. Ltd., a company organized and existing under the laws of the Republic of Korea.

17.3 Mutual Agreement to Enforce. It is the desire and intent of the Parties that the provisions contained in this Section 17 be enforced to the fullest extent permissible under the laws and public policies applied in each jurisdiction in which enforcement is sought. In such regard, the Parties express the foregoing intention with full knowledge that the covenants contained in this Section 17 are necessary to assure SPTL the benefit of its bargain with respect to the subject matter of this Agreement. Accordingly, if the final judgment of a governmental authority of competent jurisdiction declares that any term or provision contained in this Section 17 is invalid or unenforceable, the governmental authority making the determination of invalidity or unenforceability shall have the power to reduce the scope, duration or area of such term or provision, to delete specific words or phrases, or to replace any invalid or unenforceable term or

provision contained in this Section 17 with a term or provision that is valid and enforceable in such jurisdiction and that comes closest to expressing the intention of the invalid or unenforceable term or provision, and the provisions contained in this Section 17 shall be enforceable in such jurisdiction as so modified after the expiration of the time within which the judgment may be appealed, without invalidating the remaining provisions contained in this Section 17 or affecting the validity or enforceability of such provision in any other jurisdiction.

18. Miscellaneous

18.1 Governing Law. This Agreement and all disputes arising out of or in connection with this Agreement shall be governed by, interpreted under, and construed and enforceable in accordance with, the laws of the State of California, without regard to conflicts of laws principles.

18.2 Arbitration. Subject to Section 18.22, it is agreed that in case any dispute, controversy or claim arises out of or in relation to this Agreement or with respect to breach thereof, the Parties shall seek to resolve the matter amicably through discussions between the Parties. Subject to Section 18.22, only if the Parties fail to resolve such dispute, controversy, claim or breach within thirty (30) days by amicable arrangement and compromise, the aggrieved party may seek arbitration as set forth below.

Any controversy or claim arising out of or in relation to this Agreement, or breach hereof, shall be finally settled by arbitration in San Francisco, California.

(a) The arbitration shall be conducted in accordance with the Rules of Arbitration (the "***Arbitration Rules***") of the International Chamber of Commerce then in effect.

(b) There shall be three (3) arbitrators, of whom one shall be appointed by SPTL, another shall be appointed by AUO, and the third shall be appointed by the first two (2) arbitrators. If the three (3) arbitrators are not selected within thirty (30) days of the expiration of the thirty (30) day period set forth above for mutual resolution of the claim, the arbitrators will be appointed by the International Chamber of Commerce in accordance with the Arbitration Rules.

(c) The proceedings shall be conducted in English, and the arbitrators shall be conversant with and have a thorough command of the English language.

(d) The Parties shall be bound by the award rendered by the arbitrators and judgment thereon may be entered in any court of competent jurisdiction.

(e) Notwithstanding any other provision of this Agreement, any Party shall be entitled to seek preliminary injunctive relief with respect to any matter from any court of competent jurisdiction at any time prior to the final decision or award of the arbitrators with respect to such matter.

18.3 Notices. All notices, demands, requests, consents or other communications hereunder shall be in writing and shall be given by personal delivery, by express courier, by registered or certified mail with return receipt requested, or by facsimile, to the Parties at the addresses shown below, or to such other address as may be designated by written notice given by either Party to the other Party. Unless conclusively proved otherwise, all notices, demands, requests, consents or other communications hereunder shall be deemed effective upon delivery if personally delivered, five (5) days after dispatch if sent by express courier, fourteen (14) days

after dispatch if sent by registered or certified mail with return receipt requested, or confirmation of the receipt of the facsimile by the recipient if sent by facsimile.

To SPTL:

SunPower Technology, Ltd.
c/o SunPower Corporation
3939 N. 1st Street
San Jose, CA 95134
U.S.A.
Attention: General Counsel
Facsimile: 408-240-5400

To AUO:

AU Optronics Singapore Pte. Ltd.
c/o AU Optronics Corporation
No.1, JhongKe Rd.
Central Taiwan Science Park
Taichung 40763, Taiwan
R.O.C.
Attention: James Chen, Senior Associate VP, PV BD
Facsimile: 886-4-2460-8077

To AUO Taiwan:

AU Optronics Corporation
No.1, JhongKe Rd.
Central Taiwan Science Park
Taichung 40763, Taiwan
R.O.C.
Attention: James Chen, Senior Associate VP, PV BD
Facsimile: 886-4-2460-8077

To the JVC:

SunPower Malaysia Manufacturing SDN.BHD.
Kawasan Perindustrian Rembia
Mukim Sungai Petai Rembia, Alor Gajah
76100 Melaka
Malaysia
Attention: Chief Executive Officer
Facsimile: 60-63-16-2811

18.4 Entire Agreement. This Agreement (including Exhibits hereto) and the agreements, documents and instruments to be executed and delivered pursuant hereto or thereto are intended to embody the final, complete and exclusive agreement between the Parties with respect to the matters addressed herein; are intended to supersede all prior agreements,

understandings and representations written or oral, with respect thereto; and may not be contradicted by evidence of any such prior or contemporaneous agreement, understanding or representation, whether written or oral; provided, however, that the Existing Confidentiality Agreement shall only be superseded on the Closing Date when AUO has satisfied its obligations under this Agreement in connection with AUO' initial investment in the JVC.

18.5 Amendment. This Agreement shall not be modified, amended, canceled or altered in any way, and may not be modified by custom, usage of trade or course of dealing, except by an instrument in writing signed by all of the Shareholders. All amendments or modifications of this Agreement shall be binding upon the Parties despite any lack of consideration so long as the same shall be in writing and executed by the Parties.

18.6 Waiver. The performance of any obligation required of a Party hereunder may be waived only by a written waiver signed by the other Party, and such waiver shall be effective only with respect to the specific obligation described. The waiver by either Party of a breach of any provision of this Agreement by the other Party shall not operate or be construed as a waiver of any subsequent breach of the same provision or another provision of this Agreement.

18.7 Assignment. Other than as expressly otherwise provided herein, this Agreement shall not be assignable or otherwise transferable by any Party hereto without the prior written consent of all the other Shareholders, and any purported assignment or other transfer without such consent shall be void and unenforceable; provided, however, that any Shareholder may assign this Agreement:

(a) to any of its wholly-owned, direct or indirect subsidiaries so long as it will be made at the same time as a transfer of its Shares to such subsidiary specifically permitted by this Agreement; and

(b) in connection with the sale by a Shareholder of all of the Shares beneficially owned by such Shareholder as specifically provided by this Agreement.

No Shareholder may, without the prior written consent of all the other Parties, assign this Agreement to any Person (other than a controlled Affiliate of such Shareholder) by virtue of a change of control of such Shareholder (whether by means of a merger, consolidation, purchase of substantially all the stock or assets, reorganization or similar transaction or series of transactions). For the avoidance of doubt, no Shareholder shall be obligated to obtain the consent of any other Party solely by virtue of a change of control of such Shareholder involving only one or more controlled Affiliates of such Shareholder (whether by means of a merger, consolidation, purchase of substantially all the stock or assets, reorganization or similar transaction or series of transactions).

18.8 Foreign Corrupt Practices Act.

(a) The Parties recognize that the United States Foreign Corrupt Practices Act of 1977 (the "***FCPA***") shall be applicable to the JVC, its Affiliates and its designated directors, officers and personnel in the JVC, even if the JVC does not conduct any business in the United States of America. The Parties recognize that the FCPA prohibits the payment or giving of anything of value either directly or indirectly to a government official for the purpose of influencing an act or decision in his or her official capacity, or for the purpose of inducing him or her to use his or her influence with his or her government to assist a company in obtaining or retaining business for or with, or directing business to, any Person.

(b) Each Party agrees to comply, and each Shareholder shall use its reasonable best efforts to ensure that the JVC complies, with the FCPA, and each Party shall take no action that would cause itself or any other Party to be in violation of the FCPA. All Parties agree that any Party is authorized to take all appropriate actions that such Party reasonably deems is necessary to avoid a violation of the FCPA.

(c) Each Party shall each use its reasonable best efforts to ensure that no part of the JVC capital or other funds will be accepted or used by the JVC for any purpose, nor will it take any action, which would constitute a violation of any Law of the various jurisdictions in which it conducts business. Should any Party ever receive, directly or indirectly, a request that any of them believes will or might constitute, or be construed as, a violation of the FCPA or other similar Law, it shall immediately notify the other Parties.

(d) Without limiting the foregoing, the JVC shall not, and the Shareholders shall use their reasonable best efforts to cause the JVC not to, directly or indirectly, (i) make any illegal contribution, gift, bribe, rebate, payoff, influence payment, kickback or other payment to any Person, private or public, regardless of form, whether in money, property or services, (A) to obtain favorable treatment for the JVC or any Affiliate of the JVC in securing business, (B) to pay for favorable treatment for business secured for the JVC or any Affiliate of the JVC, or (C) to obtain special concessions, or for special concessions already obtained, for or in respect of the JVC or any Affiliate of the JVC or (ii) accept or otherwise receive any unlawful contribution, payment, gift, kickback, expe nditure or other item of value.

(e) Each Party shall keep and maintain accurate books and records necessary to demonstrate compliance with the foregoing provision of this Section 18.8, and each Party may, during the term of this Agreement and for a period of five (5) years following the termination of this Agreement, review or audit such books and records of the other Parties.

18.9 Compliance with National Laws and Regulations. To the extent the details of the requirements are notified to the Shareholders and the JVC, the Shareholders shall use reasonable best efforts to cause the JVC to perform such acts as any of the Shareholders shall request as reasonably necessary to permit such Shareholder to comply with all Laws and regulations applicable to companies in general and publicly reporting companies in particular including but not limited to: (i) the Exchange Act and the Securities Act and the rules of the U.S. Securities and Exchange Commission promulgated thereunder; (ii) the Sarbanes-Oxley Act of 2002 and the rules and regulations of the SEC promulgated thereunder; (iii) th e Nasdaq Marketplace Rules; (iv) the Securities Exchange Act of the Republic of China (Taiwan) and the rules promulgated thereunder (including the rules promulgated by the Taiwan Stock Exchange); (v) any applicable Laws governing anti-money laundering and/or anti-terrorism financing measures; and (vi) any Laws and regulations imposed by any regulatory authority in Malaysia in respect of the JVC, any Shareholder or the business of the JVC. Without limiting the foregoing, the JVC shall establish, maintain, adhere to and enforce a system of internal accounting controls which are effective in providing assurance regarding the reliability of financial reporting and the preparation of financial statements in accordance with U.S. GAAP.

18.10 Severability. In the event that any term, condition or provision of this Agreement is held to be or become invalid or be a violation of any applicable Law, statute or regulation, the

same shall be deemed to be deleted from this Agreement and shall be of no force and effect and the Agreement shall remain in full force and effect as if such term, condition or provision had not originally been contained in this Agreement. The validity and enforceability of the other provisions shall not be affected thereby. In such case or in the event that this Agreement should have a gap, the Parties hereto shall agree on a valid and enforceable provision completing this Agreement, coming as close as possible to the economic intentions of the Parties. In the event of a partial invalidity the Parties agree that this Agreement shall remain in force without the invalid part. This shall also apply if parts of this Agreement are partially invalid.

18.11 Waiver of Conflicts of Interests.

(a) To the maximum extent permitted under applicable Law, each Shareholder hereby waives, on behalf of itself and the JVC, any claim or cause of action against: (i) the other Shareholder, (ii) any director designated or appointed by or at the direction of the other Shareholder, or (iii) any employee of the other Shareholder made available to the JVC while remaining an employee of such Shareholder (a "***Seconded Employee***") for any breach of fiduciary duty to the JVC by such Shareholder, director, or Seconded Employee as a result of a conflict of interest between the JVC and the Shareholder which appointed such director or such Seconded Employee.

(b) Each Shareholder acknowledges and agrees that in the event of any such conflict of interest, each such Shareholder, director, or Seconded Employee may act in the best interest of the Shareholder which appointed such director or such Seconded Employee. This section entitles a Shareholder and its directors and Seconded Employees to prefer the interests of the Shareholder over the interests of the JVC or any other Shareholder, but does not permit: (i) action taken solely to harm the JVC or another Shareholder, or (ii) any breach of this Agreement or any of the Organizational Documents.

(c) No director, employee of the JVC, or Seconded Employee shall be obligated to reveal confidential or proprietary information belonging to either Shareholder, without the consent of such Shareholder. No director or Seconded Employee shall be obligated to recommend or take any action in such Person's position as a director or as a Seconded Employee that prefers the interests of the JVC over the interests of an Shareholder, and each Shareholder and the JVC hereby waives the fiduciary duty, if any, to such Shareholder or the JVC of such Person in the event of any such conflict of interest.

(d) Each Party hereby acknowledges that (i) each Shareholder regularly utilizes the services of independent legal counsel of its choice (including in-house counsel) (any such legal counsel, such Shareholder's "***Counsel***"), (ii) the JVC may request services of any Shareholder's Counsel from time to time, (iii) in connection with utilizing the services of any Shareholder's Counsel, the JVC may communicate information that is (or, but for the provisions of this Section 18.11, would be) confidential or privileged (such information being "***Imparted Information***"), and (iv) any Shareholder's Coun sel will in the future represent such Shareholder as legal counsel in connection with a variety of matters, including matters in which the interests of such Shareholder have differed or will differ from, and have directly conflicted or will directly conflict with, the interests of the JVC. Each Party hereby irrevocably (i) consents to the representation of any Shareholder by its Counsel in all past, present and

future matters (including arbitration, litigation and other adversarial proceedings), including matters in which the interests of any Shareholder differ from or directly conflict with the interests of the JVC, notwithstanding any conflict of interest or any disability of such Counsel that might otherwise exist under applicable rules of professional responsibility (all of which are hereby irrevocably waived) resulting from its provision of legal services to the JVC with respect to the same, related or unrelated matters, (ii) agrees that any Shareholder's Counsel shall be free at any time to cease and desist from providing legal services to the JVC in any circumstances and in connection with any matter in which any such conflict of interest or potential disability exists or may exist (or, but for the provisions of this Sectio n 18.11, would or may exist), (iii) agrees that none of the Parties and any Shareholder's Counsel shall be subject to any restriction or disability regarding the disclosure or use of all or any part of the Imparted Information, including any disclosure or use of the Imparted Information in a manner or for a purpose that is inconsistent with or adverse to the interests of the JVC (including any arbitration, litigation or other adversarial proceeding in which any Parties are or may be adverse parties), other than any such restriction or disability arising under the express provisions of any non-disclosure or other confidentiality agreement, (iv) represents that it has obtained the advice of independent counsel with respect to, and understands the potentially adverse consequences of, the acknowledgments, consents, waivers and agreements set forth in this Section 18.11, and knowingly and willingly assumes the resulting risks associated with its past, present and future utilization by the JVC of any Shareho lder's Counsel; and (v) agrees that it will not take any action, assert any claim or defense, make any motion or take any position (including in connection with any arbitration, litigation or other adversarial proceeding in which any Parties are or may be adverse parties) that is inconsistent with the provisions of this Section 18.11. For purposes of this Section 18.11, references to any "Party" or any "Shareholder" are references to such Party or Shareholder, as the case may be, and its direct and indirect parents and subsidiaries, if any. Notwithstanding anything to the contrary contained in this Agreement, the provisions of this Section 18.11 are for the benefit of, and may be enforced directly by, any Shareholder's Counsel.

18.12 IPO. The JVC shall not permit any IPO unless and until the Parties have agreed in writing as to (i) which provisions, if any, in this Agreement shall terminate upon the closing of such IPO and (ii) which registration rights, if any, shall be granted by the JVC to the Shareholders with respect to the Shareholders' Shares.

18.13 Expenses. Except as specifically provided for in this Agreement, each of the Parties shall bear its respective expenses, costs and fees (including attorneys' fees) in connection with the transactions contemplated hereby, including the preparation, execution and delivery of this Agreement and any agreement contemplated hereunder to be delivered at the Closing and compliance herewith and therewith, whether or not the transactions contemplated hereby or thereby shall be consummated.

18.14 Further Assurances. If, at any time after the date of this Agreement, any further action is necessary or desirable to carry out the purposes of this Agreement or any agreement contemplated hereunder to be delivered at the Closing or to vest the JVC with full right, title and possession to all assets, property, rights, privileges, powers and franchises contemplated by this Agreement, each Party will and will cause its Affiliates to take all such lawful and necessary action, so long as such action is consistent with this Agreement. Without limiting the foregoing,

each Shareholder undertakes to take all practicable steps (including the exercise of votes it directly or indirectly controls at meetings of the Board and meetings of the shareholders of the JVC) to ensure that the terms of this Agreement are complied with and to take all reasonable steps to cause the Board and the JVC to comply with its obligations hereunder.

18.15 Third Party Benefits. This Agreement shall be binding upon, and inure to the benefit of, each of the Parties and their respective successors and permitted assigns. Nothing contained in this Agreement, express or implied, shall be deemed to confer any right or remedy upon, or obligate any Party to, any person or entity other than the Parties and their respective successors and permitted assigns.

18.16 Publicity. None of the Parties nor any of their Affiliates shall issue any statement or communication to any third party regarding the subject matter of this Agreement or the transactions contemplated hereby, including, if applicable, the termination of this Agreement and the reasons therefor, without the prior consent of the other parties; provided, however, that any Shareholder may, after consultation with counsel and reasonable advanced notice to the other Shareholder, make or cause to be made any press release or similar public announcement or communication as may be re quired in the opinion of such counsel to comply with the requirements of any applicable Laws or the rules or regulations of the exchange or quotation system upon which any class or series of its capital stock is listed or quoted or any body overseeing any such exchange or quotation system. Notwithstanding the foregoing, the Shareholders intend to make a mutually agreeable public announcement regarding this Agreement after the execution of this Agreement.

18.17 Counterparts. This Agreement may be executed simultaneously in any number of counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

18.18 Interpretation. In this Agreement: (i) headings are for convenience of reference only and shall not affect the interpretation of the provisions of this Agreement except to the extent that the context otherwise requires; (ii) words importing the singular shall include the plural and vice versa; (iii) words denoting individuals shall include any form of entity and vice versa; (iv) words denoting any gender shall include all genders; (v) where any act, matter or thing is required by this Agreement to be performed or carried out on a certain day and that day is not a Business Day, then that act, matter or thing shall be carried out or performed on the next following Business Day; (vi) unless specified oth erwise, any reference herein to any Article, Section, clause, sub-article, sub-clause or Exhibit shall be deemed to be a reference to an Article, Section, clause, sub-article, sub-clause or Exhibit of this Agreement; (vii) any reference to any agreement, document or instrument shall refer to such agreement, document or instrument as amended, modified or supplemented; (viii) the words “include,” “including” and the derivations thereof shall not be limiting and shall be deemed to be followed by the phase “without limitation”, (ix) where there is any inconsistency between the definitions set out in this clause and the definitions set out in any Article, Section, clause, sub-article, sub-clause or Exhibit, then for the purposes of construing such Article, Section, clause, sub-article, sub-clause or Exhibit, the definitions set out therein shall prevail, (x) references to “$” are to the lawful currency of the United States, and (xi) where any provision is qualified or phrased by reference to the ordinary course of business, such reference shall be construed as meaning the customary course of business in the country concerned.

18.19 Limitation of Liability. EXCEPT FOR EACH PARTY'S OBLIGATIONS REGARDING PROTECTION OF CONFIDENTIAL INFORMATION UNDER SECTION 10, NO PARTY SHALL BE LIABLE FOR ANY INDIRECT, PUNITIVE, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT (INCLUDING LOSS OF BUSINESS, REVENUE, PROFITS, GOODWILL, USE, DATA, OR OTHER ECONOMIC ADVANTAGE), HOWEVER THEY ARISE, WHETHER IN BREACH OF CONTRACT, BREACH OF WARRANTY OR IN TORT, INCLUDING NEGLIGENCE, EVEN IF SUCH PARTY HAS PREVIOUSLY BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. LIABILITY FOR DAMAGES WILL BE LIMITED AND EXCLUDED UNDER THIS SECTION 18.19 EVEN IF ANY EXCLUSIVE REMEDY PROVIDED FOR FAILS OF ITS ESSENTIAL PURPO SE.

18.20 Cumulation of Remedies. The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights or remedies provided by Law.

18.21 English Language. All agendas, notices, other documentation relating to (i) the JVC's interaction with the Parties, (ii) documentation provided to the Parties and (iii) interaction between the Shareholders, including this Agreement, meetings of the Board and the Shareholders of the JVC, and the JVC's financial statements, shall be prepared in and entered into the English language. In the event of any dispute concerning the construction or meaning of this Agreement, the text of the Agreement as written in the English language shall prevail over any translation of this Agreement that may have been or will be made.

18.22 Equitable Relief. The Parties agree that irreparable damage would occur if any provision of Sections 7, 8, 9, 10, 12, 13 and 17 of this Agreement were not performed in accordance with the terms hereof and that the Parties shall be entitled to an injunction or injunctions to prevent breaches of such provisions or to enforce specifically the performance of such provisions before any court of competent jurisdiction in addition to any other remedy to which they are entitled.

18.23 Disclaimer of Agency. This Agreement shall not be deemed to constitute any Party the agent of the other Party or the JVC, nor shall it constitute the JVC to be an agent of any of the Parties.

18.24 Additional Obligations.

(a) Both AUO and AUO Taiwan shall be jointly and severally liable for any and all obligations of AUO, AUO Taiwan and/or any of their respective controlled Affiliates, as applicable, under this Agreement and/or any and all other agreements delivered by AUO (or applicable controlled Affiliate thereof) pursuant to this Agreement, in all cases as may be amended, restated, supplemented or otherwise modified from time to time, such joint and several obligations to be unconditional irrespective of any circumstances whatsoever that might otherwise constitute a legal or equitable discharge or defense of either AUO or AUO Taiwan. For the avoidance of doubt, AUO and AUO Taiwan acknowledge and agree that SPTL and/or the JVC (and their permitted successors and assigns), as applicable, shall be entitled to pursue a claim against either or both (whether concurrently or separately) of AUO and AUO Taiwan with respect to any breach of such obligations of AUO, AUO Taiwan and/or any of their respective controlled Affiliates, as applicable. In connection with a claim against AUO Taiwan under this Section 18.24, no setoff, counterclaim, reduction or diminution of any

obligation, or any defense of any kind or nature (other than the performance by AUO or AUO Taiwan of its obligations hereunder) shall be available to AUO Taiwan against SPTL and/or the JVC. Without limiting the generality or effect of the preceding sentences, each of AUO and AUO Taiwan hereby unconditionally waives, to the extent permitted by applicable Law: (i) demand for payment, protest and notice of nonpayment or dishonor; (ii) all other notices and demands, including all notices that might be required by applicable Law or otherwise to preserve any rights against the AUO and/or AUO Taiwan hereunder; (iii) any requirement of diligence; (iv) any right to require the JVC and/or SPTL to first (A) resort for payment or to proceed directly or at once against AUO, AUO Taiwan and/or the applicable controlled Affiliate ther eof or (B) to pursue any other remedy against the AUO, AUO Taiwan and/or the applicable controlled Affiliate thereof; (v) any modification of the obligations of AUO or AUO Taiwan or the agreements, instruments or other documents governing such obligations; (vi) any substitution or release of any other obligor of the obligations of AUO or AUO Taiwan (or any collateral for such obligations); and (vii) any rights under the California Civil Code in accordance with Section 2856 thereof.

(b) Concurrently with the execution and delivery of this Agreement, SPTL shall deliver or cause to be delivered to AUO a Guaranty, duly executed by SunPower Corporation, under which SunPower Corporation will provide a guaranty of the obligations of SPTL (and its applicable Affiliates) under this Agreement and/or any and all other agreements delivered by SPTL (or applicable controlled Affiliate thereof) pursuant to this Agreement, in all cases as may be amended, restated, supplemented or otherwise modified from time to time.

[Signatures follow]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their respective duly authorized signatories as of the day and year first written above.

AU OPTRONICS SINGAPORE PTE. LTD.

By: /s/ James Chen

Name: James Chen

Title: Director

AU OPTRONICS CORPORATION

By: /s/ James Chen

Name: James Chen

Title: Director

SUNPOWER TECHNOLOGY, LTD.

By: /s/ Thomas H. Werner

Name: Thomas H. Werner

Title: Director

SUNPOWER MALAYSIA MANUFACTURING SDN.BHD.

By: /s/ Thomas H. Werner

Name: Thomas H. Werner

Title: Director

Exhibit A

Form of License and Technology Transfer Agreement

LICENSE AND TECHNOLOGY TRANSFER AGREEMENT

This LICENSE AND TECHNOLOGY TRANSFER AGREEMENT ("***Agreement***") is made and entered into as of **[_____ __]**, 2010, by and among (i) SunPower Technology, Ltd., a company organized under the laws of the Cayman Islands ("***SPTL***"); (ii) AU Optronics Singapore Pte. Ltd., a company organized under the laws of Singapore ("***AUO***"); and (iii) SunPower Malaysia Manufacturing SDN.BHD., a company organized under the laws of Malaysia (the "*JVC*"). Each of SPTL, AUO and the JVC may be referred to herein as a "***Party***" and together as the "***Parties***."

RECITALS

WHEREAS, the Parties and AU Optronics Corporation, a company organized under the laws of Taiwan, R.O.C., have entered into that certain Joint Venture Agreement dated May 27, 2010 ("***JVA***");

WHEREAS, pursuant to the JVA, the business purposes of the JVC are to manufacture, sell and distribute Solar Cells (as defined below) to SPTL and AUO;

WHEREAS, the Parties desire to enter into an agreement pursuant to which each of SPTL and AUO grants to the JVC certain rights under Intellectual Property (as defined below) relating to the manufacture of Solar Cells, and the JVC grants to each of SPTL and AUO certain rights to other Intellectual Property; and

WHEREAS, one of the conditions to the effectiveness of the JVA is that the Parties shall have entered into this Agreement.

NOW, THEREFORE, in furtherance of the foregoing premises and in consideration of the mutual covenants and obligations hereinafter set forth and in the JVA, and based on the consideration set forth in the JVA, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound hereby, do agree as follows:

ARTICLE I

DEFINITIONS

Capitalized terms not specifically defined in this Agreement shall have the meanings assigned to them in the JVA.

1.1 "***AUO Background Intellectual Property***" means AUO Background Patents and AUO Background Technology.

1.2 "AUO Background Patents" means those Patents Controlled by AUO or any of its Affiliates as of the Closing Date applicable to the JVC Business.

1.3 "***AUO Background Technology***" means all Intellectual Property (excluding Patents) and Software Controlled by AUO or any of its Affiliates as of the Closing Date applicable to the JVC Business.

1.4 "***AUO Field***" means industrial process streamlining and manufacturing engineering, including supply chain management and logistics, system analysis and techniques, production planning and control, facilities design and work space design, statistical process control, operations management, productivity improvement and materials management. For purpose of clarity, the AUO Field does not include back contact, back junction, monocrystalline photovoltaic solar cell devices, including the design and manufacturing thereof .

1.5 "***Controlled***" means, with respect to any Intellectual Property, possession by a Party of the ability (whether by ownership, license or otherwise) to grant access, a license or a sublicense to such Intellectual Property without violating the terms of any agreement or other arrangement with any Third Party or requiring any payment to a Third Party.

1.6 "***Have Made Rights***" means the right to engage any third party to research, develop, design and/or manufacturer Solar Cells.

1.7 "***Improvement***" means any improvement(s), enhancement(s), refinement(s), derivative(s), modification(s), evolution(s) or combination(s) or other new invention or discovery, whether patentable or unpatentable, deriving from or otherwise relating to, in whole or in part, any of the SPTL Background Intellectual Property and/or the AUO Background Intellectual Property that is made, developed, invented, conceived and/or reduced to practice.

1.8 "***Intellectual Property***" means the rights associated with or arising out of any of the following: (i) Patents; (ii) Trade Secrets; (iii) copyrights, copyrightable works, rights in databases, data collections, "moral" rights, mask works, copyright registrations and applications therefor and corresponding rights in works of authorship; and (iv) any similar, corresponding or equivalent rights to any of the foregoing any where in the world. For the avoidance of doubt, Intellectual Property expressly excludes Trademarks.

1.9 "***Invented***" means made, developed, invented, conceived and/or reduced to practice.

1.10 "***JDP AUO Development***" means any Improvement to the AUO Background Intellectual Property or any Intellectual Property applicable to the AUO Field (but not the SPTL Field), in each case that is Invented pursuant to a Joint Development Program commenced under a JDP Agreement (as defined in Section 3.7 below) with an effective date before the earlier of (i) the second anniversary of the Closing Date or (ii) the termination of the JVA.

1.11 "***JDP SPTL Development***" means any Improvement to the SPTL Background Intellectual Property or any Intellectual Property applicable to the SPTL Field (but not the AUO Field), in each case that is Invented pursuant to a Joint Development Program commenced under a JDP Agreement with an effective date before the earlier of (i) the second anniversary of the Closing Date or (ii) the termination of the JVA.

1.12 "***Joint Development Program***" or "***JDP***" means a development program for any Step Modification.

1.13 "***Joint Invention***" means any Intellectual Property Invented jointly by or on behalf of the JVC and/or any of its subsidiaries and either or both of AUO and SPTL and/or any of their respective Affiliates during the Term that is not a JDP SPTL Development, JVC SPTL Improvement, JDP AUO Development or JVC AUO Improvement.

1.14 "***JVA***" has the meaning ascribed to it in the Recitals hereto.

1.15 "***JVC AUO Improvement***" means any Improvement to the AUO Background Intellectual Property or any Intellectual Property applicable to the AUO Field (but not the SPTL Field), in each case that is Invented by or on behalf of the JVC or any of its subsidiaries before the earlier of (i) the second anniversary of the Closing Date or (ii) the termination of the JVA.

1.16 "***JVC Business***" means the manufacture, sale and distribution of Solar Cells to SPTL and/or AUO, expressly excluding the upstream polysilicon, ingot, wafer manufacturing and downstream module manufacturing and systems businesses.

1.17 "***JVC Development***" means any Intellectual Property Invented by or on behalf of the JVC or any of its subsidiaries during the Term or pursuant to a Joint Development Program that is not a JDP AUO Development, JVC AUO Improvement, JDP SPTL Development, JVC SPTL Improvement or Joint Invention.

1.18 "***JVC SPTL Improvement***" means any Improvement to the SPTL Background Intellectual Property or any Intellectual Property applicable to the SPTL Field (but not the AUO Field), in each case that is Invented by or on behalf of the JVC or any of its subsidiaries before the earlier of (i) the second anniversary of the Closing Date or (ii) the termination of the JVA.

1.19 "***Party(ies)***" has the meaning ascribed to it in the Preamble hereto.

1.20 "***Patents***" means all domestic and foreign patents, patent applications and design registrations (including letters patent, industrial designs and inventor's certificates), together with all reissuances, divisionals, continuations, continuations-in-part, revisions, renewals, extensions, and reexaminations thereof, and any identified invention disclosures.

1.21 "***Recipient***" has the meaning ascribed to it in Section 5.1 below.

1.22 "***Software***" means all computer software and code, including assemblers, applets, compilers, source code, object code, development tools, design tools, user interfaces and data, in any form or format, however fixed.

1.23 "***Solar Cells***" means flat plate solar cells using high-efficiency back-contact, back-junction technology.

1.24 "***SPTL Background Intellectual Property***" means SPTL Background Patents and SPTL Background Technology.

1.25 "***SPTL Background Patents***" means all those Patents applicable to the JVC Business for SPTL Generation C technology, as set forth in a list to be mutually agreed upon in writing by the Parties, which list shall be supplemented if any errors or omissions are discovered.

1.26 "***SPTL Background Technology***" means all Intellectual Property (excluding Patents) and Software Controlled by SPTL or any of its Affiliates as of the Closing Date applicable to the JVC Business for SPTL Generation C technology.

1.27 "***SPTL Field***" means back contact, back junction, monocrystalline photovoltaic solar cell devices, including the design and manufacturing thereof.

1.28 "***Step Modification***" means any (i) production tool modifications or (ii) changes in sources of production tools relating to any production step or any production step modification or elimination.

1.29 "***Territory***" means Malaysia.

1.30 "***Third Party***" means any entity other than SPTL, AUO, an Affiliate of SPTL or AUO or the JVC or any of its subsidiaries.

1.31 "***Trade Secrets***" means trade secret rights and corresponding rights in Confidential Information and other non-public information (whether or not patentable), including ideas, formulas, compositions, inventor's notes, discoveries and improvements, know-how, manufacturing and production processes and techniques, testing information, research and development information, inventions, invention disclosures, unpatented blueprints, drawings, specifications, designs, plans, proposals and technical data, business and marketing plans, market surveys, market know-how and customer lists and information.

1.32 "***Trademarks***" means trademarks, service marks, logos, trade dress and trade names and domain names indicating the source of goods or services, and other indicia of commercial source or origin (whether registered, common law, statutory or otherwise), registrations and applications to register the foregoing anywhere in the world and all goodwill associated therewith.

ARTICLE II

ASSIGNMENT

2.1 JDP SPTL Developments and JVC SPTL Improvements. The JVC hereby assigns and transfers to SPTL, and its successors and assigns, all worldwide right, title and interest in and to any and all JDP SPTL Developments and JVC SPTL Improvements, subject to the license expressly granted by SPTL to the JVC under Section 3.1(a)(i) below. In the event that AUO has or acquires any right, title or interest in or to any JDP SPTL Development(s) and/or JVC SPTL Improvement(s), AUO hereby assigns and transfers to SPTL, and its successors and assigns, its entire worldwide right, title and interest in and to any and all such JDP SPTL Developments and JVC SPTL Improvements, subject to the license expr essly granted by SPTL to AUO under Section 3.3(b) below.

2.2 JDP AUO Developments and JVC AUO Improvements. The JVC hereby assigns and transfers to AUO, and its successors and assigns, all worldwide right, title and interest in and to any and all JDP AUO Developments and JVC AUO Improvements, subject to the license expressly granted by AUO to the JVC under Section 3.1(b)(i) below. In the event that SPTL has or acquires any right, title or interest in or to any JDP AUO Development(s) and/or JVC AUO Improvement(s), SPTL hereby assigns and transfers to AUO, and its successors and assigns, its entire worldwide right, title and interest in and to any and all such JDP AUO Developments and JVC AUO Improvements, subject to the license expressl y granted by AUO to SPTL under Section 3.2(b) below.

2.3 Further Assurances. The JVC and each of AUO and SPTL, as applicable, shall, without further consideration, execute and deliver any assignments or other documents and take and perform any other actions reasonably necessary to vest, perfect or confirm of record or otherwise, in SPTL and AUO, as applicable, the ownership rights set forth in Sections 2.1 and 2.2 above and Section 6.4(b) below and to assist SPTL and AUO, as applicable, or their respective designees, to obtain and from time to time enforce and defend SPTL's and AUO's respective rights under Sections 2.1 and 2.2 above, and to execute all documents reasonably necessary for SPTL or AUO, as applicable, or their respec tive designees, to do so.

ARTICLE III

LICENSES; RESTRICTIONS; JOINT DEVELOPMENT PROGRAMS

3.1 Licenses Granted to the JVC.

(a) SPTL Background Intellectual Property, JDP SPTL Developments and JVC SPTL Improvements.

(i) License. SPTL, on behalf of itself and its Affiliates, hereby grants the JVC a non-exclusive, non-transferable, non-assignable, royalty-free license, without the right to sublicense, under the SPTL Background Intellectual Property, JDP SPTL Developments and JVC SPTL Improvements, to: (1) manufacture Solar Cells solely in connection with the JVC Business and solely in the Territory; and (2) offer for sale and sell Solar Cells manufactured pursuant to subsection (1) of this Section 3.1(a)(i) solely to SPTL (or applicable Affiliate thereof) and AUO (or applicable Affiliate thereof) pursuant to the terms of the SPTL Supply Agreement or the AUO Supply Agreement, respectively. 60;The license granted in this Section 3.1(a)(i) shall expressly exclude any Have Made Rights.

(ii) Transfer and Implementation. SPTL shall assist the JVC in the transfer and integration of the SPTL Background Technology into the JVC's manufacturing operations as set forth in Section 2.4(b)(vi) of the JVA.

(b) AUO Background Intellectual Property, JDP AUO Developments and JVC AUO Improvements.

(i) License. AUO, on behalf of itself and its Affiliates, hereby grants the JVC a non-exclusive, non-transferable, non-assignable, royalty-free license, without the right

to sublicense, under the AUO Background Intellectual Property, JDP AUO Developments and JVC AUO Improvements, to: (1) manufacture Solar Cells solely in connection with the JVC Business and solely in the Territory; and (2) offer for sale and sell Solar Cells manufactured pursuant to subsection (1) of this Section 3.1(b)(i) solely to SPTL (or applicable Affiliate thereof) and AUO (or applicable Affiliate thereof) pursuant to the terms of the SPTL Supply Agreement or the AUO Supply Agreement, respectively. The license granted in this Section 3.1(b)(i) shall expressly exclude any Have Made Rights.

(ii) Transfer and Implementation. AUO shall assist the JVC in the transfer and integration of the AUO Background Technology into the JVC's manufacturing operations as set forth in Section 2.4(c)(iv) of the JVA.

3.2 Licenses Granted to SPTL.

(a) JVC Developments and Joint Inventions. The JVC, on behalf of itself and its subsidiaries, hereby grants SPTL a non-exclusive, worldwide, perpetual, non-terminable (except as expressly set forth in Section 6.2 below), fully paid-up, royalty-free license, with the right to sublicense, under the JVC Developments and the JVC's rights in and to any Joint Inventions not jointly owned by SPTL for any and all purposes. The license granted in this Section 3.2(a) shall expressly include Have Made Rights.

(b) JDP AUO Developments and JVC AUO Improvements. AUO, on behalf of itself and its Affiliates, hereby grants SPTL a non-exclusive, worldwide, perpetual, non-terminable (except as expressly set forth in Section 6.2 below), fully paid-up, royalty-free license, with the right to sublicense, under the JDP AUO Developments and JVC AUO Improvements for any and all purposes. The license granted in this Section 3.2(b) shall expressly include Have Made Rights.

3.3 Licenses Granted to AUO.

(a) JVC Developments and Joint Inventions. The JVC, on behalf of itself and its subsidiaries, hereby grants AUO a non-exclusive, worldwide, perpetual, non-terminable (except as expressly set forth in Section 6.2 below), fully paid-up, royalty-free license, with the right to sublicense, under the JVC Developments and the JVC's rights in and to any Joint Inventions not jointly owned by AUO for any and all purposes, but expressly excluding any and all rights, including any use or practice, in connection with the manufacturing of photovoltaic solar cells with greater than twenty percent (20%) efficiency within ten (10) years of the Closing Date. The license granted in this Section 3.3(a) shall expressly include Have Made Rights.

(b) JDP SPTL Developments and JVC SPTL Improvements. SPTL, on behalf of itself and its Affiliates, hereby grants AUO a non-exclusive, worldwide, perpetual, non-terminable (except as expressly set forth in Section 6.2 below), fully paid-up, royalty-free license, with the right to sublicense, under the JDP SPTL Developments and JVC SPTL Improvements for any and all purposes, but expressly excluding any and all rights, including any use or practice, in connection with the manufacturing of photovoltaic solar cells with greater than twenty percent (20%) efficiency within ten (10) years of the Closing Date. The license granted in this Section 3.3(b) shall expressly include Have Made Rights.< /font>

3.4 Limitations and Obligations.

(a) Each Party agrees to use its commercially reasonable efforts to neither perform nor permit any act which reasonably could be expected to jeopardize or be detrimental to the validity, enforceability or scope of the owning Party's rights licensed to the other Party(ies) hereunder; provided, however, that nothing contained herein shall be construed as obligating any owning Party to obtain, maintain or enforce any Intellectual Property rights licensed hereunder.

(b) Nothing herein shall be construed as granting any Party, by implication, estoppel or otherwise, any license or other right in, to or under any Intellectual Property or Software, including any license or other right in, to or under any Patent(s) held by a Party that may block and/or limit the exercise of the ownership rights granted in Article II above and/or the license rights granted in this Article III, except for those rights expressly granted hereunder. As among the Parties: (i) SPTL shall have sole and exclusive ownership of the SPTL Background Intellectual Property, JDP SPTL Developments and JVC SPTL Improvements; (ii) AUO shall have sole and exclusive ownership of the AUO Background Intellectual Property, JDP AUO Developments and JVC AUO Improvements; (iii) the JVC shall have sole and exclusive ownership of the JVC Developments; and (iv) the inventing Parties (with inventorship being determined under United States patent law) shall own an undivided interest in and to each Joint Invention, and except to the extent a particular Party is restricted by the licenses granted to the other Party and/or the other covenants contained in this Agreement or the JVA, (1) each joint owner shall be entitled to practice, and grant to Third Parties and its Affiliates, in the case of SPTL and AUO, or its subsidiaries, in the case of the JVC, the right to use and practice all Joint Inventions to which it is a joint owner without restriction or an obligation to account to the other joint owner(s), and (2) the other joint owners shall consent, without additional consideration, to any and all such licenses.

(c) Except as expressly set forth herein, none of the Parties makes any warranty or representation to any other Party (i) as to the validity, enforceability or scope of any class or type of any of the Intellectual Property assigned or licensed hereunder, or (ii) that any manufacture, sale, lease, use or other disposition of any Solar Cells using or incorporating any Intellectual Property licensed hereunder will be free from infringement of any Patent rights or other Intellectual Property rights of any Person.

3.5 Delivery Obligations and Technical Review and Transfer.

(a) Delivery. Upon a licensee Party's written request from time to time, each licensor Party shall promptly deliver to the requesting licensee Party, on media reasonably specified by the licensee Party and at the licensee Party's expense, a copy of any Intellectual Property licensed to the licensee Party hereunder.

(b) Technical Review and Transfer. The JVC shall, on a quarterly basis, conduct knowledge and technology transfer sessions with SPTL's technical team pursuant to the terms and conditions to be mutually agreed upon in writing by the Parties. AUO shall have the right to designate personnel to attend such sessions and have access to information arising from or in connection with such sessions.

3.6 Patent Matters. SPTL shall have the first right, but not the obligation, to direct and control the preparation, filing, prosecution, issuance, maintenance (including interference, opposition and similar Third Party proceedings before the relevant patent office), enforcement and defense of any Patents (collectively, "***Patent Matters***") in the JVC Developments. Otherwise, (a) for Joint Inventions owned by the JVC and SPTL, SPTL shall direct and control all Patent Matters at its cost, (b) for Joint Inventions owned by the JVC and AUO, AUO shall direct and control all Patent Matters at its cost, and (c) each of SPTL and AUO shall direct and control all Patent Matters for the Intellectual Property owned solely by it pursuant to this Agreement at its cost. All of the foregoing shall be as otherwise described in and governed by the terms and conditions of the IP Services Agreement.

3.7 Joint Development Programs. In the event the JVC wishes to develop or implement a Step Modification(s), it shall notify SPTL and AUO in writing, specifying the proposed Step Modification(s) in sufficient detail to permit evaluation of same. If SPTL agrees to such Step Modification(s) (which agreement not to be unreasonably withheld), SPTL, the JVC and, if applicable, AUO shall enter into an agreement governing the a Joint Development Program directed toward such Step Modification(s) and the rights and obligations of the each applicable Party with respect thereto substantially in a form mutually agreed upon in writing by the Parties (each, a "*JDP Agreement*"). In the event of a conflict between the terms of this Agreement and a JDP Agreement, the terms of this Agreement shall govern, unless the JDP Agreement expressly refers to and supersedes the conflicting provision contained herein. For the avoidance of doubt, the JVC may not develop or implement a Step Modification without SPTL'ss express written consent, which shall not be unreasonably withheld.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES; LIMITATION OF LIABILITY.

4.1 Representations and Warranties.

(a) The representations and warranties of SPTL under Section 16 (Representations and Warranties of SPTL) of the JVA and of AUO under Section 15 (Representations and Warranties of AUO) of the JVA are hereby incorporated by reference, as if fully set forth herein.

(b) Each Party represents and warrants to each other Party that it has the right to grant all applicable ownership and license rights provided hereunder and that it has not and shall not enter into any agreement that would preclude it from fulfilling its obligations under this Agreement.

4.2 Disclaimer. EXCEPT AS EXPRESSLY SET FORTH IN SECTION 4.1 ABOVE OR IN THE JVA, NONE OF THE PARTIES MAKES ANY WARRANTIES, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE WITH RESPECT TO THE RIGHTS AND LICENSES GRANTED BY IT HEREUNDER, AND EXPRESSLY DISCLAIMS IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT OF THIRD PARTY INTELLECTUAL PROPERTY RIGHTS.

ARTICLE V

CONFIDENTIALITY

The provisions of Section 10 (Confidentiality) of the JVA are hereby incorporated by reference, and shall apply to this Agreement as if the text of such provisions were set forth in their entirety in this Agreement. For the avoidance of doubt, as among the Parties, all Confidential Information relating to: (i) the SPTL Background Intellectual Property, JDP SPTL Developments and JVC SPTL Improvements shall be SPTL's Confidential Information; (ii) the AUO Background Intellectual Property, JDP AUO Developments and JVC AUO Improvements shall be AUO's Confidential Information; (iii) the JVC Developments shall be the JVC's Confidential Information; and (iv) the Joint Inventions shall be the Confidential Information of the owning Parties.

ARTICLE VI

TERM AND TERMINATION

6.1 Term. This Agreement shall commence upon the Closing Date and shall remain in full force and shall automatically terminate upon dissolution of the JVC or otherwise in accordance with the terms of this Article VI.

6.2 Termination of Licenses for Cause.

(a) Breach. If a Party fails to comply with a material term of this Agreement or the JVA and such failure remains uncured for a period of sixty (60) days after such licensed Party receives written notice describing such failure in reasonable detail (or a period of thirty (30) days in the event such notice is based upon a breach of (i) an assignment obligation set forth in Article II above, (ii) the terms and scope of a license granted under Article III above or (iii) a Party's confidentiality obligations set forth in Article V above), the rights and licenses granted to such breaching Party pursuant to Sections 3.1(a)(i), 3.1(b)(i), 3.2 and/or 3.3 above, as applicable, shall automatically te rminate.

(b) Bankruptcy. Upon the occurrence of a Bankruptcy Event with respect to any Party or a receiver is appointed for all of any Party's property and assets or any Party makes a general assignment for the benefit of creditors, or any Party becomes a debtor in a case under any applicable statute relating to bankruptcy or becomes the subject of any other bankruptcy or similar proceeding for the general adjustment of its debts (and in the case of an involuntary proceeding filed against such Party, such proceeding is not discharged or dismissed within sixty (60) days), the rights and licenses granted to such Party pursuant to Sections 3.1(a)(i), 3.1(b)(i), 3.2 and/or 3.3 above, as applicable, shal l automatically terminate.

Without derogating in any way from the generality of this clause and the definition of "Bankruptcy Events", the following events, if they occur with respect to JVC, shall be deemed to be Bankruptcy Events:

(i) if any step or action is taken or a resolution is passed for the winding up, dissolution or liquidation of the JVC or a petition for winding up is presented against the JVC; or

(ii) if the JVC becomes insolvent, is unable to pay its debts as they fall due, stops, suspends or threatens to stop or suspend payment of all or a material part of its debts, begins negotiations or takes any proceeding or other step with a view to readjustment, rescheduling or deferral of all or any part of its indebtedness.

6.3 Termination of JVC's Rights for Certain Events.

Unless otherwised agreed by the Parties, if the JVC undergoes a change of control or ownership which the JVC's majority shares is transferred to a third party other than SPTL and AUO or other restructuring altering the JVC's structure which is entirely controlled by SPTL and/or AUO or any violation of Section 7.6 , each of SPTL and AUO shall have the right, upon written notice to the other Parties, to immediately terminate the rights and licenses granted by it to the JVC under Article III above.

6.4 Effect of Termination.

(a) Termination of this Agreement shall not (i) relieve any Party of any obligation accruing to such Party prior to such termination, or (ii) result in the waiver of any right or remedy by a Party accruing to such Party prior to such termination.

(b) Upon the termination of this Agreement or upon termination of the JVC's rights and licenses pursuant to Section 6.2 or 6.3 above: (i) all rights and licenses granted to the JVC pursuant to Section 3.1 shall automatically terminate; (ii) the JVC shall assign its entire right, title and interest in, to and under the JVC Developments and the Joint Inventions primarily relating to the AUO Field to AUO, subject to the pre-existing license granted to SPTL pursuant to Section 3.2(a) above (unless earlier terminated pursuant to Section 6.2 above); (iii) the JVC shall assign its entire right, title and interest in, to and under the JVC Developments and the Joint Inventions not assigned to AUO pursuant to subsection (ii) of this Section 6.4(b) to SPTL, subject to the pre-existing license granted to AUO pursuant to Section 3.3(a) above (unless earlier terminated pursuant to Section 6.2 above); and (iv) the rights and licenses granted in Sections 3.2(b) and 3.3(b) shall survive (unless earlier terminated pursuant to Section 6.2 above). For the avoidance of doubt, notwithstanding the termination of this Agreement or Section 6.5 below, the surviving licenses referenced in subsections (ii), (iii) and (v) of this Section 6.4(b) shall continue to be governed by the applicable terms of this Agreement. In the event the Parties have not reached agreement on the characterization of any JVC Developments or Joint Inventions (i.e., whether or not it relates to the AUO Field) within thirty (30) days of termination of this Agreement or termination of the JVC's rights and licenses pursuant to Section 6.2 or 6.3 above, the matter shall be resolved pursuant to the dispute resolution procedures set forth in Section 1.4 of the IP Services Agreement.

6.5 Survival. Sections 3.4, 6.4 and 6.5 and Articles II, IV, V and VII herein shall survive termination of this Agreement for as long as necessary to permit their full discharge.

ARTICLE VII

MISCELLANEOUS

7.1 Governing Law and Dispute Resolution. This Agreement, and the rights and obligations of the Parties hereunder, shall be interpreted and governed in accordance with the laws of the State of California, without giving effect to its conflict of laws provisions. Any disputes incapable of being resolved by mutual agreement of the Parties shall be handled in accordance with Section 18.2 (Arbitration) of the JVA.

7.2 Notices. All notices, demands, requests, consents or other communications hereunder shall be transmitted in accordance with Section 18.3 (Notices) of the JVA.

7.3 Entire Agreement. This Agreement, together with the JVA and all Annexes, Exhibits and Schedules hereto and thereto, are intended to embody the final, complete and exclusive agreement between the Parties with respect to the matters addressed herein; are intended to supersede all prior agreements, understandings and representations written or oral, with respect thereto, including the Existing Confidentiality Agreement; and may not be contradicted by evidence of any such prior or contemporaneous agreement, understanding or representation, whether written or oral.

7.4 Amendment. This Agreement shall not be modified, amended, canceled or altered in any way, and may not be modified by custom, usage of trade or course of dealing, except by an instrument in writing signed by each Party. All amendments or modifications of this Agreement shall be binding upon the Parties despite any lack of consideration so long as the same shall be in writing and executed by the Parties.

7.5 Waiver. The performance of any obligation required of a Party hereunder may be waived only by a written waiver signed by the other Party, and such waiver shall be effective only with respect to the specific obligation described. The waiver by either Party of a breach of any provision of this Agreement by the other Party shall not operate or be construed as a waiver of any subsequent breach of the same provision or another provision of this Agreement.

7.6 Assignment. Neither this Agreement, nor any rights under this Agreement, may be assigned or otherwise transferred by any Party, in whole or in part, whether voluntary, or by operation of law, except, with respect to a Party that is an original signatory to this Agreement on the date of this Agreement, in connection with a change of control of such Party (whether by means of a merger, consolidation, purchase of substantially all the stock or assets, reorganization or similar transaction or series of transactions). Subject to the foregoing, this Agreement will be binding upon and inure to the benefit of each Party and its respective successors and permitted assigns.

7.7 Severability. In the event that any term, condition or provision of this Agreement is held to be or become invalid or be a violation of any applicable Law, statute or regulation, the same shall be deemed to be deleted from this Agreement and shall be of no force and effect and the Agreement shall remain in full force and effect as if such term, condition or provision had not originally been contained in this Agreement. The validity and enforceability of the other

provisions shall not be affected thereby. In such case or in the event that this Agreement should have a gap, the Parties shall agree on a valid and enforceable provision completing this Agreement, coming as close as possible to the economic intentions of the Parties. In the event of a partial invalidity, the Parties agree that this Agreement shall remain in force without the invalid part. This shall also apply if parts of this Agreement are partially invalid.

7.8 Expenses. Except as specifically provided for in this Agreement, each of the Parties shall bear its respective expenses, costs and fees (including attorneys' fees) in connection with the transactions contemplated hereby, including the preparation, execution and delivery of this Agreement and an exhibits hereto and compliance herewith and therewith.

7.9 Third Party Benefits. This Agreement shall be binding upon, and inure to the benefit of, each of the Parties and their respective successors and permitted assigns. Nothing contained in this Agreement, express or implied, shall be deemed to confer any right or remedy upon, or obligate any Party to, any person or entity other than the Parties and their respective successors and permitted assigns.

7.10 Counterparts. This Agreement may be executed simultaneously in any number of counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

7.11 Interpretation. In this Agreement: (i) headings are for convenience of reference only and shall not affect the interpretation of the provisions of this Agreement except to the extent that the context otherwise requires; (ii) words importing the singular shall include the plural and vice versa; (iii) words denoting individuals shall include any form of entity and vice versa; (iv) words denoting any gender shall include all genders; (v) where any act, matter or thing is required by this Agreement to be performed or carried out on a certain day and that day is not a Business Day, then that act, matter or thing shall be carried out or performed on the next following Business Day; (vi) unless specified otherwise, any reference herein to any Article, Section, clause, sub-article, sub-clause, Schedule or Exhibit shall be deemed to be a reference to an Article, Section, clause, sub-article, sub-clause, Schedule or Exhibit of this Agreement; (vii) any reference to any agreement, document or instrument shall refer to such agreement, document or instrument as amended, modified or supplemented; (viii) the words "include," "including" and the derivations thereof shall not be limiting and shall be deemed to be followed by the phase "without limitation;" and (ix) where there is any inconsistency between the definitions set out in this clause and the definitions set out in any Article, Section, clause, sub-article, sub-clause, Schedule or Exhibit, then for the purposes of construing such Article, Section, clause, sub-article, sub-clause, Schedule or Exhibit, the definitions set out therein shall prevail.

7.12 Cumulation of Remedies. The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights or remedies provided by Law.

7.13 English Language. All agendas, notices, other documentation relating to (i) documentation provided to the Parties and (ii) interaction between and/or among the Parties, including this Agreement, shall be prepared in and entered into the English language. In the event of any dispute concerning the construction or meaning of this Agreement, the text of the

Agreement as written in the English language shall prevail over any translation of this Agreement that may have been or will be made.

7.14 Equitable Relief. The Parties agree that irreparable damage would occur if any provision of Articles II, III and V of this Agreement were not performed in accordance with the terms hereof and that the Parties shall be entitled to an injunction or injunctions to prevent breaches of such provisions or to enforce specifically the performance of such provisions before any court of competent jurisdiction in addition to any other remedy to which they are entitled.

7.15 Disclaimer of Agency. This Agreement shall not be deemed to constitute any Party the agent of the other Party or the JVC, nor shall it constitute the JVC to be an agent of any of the Parties.

7.16 Rules of Construction. The Parties agree that they have been represented by counsel during the negotiation, preparation and execution of this Agreement and, therefore, waive the application of any law, regulation, holding or rule of construction providing that ambiguities in an agreement or other document will be construed against the Party drafting such agreement or document.

[*Signatures follow****]***

IN WITNESS WHEREOF, SPTL, AUO and the JVC have caused this Agreement to be signed by their respective duly authorized representatives as of the date first set forth above.

SUNPOWER TECHNOLOGY, LTD.

By: _____

Name: _____

Title: _____

AU OPTRONICS SINGAPORE PTE. LTD.

By: _____

Name: _____

Title: _____

SUNPOWER MALAYSIA MANUFACTURING SDN.BHD.

By: _____

Name: _____

Title: _____

Exhibit B

Form of SPTL Supply Agreement

CONFIDENTIAL TREATMENT REQUESTED

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

Form of SPTL Supply Agreement

SUPPLY AGREEMENT

THIS SUPPLY AGREEMENT (this "***Agreement***") is made as of **[_____]**, 2010 (the "***Effective Date***"), by and among SunPower Malaysia Manufacturing SDN.BHD., a company organized under the laws of Malaysia (the "***JVC***"), SunPower Systems Sarl, a company organized under the laws of Switzerland ("***SPSW***"), and AU Optronics Singapore Pte. Ltd., a company organized under the laws of Singapor e ("***AUO***"). The JVC, SPSW and AUO are each referred to herein as a "***Party***" and together as the "***Parties***." Capitalized terms used but not defined in this Agreement or in Schedule 1 to this Agreement shall have the meanings ascribed to them in the JVA (as defined below).

RECITALS

WHEREAS, the JVC, AUO, SunPower Technology, Ltd., a company organized under the laws of the Cayman Islands ("***SPTL***"), and AU Optronics Corporation, a company organized under the laws of Taiwan, R.O.C., have entered into that certain Joint Venture Agreement dated as of May 27, 2010 (the "***JVA***");

WHEREAS, pursuant to the JVA, the business purposes of the JVC are to manufacture, sell and distribute flat plate solar cells using high-efficiency back contact, back-junction technology ("***Product(s)***") to each of SPTL (or applicable Affiliate thereof) and AUO;

WHEREAS, SPSW and SPTL are Affiliates;

WHEREAS, the Parties desire to enter into an agreement pursuant to which the JVC supplies Product to SPSW; and

WHEREAS, one of the conditions to the effectiveness of the JVA is that the Parties shall have entered into this Agreement.

NOW, THEREFORE, in furtherance of the foregoing premises and in consideration of the mutual covenants and obligations hereinafter set forth and in the JVA, and based on the consideration set forth in this Agreement and the JVA, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound hereby, do agree as follows:

1. **SCOPE OF AGREEMENT**.

1.1 **Affiliated Companies**. SPSW and its Affiliates may purchase Product under the terms of this Agreement. Submission of a Purchase Order referencing this Agreement and the issuance of an order acknowledgment is deemed to constitute acceptance of the terms of this Agreement by the applicable Affiliate. For purposes of this Agreement "***Buyer***" shall refer to either SPSW or its Affiliate issuing a Purchase Order.

1.2 **Master Agreement Structure**. The Parties acknowledge that this Agreement shall not constitute a commitment to purchase any particular quantity of Products or services.

Except as provided in Section 2.8, Buyer shall only be committed to purchase Products and the JVC shall only be committed and authorized to ship Products to Buyer when Buyer has tendered a Purchase Order. Notwithstanding the foregoing, the JVC shall offer for sale to Buyer, in the fiscal years specified, the following percentage of the JVC's aggregate Product manufacturing capacity on any six-month period as is set forth in the Initial Annual Operating Plan or the Initial Mid-Year Operating Plan, as applicable: 95% in 2010, 90% in 2011, 85% in 2012 and 80% in 2013 or in any fiscal year thereafter.

2. **FORECASTS AND PURCHASE ORDERS**.

2.1 **Initial Annual Operating Plan**. The JVC will provide Buyer with an initial production forecast, issued at least 8 weeks prior to the first day of each fiscal year, which sets forth the JVC's good faith estimate of the aggregate amount of Product that the JVC will produce in such year on a monthly basis (the "***Initial Annual Operating Plan***").

2.2 **Annual Demand Forecast**. Buyer will provide the JVC with an annual demand forecast, issued at least 7 weeks prior to the first day of each fiscal year, which sets forth Buyer's Product demand for such fiscal year on a monthly basis (the "***Annual Demand Forecast***"); provided, however, that for any fiscal year, such demand shall not exceed the amount of Product set forth in the Initial Annual Operating Plan for such year or that the JVC is obligated to provide to Buyer in such year pursuant to Section 1.2. The difference between Buyer's Product allocation and Annual Demand Forecast shall be known as the "***SPSW Unsubscribed Annual Forecast***." If Buyer's Annual Demand Forecast is less than Buyer's Product allocation for the first six months in any year pursuant to Section 1.2, then during the term of that certain Supply Agreement among the JVC, AUO and SPTL dated f even date herewith ("***AUO Supply Agreement***"), the JVC shall deliver notice to AUO that it or may subscribe to purchase the SPSW Unsubscribed Annual Forecast with respect to such six months. AUO shall confirm in writing within 7 days whether it will purchase all or a portion of the SPSW Unsubscribed Annual Forecast. If AUO's Product demand for the first six months of any fiscal year (the "*AUO Annual Demand Forecast*") pursuant to the AUO Supply Agreement is less than AUO's Product allocation for such six month period pursuant to the AUO Supply Agreement, then during the term of this Agreement, the JVC shall deliver notice to Buyer that it may subscribe to purchase the difference between such Product allocation and the AUO Annual Demand Forecast (the "***AUO Unsubscribed Annual Forecast***") with respect to the applicable six month period of such AUO Annual Demand Forecast. Buyer shall confirm in writing within 7 days whether it will purchase all or a portion of the AUO Unsubscribed Annual Forecast.

2.3 **Final Annual Operating Plan**. The JVC will provide Buyer with an annual production forecast, issued at least 5 weeks prior to the first day of each fiscal year, setting forth the JVC's revised estimate of aggregate amount of Product that the JVC will produce in such year, which shall not exceed the aggregate amount of Product subscribed for by Buyer and AUO pursuant to Section 2.2 (the "***Final Annual Operating Plan***"). The Final Annual Operating Plan shall have been approved by the Board prior to its delivery to Buyer. If AUO elects not to purchase all of the SPSW Unsubscribed Annual Forecast for any six month period or if Buyer elects not to purchase all of the AUO Unsubscribed Annual Forecast for any six month period pursuant to Section 2.2, then the JVC shall use best efforts to minimize Fixed and Variable Costs for such six month period.

2.4 **Initial Mid-Year Operating Plan**. The JVC will provide Buyer with an initial production forecast, issued at least 8 weeks prior to the first day of the third fiscal quarter, which sets forth the JVC's good faith estimate of the aggregate amount of Product that the JVC will produce in the third and fourth quarter of such fiscal year on a monthly basis (the "***Initial Mid-Year Operating Plan***").

2.5 **Mid-Year Demand Forecast**. Buyer will provide the JVC with a demand forecast, issued at least 7 weeks prior to the first day of the third fiscal quarter, which sets forth Buyer's Product demand for the third and fourth quarter of such fiscal year on a monthly basis (the "***Mid-Year Demand Forecast***"); provided, however, that for any six month period, such demand shall not exceed the amount of Product set forth in the Initial Mid-Year Operating Plan or the amount that the JVC is obligated to provide to Buyer over the applicable six month period pursuant to Section 1.2. The difference between B uyer's Product allocation for any six month period and Mid-Year Demand Forecast for such period shall be known as the "***SPSW Unsubscribed Mid-Year Forecast***." If Buyer's Mid-Year Demand Forecast is less than Buyer's Product allocation for the applicable six month period pursuant to Section 1.2, then during the term of the AUO Supply Agreement, the JVC shall deliver notice to AUO that it may subscribe to purchase the SPSW Unsubscribed Mid-Year Forecast with respect to such six month period. AUO shall confirm in writing within 7 days whether it will purchase all or a portion of the SPSW Unsubscribed Mid-Year Forecast with respect to the following six months. If AUO's Product demand for the last six months of any year (the "***AUO Mid-Year Demand Forecast***") pursuant to the AUO Supply Agreement is less than AUO's Product allocation for such six period pursuant to the AUO Supply Agreement, then during the term of this Agreement, the JVC shall deliver notice to Buyer that it may subscribe to purchase the difference between such Product allocation and the AUO Mid-Year Demand Forecast (the "***AUO Unsubscribed Mid-Year Forecast***") with respect to the applicable six month period of such AUO Mid-Year Demand Forecast. Buyer shall confirm in writing within 7 days whether it will purchase all or a portion of the AUO Unsubscribed Mid-Year Forecast with respect to the following six months.

2.6 **Final Mid-Year Operating Plan**. The JVC will provide Buyer with a production forecast, issued at least 5 weeks prior to the first day of the third fiscal quarter, which sets forth the JVC's revised estimate of aggregate amount of Product that the JVC will produce in the third and fourth quarter of such fiscal year, on a monthly basis, which shall not exceed the aggregate amount of Product subscribed for by Buyer and AUO pursuant to Section 2.5 (the "***Final Mid-Year Operating Plan***"). The Final Mid-Year Operating Plan shall have been approved by the Board prior to its de livery to Buyer. If AUO elects not to purchase all of the SPSW Unsubscribed Annual Forecast for any six month period or if Buyer elects not to purchase all of the AUO Unsubscribed Mid-Year Forecast for any six month period pursuant to Section 2.5, then the JVC shall use best efforts to minimize Fixed and Variable Costs for such six month period.

2.7 **Monthly Demand Allocation**. The JVC will deliver to Buyer a demand allocation once per month, which sets forth the aggregate amount of Product that the JVC expects to produce during the following month and sets forth the amount of Product to be purchased by Buyer and AUO during such month based on the JVC's expected production and each of Buyer's and AUO's percentage of aggregate Product demand for such month pursuant

to Sections 2.2 and 2.5 of this Agreement and the AUO Supply Agreement, as applicable for such month (the "***Monthly Demand Allocation***"). The Monthly Demand Allocation for any month shall be issued at least four weeks prior to the commencement of such month. Notwithstanding anything contained in this Agreement to the contrary, AUO and Buyer may reallocate their respective Product allocations as they may agree in writing from time to time, and the JVC agrees to honor any such reallocations and adjust Buyer's and AUO's Product allocations accordingly in the Monthly Demand Allocation.

2.8 **Purchase Order**. Buyer shall deliver a Purchase Order to the JVC in the first week of the then current month to confirm purchase commitments consistent with the Monthly Demand Allocation for the subsequent month of such Monthly Demand Allocation. Purchase Orders are a binding commitment to purchase Product. The JVC shall deliver a formal acknowledgement and acceptance within two business days from the date the Purchase Order was sent to the JVC. In the event that the JVC does not receive a Purchaser Order from Buyer with respect to any given month within the first 10 days of the prior month, Buyer shall be obligated in such given month to purchase an amount of Product consistent with the Monthly Demand Allocation for such month. Buyer and AUO shall meet with the JVC monthly to review updated monthly production forecasts and rescheduling of planned production and shipments.

2.9 **Binning and Testing**. The JVC shall bin and test solar cells manufactured by the JVC in accordance with SPTL Document Numbers *** and ***or as mutually agreed upon in writing by the Parties. Solar cells sorted into different bins but still conforming to applicable specifications shall be allocated between Buyer and AUO in accordance with Section 1.2 and Sections 2.1-2.10 of this Agreement and the AUO Supply Agreement.

2.10 **Additional Allocations**. The JVC shall offer to sell solar cells manufactured by the JVC that do not satisfy the specifications set forth in Section 2.9, including scrap cells (collectively "***Offspec Cells***"), and such Offspec Cells shall be allocated between Buyer and AUO consistent with their respective allocations pursuant to Section 1.2 and Sections 2.1-2.10 of this Agreement and the AUO Supply Agreement. If the JVC manufactures more cells during a month than otherwise previously ordered by Buyer and AUO, then Buyer and AUO will purchase their respective allocations pursuant to Section 1.2 and Sections 2.2, 2.5, 2.7, 2.8 and 2.9 of this Agreement and the AUO Supply Agreement.

3. **PRICING**.

3.1 **Product Pricing**. Prices for the Products shall be calculated as described in Exhibit A to this Agreement. Upon Buyer's prior request, and by the end of ***, or more frequently if Buyer requests, the JVC shall submit an updated cost forecast for the ***. Offspec Cells shall have a transfer price of *** dollars ($***).

4. **LEAD-TIME; DELIVERY**.

4.1 **On-Time Delivery**. The JVC will maintain On-Time Delivery Performance equal to or greater than *** percent (***%), as measured each ***.

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4.2 **Shipping Specifications**. Buyer shall specify the delivery address in the Purchase Order or by separate notice. All shipping information, including that on invoices and packing labels will list the Country of Origin for all Products supplied, and must be in both text and scannable bar code formats, as provided in the applicable Specification. The JVC shall deliver a shipment notice to Buyer by telefax, EDI, XML or other means of communication no later than the shipment date, and such notice shall include such information as agreed upon by the Parties.

4.3 **Delivery; Title; Risk of Loss; Damage**. The JVC agrees to deliver all Products to Buyer, EXW Melaka (Incoterms 2000), and title for such Products shall pass to Buyer when risk of loss passes in accordance therewith. The JVC shall be responsible for any loss or damage to Product due to the JVC's failure to properly preserve, package, or handle the Product. All Products shall be packaged, marked, and otherwise prepared in accordance with good commercial practices to reduce the risk of damage and to be packaged in the smallest commercially acceptable form in order to enable Buyer to obtain the lowest shipping rates possible (based on volume metric dimensions) and in accordance with all applicable federal, state and local packaging and transportation laws and regulations.

4.4 **Inspections after Delivery**. Products shall be subject to inspection, testing and acceptance by Buyer. Buyer shall inspect all Products within a reasonable period after arrival at Buyer's premises. Such incoming inspection shall include checks for identity, quantity, damage due to transportation and other visible damage or noncompliance with the Product Specifications. If Buyer's inspection results in multiple Products failing to meet the Product Specifications, then upon Buyer's request, the JVC shall inspect all Products delivered with such shipment to confirm compliance with Product Specifications, segregating conforming Products from nonconforming Products. The JVC shall be responsible for all costs incurred in connection with such inspection and sorting by the JVC.

4.5 **Product Specification Claims**. If Buyer determines as a result of its inspection that Products fail to meet Product Specifications and/or applicable warranties set forth in this Agreement, Buyer shall notify the JVC whereupon the JVC shall have the right to undertake its own inspection. Upon the JVC's request, Buyer shall ship to the JVC, at the JVC's expense, the nonconforming Product, along with relevant information from the shipping notice. If the Product fails to meet the acceptance criteria set forth in the Product Specifications, the JVC shall make, at the JVC's expense, such adjustments or corrections, or deliver replacement Product, as may be required to satisfy the requirements. The JVC shall be responsible for costs of either disposing or returning such noncon forming Products, including shipping and insurance costs.

5. **ENGINEERING CHANGES**.

5.1 The Parties agree that further changes, modifications or amendments to the Specifications shall only be accomplished by mutual agreement between the JVC and SPSW, with the consent of AUO (during the term of the AUO Supply Agreement), and through the formal change control process set forth below:

(a) Either Party may at any time propose changes to the Specifications by a written Engineering Change Notice (an "***ECN***") to the other party; provided, however, that no ECN shall not be binding unless approved in writing by both Parties.

(b) The recipient of an ECN will use all reasonable efforts to provide a detailed response within seven (7) days of receipt.

(c) The JVC will inform Buyer of all known and likely impacts of an ECN (including but not limited to delivery scheduling and prices) on the provisions of any relevant Purchase Orders.

(d) The Parties will endeavour to agree and implement at the earliest opportunity ECNs relating to personal and product safety.

(e) Until an ECN and any associated impact have been agreed in writing, the Parties will continue to perform their obligations without taking account of that ECN.

6. **SUPPLY CONSTRAINTS**.

6.1 **Allocation**. The JVC will notify Buyer within one (1) business day or less, if possible, whenever the JVC identifies a reasonable likelihood that there is or will be a Supply Constraint that adversely impacts either open Purchase Orders or forecasts. During any period of Supply Constraint, the JVC agrees to allocate materials and capacity to Buyer on a pro rata basis compared against all other pending Purchase Orders and production allocation rights. If JVC experiences a Supply Constraint consistently over one quarter due to a raw materials shortage, Buyer has a right to supplement with its own raw materials and provide such raw materials to the JVC until the JVC can demonstrate that it can source sufficient raw materials for its production, and in such event Buyer shall be reimbursed by the JVC fo r the cost of such raw materials.

7. **WARRANTIES**.

7.1 **General**. The JVC represents and warrants that: (a) it is duly incorporated and validly existing in its jurisdiction of formation or organization; (b) it has full authority to enter into this Agreement; (c) this Agreement is a valid, legally binding and enforceable agreement; (d) there are no prior commitments or other obligations that prevent the JVC from fully performing all its obligations under this Agreement, and neither execution of this Agreement or performance of obligations hereunder will result in a breach of any obligations owed by the JVC under any other agreement; (e) the services to be provided in connection with the manufacture and sale of Products shall be performed in a good and workmanlike manner consistent with prevailing industry standards by competent and qualified personnel; (f) the JVC will not en ter into any agreement or obligation that will conflict with the JVC obligations under this Agreement; (g) neither the JVC nor any of its Representatives has given to or received from Buyer or its Representatives any commission, fee, rebate, kickback, or unreasonable gift or entertainment of value in connection with this Agreement; (h) Buyer will receive good and marketable title to each Product free from liens or encumbrances of any nature; and (i) the Products comply with all applicable laws and regulations.

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8. **PAYMENT TERMS; INVOICES**.

8.1 **Payment**. Except as permitted under Section 8.2 below, payment is due within *** days after the receipt of invoice or receipt of Product, whichever is later ("***Payment Due Date***").

8.2 **Adjustments**. Buyer shall not be required to pay the portion of any invoice that is the subject of a bona fide dispute pending resolution of that dispute. Invoices will be subject to adjustment by Buyer for errors, shortages, and/or rejected Products. Payment of an invoice does not constitute Product acceptance.

8.3 **Invoices**. The information on the JVC's invoice shall include, without limitation, the following (each stated separately): Purchase Order number, Buyer part number(s), quantities, unit value and settlement currency, and freight charges, if applicable. Any terms and conditions that may be printed on or attached to the JVC's invoice shall not be enforceable and shall not be incorporated into this Agreement. Invoices must be addressed to Buyer at the address set forth in Section 13.12(a), unless Buyer provides notice otherwise.

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

8.4 **Currency**. All references to amounts payable under this Agreement or any Purchase Order shall be to the currency of the United States of America (i.e., U.S. Dollars), unless expressly stated otherwise in the applicable Purchase Order from Buyer.

9. **CONFIDENTIAL INFORMATION**.

9.1 **Obligation**. The confidentiality obligations between the Parties shall be governed by the JVA.

10. **EXIT TRANSACTION**.

10.1 **Exit Transaction**. Upon the time (if any) in which SPTL or its Affiliates no longer hold any shares of the JVC, the terms and conditions set forth in Exhibit B to this Agreement are deemed incorporated herein and all other terms and conditions of this Agreement shall remain in full force and effect; provided, however, that to the extent that there are any inconsistencies or ambiguities between the terms set forth in Exhibit B and the other terms of this Agreement, the terms set forth in Exhibit B shall supersede the other terms of this Agreement. Until such time, the terms set forth in Exhibit B to this Agreement shall not apply.

11. **COMPLIANCE PROGRAM**.

11.1 **Compliance with Applicable Law**. It is Buyer's policy to comply fully with all economic sanctions and trade restrictions promulgated by the United States government. The JVC agrees to comply, in performing this Agreement, with all applicable laws, including, without limitation, all statutory and regulatory requirements under the Export Administration Regulations (15 C.F.R. § 730 et seq.) administered by the U.S. Department of Commerce; the laws, regulations, and executive orders implemented by the Office of Foreign Assets Control of the U.S. Department of the Treasury; and equivalent laws in any jurisdiction in which the JVC operates. In addition, the JVC shall comply with all laws and regulations applicable to the manufacture and sale of the Products, including, by way of example and not limitatio n, Executive Order 11246 as amended by Executive Order 11375 (non-discrimination in employment), the U.S. Clean Air Act of 1990, FAR 52.219-8, Utilization of Small Business Concerns (October 2000) (15. U.S.C. 637(d) (2) and (3)), and FARS 52.222-26, 52.222-35, 52.222-36 and 52.247-64. The JVC shall not use any ozone depleting substances listed in annexes A and B of the Montreal Protocol, including but not limited to chlorofluorocarbons, in the manufacture of Products. Buyer reserves the right to reject any Products manufactured utilizing or containing such materials if Buyer has not previously been notified of the same. Additional requirements set forth in Exhibit C are incorporated by reference.

11.2 **Anti-Corruption Laws**. The JVC acknowledges that it has reviewed a copy (available at www.justice.gov/criminal/fraud/fcpa) of 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. The JVC agrees that it shall comply with the FCPA and similar anti-corruption laws and will take no action that would cause either Party to be in violation of

such laws. The JVC agrees to immediately notify Buyer of any request that such Party receives to take any action that might constitute, or be construed as, a violation of anti-corruption laws. The JVC agrees that Buyer is authorized to take all appropriate actions that Buyer reasonably deems is necessary to avoid a violation of anti-corruption laws. The JVC agrees that it shall keep and maintain accurate books and records necessary to demonstrate compliance with the foregoing, and that Buyer may, during the term of this Agreement and for a period of five years following the final payment under, or termination of, this Agreement, review or audit such books and records of the JVC.

11.3 **Conflicts of Interest**. Neither the JVC nor any of its Representatives shall give to, or receive from, Buyer or its Representatives any commission, fee, rebate, or any unreasonable gift or entertainment of value in connection with this Agreement, or enter into any other business arrangement with Buyer or its Representatives, other than those contemplated by the JVA, without the prior consent of the Buyer. The JVC shall (a) promptly notify Buyer of any violation of this clause and (b) repay or credit to Buyer any consideration received as a result of such violation. The JVC shall promptly disclose to Buyer any conflict of interest between (i) the JVC and its Representatives, on the one hand, and (ii) Buyer and its Representatives, on the other hand.

12. **TERM; EVENTS OF DEFAULT; TERMINATION**.

12.1 **Expiration**. The term of this Agreement shall commence on the Effective Date and continue for a period of seven (7) years ("***Initial Term***") and shall thereafter may be renewed for additional one (1) year periods by the Buyer, in the Buyer's sole discretion; provided, however, that Buyer may terminate this Agreement under those certain circumstances set forth in the JVA; and provided, further, that this Agreement shall automatically terminate upon dissolution of the JVC.

12.2 **Force Majeure**. Neither Party shall be deemed to have failed to fulfil an obligation under this Agreement if the delay or failure is the result of a Force Majeure. To the extent reasonably practicable, within forty-eight (48) hours of commencement of a Force Majeure, the non-performing Party shall provide the other Party with oral notice of the Force Majeure, and within two (2) weeks of the commencement of a Force Majeure the non-performing Party shall provide the other Party with notice in the form of a letter describing in detail the particulars of the occurrence giving rise to the Force Majeure claim. The suspension of performance due to a claim of Force Majeure must be of no greater scope and of no longer duration than is required by the Force Majeure. The non-performing Party shall use reasonable efforts to overcome or mitigate the Force Majeure. Nothing in this Section 12.2 is meant to relieve the JVC's obligations under Section 7.3.

12.3 **Limitation of Liability**. EXCEPT FOR EACH PARTY'S OBLIGATIONS REGARDING PROTECTION OF CONFIDENTIAL INFORMATION UNDER THIS AGREEMENT, NEITHER PARTY WILL BE LIABLE FOR ANY INDIRECT, PUNITIVE, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT (INCLUDING WITHOUT LIMITATION, LOSS OF BUSINESS, REVENUE, PROFITS, GOODWILL, USE, DATA, OR OTHER ECONOMIC ADVANTAGE), HOWEVER THEY ARISE, WHETHER IN BREACH OF CONTRACT, BREACH OF WARRANTY OR IN TORT, INCLUDING NEGLIGENCE, EVEN IF THAT PARTY

HAS PREVIOUSLY BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. LIABILITY FOR DAMAGES WILL BE LIMITED AND EXCLUDED UNDER THIS SECTION 12.3 EVEN IF ANY EXCLUSIVE REMEDY HEREUNDER FAILS OF ITS ESSENTIAL PURPOSE.

13. **MISCELLANEOUS**.

13.1 **Entire Agreement**. This Agreement, the JVA and the agreements, documents and instruments to be executed and delivered pursuant hereto or thereto are intended to embody the final, complete and exclusive agreement between the Parties with respect to the matters addressed herein; are intended to supersede all prior agreements, understandings and representations written or oral, with respect thereto; and may not be contradicted by evidence of any such prior or contemporaneous agreement, understanding or representation, whether written or oral.

13.2 **English Language**. All agendas, notices, other documentation relating to this Agreement shall be prepared in and entered into the English language. In the event of any dispute concerning the construction or meaning of this Agreement, the text of the Agreement as written in the English language shall prevail over any translation of this Agreement that may have been or will be made.

13.3 **Interpretation**. In this Agreement: (i) headings are for convenience of reference only and shall not affect the interpretation of the provisions of this Agreement except to the extent that the context otherwise requires; (ii) words importing the singular shall include the plural and vice versa; (iii) words denoting individuals shall include any form of entity and vice versa; (iv) words denoting any gender shall include all genders; (v) where any act, matter or thing is required by this Agreement to be performed or carried out on a certain day and that day is not a Business Day, then that act, matter or thing shall be carried out or performed on the next following Business Day; (vi) unless specified otherwise, any reference herein to any Section shall be deemed to be a reference to a Section of this Agreement; (vii) any reference to any agreement, document or instrument shall refer to such agreement, document or instrument as amended, modified or supplemented; (viii) the words “include,” “including” and the derivations thereof shall not be limiting and shall be deemed to be followed by the phase “without limitation”, (ix) where there is any inconsistency between the definitions set out in this clause and the definitions set out in any Section, then for the purposes of construing such Section, the definitions set out therein shall prevail, (x) references to “$” are to the lawful currency of the United States, (xi) where any provision is qualified or phrased by reference to the ordinary course of business, such reference shall be construed as meaning the customary course of business in the country concerned and (xii) references to any “fiscal” period shall refer to such period in acco rdance with the JVC’s fiscal year.

13.4 **Counterparts**. This Agreement may be executed simultaneously in any number of counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

13.5 **Severability**. If one or more of the provisions of this Agreement shall be found, by a court with proper jurisdiction, to be illegal, invalid or unenforceable, it shall not affect the legality, validity or enforceability of any of the remaining provisions of this Agreement.

The Parties agree to attempt to substitute for any illegal, invalid or unenforceable provision a legal, valid or enforceable provision that achieves to the greatest extent possible the economic objectives of the illegal, invalid or unenforceable provision.

13.6 **Amendment**. This Agreement shall not be modified, amended, cancelled or altered in any way, and may not be modified by custom, usage of trade or course of dealing, except by an instrument in writing signed by the JVC (with the written consent of AUO) and SPSW. The failure to refer to this Agreement in related Purchase Order, invoices, and quotations exchanged by the Parties will not per se affect the governance of this Agreement.

13.7 **Survival**. Sections 4.4, 4.5, 7.1, 7.2, 9.1, 11.1-11.3, 12.1-12.3 and 13.1-13.14 shall survive any termination or expiration of this Agreement for as long as necessary to permit their full discharge.

13.8 **Waiver**. The performance of any obligation required of the JVC or AUO hereunder may be waived only by a written waiver signed by the other party (and in the case of a waiver by the JVC, with the written consent of AUO), and such waiver shall be effective only with respect to the specific obligation described. The waiver by either of the JVC or SPSW of a breach of any provision of this Agreement by the other party shall not operate or be construed as a waiver of any subsequent breach of the same provision or another provision of this Agreement.

13.9 **Successors and Assigns**. The provisions hereof shall inure to the benefit of, and be binding upon, the successors, assigns, heirs, executors and administrators of the parties hereto. Notwithstanding the foregoing, this Agreement shall not be assignable or otherwise transferable by any party hereto without the prior written consent of the other parties thereto, and any purported assignment or other transfer without such consent shall be void and unenforceable; provided, however, that either of SPSW or AUO may assign this Agreement:

(a) to any of its wholly-owned, direct or indirect subsidiaries so long as it will be made at the same time as a transfer of its (or, in the case of SPSW, SPTL's) shares in the JVC to such subsidiary specifically permitted by this Agreement; and

(b) in connection with the sale of all of its (or, in the case of SPSW, SPTL's) shares in the JVC beneficially owned by such party as specifically provided by this Agreement.

13.10 **Third-party Beneficiaries**. This Agreement is made and entered into for the sole protection and benefit of the Parties hereto, their respective permitted successors and assigns, including Buyer's Contractors, and AUO (which shall have the right to enforce this Agreement on the JVC's and/or its own behalf), and no other person or entity shall be a third-party beneficiary of, or have any direct or indirect cause of action or claim in connection with this Agreement.

13.11 **Disclaimer of Agency**. The Parties are, and intend to be, independent contractors with respect to the services described in this Agreement. This Agreement shall not be deemed to constitute any Party the agent of the other Party.

13.12 **Notices**. All notices, demands, requests, consents or other communications hereunder shall be in writing and shall be given by personal delivery, by express courier, by registered or certified mail with return receipt requested, or by facsimile, at the addresses shown below, or to such other address as may be designated by written notice given in accordance with this Section 13.12. Unless conclusively proved otherwise, all notices, demands, requests, consents or other communications hereunder shall be deemed effective upon delivery if personally delivered, five (5) days after dispatch if sent by express courier, fourteen (14) days after dispatch if sent by registered or certified mail with return receipt requested, or confirmation of the receipt of the facsimile by the recipient if sent by facsimile.

(a) To Buyer:

SunPower Systems Sarl
c/o SunPower Corporation
3939 N. 1st Street
San Jose, CA 95134
U.S.A.
Attention: General Counsel
Facsimile: 408-240-5400

(b) To the JVC:

SunPower Malaysia Manufacturing SDN.BHD.
Kawasan Perindustrian Rembia
Mukim Sungai Petai Rembia, Alor Gajah
76100 Melaka
Malaysia
Attention: Chief Executive Officer
Facsimile: 60-63-16-2811

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

AU Optronics Singapore Pte. Ltd.
c/o AU Optronics Corporation
No.1, JhongKe Rd.
Central Taiwan Science Park
Taichung 40763, Taiwan
R.O.C.
Attention: James Chen, Senior Associate VP, PV BD
Facsimile: 886-4-2460-8077

(c) To AUO:

AU Optronics Singapore Pte. Ltd.

c/o AU Optronics Corporation
No.1, JhongKe Rd.
Central Taiwan Science Park
Taichung 40763, Taiwan
R.O.C.
Attention: James Chen, Senior Associate VP, PV BD
Facsimile: 886-4-2460-8077

13.13 **Governing Law and Dispute Resolution**. This Agreement and all disputes arising out of or in connection with this Agreement shall be governed by, interpreted under, and construed and enforceable in accordance with, the laws of the State of California, without regard to conflicts of laws principles or the U.N. Convention on Contracts for the International Sale of Goods. Any disputes incapable of being resolved by mutual agreement of the JVC (with the written consent of AUO) and Buyer shall be handled in accordance with Section 18.2 (Arbitration) of the JVA; provided, however, that the JVC may not take any action with respect to any such disputes or arbitration or settlement thereof w ithout the written consent of AUO. Pending resolution of any dispute, the JVC agrees to continue to fabricated and deliver Products under the terms of this Agreement as directed by Buyer.

13.14 **Expenses**. Except as specifically provided for in this Agreement, each of the Parties shall bear its respective expenses, costs and fees (including attorneys' fees) in connection with the transactions contemplated hereby, including the preparation, execution and delivery of this Agreement and an exhibits hereto and compliance herewith and therewith, whether or not the transactions contemplated hereby or thereby shall be consummated.

[*Signature pages follow*]

IN WITNESS WHEREOF, the Parties have caused this Supply Agreement to be signed by their duly authorized representatives, and the Parties hereby agree to the above terms and conditions of this Supply Agreement and intend to be legally bound thereby.

SUNPOWER MALAYSIA MANUFACTURING SDN.BHD.

By: _____

Name: _____

Title: _____

SUNPOWER SYSTEMS SARL

By: _____

Name: _____

Title: _____

AU OPTRONICS SINGAPORE PTE. LTD.

By: _____

Name: _____

Title: _____

Attachments

Schedule 1 – Definitions

Exhibit A – Product & Service Pricing

Exhibit B – Post-Exit Transaction Terms and Conditions

Exhibit C – Customs Requirements

SCHEDULE 1

DEFINITIONS

The following defined terms shall have the meanings set forth below.

1. "**Actual Monthly Cost**" shall have the meaning set forth on Exhibit A.

2. "**Affiliate**" of a Party shall mean another person or entity that directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with such Party.

3. "**Annual Demand Forecast**" shall have the meaning set forth in Section 2.2.

4. "**Agreement**" shall have the meaning set forth in the introductory paragraph.

5. "**AUO**" shall have the meaning set forth in the introductory paragraph.

6. "**AUO Supply Agreement**" shall have the meaning set forth in Section 2.2.

7. "**AUO Unsubscribed Annual Forecast**" shall have the meaning set forth in Section 2.2.

8. "**AUO Unsubscribed Mid-Year Forecast**" shall have the meaning set forth in Section 2.5.

9. "**Buyer**" shall have the meaning set forth in Section 1.1.

10. "**ECN**" shall have the meaning set forth in Section 5.1(a).

11. "**Effective Date**" shall have the meaning set forth in the introductory paragraph.

***

***

14. "**Event of Default**" shall have the meaning set forth on Exhibit B.

15. "**FCC**" shall mean the United States Federal Communications Commission.

16. "**FCPA**" shall mean the United States Foreign Corrupt Practices Act.

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17. "**Initial Annual Operating Plan**" shall have the meaning set forth in Section 2.1.

18. "**Initial Mid-Year Operating Plan**" shall have the meaning set forth in Section 2.4.

19. "**Initial Term**" shall have the meaning set forth in Section 12.1.

20. "**Final Annual Operating Plan**" shall have the meaning set forth in Section 2.3.

21. "**Final Mid-Year Operating Plan**" shall have the meaning set forth in Section 2.6.

22. "**JVA**" shall have the meaning set forth in the Recitals.

23. "**JVC**" shall have the meaning set forth in the introductory paragraph.

24. "**Mid-Year Demand Forecast**" shall have the meaning set forth in Section 2.5.

25. "**Monthly Demand Allocation**" shall have the meaning set forth in Section 2.7.

26. "**Offspec Cells**" shall have the meaning set forth in Section 2.10.

27. "**Party**" and "**Parties**" shall have the meanings set forth in the introductory paragraph.

28. "**Payment Due Date**" shall have the meaning set forth in Section 8.1.

29. "**Product(s)**" shall have the meaning set forth in the Recitals.

30. "**Product Warranty**" shall have the meaning set forth on Exhibit B.

31. "**Projected Monthly Cost**" shall have the meaning set forth on Exhibit A.

32. "**Purchase Order**" shall mean Buyer written or electronic purchase order that Buyer may place as specified in this Agreement or otherwise on an as-needed basis. Each Purchase Order will indicate the price(s), part number(s), quantity(s), delivery date(s), and destination(s) of the requested Product(s).

33. "**Representatives**" include a Party's Affiliates, as well as a Party and its Affiliates' directors, officers, employees, agents and advisors (including, without limitation, attorneys, accountants, consultants, bankers, financial advisors or lending institutions.

34. "**Specifications**" shall mean (a) the specifications and or assembly drawings for the Products set forth in the applicable exhibit, and (b) references within this Agreement to controlled specifications. It is the obligation of the JVC to request any referenced documents or specifications with this Agreement and amended Exhibits.

35. "**SPSW**" shall have the meaning set forth in the introductory paragraph.

36. "**SPSW Annual Demand Forecast**" shall have the meaning set forth in Section 2.2.

37. "**SPSW Mid-Year Demand Forecast**" shall have the meaning set forth in Section 2.5.

38. "**SPSW Unsubscribed Annual Forecast**" shall have the meaning set forth in Section 2.2.

39. "**SPSW Unsubscribed Mid-Year Forecast**" shall have the meaning set forth in Section 2.5.

40. "**SPTL**" shall have the meaning set forth in the Recitals.

41. **Supply Constraint**" shall mean a materials or capacity constraint that could adversely affect the JVC's ability to meet the quantity requirements specified in the Purchaser Order, and/or Monthly Demand Allocation for Products.

42. "**Value Engineering Change**" means, for the Product, an alternative technical and/or engineering solution that alters the specification of the Product and provides equivalent or better functionality at a lower cost.

EXHIBIT A

PRODUCT PRICING

The pricing model under this Agreement shall be an "Open Book" model, and therefore the JVC agrees to disclose to SPSW and AUO all costs incurred in connection with or under this Agreement, and the JVC shall provide, upon request by either of SPSW and AUO and at a mutually agreed upon frequency, system generated documentation to substantiate such costs as they were actually incurred.

Pricing for Product to be offered to Buyer shall be on a per Watt basis set prior to the beginning of each ***. At the end of the ***, a per Watt True-Up Amount shall be calculated and applied as described below. Notwithstanding anything contained in this Exhibit A to the contrary, through the end of the ***, pricing and any per Watt True-Up Amount for Product shall be set and calculated on a *** basis.

The pricing set prior the beginning of any given *** with respect to Buyer shall be determined as follows:

Price per Watt = ((Projected per Watt Fixed Cost + Projected per Watt Variable Costs) * (1 + Premium Percentage)),

where:

- Projected per Watt Fixed Cost allocated to Buyer is described below;
- Projected per Watt Variable Cost allocated to Buyer is described below;
- "***Projected Monthly Cost***" is defined as the sum of the Projected per Watt Fixed Cost and the Projected per Watt Variable Cost; and
- Premium Percentage shall equal ***, and shall equal ***, subject to adjustment as set forth below.

The Projected per Watt Fixed Cost to be allocated to Buyer for any given *** shall be determined as follows:

Projected per Watt Fixed Cost = Total Fixed Costs * ***,

where:

- Total Fixed Costs is the projected Fixed Cost to be incurred by the JVC in such month in producing the Product;
- ***
- ***

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- ***

The Projected per Watt Variable Cost to be allocated to Buyer for any given *** shall be determined as follows:

Projected per Watt Variable Cost = Total Variable Costs / Monthly Production Forecast,

where:

- Total Variable Costs is the projected Variable Cost to be incurred by the JVC in such month in producing the Product;
- Monthly Production Forecast is the projected amount of Product (in Watts) to be produced by the JVC in such month in producing the Product.

Both Variable and Fixed Costs shall include ***, but shall exclude ***. Fixed Costs also shall include the following expenses of the JVC: ***. Annex 1 sets forth an example which illustrates the Fixed and Variable Cost allocation between Buyer and AUO. All costs incurred or to be incurred by the JVC shall be determined in accordance with International Financial Reporting Standards.

Premium Percentage

***

True-Up Amount

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At the end of each ***, if the actual per Watt Fixed and per Watt Variable Costs, in the aggregate, incurred by the JVC in producing Product (the "***Actual Monthly Cost***") exceeds or is less than the per Watt Projected Monthly Cost for such month, the per Watt True-Up Amount shall equal the difference between the per Watt Actual Monthly Cost and the per Watt Projected Monthly Cost for such month. Any per Watt True-Up Amount will be passed along to Buyer and AUO for their respective aggregate Watts of purchased Product during that month.

After installation of the full initial capacity of the Fab 3 as defined in the Business Plan, proposals by the JVC or any Shareholder to spend greater than $*** in capital expenditures that serves to reduce the Fixed and/or Variable Costs to be incurred by the JVC in producing Product shall include a pricing adjustment mechanism as determined and defined by the JVC to incentivize the Shareholders to approve such expenditures. Starting ***, AUO and SPTL (or its applicable Affiliate) will negotiate in good faith a potential change in the Premium Percentage to compensate for reductions in depreciation expenses for the initial capital expenditures.

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EXHIBIT B

POST-EXIT TRANSACTION TERMS AND CONDITIONS

In the event that SPTL or its Affiliates no longer own any shares of the JVC, the following terms and conditions shall apply:

1. **PRICING**.

1.1 **Cost Reductions**. It is agreed and acknowledged that the pricing shall be calculated as described in Exhibit A to this Agreement and the JVC will work in good faith to achieve cost reductions on all materials and manufacturing process costs. The JVC will provide to Buyer an anticipated twelve (12) month cost reduction plan on a monthly basis. Allocation of costs savings shall be as follows:

(a) **Material Cost Savings**. Material cost savings developed by the JVC and accepted by Buyer will be retained by the JVC for the month in which the JVC achieved the cost savings, and thereafter, the JVC shall pass on to Buyer the cost savings through a Product price reduction.

(b) **Value Engineering**. If a Value Engineering Change is developed by the JVC and approved by Buyer, the cost savings shall be retained by the JVC for the month in which the JVC implemented the Value Engineering Change, plus five (5) succeeding quarters, and thereafter, the JVC will pass on the cost savings to Buyer through a Product price reduction. If a Value Engineering Change is developed by Buyer, the associated cost savings shall be passed on to Buyer immediately upon implementation. If the Value Engineering Change is jointly developed by Buyer and the JVC, the Parties will negotiate in good faith an equitable allocation of the cost savings which shall, in all cases, pass to Buyer through a Product price reduction no later than the next month following the month in which the Value Engineering Cha nge was implemented. Value Engineering Changes to the Product, where Buyer is the primary design provider, shall be owned by Buyer.

(c) **Sub-tier Components**. Upon the effective date of any cost reduction in a sub-tier component, the JVC shall immediately pass on to Buyer one hundred percent (100%) of the cost savings on a forward looking, weighted average basis or as mutually agreed by the Parties.

1.2 **Non-approved Charges**. Buyer shall not be liable to the JVC for any overtime charges, freight charges or component product price variances incurred by the JVC as the result of factors including, but not limited to, component purges and stop-shipments to the extent attributable to the JVC. Any other extraordinary charges must be submitted by the JVC to Buyer in writing in advance for approval.

2. **LEAD-TIME; DELIVERY**.

2.1 **Delivery Delay Penalty**. Upon acceptance of the Purchase Order by the JVC, all deliveries are to be made according the committed delivery schedule. In the event of late delivery of more than *** days from the committed delivery date, the JVC shall pay as liquidated damages an amount equal to ***

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***. The foregoing liquidated damages address late delivery shipments only, are independent of, and in addition to, the JVC's liability (if any), and Buyer's corresponding ability to recover damages, for the JVC's failure to satisfy its obligations under this Agreement and are attributed solely to the JVC. The Parties acknowledge that such payment are intended to represent liquidated damages and not serve as a penalty, and are agreed upon as a reasonable estimation of damages Buyer would incur as a result of delayed deliveries of Products that satisfy the applicable Product Specifications.

2.2 **Extraordinary Transportation for Late Deliveries**. If the JVC will not, or is not reasonably likely to, deliver Product on the applicable delivery date through no fault of Buyer, after mutual consultation about the proper allocation of the expenses incurred or to be incurred as a result of the extraordinary transportation, the JVC shall use any extraordinary transportation, including air transportation, to deliver Product at the earliest possible date.

2.3 **Inspection before Delivery**. Buyer may, in its sole discretion, but not more than twice a year, perform a source inspection of the Products at the JVC's facility. The applicable testing and inspection process shall be set forth in the applicable Product Specification. The source inspection shall be at the JVC's facility and shall be made within thirty (30) days after the Products are available and ready for inspection, provided that the JVC delivers notice to Buyer that the Product shall be ready for source inspection as soon as practicable and in any event at least thirty (30) days prior to the date when Products are expected to be available and ready for inspection. Should the Product fail the initial inspection in accordance with the mutually agreed inspection standard bef ore delivery, the JVC shall reimburse Buyer for the additional actual costs, including airfare, meals, and lodging, incurred by Buyer arising from any additional inspection. The JVC shall be responsible for its own additional costs incurred. Buyer's Representatives may witness any test necessary or appropriate to demonstrate the performance of Products. Upon Buyer's request, the JVC shall provide any relevant equipment performance test data. Buyer's approval for release shall not constitute a waiver of its right to inspect Products after delivery to the Buyer's facility.

3. **WARRANTIES**.

3.1 **The JVC Warranty Term**. The JVC represents and warrants that all Products delivered to Buyer hereunder shall comply with the mutually agreed upon warranty terms (the "***Product Warranty***") for the warranty period set forth therein. The parties shall discuss and agree in good faith on the warranty terms comparable to the general industry standard.

4. **EVENTS OF DEFAULT**.

4.1 **Events of Default**. The occurrence of any of the following shall constitute an "***Event of Default***" by the JVC under this Agreement: (a) if the representations and warranties of the JVC are materially incorrect or inaccurate, and the JVC fails to remedy such misstatements or inaccuracies within thirty (30) days of delivery of notice of such misstatements or inaccuracies by SPSW; (b) if the JVC fails to comply with the terms of this Agreement, and such failure is not cured within thirty (30) days of delivery of notice of such failure by SPSW; or (c) if the JVC becomes subject to an assignment for the

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benefit of creditors, files a petition for relief under the U.S. Bankruptcy Code or similar law or regulation, or is subject of a petition for relief under the U.S. Bankruptcy Code or similar law or regulation, filed by its creditors and such petition is not dismissed within thirty (30) days.

4.2 **Rights upon Event of Default**. Upon an Event of Default by the JVC, SPSW may immediately terminate this Agreement and/or any outstanding Purchase Orders by sending notice of its intent to the JVC. Upon termination of this Agreement, SPSW shall be entitled to receive from the JVC payment for all actual damages incurred, subject to Section 12.3 of this Agreement, and all outstanding amounts owed by the JVC to SPSW shall accelerate and become due and payable; provided, however, that outstanding transactions under accepted Purchase Orders which are not terminated shall survive termination until completed.

EXHIBIT C

CUSTOMS REQUIREMENTS

[N/A]

Annex 1

TRANSFER PRICING PROCESS

	FORECAST	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	NOTES
	Initial Forecast					
1	Total Production Forecast (MW)	***	***	***	***	Forecasted by JV
2	Party A Allocated %	***	***	***	***	Based on contractual amounts
3	Party S Allocated %	***	***	***	***	Based on contractual amounts
4	Party A Allocated MW	***	***	***	***	Equals Row 1 * Row 2
5	Party S Allocated MW	***	***	***	***	Equals Row 1 * Row 3
	Final Production Plan					
6	Total Production (MW)	***	***	***	***	MW based on demand submitted
7	Total Production (MW)	***	***	***	***	MW based on demand submitted
8	Party A Demand (MW)	***	***	***	***	MW based on demand submitted
9	Party S Demand (MW)	***	***	***	***	Equals shortfall minus any MW claimed by partner
10	Party A Unsubscribed MW	***	***	***	***	Equals shortfall minus any MW claimed by partner
	Cost Allocation					
11	Party A - % of Variable Costs	***	***	***	***	Equals Row 7 / Row 6
12	Party S - % of Variable Costs	***	***	***	***	Equals Row 8 / Row 6
13	Party A - % of Fixed Costs	***	***	***	***	Equals (Row 7 + Row 9) / Row 1
14	Party S - % of Fixed Costs	***	***	***	***	Equals (Row 8 + Row 10) / Row 1
	Standard Costs					
	Total Projected Costs					
15	Total Variable Costs	***	***	***	***	***
16	Total Fixed Costs	***	***	***	***	***
17	Total Costs	***	***	***	***	Equals Row 15 + Row 16
18	Total Costs/W	***	***	***	***	Equals Row 17 / Row 6
19	Fully Production Cost/W	***	***	***	***	Used to determine cost improvement trigger

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	Party A	***	***	***	***	
20	Total Variable Costs	***	***	***	***	Equals Row 11 * Row 15
21	Total Fixed Costs	***	***	***	***	Equals Row 13 * Row 16
22	Total Costs	***	***	***	***	Equals Row 20 + Row 21
23	Total Costs/W	***	***	***	***	Equals Row 22 / Row 7
	Party S					
24	Total Variable Costs	***	***	***	***	Equals Row 12 * Row 15
25	Total Fixed Costs	***	***	***	***	Equals Row 14 * Row 16
26	Total Costs	***	***	***	***	Equals Row 24 + Row 25
27	Total Costs/W	***	***	***	***	Equals Row 26 / Row 8
	Transfer Price					
28	Mark-up	***	***	***	***	Assumption - based on cost improvements
29	Party A Transfer Price	***	***	***	***	Equals Row 23 * (1 + Row 28)
30	Party S Transfer Price	***	***	***	***	Equals Row 27 * (1 + Row 28)
	True-UP					
31	Quarter-end True-up	***	***	***	***	Assumption
32	Net Party A Transfer Price	***	***	***	***	Equals Row 29 + Row 31
33	Net Party S Transfer Price	***	***	***	***	Equals Row 30 + Row 31

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EXHIBIT 31.1

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: August 13, 2010

/S/ THOMAS H. WERNER

Thomas H. Werner
President and Chief Executive Officer
(Principal Executive Officer)

EXHIBIT 31.2

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: August 13, 2010

/S/ DENNIS V. ARRIOLA

Dennis V. Arriola
Executive Vice President and Chief Financial Officer
(Principal Financial and Accounting Officer)

EXHIBIT 32.1

CERTIFICATION OF CHIEF EXECUTIVE OFFICER AND CHIEF FINANCIAL OFFICER PURSUANT TO 18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Quarterly Report of SunPower Corporation (the "Company") on Form 10-Q for the period ended July 4, 2010 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), each of 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 results of operations of the Company.

Dated: August 13, 2010

/S/ THOMAS H. WERNER

Thomas H. Werner
President and Chief Executive Officer
(Principal Executive Officer)

/S/ DENNIS V. ARRIOLA

Dennis V. Arriola
Executive 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.