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

FORM 10-Q

T **QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**
For the quarterly period ended October 2, 2011

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.)

77 Rio Robles, San Jose, California 95134
(Address of Principal Executive Offices and Zip Code)

(408) 240-5500
(Registrant's Telephone Number, Including Area Code)

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 T 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 T No o

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 T

The total number of outstanding shares of the registrant's class A common stock as of November 4, 2011 was 58,143,226.
The total number of outstanding shares of the registrant's class B common stock as of November 4, 2011 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)

	October 2, 2011	January 2, 2011
Assets		
Current assets:		
Cash and cash equivalents	$ 374,562	$ 605,420
Restricted cash and cash equivalents, current portion	2,871	117,462
Short-term investments	—	38,720
Accounts receivable, net	438,091	381,200
Costs and estimated earnings in excess of billings	98,828	89,190
Inventories	425,233	313,398
Advances to suppliers, current portion	37,119	31,657
Project assets - plants and land, current portion	34,426	23,868
Prepaid expenses and other current assets (1)	354,086	192,934
Total current assets	1,765,216	1,793,849
Restricted cash and cash equivalents, net of current portion	223,639	138,837
Restricted long-term marketable securities	8,962	—
Property, plant and equipment, net	585,022	578,620
Project assets - plants and land, net of current portion	33,447	22,238
Goodwill	35,990	345,270
Other intangible assets, net	5,907	66,788
Advances to suppliers, net of current portion	259,399	255,435
Other long-term assets (1)	235,597	178,294
Total assets	$ 3,153,179	$ 3,379,331
Liabilities and Stockholders' Equity		
Current liabilities:		
Accounts payable (1)	$ 428,489	$ 382,884
Accrued liabilities	212,645	137,704
Billings in excess of costs and estimated earnings	63,813	48,715
Short-term debt	—	198,010
Convertible debt, current portion	192,913	—
Customer advances, current portion (1)	26,152	21,044
Total current liabilities	924,012	788,357
Long-term debt	355,001	50,000
Convertible debt, net of current portion	419,725	591,923
Customer advances, net of current portion (1)	153,597	160,485
Other long-term liabilities	127,390	131,132
Total liabilities	1,979,725	1,721,897
Commitments and contingencies (Note 8)		
Stockholders' equity:		
Preferred stock, 10,042,490 shares authorized, $0.001 par value; none issued and outstanding	—	—
Common stock, 217,500,000 shares of class A common stock authorized, $0.001 par value; 59,347,697 and 56,664,413 shares of class A common stock issued; 58,133,812 and 56,073,083 shares of class A common stock outstanding, as of October 2, 2011 and January 2, 2011, respectively; 150,000,000 shares of class B common stock authorized, $0.001 par value; 42,033,287 shares of class B common stock issued and outstanding as of both October 2, 2011 and January 2, 2011	100	98
Additional paid-in capital	1,648,733	1,606,697
Retained earnings (accumulated deficit)	(457,106)	63,672
Accumulated other comprehensive income	8,950	3,640
Treasury stock, at cost; 1,213,885 and 591,330 shares of class A common stock as of October 2, 2011 and January 2, 2011, respectively	(27,223)	(16,673)
Total stockholders' equity	1,173,454	1,657,434
Total liabilities and stockholders' equity	$ 3,153,179	$ 3,379,331

(1) The Company has related party balances in connection with transactions made with its joint ventures which are recorded within the "Prepaid expenses and other current assets," "Other long-term assets," "Accounts payable," "Customer advance, current portion" and "Customer advances, net of current portion" financial statement line items in the Condensed Consolidated Balance Sheets (see Note 5, Note 8 and Note 9).

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

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

	Three Months Ended		Nine Months Ended	
	October 2, 2011	October 3, 2010	October 2, 2011	October 3, 2010
Revenue:				
Utility and power plants	$ 324,542	$ 257,803	$ 872,890	$ 521,896
Residential and commercial	380,885	292,842	876,210	760,261
Total revenue	705,427	550,645	1,749,100	1,282,157
Cost of revenue:				
Utility and power plants	285,537	212,526	797,580	421,178
Residential and commercial	343,766	225,534	767,580	588,800
Total cost of revenue	629,303	438,060	1,565,160	1,009,978
Gross margin	76,124	112,585	183,940	272,179
Operating expenses:				
Research and development	12,664	13,382	41,565	34,995
Sales, general and administrative	76,329	91,015	243,364	233,671
Goodwill impairment	309,457	—	309,457	—
Other intangible asset impairment	40,301	—	40,301	—
Restructuring charges	637	—	13,945	—
Total operating expenses	439,388	104,397	648,632	268,666
Operating income (loss)	(363,264)	8,188	(464,692)	3,513
Other income (expense), net:				
Interest income	206	742	1,437	1,294
Interest expense	(17,096)	(14,768)	(48,414)	(45,018)
Gain on deconsolidation of consolidated subsidiary	—	36,849	—	36,849
Gain on sale of equity interest in unconsolidated investee	10,989	—	10,989	—
Gain on change in equity interest in unconsolidated investee	—	—	322	28,348
Gain (loss) on mark-to-market derivatives	472	(2,967)	331	28,885
Other, net	8,015	(11,947)	(10,719)	(28,344)
Other income (expense), net	2,586	7,909	(46,054)	22,014
Income (loss) before income taxes and equity in earnings of unconsolidated investees	(360,678)	16,097	(510,746)	25,527
Provision for income taxes	(11,077)	(3,376)	(17,963)	(19,493)
Equity in earnings of unconsolidated investees	971	5,825	7,932	10,973
Income (loss) from continuing operations	(370,784)	18,546	(520,777)	17,007
Income from discontinued operations, net of taxes	—	1,570	—	9,466
Net income (loss)	$ (370,784)	$ 20,116	$ (520,777)	$ 26,473
Net income (loss) per share of class A and class B common stock:				
Net income (loss) per share - basic:				
Continuing operations	$ (3.77)	$ 0.19	$ (5.34)	$ 0.18
Discontinued operations	—	0.02	—	0.10
Net income (loss) per share - basic	$ (3.77)	$ 0.21	$ (5.34)	$ 0.28
Net income (loss) per share - diluted:				
Continuing operations	$ (3.77)	$ 0.19	$ (5.34)	$ 0.18
Discontinued operations	$ —	$ 0.02	$ —	$ 0.09
Net income (loss) per share - diluted	$ (3.77)	$ 0.21	$ (5.34)	$ 0.27
Weighted-average shares:				
Basic	98,259	95,840	97,456	95,519
Diluted	98,259	105,648	97,456	96,741

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

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

	Nine Months Ended	
	October 2, 2011	October 3, 2010
Cash flows from operating activities:		
Net income (loss)	$ (520,777)	$ 26,473
Less: Income from discontinued operations, net of taxes	—	9,466
Income (loss) from continuing operations	(520,777)	17,007
Adjustments to reconcile income (loss) from continuing operations to net cash used in operating activities of continuing operations		
Stock-based compensation	37,829	38,064
Goodwill impairment	309,457	—
Other intangible asset impairment	40,301	—
Depreciation	83,979	75,680
Amortization of other intangible assets	20,614	28,039
Loss (gain) on sale of investments	191	(1,572)
Gain on mark-to-market derivatives	(331)	(28,885)
Non-cash interest expense	21,112	22,175
Amortization of debt issuance costs	4,196	4,030
Amortization of promissory notes	3,486	8,941
Gain on deconsolidation of consolidated subsidiary	—	(36,849)
Gain on change in equity interest in unconsolidated investee	(322)	(28,348)
Gain on sale of equity interest in unconsolidated investee	(10,989)	—
Third-party inventories write-down	16,399	—
Project assets write-down	16,053	—
Equity in earnings of unconsolidated investees	(7,932)	(10,973)
Deferred income taxes and other tax liabilities	(860)	18,708
Changes in operating assets and liabilities, net of effect of acquisition:		
Accounts receivable	(48,587)	(3,879)
Costs and estimated earnings in excess of billings	(3,304)	(80,719)
Inventories	(120,753)	(84,210)
Project assets	(43,242)	(146,268)
Prepaid expenses and other assets	(123,044)	(76,774)
Advances to suppliers	(9,535)	1,672
Accounts payable and other accrued liabilities	64,432	219,133
Billings in excess of costs and estimated earnings	14,345	1,269
Customer advances	(1,698)	(7,961)
Net cash used in operating activities of continuing operations	(258,980)	(71,720)
Net cash used in operating activities of discontinued operations	—	(3,969)
Net cash used in operating activities	(258,980)	(75,689)
Cash flows from investing activities:		
Decrease in restricted cash and cash equivalents	29,789	64,674
Purchase of property, plant and equipment	(85,528)	(104,623)
Proceeds from sale of equipment to third-party	501	5,284
Purchase of marketable securities	(8,962)	—
Proceeds from sales or maturities of available-for-sale securities	43,759	1,572
Cash paid for acquisition, net of cash acquired	—	(272,699)
Cash decrease due to deconsolidation of consolidated subsidiary	—	(12,879)
Cash received for sales of investments in joint ventures and other non-public companies	24,043	—
Cash paid for investments in joint ventures and other non-public companies	(80,000)	(3,798)
Net cash used in investing activities of continuing operations	(76,398)	(322,469)
Net cash provided by investing activities of discontinued operations	—	33,950
Net cash used in investing activities	(76,398)	(288,519)
Cash flows from financing activities:		
Proceeds from issuance of bank loans, net of issuance costs	489,221	—
Proceeds from issuance of project loans, net of issuance costs	—	56,323
Assumption of project loans by customers	—	(57,732)
Proceeds from issuance of convertible debt, net of issuance costs	—	244,241

Repayment of bank loans	(377,124)	(63,646)
Cash paid for repurchase of convertible debt	—	(143,804)
Cash paid for bond hedge	—	(75,200)
Proceeds from warrant transactions	2,261	61,450
Proceeds from exercise of stock options	4,013	670
Purchases of stock for tax withholding obligations on vested restricted stock	(10,550)	(2,539)
Net cash provided by financing activities of continuing operations	107,821	19,763
Net cash provided by financing activities of discontinued operations	—	17,059
Net cash provided by financing activities	107,821	36,822
Effect of exchange rate changes on cash and cash equivalents	(3,301)	(7,281)
Net decrease in cash and cash equivalents	(230,858)	(334,667)
Cash and cash equivalents at beginning of period	605,420	615,879
Cash and cash equivalents of continuing operations, end of period	$ 374,562	$ 281,212
Non-cash transactions:		
Property, plant and equipment acquisitions funded by liabilities	$ 11,781	$ 4,382
Non-cash interest expense capitalized and added to the cost of qualified assets	2,096	2,951

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.

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 between these two business segments: the Utility and Power Plants ("UPP") Segment and the Residential and Commercial ("R&C") Segment. 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 sells components, including large volume sales of solar panels and mounting systems, to third parties, often on a multi-year, firm commitment basis. 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 in the United States and Europe for rooftop and ground-mounted solar power systems for the new homes, commercial and public sectors.

On June 21, 2011, the Company became a majority owned subsidiary of Total Gas & Power USA, SAS, a French *société par actions simplifiée* ("Total”), a subsidiary of Total S.A., a French *société anonyme* ("Total S.A."), through a tender offer and Total's purchase of 60% of the outstanding class A common stock and class B common stock of the Company as of June 13, 2011 (see Note 2).

Basis of Presentation and Preparation

Principles of Consolidation

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 contained in the Company's Annual Report on Form 10-K for the fiscal year ended January 2, 2011 (the "fiscal 2010 Form 10-K").

Fiscal Years

The Company reports on a fiscal-year basis and ends its quarters on the Sunday closest to the end of the applicable calendar quarter, except in a 53-week fiscal year, in which case the additional week falls into the fourth quarter of that fiscal year. Both fiscal year 2011 and 2010 consist of 52 weeks. The third quarter of fiscal 2011 ended on October 2, 2011 and the third quarter of fiscal 2010 ended on October 3, 2010.

Management Estimates

The preparation of the condensed consolidated financial statements in conformity with accounting principles generally accepted in the United States (“U.S. GAAP”) 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 and project assets write-downs, stock-based compensation, estimates for future cash flows and economic useful lives of property, plant and equipment, goodwill, valuations for business combinations, other intangible assets and other long-term assets, asset impairments, fair value of financial instruments, certain accrued liabilities including accrued warranty, restructuring and termination of supply contracts reserves, valuation of debt without the conversion feature, valuation of share lending arrangements, income taxes and tax valuation allowances. Actual results could materially differ from those estimates.

In the opinion of management, the accompanying condensed consolidated financial statements contain all adjustments, consisting only of normal recurring adjustments, which the Company believes are necessary for a fair statement of the

Company's financial position as of October 2, 2011, its results of operations for the three and nine months ended October 2, 2011 and October 3, 2010 and cash flows for the nine months ended October 2, 2011 and October 3, 2010. These condensed consolidated financial statements are not necessarily indicative of the results to be expected for the entire year.

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 contained in the fiscal 2010 Form 10-K. There have been no significant changes in the Company's significant accounting policies for the three months ended October 2, 2011, as compared to the significant accounting policies described in the fiscal 2010 Form 10-K.

Recent Accounting Pronouncements

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

In June 2011, the FASB amended its disclosure guidance related to the presentation of comprehensive income. This amendment eliminates the option to report other comprehensive income and its components in the statement of changes in equity and requires presentation and reclassification adjustments on the face of the income statement. The amendment will be effective for the Company on January 2, 2012 and will not have any impact on our financial position, but will impact our financial statement presentation.

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

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

On April 28, 2011, the Company and Total entered into a Tender Offer Agreement (the “Tender Offer Agreement”), pursuant to which, on May 3, 2011, Total commenced a cash tender offer to acquire up to 60% of the Company's outstanding shares of class A common stock and up to 60% of the Company's outstanding shares of class B common stock (the “Tender Offer”) at a price of $23.25 per share for each class. The consummation of the Tender Offer was subject to customary closing conditions, including a minimum of 50% of the outstanding shares of each of the class A common stock and class B common stock being tendered, clearance by U.S. and European Union antitrust authorities, and other customary closing conditions. On May 9, 2011 the U.S. Federal Trade Commission granted the Company and Total S.A. early termination of the waiting period otherwise required for the parties to achieve U.S. antitrust approval.

The offer expired on June 14, 2011 and Total accepted for payment on June 21, 2011 a total of 34,756,682 shares of the Company's class A common stock and 25,220,000 shares of the Company's class B common stock, representing 60% of each class of its outstanding common stock as of June 13, 2011, for a total cost of approximately $1.4 billion. On June 28, 2011, the European Commission granted clearance for the Tender Offer transaction. As a result of the Commission clearance, Total is permitted to fully exercise voting and election rights over the purchased shares, as well as fully exercise its rights under the Credit Support Agreement, the Affiliation Agreement, and the Research & Collaboration Agreement described below.

Credit Support Agreement

In connection with the Tender Offer, the Company and Total S.A. entered into a Credit Support Agreement (the “Credit Support Agreement”) under which Total S.A. has agreed to enter into one or more guarantee agreements (each a “Guaranty”) with banks providing letter of credit facilities to the Company in support of certain Company businesses and other permitted purposes. Total S.A. will guarantee the payment to the applicable issuing bank of the Company's obligation to reimburse a draw on a letter of credit and pay interest thereon in accordance with the letter of credit facility between such bank and the Company. The Credit Support Agreement became effective on June 28, 2011, the date on which the European Commission granted anti-

trust clearance (the “CSA Effective Date”). Under the Credit Support Agreement, at any time from the CSA Effective Date until the fifth anniversary of the CSA Effective Date, the Company may request that Total S.A. provide a Guaranty in support of the Company's payment obligations with respect to a letter of credit facility. Total S.A. is required to issue and enter into the Guaranty requested by the Company, subject to certain terms and conditions that may be waived by Total S.A., and subject to certain other conditions.

In consideration for the commitments of Total S.A., the Company is required to pay Total S.A. a guarantee fee for each letter of credit that is the subject of a Guaranty and was outstanding for all or part of the preceding calendar quarter.

The Company is also required to reimburse Total S.A. for payments made under any Guaranty and certain expenses of Total S.A., plus interest on both.

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

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

Affiliation Agreement

In connection with the Tender Offer, the Company and Total entered into an Affiliation Agreement that governs the relationship between Total and the Company following the close of the Tender Offer (the “Affiliation Agreement”). Until the expiration of a standstill period (the “Standstill Period”), Total, Total S.A., any of their respective affiliates and certain other related parties (the “Total Group”) may not effect, seek, or enter into discussions with any third party regarding any transaction that would result in the Total Group beneficially owning shares of the Company in excess of certain thresholds, or request the Company or the Company's independent directors, officers or employees, to amend or waive any of the standstill restrictions applicable to the Total Group.

The Affiliation Agreement imposes certain limitations on the Total Group's ability to seek to effect a tender offer or merger to acquire 100% of the outstanding voting power of the Company and imposes certain limitations on the Total Group's ability to transfer 40% or more of outstanding shares or voting power of the Company to a single person or group that is not a direct or indirect subsidiary of Total S.A. During the Standstill Period, no member of the Total Group may, among other things, solicit proxies or become a participant in an election contest relating to the election of directors to the Company's Board of Directors.

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

In accordance with the terms of the Affiliation Agreement, on July 1, 2011, the Company's Board of Directors expanded the size of the Board of Directors to eleven members and elected six nominees from Total as directors, following which the Board of Directors was composed of the Chief Executive Officer of the Company (who also serves as the chairman of the Company's Board of Directors), four existing non-Total designated members of the Company's Board of Directors, and six directors designated by Total. Directors designated by Total also serve on certain committees of the Company's Board of Directors. On the first anniversary of the consummation of the Tender Offer, the size of the Company's Board of Directors will be reduced to nine members and one non-Total designated director and one director designated by Total will resign from the Company's Board of Directors. If the Total Group's ownership percentage of Company common stock declines, the number of members of the Company's Board of Directors that Total is entitled to nominate to the Company's Board of Directors will be reduced as set forth in the Affiliation Agreement.

The Affiliation Agreement also imposes certain restrictions with respect to the Company's and the Company's Board of Directors' ability to take certain actions, including specifying certain actions that require approval by the directors other than the directors appointed by Total and other actions that require stockholder approval by Total.

Affiliation Agreement Guaranty

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

Research & Collaboration Agreement

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

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

Registration Rights Agreement

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

Stockholder Rights Plan

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

On June 14, 2011, the Company entered into a second amendment to the Rights Agreement (the “Second Rights Agreement Amendment”), in order to, among other things, exempt Total, Total S.A. and certain of their affiliates and certain members of a group of which they may become members from the definition of “Acquiring Person” such that the rights issuable pursuant to the Rights Agreement will not become issuable in connection with the completion of the Tender Offer.

By-laws Amendment

On June 14, 2011, the Board of Directors approved the amendment of the Company's By-laws (the “By-laws”). The changes are required under the Affiliation Agreement. The amendments: (i) allow any member of the Total Group to call a meeting of stockholders for the sole purpose of considering and voting on a proposal to effect a Terra Merger (as defined in the Affiliation Agreement) or a Transferee Merger (as defined in the Affiliation Agreement); (ii) provide that the number of directors of the Board shall be determined from time to time by resolution adopted by the affirmative vote of a majority of the entire Board at any regular or special meeting; (iii) require, prior to the termination of the Affiliation Agreement, a majority of independent directors' approval to amend the By-laws so long as Total, together with Total S.A.'s subsidiaries collectively own

at least 30% of the voting securities of the Company as well as require, prior to the termination of the Affiliation Agreement, Total's written consent during the Terra Stockholder Approval Period (as defined in the Affiliation Agreement) to amend the By-laws; and (iv) make certain other conforming changes to the By-laws.

The Tender Offer Agreement, Tender Offer Agreement Guaranty, Credit Support Agreement, Affiliation Agreement, Affiliation Agreement Guaranty, Research and Collaboration Agreement, Registration Rights Agreement, Rights Agreement Amendment, Second Rights Agreement Amendment and By-laws, and amendments thereto, are attached to, and more fully described in, the Company's Form 8-Ks as filed with the SEC on May 2, 2011, June 7, 2011, and June 15, 2011.

Note 3. ***SALE OF DISCONTINUED OPERATIONS***

In connection with a strategic acquisition on March 26, 2010, the Company acquired a European project company, Cassiopea PV S.r.l (“Cassiopea”), which operated a previously completed 20 megawatt alternating current ("MWac") solar power plant in Montalto di Castro, Italy. In the period in which an asset of the Company is classified as held-for-sale, it is required to present for all periods the related assets, liabilities and results of operations associated with that asset as discontinued operations. On August 5, 2010, the Company sold the assets and liabilities of Cassiopea. Therefore, Cassiopea's results of operations were classified as “Income from discontinued operations, net of taxes” in the Condensed Consolidated Statement of Operations in the three and nine months ended October 3, 2010.

In both the three and nine months ended October 3, 2010, results of operations related to Cassiopea were as follows:

	Three Months Ended	Nine Months Ended
(In thousands)	**October 3, 2010**	**October 3, 2010**
Utility and power plants revenue	$ 3,176	$ 11,081
Gross margin	3,176	11,081
Income (loss) from discontinued operations before sale of business unit	(5,648)	5,862
Gain on sale of business unit	7,937	7,937
Income before income taxes	2,289	13,799
Income from discontinued operations, net of taxes	1,570	9,466

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 2, 2011	$ 226,350	$ 118,920	$ 345,270
Goodwill impairment	(226,350)	(83,107)	(309,457)
Translation adjustment	—	177	177
As of October 2, 2011	$ —	$ 35,990	$ 35,990

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

The Company conducts its annual impairment test of goodwill as of the Sunday closest to the end of the third fiscal

quarter of each year. Impairment of goodwill is tested at the Company's reporting unit level. Management determined the UPP Segment and R&C Segment each have two reporting units, UPP-International and UPP-Americas for UPP Segment, and Residential and Light Commercial and North American Commercial for R&C Segment. In estimating the fair value of the reporting units, the Company makes estimates and judgments about its future cash flows using an income approach defined as Level 3 inputs under fair value measurement standards. The income approach, specifically a discounted cash flow analysis, included assumptions for, among others, forecasted revenue, gross margin, operating income, working capital cash flow, perpetual growth rates and long-term discount rates, all of which require significant judgment by management. The sum of the fair values of the Company's reporting units are also compared to its external market capitalization to determine the appropriateness of its assumptions and adjusted, if appropriate. These assumptions took into account the current industry environment and its impact on the Company's business. Based on the impairment test as of October 2, 2011, the Company determined that the carrying value of the UPP-International, UPP-Americas, and Residential and Light Commercial reporting units exceeded their fair value. As a result, the Company performed the second step of the impairment analysis for the three reporting units discussed above. The Company's calculation of the implied fair value of goodwill included significant assumptions for, among others, the fair values of recognized assets and liabilities and of unrecognized intangible assets, all of which require significant judgment by management. The Company calculated that the implied fair value of goodwill for the three reporting units was zero and therefore recorded a goodwill impairment loss of $309.5 million, representing all of the goodwill associated with these reporting units. As of October 2, 2011, the fair value of the remaining reporting unit, North American Commercial, significantly exceeded the carrying value under the first step of the goodwill impairment test; therefore, goodwill was not impaired.

Intangible Assets

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

(In thousands)	Gross	Accumulated Amortization	Net
As of October 2, 2011			
Patents, trade names and purchased technology	$ 49,892	$ (49,892)	$ —
Purchased in-process research and development	1,000	(153)	847
Customer relationships and other	28,251	(23,191)	5,060
	$ 79,143	$ (73,236)	$ 5,907
As of January 2, 2011			
Project assets	$ 79,160	$ (22,627)	$ 56,533
Patents, trade names and purchased technology	55,144	(54,563)	581
Purchased in-process research and development	1,000	(28)	972
Customer relationships and other	40,525	(31,823)	8,702
	$ 175,829	$ (109,041)	$ 66,788

All of the Company's acquired other intangible assets are subject to amortization. Aggregate amortization expense for other intangible assets totaled $6.7 million and $20.6 million in the three and nine months ended October 2, 2011, respectively, and $11.6 million and $28.0 million in the three and nine months ended October 3, 2010, respectively.

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

As of October 2, 2011, the estimated future amortization expense related to other intangible assets is as follows:

(In thousands)	Amount
Year	
2011 (remaining three months)	$ 1,054
2012	4,109
2013	272
2014	167
2015	167
Thereafter	138
	$ 5,907

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

(In thousands)	As of October 2, 2011	As of January 2, 2011
Accounts receivable, net:		
Accounts receivable, gross	$ 452,672	$ 389,554
Less: allowance for doubtful accounts	(12,143)	(5,967)
Less: allowance for sales returns	(2,438)	(2,387)
	$ 438,091	$ 381,200
Inventories:		
Raw materials	$ 75,269	$ 70,683
Work-in-process	50,903	35,658
Finished goods	299,061	207,057
	$ 425,233	$ 313,398
Prepaid expenses and other current assets:		
VAT receivables, current portion	$ 38,249	$ 26,500
Foreign currency derivatives	79,464	35,954
Income tax receivable	8,953	1,513
Deferred project costs	75,346	934
Other current assets	6,137	13,605
Other receivables (1)	116,092	83,712
Other prepaid expenses	29,845	30,716
	$ 354,086	$ 192,934

(1) Includes tolling agreements with suppliers in which the Company provides polysilicon required for silicon ingot manufacturing and procures the manufactured silicon ingots from the suppliers (see Notes 8 and 9).

Project assets - plants and land:		
Project assets - plants	$ 13,038	$ 28,784
Project assets - land	54,835	17,322
	$ 67,873	$ 46,106
Project assets - plants and land, current portion	$ 34,426	$ 23,868
Project assets - plants and land, net of current portion	$ 33,447	$ 22,238
Property, plant and equipment, net:		
Land and buildings	$ 13,912	$ 13,912
Leasehold improvements	239,079	207,248
Manufacturing equipment (2)	578,511	551,815
Computer equipment	57,203	46,603
Solar power systems	11,621	10,614
Furniture and fixtures	7,053	5,555
Construction-in-process	39,838	28,308
	947,217	864,055
Less: accumulated depreciation (3)	(362,195)	(285,435)
	$ 585,022	$ 578,620

(2) 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 also provided security for advance payments received from a third party in fiscal 2008 in the form of collateralized manufacturing equipment with a net book value of $22.6 million and $28.3 million as of October 2, 2011 and January 2, 2011, respectively.

(3) Total depreciation expense was $30.3 million and $84.0 million for the three and nine months ended October 2, 2011, respectively, and $26.4 million and $75.7 million for the three and nine months ended October 3, 2010, respectively.

	As of	
(In thousands)	**October 2, 2011**	**January 2, 2011**
Property, plant and equipment, net by geography (4):		
Philippines	$ 474,574	$ 502,131
North America	104,079	73,860
Europe	6,188	2,400
Australia	181	229
	$ 585,022	$ 578,620

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

The below table presents the cash and non-cash interest expense capitalized to property plant and equipment and project assets during the three and nine months ended October 2, 2011 and October 3, 2010, respectively.

	Three Months Ended		Nine Months Ended	
(In thousands)	**October 2, 2011**	**October 3, 2010**	**October 2, 2011**	**October 3, 2010**
Interest expense:				
Interest cost incurred	$ (18,729)	$ (17,827)	$ (52,832)	$ (49,944)
Cash interest cost capitalized - property, plant and equipment	297	413	1,182	1,185
Non-cash interest cost capitalized - property, plant and equipment	113	657	834	1,752
Cash interest cost capitalized - project assets - plant and land	534	790	1,140	790
Non-cash interest cost capitalized - project assets - plant and land	689	1,199	1,262	1,199
Interest expense	$ (17,096)	$ (14,768)	$ (48,414)	$ (45,018)

	As of	
(In thousands)	**October 2, 2011**	**January 2, 2011**
Other long-term assets:		
Investments in joint ventures	$ 191,644	$ 116,444
Bond hedge derivative	695	34,491
Investments in non-public companies	6,418	6,418
VAT receivables, net of current portion	6,254	7,002
Long-term debt issuance costs	11,221	12,241
Other	19,365	1,698
	$ 235,597	$ 178,294

(In thousands)	As of October 2, 2011	As of January 2, 2011
Accrued liabilities:		
VAT payables	$ 8,305	$ 11,699
Foreign currency derivatives	33,011	10,264
Short-term warranty reserves	13,675	14,639
Interest payable	6,875	6,982
Deferred revenue	48,674	21,972
Employee compensation and employee benefits	34,603	33,227
Restructuring liability	9,686	—
Other	57,816	38,921
	$ 212,645	$ 137,704
Other long-term liabilities:		
Embedded conversion option derivatives	$ 711	$ 34,839
Long-term warranty reserves	69,990	48,923
Unrecognized tax benefits	27,134	24,894
Other	29,555	22,476
	$ 127,390	$ 131,132

Note 6. ***INVESTMENTS***

The Company's investments in money market funds and debt securities, classified as available-for-sale, are carried at fair value. Debt securities that are classified as held-to-maturity are carried at amortized costs. 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.

The following tables present information about the Company's investments in money market funds and debt securities, classified as available-for-sale, 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 convertible debenture derivatives measured at fair value on a recurring basis is disclosed in Note 10. Information about the Company's foreign currency derivatives measured at fair value on a recurring basis is disclosed in Note 12. The Company did not have any nonfinancial assets or liabilities that were recognized or disclosed at fair value on a recurring basis in its condensed consolidated financial statements.

	October 2, 2011				January 2, 2011			
(In thousands)	Level 1	Level 2	Level 3	Total	Level 1	Level 2	Level 3	Total
Assets								
Money market funds	$ 71,553	$ —	$ —	$ 71,553	$ 488,626	$ —	$ 172	$ 488,798
Debt securities	—	—	—	—	—	38,548	—	38,548
	$ 71,553	$ —	$ —	$ 71,553	$ 488,626	$ 38,548	$ 172	$ 527,346

There were no transfers between Level 1, Level 2 and Level 3 measurements during the three and nine months ended October 2, 2011.

Money Market Funds

The majority of 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 consisted of the Company's investment in the Reserve International Liquidity Fund which amounted to $0.2 million as of January 2, 2011. The Company had 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. On March 3, 2011, the Company recovered $0.3 million from the Reserve International Liquidity Fund. The recovery was $0.1 million in excess of the recorded fair value and was reflected as a gain within "Other, net" in the Condensed Consolidated Statement of Operations for the nine months ended October 2, 2011. The Company had no remaining investments with Level 2 or Level 3 measurements as of October 2, 2011.

Debt Securities

Investments in debt securities classified as held-to-maturity as of October 2, 2011 consist of Philippine government bonds purchased in the third quarter of fiscal 2011 which are maintained as collateral for present and future business transactions within the country. These bonds have maturity dates of up to 5 years and are classified as "Restricted long term investments" on the Company's Condensed Consolidated Balance Sheets. The Company records such held-to-maturity investments at amortized cost based on its ability and intent to hold the securities until maturity. The Company monitors for changes in circumstances and events which would impact its ability and intent to hold such securities until the recorded amortized cost is recovered. The Company incurred no other-than-temporary impairment loss in the three and nine months ended October 2, 2011.

Investments in debt securities classified as available-for-sale, utilizing Level 2 inputs, as of January 2, 2011 consisted of bonds purchased in the fourth quarter of fiscal 2010. The bonds were guaranteed by the Italian government. The Company based its valuation of these bonds on movements of Italian sovereign bond rates since the time of purchase and incurred no other-than-temporary impairment loss in the three and nine months ended October 2, 2011. This valuation is corroborated by comparison to third-party financial institution valuations. The fair value of the Company's investments in bonds totaled €29.5 million as of January 2, 2011. On May 23, 2011, the bonds were sold for net proceeds of €29.3 million which was €0.2 million below the recorded fair value of €29.5 million on the sale date. The €0.2 million difference was reflected as a loss within "Other, net" in the Condensed Consolidated Statement of Operations for the nine months ended October 2, 2011.

Available-for-Sale Securities

Available-for-sale securities are comprised of the fair value of the Company's debt securities, including any other-than temporary impairment loss incurred. The classification of available-for-sale securities and cash and cash equivalents is as follows:

	October 2, 2011			January 2, 2011		
(In thousands)	**Available-For-Sale**	**Cash and Cash Equivalents (2)**	**Total**	**Available-For-Sale**	**Cash and Cash Equivalents (2)**	**Total**
Cash and cash equivalents	$ —	$ 374,562	$ 374,562	$ —	$ 605,420	$ 605,420
Short-term restricted cash and cash equivalents (1)	—	2,871	2,871	—	117,462	117,462
Short-term investments	—	—	—	38,548	172	38,720
Long-term restricted cash and cash equivalents (1)	—	223,639	223,639	—	138,837	138,837
	$ —	$ 601,072	$ 601,072	$ 38,548	$ 861,891	$ 900,439

(1) Details regarding the Company's cash in restricted accounts are contained in the Company's annual consolidated financial statements and notes thereto for the year ended January 2, 2011 included in the fiscal 2010 Form 10-K.

(2) Includes money market funds.

Minority Investments in Joint Ventures and Other Non-Public Companies

The Company holds minority investments in joint ventures and other non-public companies comprised of convertible promissory notes, common and preferred stock. The Company monitors these minority investments for impairment, which are included in "Prepaid expenses and other current assets" and “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 the valuation ascribed to the issuing company in subsequent financing rounds, decreases in quoted market prices and declines in operations of the issuer. As of October 2, 2011 and January 2, 2011, the Company had $191.6 million and

$116.4 million, respectively, in investments in joint ventures accounted for under the equity method and $12.1 million and $16.4 million, respectively, in investments accounted for under the cost method (see Note 5 and Note 9).

Note 7. *RESTRUCTURING*

In response to reductions in European government incentives, primarily in Italy, which have had a significant impact on the global solar market, on June 13, 2011, the Company's Board of Directors approved a restructuring plan to realign the Company's resources. The restructuring plan eliminates approximately 85 positions, or 2% of the Company's workforce, in addition to the consolidation or closure of certain facilities in Europe. The Company expects to record restructuring charges of up to $22.0 million, related to the UPP Segment, in the twelve months following the approval and implementation of the plan, of which $0.6 million and $13.9 million has been recognized in the three and nine months ending October 2, 2011, respectively. The Company expects greater than 90% of restructuring related charges to be cash.

Restructuring charges recognized during the three and nine months ended October 2, 2011 in the Condensed Consolidated Statements of Operations consisted of zero and $12.3 million, respectively, of employee severance, benefits and accelerated vesting of promissory notes, zero and $0.7 million, respectively, of lease and related termination costs, and $0.6 million and $0.9 million, respectively, of legal and other related charges.

As of October 2, 2011, $9.7 million associated with the restructuring was recorded in "Accrued liabilities" on the Company's Condensed Consolidated Balance Sheet. The following tables summarize the restructuring reserve activity during the three and nine months ended October 2, 2011:

	Nine Months Ended			
(In thousands)	**Severance Benefits (1)**	**Lease and Related Termination Costs**	**Other Costs (2)**	**Total**
Accrued liability as of January 2, 2011	$ —	$ —	$ —	$ —
Charges	10,911	713	320	11,944
Payments	(905)	—	—	(905)
Accrued liability as of July 3, 2011	$ 10,006	$ 713	$ 320	$ 11,039
Charges	$ —	$ —	$ 637	$ 637
Payments	$ (1,454)	$ —	$ (536)	$ (1,990)
Accrued liability as of October 2, 2011	$ 8,552	$ 713	$ 421	$ 9,686

(1) Restructuring reserve charges above exclude $1.4 million of charges associated with the accelerated vesting of promissory notes, in accordance with the terms of each agreement, previously issued as consideration for an acquisition completed in the first quarter of fiscal 2010. The $1.4 million charge is separately in "Accrued liabilities" on the Company's Balance Sheet as October 2, 2011, and in "Restructuring charges" on the Company's Condensed Consolidated Statement of Operations for the nine months ended October 2, 2011.

(2) Other costs primarily represent associated legal services.

Note 8. *COMMITMENTS AND CONTINGENCIES*

Operating Lease Commitments

The Company leased its San Jose, California facility under a non-cancellable operating lease from Cypress Semiconductor Corporation ("Cypress") which expired in May 2011. In May 2011 the Company moved to new offices in San Jose, California under a non-cancellable operating lease from an unaffiliated third party through April 2021. In addition, the Company leases its Richmond, California facility under a non-cancellable operating lease from an unaffiliated third party, which expires in December 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, in the first quarter of fiscal 2010, the Company acquired a lease arrangement in London, England, which was leased from a party affiliated with the Company and expired on August 7, 2011.

In August 2011, the Company entered into a non-cancellable operating lease agreement for its solar module facility in Mexicali, Mexico from an unaffiliated third party through August 2021.

In fiscal 2009, the Company signed a commercial project financing agreement with Wells Fargo to fund up to $100 million of commercial-scale solar power system projects through December 31, 2010. On July 16, 2011, the Company and Wells Fargo amended the agreement to extend through June 30, 2012. As of October 2, 2011, the Company leases six solar power systems from Wells Fargo over minimum lease terms of up to 20 years that it had previously sold to Wells Fargo, of which two of these sales occurred during the nine months ended October 2, 2011. Separately, the Company entered into power purchase agreements ("PPAs") with end customers, who host the leased solar power systems and buy the electricity directly from the Company under PPAs with a duration of up to 20 years. At the end of the lease term, the Company has the option to purchase the systems at fair value or remove the systems. The deferred profit on the sale of the systems to Wells Fargo is recognized over the minimum term of the lease.

Future minimum obligations under all non-cancellable operating leases as of October 2, 2011 are as follows:

(In thousands)	**Amount**
Year	
2011 (remaining three months)	$ 4,125
2012	13,323
2013	12,935
2014	11,516
2015	10,100
Thereafter	51,265
	$ 103,264

Purchase Commitments

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

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

As of October 2, 2011, total obligations related to non-cancellable purchase orders totaled $0.2 billion and long-term supply agreements with suppliers totaled $4.6 billion. Of the total future purchase commitments of $4.8 billion as of October 2, 2011, $2.0 billion are for commitments to its non-consolidated joint ventures. Future purchase obligations under non-cancellable purchase orders and long-term supply agreements as of October 2, 2011 are as follows:

(In thousands)	Amount
Year	
2011 (remaining three months)	$ 499,777
2012	515,957
2013	585,552
2014	781,316
2015	839,685
Thereafter	1,548,809
	$ 4,771,096

Total future purchase commitments of $4.8 billion as of October 2, 2011 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 October 2, 2011 would be reduced by $1.4 billion to $3.4 billion 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 manufacturing equipment will be recovered through future cash flows of the solar cell manufacturing lines and solar panel assembly lines when such long-lived assets are placed in service. Factors considered important that could result in an impairment review include significant underperformance relative to expected historical or projected future operating results, significant changes in the manner of use of acquired assets and significant negative industry or economic trends. Obligations related to non-cancellable purchase orders for inventories match current and forecasted sales orders that will consume these ordered materials and actual consumption of these ordered materials are compared to expected demand regularly. The Company anticipates total obligations related to long-term supply agreements for inventories will be recovered because quantities are less than management's expected demand for its solar power products. However, the terms of the long-term supply agreements are reviewed by management and the Company 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. During the three and nine months ended October 2, 2011, the Company recorded charges amounting to zero and $32.5 million, respectively, related to the write-down of third-party inventory and costs associated with the termination of third-party solar cell supply contracts after reductions in European government incentives drove down demand and average selling price in certain areas of Europe.

Advances to Suppliers

As noted above, the Company has entered into agreements with various polysilicon, ingot, wafer, solar cell and solar panel vendors that specify future quantities and pricing of products to be supplied by the vendors for periods up to 10 years. Certain agreements also provide for penalties or forfeiture of advanced deposits in the event the Company terminates the arrangements. Under certain agreements, the Company is required to make prepayments to the vendors over the terms of the arrangements. During the three and nine months ended October 2, 2011, the Company paid advances totaling zero and $26.9 million, respectively, in accordance with the terms of existing long-term supply agreements. As of October 2, 2011 and January 2, 2011, advances to suppliers totaled $296.5 million and $287.1 million, respectively, the current portion of which is $37.1 million and $31.7 million, respectively. Two suppliers accounted for 76% and 23% of total advances to suppliers as of October 2, 2011, and 83% and 13% as of January 2, 2011.

The Company's future prepayment obligations related to these agreements as of October 2, 2011 are as follows:

(In thousands)	Amount
Year	
2011 (remaining three months)	$ 110,493
2012	102,883
2013	7,350
	$ 220,726

In January 2008, the Company entered into an Option Agreement with NorSun AS ("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 of $5.0 million to NorSun during the fourth quarter of fiscal 2009. The Option Agreement provided NorSun an option to sell a 23.3% equity interest in a joint venture to the Company at a price equal to the $5.0 million cash advance. On December 3, 2010, NorSun entered into an agreement with a third party to sell its equity interest in the joint venture at cost, including the Company's indirect equity interest of 23.3% at $5.0 million. That agreement became effective in the first quarter of fiscal 2011 and accordingly the Option Agreement was terminated. In connection with the termination of the Option Agreement, on March 31, 2011, the $5.0 million cash advance was returned to the Company.

Product Warranties

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

Provisions for warranty reserves charged to cost of revenue were $6.4 million and $24.8 million during the three and nine months ended October 2, 2011, respectively, and $8.6 million and $18.3 million during the three and nine months ended October 3, 2010, respectively. Activity within accrued warranty for the three and nine months ended October 2, 2011 and October 3, 2010 is summarized as follows:

	Three Months Ended		Nine Months Ended	
(In thousands)	**October 2, 2011**	**October 3, 2010**	**October 2, 2011**	**October 3, 2010**
Balance at the beginning of the period	$ 79,261	$ 51,991	$ 63,562	$ 46,475
Accruals for warranties issued during the period	6,435	8,604	24,803	18,309
Settlements made during the period	(2,031)	(1,162)	(4,700)	(5,351)
Balance at the end of the period	$ 83,665	$ 59,433	$ 83,665	$ 59,433

Contingent Obligations

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

Future Financing Commitments

As specified in the Company's joint venture agreement with AU Optronics Singapore Pte. Ltd. ("AUO"), both the Company and AUO contributed certain funding to the AUO SunPower Sdn. Bhd. ("AUOSP") joint venture during fiscal 2010 and the nine months of fiscal 2011. The Company and AUO are required to each contribute additional amounts to the joint venture in fiscal 2012 through 2014 amounting to $241.0 million, or such lesser amount as the parties may mutually agree. In addition, if the Company, AUO, or the joint venture requests additional equity financing to the joint venture, then both the Company and AUO will be required to make additional cash contributions of up to $50.0 million in the aggregate(see Note 9).

On September 28, 2010, the Company invested $0.2 million in a non-public company accounted for under the cost method. The Company will be required to provide additional financing of up to $4.9 million, subject to certain conditions.

The Company's future financing obligations related to these agreements as of October 2, 2011 are as follows:

(In thousands)	Amount
Year	
2011 (remaining three months)	$ 900
2012	46,870
2013	101,400
2014	96,770
	$ 245,940

Liabilities Associated with Uncertain Tax Positions

Total liabilities associated with uncertain tax positions were $27.1 million and $24.9 million as of October 2, 2011 and January 2, 2011, 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 13).

Indemnifications

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

Legal Matters

Three securities class action lawsuits were filed against the Company and certain of its current and former officers and directors in the United States District Court for the Northern District of California on behalf of a class consisting of those who acquired the Company's securities from April 17, 2008 through November 16, 2009. The cases were consolidated as In re SunPower Securities Litigation, Case No. CV-09-5473-RS (N.D. Cal.), and lead plaintiffs and lead counsel were appointed on March 5, 2010. Lead plaintiffs filed a consolidated complaint on May 28, 2010. The actions arise from the Audit Committee's investigation announcement on November 16, 2009 regarding certain unsubstantiated accounting entries. The consolidated complaint alleges that the defendants made material misstatements and omissions concerning the Company's financial results for 2008 and 2009, seeks an unspecified amount of damages, and alleges violations of Sections 10(b) and 20(a) of the Securities Exchange Act of 1934, and Sections 11 and 15 of the Securities Act of 1933. The Company believes it has meritorious defenses to these allegations and will vigorously defend itself in these matters. The court held a hearing on the defendants' motions to dismiss the consolidated complaint on November 4, 2010. The court dismissed the consolidated complaint with leave to amend on March 1, 2011. An amended complaint was filed on April 18, 2011. Defendants filed motions to dismiss the amended complaint on May 23, 2011. The motion to dismiss the amended complaint was heard by the court on August 11, 2011, and the court took it under submission. 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 after entry of an order deciding defendants' motion to dismiss the amended class action complaint. 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. Plaintiffs filed a consolidated complaint on May 13, 2011. A Delaware state derivative case, Brenner v. Albrecht, et al., C.A. No. 6514-VCP (Del Ch.), was filed on May 23, 2011. The complaint asserts state-law claims for breach of fiduciary duty and contribution and indemnification, and seeks an unspecified amount of damages. The Company intends to oppose the derivative plaintiffs' efforts to pursue this litigation on the Company's behalf. Defendants moved to stay or dismiss the Delaware derivative action on July 5, 2011. The motion to stay was heard by the court on October 27, 2011, and the court took it under submission. If the court does not stay the action, a hearing on the motions to dismiss will be scheduled for a later date. The Company is currently unable to determine if the resolution of these matters will have an adverse effect on the Company's financial position, liquidity or results of operations.

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

Note 9. ***JOINT VENTURES***

Joint Venture with Woongjin Energy Co., Ltd (“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 supplies polysilicon, services and technical support required for silicon ingot manufacturing to Woongjin Energy. Once manufactured, the Company purchases the silicon ingots from Woongjin Energy under a nine-year agreement through 2016. There is no obligation or expectation for the Company to provide additional funding to Woongjin Energy.

On June 30, 2010, Woongjin Energy completed its initial public offering ("IPO") and the sale of 15.9 million new shares of common stock. The Company did not participate in this common stock issuance and its percentage equity ownership was subsequently diluted. As a result of the completion of the IPO, the Company concluded that Woongjin Energy is no longer a variable interest entity ("VIE"). During the third quarter of fiscal 2011, the Company sold 2.9 million shares of Woongjin Energy on the open market for total proceeds, net of tax, amounting to $24.0 million subsequently reducing the Company's percentage equity in Woongjin Energy and its investment carrying balance. As of October 2, 2011 and January 2, 2011, the Company held 16.5 million and 19.4 million shares, respectively, or a percentage equity ownership of 27% and 31%, respectively. The market value of the Company's equity interest in Woongjin Energy was $81.3 million on September 30, 2011.

As of October 2, 2011 and January 2, 2011, the Company's carrying value of its investment in Woongjin Energy totaled $74.2 million and $76.6 million, respectively, in its Condensed Consolidated Balance Sheets. The Company accounts for its investment in Woongjin Energy using the equity method under which the investment is classified as “Other long-term assets” in the Condensed Consolidated Balance Sheets and the Company's share of Woongjin Energy's income totaling $3.7 million and $10.4 million in the three and nine months ended October 2, 2011, respectively, and $5.7 million and $10.5 million in the three and nine months ended October 3, 2010, respectively, is included in “Equity in earnings (loss) of unconsolidated investees” in the Condensed Consolidated Statements of Operations. The Company recorded a cash gain of $11.0 million in both the three and nine months ended October 2, 2011 in "Gain on sale of equity interest in unconsolidated investee" in the Company's Condensed Consolidated Statement of Operations as a result of the Company's sale of 2.9 million shares of Woongjin Energy in the third quarter of fiscal 2011, which decreased the Company's equity ownership from 31% to 27%. The Company recorded non-cash gains of zero and $0.3 million in the three and nine months ended October 2, 2011, respectively, and zero and $28.3 million in the three and nine months ended October 3, 2010 in "Gain on change in equity interest in unconsolidated investee" in the Company's Condensed Consolidated Statement of Operations due to its equity interest in Woongjin Energy being diluted as a result of Woongjin Energy's IPO and issuance of additional equity to other investors. As of October 2, 2011, the Company's maximum exposure to loss as a result of its involvement with Woongjin Energy was limited to the carrying value of its investment.

As of October 2, 2011 and January 2, 2011, $21.0 million and $18.4 million, respectively, remained due and receivable from Woongjin Energy related to polysilicon the Company supplied to Woongjin Energy for silicon ingot manufacturing. Payments to Woongjin Energy for manufactured silicon ingots totaled $72.6 million and $165.2 million in the three and nine months ended October 2, 2011, respectively, and $44.7 million and $134.0 million in the three and nine months ended October 3, 2010, respectively. As of October 2, 2011 and January 2, 2011, $54.1 million and $32.6 million, respectively, remained due and payable to Woongjin Energy. In addition, the Company conducted other related-party transactions with Woongjin Energy in the first half of fiscal 2010. The Company recognized revenue related to the sale of solar panels to

Woongjin Energy of $0.3 million during each of the three and nine months ended October 3, 2010. As of both October 2, 2011 and January 2, 2011, zero remained due and receivable from Woongjin Energy related to the sale of these solar panels.

Woongjin Energy qualified as a "significant investee" of the Company in fiscal 2009 as defined in SEC Regulation S-X Rule 10-01(b)(1). Summarized financial information adjusted to conform to U.S. GAAP for Woongjin Energy for the nine months ended October 2, 2011 and October 3, 2010 is as follows:

Statement of Operations

	Nine Months Ended	
(In thousands)	**October 2, 2011**	**October 3, 2010**
Revenue	$ 223,748	$ 91,944
Cost of revenue	190,013	49,895
Gross margin	33,735	42,049
Operating income	22,039	37,194
Net income	22,353	28,413

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 in the Philippines. The Company supplies to First Philec Solar silicon ingots and technology required for slicing silicon. Once manufactured, the Company purchases the completed silicon wafers from First Philec Solar under a five-year wafering supply and sales agreement through 2013. There is no obligation or expectation for the Company to provide additional funding to First Philec Solar.

As of October 2, 2011 and January 2, 2011, the Company's carrying value of its investment in the joint venture totaled $6.8 million and $6.1 million, respectively, in its Condensed Consolidated Balance Sheets which represented a 15% equity investment in both periods. The Company accounts for its investment in First Philec Solar using the equity method since the Company is able to exercise significant influence over First Philec Solar due to its board positions. 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 zero and $0.7 million in the three and nine months ended October 2, 2011, respectively, and $0.1 million and $0.4 million in the three and nine months ended October 3, 2010, respectively, is included in “Equity in earnings (loss) of unconsolidated investees” in the Condensed Consolidated Statements of Operations. As of October 2, 2011, the Company's maximum exposure to loss as a result of its involvement with First Philec Solar was limited to the carrying value of its investment.

As of October 2, 2011 and January 2, 2011, $8.0 million and $3.3 million, respectively, remained due and receivable from First Philec Solar related to the wafer slicing process of silicon ingots supplied by the Company to First Philec Solar. Payments to First Philec Solar for wafer slicing services of silicon ingots totaled $37.8 million and $102.2 million during the three and nine months ended October 2, 2011, respectively, and $23.4 million and $61.6 million during the three and nine months ended October 3, 2010, respectively. As of October 2, 2011 and January 2, 2011, $13.3 million and $9.0 million, respectively, remained due and payable to First Philec Solar related to the purchase of silicon wafers.

The Company has concluded that it is not the primary beneficiary of First Philec Solar since, although the Company and First Philec are both obligated to absorb losses or have the right to receive benefits from First Philec Solar 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 joint venture's Board of Directors, management and daily operations.

Joint Venture with AUOSP

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

In connection with the joint venture agreement, the Company and AUO also entered into licensing and joint

development, supply, and other ancillary transaction agreements. Through the licensing agreement, SPTL and AUO licensed to AUOSP, on a non-exclusive, royalty-free basis, certain background intellectual property related to solar cell manufacturing (in the case of SPTL), and manufacturing processes (in the case of AUO). Under the seven-year supply agreement with AUOSP, renewable by the Company for one-year periods thereafter, the percentage of AUOSP's total annual output allocated on a monthly basis to the Company, which the Company is committed to purchase, ranges from 95% in the fourth quarter of fiscal 2010 to 80% in fiscal year 2013 and thereafter. The Company and AUO have the right to reallocate supplies from time to time under a written agreement. As required under the joint venture agreement, on November 5, 2010, the Company and AUOSP entered into an agreement under which the Company will resell to AUOSP polysilicon purchased from a third-party supplier and AUOSP will provide prepayments to the Company related to such polysilicon, which prepayment will then be made by the Company to the third-party supplier.

The Company and AUO are not permitted to transfer any of AUOSP's shares held by them, except to each other and to their direct or indirect wholly-owned subsidiaries. During the second half of fiscal 2010, the Company, through SPTL, and AUO each contributed total initial funding of $27.9 million. Both the Company and AUO each contributed an additional $30.0 million and $80.0 million during the three and nine months ended October 2, 2011, respectively, and will each contribute additional amounts through 2014 amounting to $241.0 million, or such lesser amount as the parties may mutually agree. In addition, if AUOSP, SPTL or AUO requests additional equity financing to AUOSP, then SPTL and AUO will each be required to make additional cash contributions of up to $50.0 million in the aggregate (See Note 8).

The Company has concluded that it is not the primary beneficiary of AUOSP since, although the Company and AUO are both obligated to absorb losses or have the right to receive benefits, the Company alone does not have the power to direct the activities of AUOSP that most significantly impact its economic performance. In making this determination the Company considered the shared power arrangement, including equal board governance for significant decisions, elective appointment, and the fact that both parties contribute to the activities that most significantly impact the joint venture's economic performance. As a result of the shared power arrangement the Company deconsolidated AUOSP in the third quarter of fiscal 2010 and accounts for its investment in the joint venture under the equity method. The Company recognized a non-cash gain of $23.0 million as a result of deconsolidating the carrying value of AUOSP as of July 5, 2010. Under the deconsolidation accounting guidelines, an investor's opening investment is recorded at fair value on the date of deconsolidation. The Company recognized an additional non-cash gain of $13.8 million representing the difference between the initial fair value of the investment and its carrying value. The total non-cash gain of $36.8 million upon deconsolidation is classified as "Other income" in both the three and nine months ended October 3, 2010 within the Company's Condensed Consolidated Statements of Operations.

As of October 2, 2011 and January 2, 2011, the Company's carrying value of its investment (which represents its 50% equity investment) totaled $110.6 million and $33.7 million, respectively, in its Condensed Consolidated Balance Sheets. The Company accounts for its investment in AUOSP using the equity method in which the investment is classified as “Other long-term assets” in the Condensed Consolidated Balance Sheets. The Company's share of AUOSP's net loss for the three and nine months ended October 2, 2011 totaled $2.7 million and $3.1 million, respectively, which is included in “Equity in earnings (loss) of unconsolidated investees” in the Condensed Consolidated Statement of Operations. The Company accounts for its share of AUOSP's net loss with a quarterly lag in reporting.

As of October 2, 2011 and January 2, 2011, $64.5 million and $6.0 million, respectively, remained due and payable to AUOSP and $51.6 million and $7.5 million, respectively, remained due and receivable from AUOSP. Payments to AUOSP for solar cells totaled $44.0 million and $114.7 million during the three and nine months ended October 2, 2011, respectively. As of October 2, 2011, the Company's maximum exposure to loss as a result of its involvement with AUOSP is limited to the carrying value of its investment.

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

The following table summarizes the Company's outstanding debt as of October 2, 2011 and the related maturity dates:

(In thousands)	Face Value	Payments Due by Period: 2011 (remaining three months)	2012	2013	2014	2015	Beyond 2015
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	79	—	—	—	—	79	—
IFC mortgage loan	75,000	—	—	12,500	15,000	15,000	32,500
CEDA loan	30,000	—	—	—	—	—	30,000
Credit Agricole revolving credit facility	250,000	$ —	—	250,000	—	—	—
	$ 1,033,687	$ —	$ 198,608	$ 262,500	$ 245,000	$ 265,079	$ 62,500

Convertible Debt

The following table summarizes the Company's outstanding convertible debt (which is additionally reflected in the table above):

(In thousands)	October 2, 2011 Carrying Value	October 2, 2011 Face Value	October 2, 2011 Fair Value (1)	January 2, 2011 Carrying Value	January 2, 2011 Face Value	January 2, 2011 Fair Value (1)
4.50% debentures	$ 189,646	$ 250,000	$ 215,425	$ 179,821	$ 250,000	$ 230,172
4.75% debentures	230,000	230,000	197,800	230,000	230,000	215,050
1.25% debentures (2)	192,913	198,608	196,622	182,023	198,608	188,429
0.75% debentures	79	79	79	79	79	75
	$ 612,638	$ 678,687	$ 609,926	$ 591,923	$ 678,687	$ 633,726

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

(2) The carrying value of the 1.25% senior convertible debentures ("1.25% debentures") was reclassified from long-term liabilities to short-term liabilities within "Convertible debt, current portion" in the Condensed Consolidated Balance Sheet as of October 2, 2011 as the holders may require the Company to repurchase all of their 1.25% debentures on February 15, 2012.

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”). On April 5, 2010, initial purchasers of the 4.50% debentures exercised the $30.0 million over-allotment option in full. Interest is payable semi-annually, on March 15 and September 15 of each year, at a rate of 4.50% per annum. The 4.50% debentures mature on March 15, 2015 unless repurchased or converted in accordance with their terms prior to such date. The 4.50% debentures are convertible only into cash, and not into shares of the Company's class A common stock (or any other securities).

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 over-allotment option was settled on April 5, 2010, however, the embedded cash conversion option continues to require mark-to-market accounting treatment. The initial fair value liabilities of the embedded cash conversion option and over-allotment option were classified within “Other long-term liabilities” and simultaneously reduced the carrying value of “Convertible debt, net of current portion” in the Company's

Condensed Consolidated Balance Sheets.

During the three and nine months ended October 2, 2011, the Company recognized a non-cash gain of $65.8 million and $34.2 million, respectively, recorded in “Gain (loss) on mark-to-market derivatives” in the Company's Condensed Consolidated Statement of Operations related to the change in fair value of the embedded cash conversion option. During the three and nine months ended October 3, 2010, the Company recognized a non-cash loss of $4.0 million and $34.9 million, respectively, recorded in “Gain (loss) on mark-to-market derivatives” in the Company's Condensed Consolidated Statement of Operations related to the change in fair value of the embedded cash conversion option and over-allotment option. The fair value liability of the embedded cash conversion option as of October 2, 2011 and January 2, 2011 totaled $0.7 million and $34.8 million, respectively, and is classified within “Other long-term liabilities” in the Company's Condensed Consolidated Balance Sheets.

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

Significant inputs for the valuation of the embedded cash conversion option are as follows:

	As of (1)	
	October 2, 2011	January 2, 2011
Stock price	$ 8.09	$ 12.83
Exercise price	$ 22.53	$ 22.53
Interest rate	0.86%	1.63%
Stock volatility	27.70%	49.80%
Maturity date	February 18, 2015	February 18, 2015

(1) The valuation model utilizes these inputs to value the right but not the obligation to purchase one share at $22.53. The Company utilized a Black-Scholes valuation model to value the 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.

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

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

Under the terms of the 4.50% Bond Hedge, the Company bought from affiliates of certain of the initial purchasers options to acquire, at an exercise price of $22.53 per share, subject to customary adjustments for anti-dilution and other events, cash in an amount equal to the market value of up to 11.1 million shares of the Company's class A common stock. Under the terms of the original 4.50% 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 customary adjustments for anti-dilution and other events), cash in an amount equal to the market value of up to 11.1 million shares of the Company's class A common stock. Each 4.50% Bond Hedge and 4.50% Warrant transaction is a separate transaction, entered into by the Company with each counterparty, and is not part of the terms of the 4.50% debentures. On December 23, 2010, the Company amended and restated the original 4.50% Warrants so that the holders would, upon exercise of the 4.50% Warrants, no longer receive cash but instead would acquire up to 11.1 million shares of the Company's class A common stock. According to the

counterparties to the warrants, the consummation of the Total Tender Offer triggered their rights to make a downward adjustment to the strike price of the warrants. In the third quarter of fiscal 2011, the Company and the counter parties to the 4.50% Warrants agreed to reduce the exercise price of the 4.50% Warrants from $27.03 to $24.00.

The 4.50% Bond Hedge, which is indexed to the Company's class A common stock, is a derivative instrument that requires mark-to-market accounting treatment due to the cash settlement features until such transactions settle or expire. Similarly, the original 4.50% Warrants was a derivative instrument that required mark-to-market accounting treatment through December 23, 2010. The initial fair value of the 4.50% Bond Hedge was classified as “Other long-term assets” in the Company's Condensed Consolidated Balance Sheets.

The fair value of the 4.50% Bond Hedge as of October 2, 2011 and January 2, 2011 totaled $0.7 million and $34.5 million, respectively, and is classified within "Other long-term assets" in the Company's Condensed Consolidated Balance Sheets. During the three and nine months ended October 2, 2011, the Company recognized a non-cash loss of $65.3 million and $33.8 million, respectively, in “Gain (loss) on mark-to-market derivatives” in the Company's Condensed Consolidated Statement of Operations related to the change in fair value of the 4.50% Bond Hedge. During the three and nine months ended October 3, 2010, the change in fair value of the original CSO2015 resulted in a mark-to-market non-cash gain of $1.0 million and a net non-cash loss of $6.0 million, respectively, in “Gain (loss) on mark-to-market derivatives” in the Company's Condensed Consolidated Statement of Operations.

The 4.50% Bond Hedge derivative instruments are fair valued utilizing Level 2 inputs consisting of the exercise price of the instruments, the Company's class A stock price and volatility, the risk free interest rate and the contractual term. Such derivative instruments are not traded on an open market. Valuation techniques utilize the inputs described above in addition to liquidity and institutional credit risk inputs.

Significant inputs for the valuation of the 4.50% Bond Hedge at the measurement date are as follows:

	As of (1)	
	October 2, 2011	**January 2, 2011**
Stock price	$ 8.09	$ 12.83
Exercise price	$ 22.53	$ 22.53
Interest rate	0.86%	1.63%
Stock volatility	27.70%	49.80%
Credit risk adjustment	2.29%	1.25%
Maturity date	February 18, 2015	February 18, 2015

(1) The valuation model utilizes these inputs to value the right but not the obligation to purchase one share at $22.53 for the 4.50% Bond Hedge. The Company utilized a Black-Scholes valuation model to value the 4.50% Bond Hedge. 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 4.50% Bond Hedge.
(iii) Interest rate. The Treasury Strip rate associated with the life of the 4.50% Bond Hedge.
(iv) Stock volatility. The volatility of the Company's class A common stock over the life of the 4.50% Bond Hedge.
(v) Credit risk adjustment. Represents the weighted 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”), before payment of the net cost for the call spread overlay described below. Interest on the 4.75% debentures is payable on April 15 and October 15 of each year. Holders of the 4.75% debentures are able to exercise their right to convert the debentures at any time into shares of the Company's 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 described in the indenture governing the 4.75% debentures. If not earlier converted, the 4.75% debentures mature on April 15, 2014. Holders may also require the Company to repurchase all or a portion of their 4.75% debentures upon a fundamental change at a cash repurchase price equal to 100% of the principal amount plus accrued and unpaid interest. In the event of

certain events of default, such as the Company's failure to make certain payments or perform or observe certain obligations thereunder, Wells Fargo, the trustee, or holders of a specified amount of then-outstanding 4.75% debentures will have the right to declare all amounts then outstanding due and payable.

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

Concurrent with the issuance of the 4.75% debentures, the Company entered into certain convertible debenture hedge transactions (the "4.75% Bond Hedge") and warrant transactions (the "4.75% Warrants") with affiliates of certain of the underwriters of the 4.75% debentures. The 4.75% Bond Hedge and the 4.75% Warrants described below represent a call spread overlay with respect to the 4.75% debentures (the "CSO2014"), whereby the cost of the 4.75% Bond Hedges purchased by the Company to cover the potential share outlays upon conversion of the debentures is reduced by the sales prices of the 4.75% Warrants).

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

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

July 2007 Share Lending Arrangement

Concurrent with the offering of the 0.75% senior convertible debentures ("0.75% debentures"), the Company lent 1.8 million shares of its class A common stock to Credit Suisse International ("CSI"), an affiliate of Credit Suisse Securities (USA) LLC ("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. The Company did not receive any proceeds from the 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 agreement. As of October 2, 2011 the fair value of the 1.8 million outstanding loaned shares of class A common stock was $14.6 million (based on a market price of $8.09 as of September 30, 2011).

Share loans under the share lending agreement terminate and the borrowed shares must be returned to the Company under the following circumstances: (i) 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 CSI under the share lending agreement, including a breach by CSI of any of its representations and warranties, covenants or agreements under the share lending agreement, or the bankruptcy or administrative proceeding of CSI; or (iii) either party may terminate 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 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, CSI agreed that it will not participate in shareholder voting matters and further 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 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.

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.

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

In fiscal 2010, SunPower Philippines Manufacturing Ltd. ("SPML") and SPML Land, Inc. (“SPML Land”), both 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. The Company guarantees SPML's obligations under the mortgage loan agreement. On June 9, 2011, SPML borrowed $25.0 million under the loan agreement. As of October 2, 2011 and January 2, 2011, SPML had $75.0 million and $50.0 million, respectively, outstanding under the mortgage loan agreement which is classified as "Long-term debt" in the Company's Condensed Consolidated Balance Sheets. As of October 2, 2011, no additional amounts remained available for borrowing under the loan agreement.

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

On December 29, 2010, the Company borrowed the proceeds of the $30.0 million aggregate principal amount of CEDA's tax-exempt Recovery Zone Facility Revenue Bonds (SunPower Corporation - Headquarters Project) Series 2010 (the "Bonds") maturing April 1, 2031 under a loan agreement with CEDA. The Company's obligations under the loan agreement are contained in a promissory note dated December 29, 2010 issued by the Company to CEDA, which assigned the promissory note, along with all right, title and interest in the loan agreement, to Wells Fargo, as trustee, with respect to the Bonds for the benefit of the holders of the Bonds. The Bonds initially bore interest at a variable interest rate (determined weekly), but at the Company's option were converted into fixed-rate bonds (which include covenants of, and other restrictions on, the Company). As of January 2, 2011 the $30.0 million aggregate principal amount of the Bonds was classified as "Short-term debt" in the Company's Condensed Consolidated Balance Sheet due to the potential for the Bonds to be redeemed or tendered for purchase on June 22, 2011 under the reimbursement agreement described below. On June 1, 2011, the Bonds were converted to bear interest at a fixed rate of 8.50% to maturity and the holders' rights to tender the Bonds prior to their stated maturity was removed. As such, the $30.0 million aggregate principal amount of the Bonds were reclassified as "Long-term debt" in the Company's Condensed Consolidated Balance Sheet as of October 2, 2011.

Concurrently with the execution of the loan agreement and the issuance of the Bonds by CEDA, the Company entered into a reimbursement agreement with Barclays Capital Inc. ("Barclays") pursuant to which the Company caused Barclays to deliver to Wells Fargo a direct-pay irrevocable letter of credit in the amount of $30.4 million (an amount equal to the principal amount of the Bonds plus 38 days' interest thereon). The letter of credit permitted Wells Fargo to draw funds to pay the Company's obligations to pay principal and interest on the Bonds and, in the event the Bonds are redeemed or tendered for purchase, the redemption price or purchase price thereof. Under the reimbursement agreement, the Company deposited $31.8 million in a sequestered account with Barclays, subject to an account control agreement, which funds collateralized the letter of credit pursuant to a cash collateral account pledge agreement entered into by the Company and Barclays on December 29, 2010. Such funds were classified as short-term restricted cash as of January 2, 2011 on the Condensed Consolidated Balance Sheet.

Following the conversion of the Bonds to a fixed rate instrument (for which the letter of credit is no longer required), Barclays returned $31.8 million of the deposit, plus any remaining unspent funds and interest earnings, to the Company. The amounts returned were included in cash and cash equivalents on the Condensed Consolidated Balance Sheet as of October 2, 2011. In addition, the letter of credit terminated on June 16, 2011, and the Company's obligations under the reimbursement agreement, the cash collateral account pledge agreement and the related account control agreement were thereby terminated.

Revolving Credit Facility with Société Générale, Milan Branch ("Société Générale")

In fiscal 2010, the Company entered into a revolving credit facility with Société Générale under which the Company could borrow up to €75.0 million from Société Générale. On May 25, 2011 the Company entered into an amendment of its

revolving credit facility with Société Générale which extended the maturity date to November 23, 2011. Under the amended facility the Company was able to borrow up to €75.0 million of which amounts borrowed could be repaid and reborrowed until October 23, 2011. The Company was required to pay interest on outstanding borrowings of (1) EURIBOR plus 3.25% per annum for advances outstanding before May 26, 2011, and (2) EURIBOR plus 2.70% for advances outstanding on May 26, 2011 or thereafter; a front-end fee of 0.50% on the available borrowing; and a commitment fee of 1% per annum on funds available for borrowing and not borrowed.

As of January 2, 2011, an aggregate amount of €75.0 million, or approximately $98.0 million based on the exchange rate as of that date, remained outstanding under the revolving credit facility which is classified as "Short-term debt" in the Condensed Consolidated Balance Sheets. On September 27, 2011, the Company repaid €75.0 million, or approximately $107.7 million based on the exchange rate as of that date, of outstanding borrowings plus fees, using proceeds received from the September 2011 revolving credit facility with Credit Agricole Corporate and Investment Bank ("Credit Agricole") described below, and terminated the facility.

April 2010 Letter of Credit Facility with Deutsche Bank AG New York Branch ("Deutsche Bank")

In fiscal 2010, the Company and certain subsidiaries of the Company entered into a letter of credit facility with Deutsche Bank, as issuing bank and as administrative agent, and certain financial institutions. The letter of credit facility provided for the issuance, upon request by the Company, of letters of credit by the issuing bank in order to support obligations of the Company. On May 27, 2011, the Company received an additional $25.0 million commitment from a financial institution under the Deutsche Bank letter of credit facility, which increased the aggregate amount of letters of credit that could have been issued under the facility from $375.0 million to $400.0 million.

As of January 2, 2011, letters of credit issued under the letter of credit facility totaled $326.9 million and were collateralized by short-term and long-term restricted cash of $55.7 million and $118.3 million, respectively, on the Condensed Consolidated Balance Sheet. On August 9, 2011, the Company terminated its April 2010 letter of credit facility agreement with Deutsche Bank subsequent to the establishment of the August 2011 letter of credit facility agreement, as described below. All outstanding letters of credit under the April 2010 letter of credit facility were transferred to the August 2011 letter of credit facility and $197.8 million in collateral as of August 9, 2011 was released to the Company.

August 2011 Letter of Credit Facility with Deutsche Bank

On August 9, 2011, the Company entered into a letter of credit facility agreement with Deutsche Bank, as issuing bank and as administrative agent, and certain financial institutions. Payment of obligations under the letter of credit facility is guaranteed by Total S.A. pursuant to the Credit Support Agreement. The letter of credit facility provides for the issuance, upon request by the Company, of letters of credit by the issuing banks thereunder in order to support certain obligations of the Company, in an aggregate amount not to exceed (a) $645.0 million for the period from August 9, 2011 through December 31, 2011; (b) $725.0 million for the period from January 1, 2012 through December 31, 2012; and (c) $771.0 million for the period from January 1, 2013 through December 31, 2013. Aggregate letter of credit amounts may be increased upon the agreement of the parties but may not exceed (i) $878.0 million for the period from January 1, 2014 through December 31, 2014; (ii) $936.0 million for the period from January 1, 2015 through December 31, 2015; and (iii) $1.0 billion for the period from January 1, 2016 through June 28, 2016.

Each letter of credit issued under the letter of credit facility must have an expiration date no later than the second anniversary of the issuance of that letter of credit, provided that up to 15% of the outstanding value the letters of credit may have an expiration date of between two and three years from the date of issuance. The letter of credit facility includes representations, covenants, and events of default customary for financing transactions of this type. The letter of credit facility does not have a requirement for establishing a collateral account or any other security arrangements with Deutsche Bank or otherwise.

As of October 2, 2011, letters of credit issued under the August 2011 letter of credit facility with Deutsche Bank totaled $638.2 million.

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

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

entered into a security agreement with Deutsche Bank Trust, granting them a security interest in a cash collateral account established for this purpose.

As of October 2, 2011 letters of credit issued under the Deutsche Bank Trust facility amounted to $199.6 million which were fully collateralized with long-term restricted cash on the Condensed Consolidated Balance Sheets.

October 2010 Collateralized Revolving Credit Facility with Union Bank

In fiscal 2010, the Company entered into a revolving credit facility with Union Bank under which the Company was able to borrow up to $70.0 million from Union Bank until October 28, 2011. The amount available for borrowing under the revolving credit facility was further capped at 30% of the market value of the Company's holding of 19.4 million shares of common stock of Woongjin Energy which were pledged as security under the facility. The Company repaid $70.0 million of outstanding borrowings plus fees in the second quarter of fiscal 2011. On June 20, 2011, the Company terminated the facility and the pledge on all shares of Woongjin Energy held by the Company was released.

July 2011 Uncollateralized Revolving Credit Facility with Union Bank

On July 18, 2011, the Company entered into a Credit Agreement with Union Bank under which the Company was able to borrow up to $50.0 million from Union Bank until October 28, 2011. Amounts borrowed were able to be repaid and reborrowed until October 28, 2011. All outstanding amounts under the facility were due and payable on October 31, 2011. On July 18, 2011, the Company drew down $50.0 million under the credit facility.

The Company was required to pay interest on outstanding borrowings of, at the Company's option, (1) LIBOR plus 2.75% or (2) 1.75% plus a base rate equal to the higher of (a) the federal funds rate plus 0.50%, or (b) Union Bank's reference rate as announced from time to time; a front-end fee of 0.15% on the total amount available for borrowing; and a commitment fee of 0.50% per annum, calculated on a daily basis, on funds available for borrowing and not borrowed.

On September 27, 2011, the Company repaid $50.0 million of outstanding borrowings plus fees, using proceeds received from the September 2011 revolving credit facility with Credit Agricole described below, and terminated the facility.

September 2011 Revolving Credit Facility with Credit Agricole

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

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

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

As of October 2, 2011, $250.0 million was outstanding under the revolving credit facility with Credit Agricole which amount is classified as "Long term debt" on the Company's Condensed Consolidated Balance Sheets.

Other Debt and Credit Sources

There has been no significant change in the Company's remaining debt balance, composition or terms since the end of the most recently completed fiscal year end other than as described above. Additional details regarding the Company's debt arrangements may be referenced from the Company's annual consolidated financial statements and notes thereto for the year ended January 2, 2011 included in the fiscal 2010 Form 10-K and its Forms 8-K subsequently filed with the SEC.

Note 11. ***COMPREHENSIVE INCOME (LOSS)***

The components of comprehensive income (loss) are as follows:

	As of	
(In thousands)	**October 2, 2011**	**January 2, 2011**
Accumulated other comprehensive income (loss):		
Cumulative translation adjustment	$ 1,306	$ (2,761)
Net unrealized gain on derivatives	8,639	10,647
Deferred taxes	(995)	(4,246)
	$ 8,950	$ 3,640

	Three Months Ended		Nine Months Ended	
(In thousands)	**October 2, 2011**	**October 3, 2010**	**October 2, 2011**	**October 3, 2010**
Net income (loss)	$ (370,784)	$ 20,116	$ (520,777)	$ 26,473
Components of comprehensive income (loss):				
Translation adjustment	5,211	(831)	4,067	903
Net unrealized gain (loss) on derivatives (Note 12)	38,987	(77,042)	(2,008)	(14,763)
Unrealized loss on investments	—	—	—	—
Income taxes	(4,483)	8,940	3,251	1,664
Net change in accumulated other comprehensive income (loss)	39,715	(68,933)	5,310	(12,196)
Total comprehensive income (loss)	$ (331,069)	$ (48,817)	$ (515,467)	$ 14,277

Note 12. ***FOREIGN CURRENCY DERIVATIVES***

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

The Company is required to recognize derivative instruments as either assets or liabilities at fair value in its Condensed Consolidated Balance Sheets. The Company utilizes the income approach and mid-market pricing to calculate the fair value of its option and forward contracts based on market volatilities, spot and forward rates, interest rates and credit default swaps rates from published sources. The following table presents information about the Company's hedge instruments measured at fair value on a recurring basis as of October 2, 2011 and January 2, 2011, all of which utilize Level 2 inputs under the fair value hierarchy:

(In thousands)	Balance Sheet Classification	October 2, 2011	January 2, 2011
Assets	Prepaid expenses and other current assets		
Derivatives designated as hedging instruments:			
Foreign currency option contracts		$ 19,374	$ 16,432
Foreign currency forward exchange contracts		510	16,314
		$ 19,884	$ 32,746
Derivatives not designated as hedging instruments:			
Foreign currency forward exchange contracts		$ 59,580	$ 3,208
Liabilities	Accrued liabilities		
Derivatives designated as hedging instruments:			
Foreign currency option contracts		$ 829	$ 2,909
Foreign currency forward exchange contracts		—	3,295
		$ 829	$ 6,204
Derivatives not designated as hedging instruments:			
Foreign currency forward exchange contracts		$ 32,182	$ 4,060

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

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

	Three Months Ended		Nine Months Ended	
(In thousands)	October 2, 2011	October 3, 2010	October 2, 2011	October 3, 2010
Derivatives designated as cash flow hedges:				
Unrealized gain (loss) recognized in OCI (effective portion)	$ 25,085	$ (63,264)	$ (35,118)	$ 317
Less: Loss (gain) reclassified from OCI to revenue (effective portion)	13,249	(13,778)	28,568	(27,558)
Less: Loss reclassified from OCI to other, net (1)	653	—	4,542	—
Add: Loss reclassified from OCI to cost of revenue (effective portion)	—	—	—	12,478
Net gain (loss) on derivatives (Note 11)	$ 38,987	$ (77,042)	$ (2,008)	$ (14,763)

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

The following table summarizes the amount of gain (loss) recognized in “Other, net” in the Condensed Consolidated Statements of Operations in the three and nine months ended October 2, 2011 and October 3, 2010:

(In thousands)	Three Months Ended		Nine Months Ended	
	October 2, 2011	October 3, 2010	October 2, 2011	October 3, 2010
Derivatives designated as cash flow hedges:				
Gain (Loss) recognized in "Other, net" on derivatives (ineffective portion and amount excluded from effectiveness testing) (1)	$ 3,081	$ (9,810)	$ (19,555)	$ (18,077)
Derivatives not designated as hedging instruments:				
Gain (loss) recognized in "Other, net"	$ 38,411	$ (28,275)	$ (6,187)	$ 9,115

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

Foreign Currency Exchange Risk

Designated Derivatives Hedging Cash Flow Exposure

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

As of October 2, 2011, the Company had designated outstanding cash flow hedge option contracts and forward contracts with an aggregate notional value of $348.3 million and $207.1 million, respectively. The maturity dates of the outstanding contracts as of October 2, 2011 range from October to July 2012. During the first quarter of fiscal 2011, 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. As of January 2, 2011, the Company had designated outstanding hedge option contracts and forward contracts with an aggregate notional value of $358.9 million and $534.7 million, respectively. The Company designates either gross external or intercompany revenue up to its net economic exposure. These derivatives have a maturity of one year or less and consist of foreign currency option and forward contracts. The effective portion of these cash flow hedges are reclassified into revenue when third party revenue is recognized in the Condensed Consolidated Statements of Operations.

The Company expects to reclassify the majority of its net gains related to these option and forward contracts that are included in accumulated other comprehensive gain as of October 2, 2011 to revenue in the next 12 months. 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 purchase is recorded as an asset in the Condensed Consolidated Balance Sheets. Thereafter, any change to this time value and the cost of forward points is included in “Other, net” in the Condensed Consolidated Statements of Operations.

Under hedge accounting rules for foreign currency derivatives, the Company is required to reflect mark-to-market gains and losses on its hedged transactions in accumulated other comprehensive income (loss) rather than current earnings until the hedged transactions occur. However, if the Company determines that the anticipated hedged transactions are probable not to occur, it must immediately reclassify any cumulative market gains and losses into its Condensed Consolidated Statement of Operations. During the nine months ended October 2, 2011, the Company determined that certain anticipated hedged transactions were probable not to occur due, in part, to the announcement of the feed-in-tariff changes in Italy. As a result, a loss of $4.5 million was reclassified from accumulated other comprehensive income (loss) to "Other, net" in the Company's Condensed Consolidated Statement of Operations.

Non-Designated Derivatives Hedging Transaction Exposure

Other derivatives not designated as hedging instruments consist of forward contracts used to hedge re-measurement of foreign currency denominated monetary assets and liabilities primarily for intercompany transactions, receivables from customers, and payables to third parties. Changes in exchange rates between the Company's subsidiaries' functional currencies and the currencies in which these assets and liabilities are denominated can create fluctuations in the Company's reported consolidated financial position, results of operations and cash flows. The Company enters into forward contracts, which are originally designated as cash flow hedges, and de-designates them upon recognition of the anticipated transaction to protect resulting non-functional currency monetary assets. These forward contracts as well as additional forward contracts are entered into to hedge foreign currency denominated monetary assets and liabilities against the short-term effects of currency exchange rate fluctuations. The Company records its derivative contracts that are not designated as hedging instruments at fair value with the related gains or losses recorded in “Other, net” in the Condensed Consolidated Statements of Operations. The gains or losses on these contracts are substantially offset by transaction gains or losses on the underlying balances being hedged. As of October 2, 2011 and January 2, 2011, the Company held forward contracts with an aggregate notional value of $247.1 million and $934.8 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 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 13. ***INCOME TAXES***

In the three and nine months ended October 2, 2011, the Company's income tax provision of $11.1 million and $18.0 million, respectively, on a loss from continuing operations before income taxes and equity in earnings of unconsolidated investees of $360.7 million and $510.7 million, respectively, was primarily due to projected tax expense in profitable foreign jurisdictions. In the three and nine months ended October 3, 2010, the Company's income tax provision was $3.4 million and $19.5 million, respectively, on income before income taxes and equity in earnings of unconsolidated investees of $16.1 million and $25.5 million, respectively, was primarily due to domestic and foreign income in certain jurisdictions, nondeductible amortization of purchased intangible assets, nondeductible stock 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 of deferred tax assets, and discrete stock option deductions. The Company determines its interim tax provision using an estimated annual effective tax rate methodology except in jurisdictions where the Company anticipates or has a year-to-date ordinary loss for which no tax benefit can be recognized. In these jurisdictions, tax expense is computed based on an actual or discrete method.

Note 14. ***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 classes of 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 dilutive securities outstanding during the period using the if-converted method and treasury-stock-type method, except when their effect is anti-dilutive. The Company uses income from continuing operations as the control number in determining whether potential

common shares are dilutive or anti-dilutive in the period it reports a discontinued operation (see Note 3). Potentially dilutive securities include stock options, restricted stock units, senior convertible debentures and amended warrants associated with the CSO2015. As a result of the net loss from continuing operations for each of the three and nine months ended October 2, 2011 there is no dilutive impact to the net income (loss) per share calculation for these periods.

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

	Three Months Ended		Nine Months Ended	
(In thousands, except per share amounts)	**October 2, 2011**	**October 3, 2010**	**October 2, 2011**	**October 3, 2010**
Basic net income (loss) per share:				
Numerator				
Income (loss) from continuing operations	$ (370,784)	$ 18,546	$ (520,777)	$ 17,007
Less: undistributed earnings allocated to unvested restricted stock awards (1)	—	(22)	—	(29)
Income (loss) from continuing operations available to common stockholders	$ (370,784)	$ 18,524	$ (520,777)	$ 16,978
Denominator				
Basic weighted-average common shares	98,259	95,840	97,456	95,519
Basic net income (loss) per share from continuing operations	$ (3.77)	$ 0.19	$ (5.34)	$ 0.18
Basic net income (loss) per share from discontinued operations	—	0.02	—	0.10
Basic net income (loss) per share	$ (3.77)	$ 0.21	$ (5.34)	$ 0.28
Diluted net income (loss) per share:				
Numerator				
Income (loss) from continuing operations	$ (370,784)	$ 18,546	$ (520,777)	$ 17,007
Add: Interest expense incurred on 4.75% debentures, net of tax	—	1,666	—	—
Less: undistributed earnings allocated to unvested restricted stock awards (1)	—	(22)	—	(29)
Income (loss) from continuing operations available to common stockholders	$ (370,784)	$ 20,190	$ (520,777)	$ 16,978
Denominator				
Basic weighted-average common shares	98,259	95,840	97,456	95,519
Effect of dilutive securities:				
Stock options	—	861	—	1,036
Restricted stock units	—	235	—	186
4.75 debentures	—	8,712	—	—
Diluted weighted-average common shares	98,259	105,648	97,456	96,741
Diluted net income (loss) per share from continuing operations	$ (3.77)	$ 0.19	$ (5.34)	$ 0.18
Diluted net income (loss) per share from discontinued operations	—	0.02	—	0.09
Diluted net income (loss) per share	$ (3.77)	$ 0.21	$ (5.34)	$ 0.27

(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. The 4.75% debentures are included in the calculation of diluted net income per share if their inclusion is dilutive under the if-converted method. During each of the three and nine months ended October 2, 2011, there were no dilutive potential common shares under the 4.75% debentures. During the three and nine months ended October 3, 2010, there were 8.7 million and zero dilutive potential common shares, respectively, under the 4.75% debentures.

Holders of the Company's 1.25% debentures and 0.75% debentures may, under certain circumstances at their option, convert the debentures into cash and, if applicable, shares of the Company's class A common stock at the applicable conversion rate, at any time on or prior to maturity. The 1.25% debentures and 0.75% debentures are included in the calculation of diluted net income per share if their inclusion is dilutive under the treasury-stock-type method. The Company's average stock price during the three and six months ended October 2, 2011 and October 3, 2010 did not exceed the conversion price for the 1.25% debentures and 0.75% debentures. Under the treasury-stock-type method, the Company's 1.25% debentures and 0.75% debentures will generally have a dilutive impact on net income per share if the Company's average stock price for the period exceeds the conversion price for the debentures.

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

In the fourth quarter of fiscal 2010, the Company amended and restated the original Warrants under the CSO2015 so that holders would, upon exercise of the 4.50% Warrants, no longer receive cash but instead would acquire up to 11.1 million shares of the Company's class A common stock at an exercise price of $27.03. In the third quarter of fiscal 2011, as a result of the Total Tender Offer, the Company and the counterparties to the 4.50% Warrants agreed to reduce the exercise price of the 4.50% Warrants from $27.03 to $24.00 (see Note 10). If the market price per share of the Company's class A common stock for the period exceeds the established strike price, the Warrants will have a dilutive effect on its diluted net income per share using the treasury-stock-type method.

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

	Three Months Ended		Nine Months Ended	
(In thousands)	**October 2, 2011 (1)**	**October 3, 2010**	**October 2, 2011 (1)**	**October 3, 2010**
Stock options	440	318	440	318
Restricted stock units	1,973	1,958	1,973	1,958
Warrants (under the CSO2015)	*	N/A	*	N/A
4.75% debentures	8,712	**	8,712	8,712
1.25% debentures	*	*	*	*
0.75% debentures	*	*	*	*

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

* The Company's average stock price during the three and nine months ended October 2, 2011 and October 3, 2010 did not exceed the conversion price for the amended warrants (under the CSO2015), 1.25% debentures and 0.75% debentures and those instruments were thus non-dilutive in such periods.

** Potential common shares under the 4.75% debentures were dilutive during the three months ended October 3, 2010.

Note 15. *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		Nine Months Ended	
(In thousands)	**October 2, 2011**	**October 3, 2010**	**October 2, 2011**	**October 3, 2010**
Cost of UPP revenue	$ 1,762	$ 2,442	$ 5,061	$ 5,265
Cost of R&C revenue	1,948	1,941	5,843	5,759
Research and development	1,608	1,886	5,112	5,822
Sales, general and administrative	6,531	9,396	21,813	21,218
Total stock-based compensation expense	$ 11,849	$ 15,665	$ 37,829	$ 38,064

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

	Three Months Ended		Nine Months Ended	
(In thousands)	**October 2, 2011**	**October 3, 2010**	**October 2, 2011**	**October 3, 2010**
Employee stock options	$ 317	$ 550	$ 1,388	$ 1,452
Restricted stock awards and units	10,910	15,115	36,790	37,496
Change in stock-based compensation capitalized in inventory	622	—	(349)	(884)
Total stock-based compensation expense	$ 11,849	$ 15,665	$ 37,829	$ 38,064

Note 16. ***SEGMENT AND GEOGRAPHICAL INFORMATION***

The CODM assesses 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 other intangible assets, stock-based compensation expense, loss on change in European government incentives and interest expense. In addition, the CODM assesses 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.

	Three Months Ended		Nine Months Ended	
(As a percentage of total revenue)	**October 2, 2011**	**October 3, 2010**	**October 2, 2011**	**October 3, 2010**
Revenue by geography:				
North America	52%	32%	54%	32%
Europe:				
Italy	20	38	17	27
Germany	8	11	7	15
France	9	3	10	7
Other	5	9	5	10
Rest of world	6	7	7	9
	100%	100%	100%	100%

	Three Months Ended		Nine Months Ended	
	October 2, 2011	October 3, 2010	October 2, 2011	October 3, 2010
Revenue by segment (in thousands):				
Utility and power plants (as reviewed by CODM)	$ 324,542	$ 260,979	$ 872,890	$ 532,977
Revenue earned by discontinued operations	—	(3,176)	—	(11,081)
Utility and power plants	$ 324,542	$ 257,803	$ 872,890	$ 521,896
Residential and commercial	$ 380,885	$ 292,842	$ 876,210	$ 760,261
Cost of revenue by segment (in thousands):				
Utility and power plants (as reviewed by CODM)	$ 283,519	$ 208,845	$ 762,028	$ 412,535
Amortization of intangible assets	63	946	230	2,409
Stock-based compensation expense	1,762	2,442	5,061	5,265
Non-cash interest expense	193	293	1,179	969
Loss on change in European government incentives	—	—	29,082	—
Utility and power plants	$ 285,537	$ 212,526	$ 797,580	$ 421,178
Residential and commercial (as reviewed by CODM)	$ 341,616	$ 221,578	$ 741,155	$ 575,882
Amortization of intangible assets	—	1,745	195	5,994
Stock-based compensation expense	1,948	1,941	5,843	5,759
Non-cash interest expense	202	270	1,006	1,165
Loss on change in European government incentives	—	—	19,381	—
Residential and commercial	$ 343,766	$ 225,534	$ 767,580	$ 588,800
Gross margin by segment:				
Utility and power plants (as reviewed by CODM)	13%	20%	13%	23%
Residential and commercial (as reviewed by CODM)	10%	24%	15%	24%
Utility and power plants	12%	18%	9%	19%
Residential and commercial	10%	23%	12%	23%

		Three Months Ended		Nine Months Ended	
(As a percentage of total revenue)		October 2, 2011	October 3, 2010	October 2, 2011	October 3, 2010
Significant Customers:	**Business Segment**				
Customer A	Utility and power plants	10%	*	10%	*
Customer B	Utility and power plants	11%	*	*	*
Customer C	Utility and power plants	*	12%	*	*
Customer D	Utility and power plants	*	10%	*	*

* denotes less than 10% during the period

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

Cautionary Statement Regarding Forward-Looking Statements

This Quarterly Report on Form 10-Q contains forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995. Forward-looking statements are statements that do not represent historical facts and the assumptions underlying such statements. We use words such as "anticipate," "believe," "continue," "could," "estimate," "expect," "intend," "may," "predict," "potential," "will," "would," and similar expressions to identify forward-looking statements. Forward-looking statements in this Quarterly Report on Form 10-Q include, but are not limited to, our plans and expectations regarding future financial results, expected operating results, business strategies, projected costs and cost reduction roadmap, products, ability to monetize utility projects, competitive positions, management's plans and objectives for future operations, the sufficiency of our cash and our liquidity, our ability to obtain financing, ability to comply with debt

covenants or cure any defaults, ASPs, the success of our joint ventures, expected capital expenditures, warranty matters, outcomes of litigation, our exposure to foreign exchange, interest and credit risk, general business and economic conditions, industry trends, impact of changes in government incentive programs, expected restructuring charges, the likelihood of any impairment of project assets, goodwill and intangible assets, and the expected benefits from our ownership relationship with Total Gas & Power USA S.A.S. ("Total") and the related agreements with Total and its affiliates. These forward-looking statements are based on information available to us as of the date of this Quarterly Report on Form 10-Q and current expectations, forecasts and assumptions and involve a number of risks and uncertainties that could cause actual results to differ materially from those anticipated by these forward-looking statements. Such risks and uncertainties include a variety of factors, some of which are beyond our control. Please see "Part II. Item 1A: Risk Factors" herein and our other filings with the Securities and Exchange Commission ("SEC"), including our Annual Report on Form 10-K for the year ended January 2, 2011 (the "fiscal 2010 Form 10-K") and our subsequent Quarterly Reports on Form 10-Q, for additional information on risks and uncertainties that could cause actual results to differ. These forward-looking statements should not be relied upon as representing our views as of any subsequent date, and we are under no obligation to, and expressly disclaim any responsibility to, update or alter our forward-looking statements, whether as a result of new information, future events or otherwise.

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

Unit of Power

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

General Overview

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

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

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

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

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

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

Our solar power systems are designed to generate electricity over a system life typically exceeding 25 years under test conditions and are principally designed to be used in large-scale applications with system ratings of typically more than 500 KW. Worldwide, we have 1 GW of SunPower solar power systems operating or under contract. We sell distributed rooftop and ground-mounted solar power systems as well as central-station power plants globally. In the United States, distributed solar power systems are typically either: (i) rated at more than 500 KW of capacity to provide a supplemental, distributed source of electricity for a customer's facility; or (ii) ground mount systems reaching up to hundreds of MWs for regulated utilities. In the United States and Europe, commercial and electric utility customers typically choose to purchase solar electricity under a power purchase agreement (“PPA”) with an investor or financing company that buys the system from us. In Europe, our products and systems are typically purchased by an investor or financing company and operated as central-station solar power plants. These power plants are rated with capacities of approximately one to fifty MW, and generate electricity for sale under tariff to private and public utilities.

Business Segments Overview

Our President and Chief Executive Officer, as the chief operating decision maker (“CODM”), has organized our company and manages resource allocations and measures performance of our company's activities between two business segments: the Utility and Power Plants ("UPP") Segment and the Residential and Commercial ("R&C") Segment. 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. Our UPP Segment also sells components, including large volume sales of solar panels and mounting systems to third parties, often on a multi-year, firm commitment basis. 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 in the United States and Europe for rooftop and ground-mounted solar power systems for the new homes, commercial and public sectors.

Seasonal Trends

Our business is subject to industry-specific seasonal fluctuations. Sales have historically reflected these seasonal trends with the largest percentage of total revenues realized during the last two calendar quarters of a fiscal year. Lower seasonal demand normally results in reduced shipments and revenues in the first two calendar quarters of a fiscal year. There are various reasons for this seasonality, mostly related to economic incentives and weather patterns. For example, in European countries with feed-in tariffs, the construction of solar power systems may be concentrated during the second half of the calendar year, largely due to the fact that the coldest winter months 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.

Average Selling Prices

We expect continued market pressure will further drive down the average selling prices of our solar power products as a result of the evolving supply environment.

Total Tender Offer

On April 28, 2011, we and Total, a subsidiary of Total S.A., a French *société anonyme* (“Total S.A.”), entered into a Tender Offer Agreement (the “Tender Offer Agreement”). Pursuant to the Tender Offer Agreement, on May 3, 2011, Total commenced a cash tender offer to acquire up to 60% of our outstanding shares of class A common stock and up to 60% of our outstanding shares of class B common stock (the “Tender Offer”) at a price of $23.25 per share for each class. The consummation of the Tender Offer was subject to customary closing conditions, including a minimum of 50% of the outstanding shares of each of the class A common stock and class B common stock being tendered, clearance by U.S. and European Union antitrust authorities, and other customary closing conditions.

The offer expired on June 14, 2011 and Total accepted for payment on June 21, 2011 a total of 34,756,682 shares of our class A common stock and 25,220,000 shares of our class B common stock, representing 60% of each class of our outstanding common stock as of June 13, 2011 for a total cost of approximately $1.4 billion.

Change in Solar Market

In March 2011, the Italian government passed a new legislative decree providing for a significant change in its feed-in

tariff ("FIT") program. In May 2011, the Italian government announced a legislative decree which defined the revised FIT and the transition process effective June 1, 2011. The decree announced a decline in FIT and also set forth a limit on the construction of solar plants on agricultural land. Similarly, during the last several months other European countries reduced government incentives for the solar market. Such changes had a materially negative effect on the market for solar systems in Europe and caused our earnings to decline in Europe and adversely affected our financial results. In the six months ended July 3, 2011 some solar projects planned for 2011 were delayed, which has driven down demand and average selling prices for our solar panels thereby increasing inventories on hand and reducing our cash and cash equivalents. In response to the reduction in European government incentives, primarily in Italy, our Board of Directors approved a restructuring plan, on June 13, 2011, to realign our resources. The plan and related charges are further discussed below under "Results of Operations."

We conduct our annual impairment test of goodwill as of the Sunday closest to the end of the third fiscal quarter of each year. Impairment of goodwill is tested at our reporting unit level. Management determined the UPP Segment and R&C Segment each have two reporting units. In estimating the fair value of the reporting units, we make estimates and judgments about our future cash flows using an income approach defined as Level 3 inputs under fair value measurement standards. The income approach, specifically a discounted cash flow analysis, included assumptions for, among others, forecasted revenue, gross margin, operating income, working capital cash flow, perpetual growth rates and long-term discount rates, all of which require significant judgment by management. The sum of the fair values of our reporting units are also compared to our external market capitalization to determine the appropriateness of our assumptions and adjusted, if appropriate. These assumptions took into account the current industry environment and its impact on our business. Based on the impairment test as of October 2, 2011, we determined that the carrying value of the UPP-International, UPP-Americas, and Residential and Light Commercial reporting units exceeded their fair value. As a result, we recorded a goodwill impairment loss of $309.5 million, representing all of the goodwill associated with these reporting units. As of October 2, 2011, the fair value of the remaining reporting unit exceeded the carrying value under the first step of the goodwill impairment test. Therefore, goodwill was not impaired with respect to the reporting unit.

We additionally review our intangible assets for impairment whenever events or changes in circumstances indicate that the carrying value of such assets may not be recoverable. Triggering events for an impairment review may include indications such as adverse industry or economic trends, lower than projected operation results or cash flows, or sustained decline in our stock price or market capitalization. During the three months ended October 2, 2011, we determined that the carrying value of certain intangible assets related to strategic acquisitions of EPC and O&M project pipelines in Europe were no longer recoverable and therefore recognized an impairment loss of $40.3 million in the three and nine months ended October 2, 2011.

Critical Accounting Policies and Estimates

These condensed consolidated financial statements and accompanying notes should be read in conjunction with our annual consolidated financial statements and notes thereto contained in the fiscal 2010 Form 10-K.

There have been no significant changes in our significant accounting policies for the three months ended October 2, 2011, as compared to the significant accounting policies described in the fiscal 2010 Form 10-K.

Recent Accounting Pronouncements

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

In June 2011, the FASB amended its disclosure guidance related to the presentation of comprehensive income. This amendment eliminates the option to report other comprehensive income and its components in the statement of changes in equity and requires presentation and reclassification adjustments on the face of the income statement. The amendment will be effective for us on January 2, 2012 and will not have any impact on our financial position, but will impact our financial statement presentation.

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

amendment will have a material impact on its financial statements.

Results of Operations

Revenue

(In thousands)	Three Months Ended		Nine Months Ended	
	October 2, 2011	October 3, 2010	October 2, 2011	October 3, 2010
Utility and power plants	$ 324,542	$ 257,803	$ 872,890	$ 521,896
Residential and commercial	380,885	292,842	876,210	760,261
Total revenue	$ 705,427	$ 550,645	$ 1,749,100	$ 1,282,157

Total Revenue: During the three and nine months ended October 2, 2011, our total revenue was $705.4 million and $1,749.1 million, respectively, an increase of 28% and 36% from total revenue reported in each of the comparable periods in fiscal 2010. The increase in our total revenue during the three and nine months ended October 2, 2011 compared to the same periods in fiscal 2010 was attributable to revenue related to the development of several large scale projects in North America and Europe, as well as the continuous growth of our third-party global dealer network to adjust to demand in the geographical regions in which we do business. In the three and nine months ended October 2, 2011, we recognized revenue on 236.8 MW and 559.8 MW, respectively, of solar power products sold through both our UPP and R&C Segments as compared to 145.9 MW and 357.1 MW, respectively, sold during the comparable periods in fiscal 2010, representing an increase of 62% and 57%, respectively. The increase in our total revenue was partially offset by declining average selling prices and mix of our solar power products.

Sales outside North America represented 48% and 46% of total revenue for the three and nine months ended October 2, 2011, respectively, as compared to 68% for both the three and nine months ended October 3, 2010. The shift in revenue by geography in the three and nine months ended October 2, 2011 as compared to the comparable periods in fiscal 2010 was due to increasing demand in the United States for our solar power products due to additional federal and state initiatives supporting attractive solar incentives within the residential, commercial and utility sectors, as well as a slowdown in project development and component shipments in Europe due to changes in government incentives.

Concentrations: We had two and one customers that accounted for 10 percent or more of total revenue in the three and nine months ended October 2, 2011, respectively. We had two and zero customers that accounted for 10 percent or more of total revenue in the three and nine months ended October 3, 2010, respectively.

(As a percentage of total revenue)		Three Months Ended		Nine Months Ended	
		October 2, 2011	October 3, 2010	October 2, 2011	October 3, 2010
Significant Customer:	**Business Segment**				
Customer A	Utility and power plants	10%	*	10%	*
Customer B	Utility and power plants	11%	*	*	*
Customer C	Utility and power plants	*	12%	*	*
Customer D	Utility and power plants	*	10%	*	*

* denotes less than 10% during the period

UPP Revenue: UPP revenue for the three and nine months ended October 2, 2011 was $324.5 million and $872.9 million, respectively, which accounted for 46% and 50%, respectively, of total revenue. UPP revenue for the three and nine months ended October 2, 2011 increased 26% and 67%, respectively, as compared to the three and nine months ended October 3, 2010 due to revenue related to large scale projects completed or under construction in North America and Europe, including projects acquired and sold as part of our strategic acquisition in March 2010.

The increase in UPP revenue during the three and nine months ended October 2, 2011 as compared to same period in

2010 was primarily driven by additional revenue recognized under the percentage-of-completion method for several power plants under construction including a 20 MW solar power plant in Ontario, Canada, and three solar power plants under construction in the United States totaling 60 MW. Two power plants in Italy totaling 14 MW were completed and subsequently sold in the third quarter of fiscal 2011. Component sales also increased period over period and amounted to 56.0 MW and 122.2 MW in the three and nine months ended October 2, 2011, respectively, as compared to 23.5 MW and 89.6 MW in the three and nine months ended October 3, 2010.

R&C Revenue: R&C revenue for the three and nine months ended October 2, 2011 was $380.9 million and $876.2 million, respectively, or 54% and 50%, respectively, of total revenue. R&C revenue for the three and nine months ended October 2, 2011 increased 30% and 15%, respectively, as compared to the three and nine months ended October 3, 2010 due to growing demand for our solar power products in the residential and commercial markets, specifically in rooftop and ground-mounted commercial projects in North America, particularly the United States, due to federal state and local initiatives supporting solar power projects. These increases were partially offset by the change in European government incentives which adversely impacted the overall market for solar products and further drove down average selling prices in all regions. Our third-party global dealer network was composed of more than 1,750 dealers worldwide at the end of the third quarter in fiscal 2011, an increase of approximately 350 dealers from the third quarter in fiscal 2010.

Cost of Revenue

	Three Months Ended					
	UPP		R&C		Consolidated	
(Dollars in thousands)	**October 2, 2011**	**October 3, 2010**	**October 2, 2011**	**October 3, 2010**	**October 2, 2011**	**October 3, 2010**
Amortization of other intangible assets	$ 63	$ 946	$ —	$ 1,745	$ 63	$ 2,691
Stock-based compensation	1,762	2,442	1,948	1,941	3,710	4,383
Non-cash interest expense	193	293	202	270	395	563
Loss on change in European government incentives	—	—	—	—	—	—
Materials and other cost of revenue	283,519	208,845	341,616	221,578	625,135	430,423
Total cost of revenue	$ 285,537	$ 212,526	$ 343,766	$ 225,534	$ 629,303	$ 438,060
Total cost of revenue as a percentage of revenue	88%	82%	90%	77%	89%	80%
Total gross margin percentage	12%	18%	10%	23%	11%	20%

	Nine Months Ended					
	UPP		R&C		Consolidated	
(Dollars in thousands)	October 2, 2011	October 3, 2010	October 2, 2011	October 3, 2010	October 2, 2011	October 3, 2010
Amortization of other intangible assets	$ 230	$ 2,409	$ 195	$ 5,994	$ 425	$ 8,403
Stock-based compensation	5,061	5,265	5,843	5,759	10,904	11,024
Non-cash interest expense	1,179	969	1,006	1,165	2,185	2,134
Loss on change in European government incentives	29,082	—	19,381	—	48,463	—
Materials and other cost of revenue	762,028	412,535	741,155	575,882	1,503,183	988,417
Total cost of revenue	$ 797,580	$ 421,178	$ 767,580	$ 588,800	$ 1,565,160	$ 1,009,978
Total cost of revenue as a percentage of revenue	91%	81%	88%	77%	89%	79%
Total gross margin percentage	9%	19%	12%	23%	11%	21%

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

During the three and nine months ended October 2, 2011, total cost of revenue was $629.3 million and $1,565.2 million, respectively, which represented an increase of 44% and 55%, respectively, period over period. The increase in total cost of revenue partly corresponds with the increase of 28% and 36%, respectively, in total revenue during the three and nine months ended October 2, 2011 compared to the three and nine months ended October 3, 2010. As a percentage of total revenue, total cost of revenue increased to 89% in both the three and nine months ended October 2, 2011 as compared to 80% and 79%, respectively, in the three and nine months ended October 3, 2010. The increase in total cost of revenue as a percentage of total revenue is primarily due to: (i) a 62% and 57% increase in total MW of solar power products sold during the three and nine months ended October 2, 2011, respectively, as compared to the respective periods in fiscal 2010, accompanied by an overall reduction in average selling prices of our solar power products period over period; (ii) additional anticipated costs associated with the ramp up of AUO SunPower Sdn. Bhd's ("AUOSP") solar cell manufacturing facility in Malaysia which became operational in December 2010; and (iii) an increase in output generated at our two solar cell manufacturing facilities. During the three and nine months ended October 2, 2011, our two solar cell manufacturing facilities produced 161.4 MW and 483.6 MW, respectively, as compared to the three and nine months ended October 3, 2010 when we produced 152.1 MW and 425.4 MW, respectively. Additionally contributing to the increase in total cost of revenue is $48.5 million in charges incurred in the second quarter of fiscal 2011 associated with the change in European government incentives, including (i) a $16.0 million write-down of project asset costs based on changes in fair value and our ability to develop, commercialize and sell active projects within Europe, and (ii) $32.5 million related to the write-down of third-party inventory and costs associated with the termination of third-party solar cell supply contracts resulting from lower demand and average selling price in certain areas of Europe.

UPP Gross Margin: Gross margin for our UPP Segment was $39.0 million and $75.3 million for the three and nine months ended October 2, 2011, respectively, or 12% and 9%, respectively, of UPP revenue. UPP gross margin for the three and nine months ended October 2, 2011 primarily decreased due to: (i) an increase in costs on certain power plant projects under construction; and (ii) reductions in the average selling price of components. Also contributing to the decline in gross margin were charges relating to the change in European government incentives totaling $29.1 million including (i) a $16.0 million write-down of project asset costs to estimated fair value based on changes in our ability to develop, commercialize and sell active projects within Europe, and (ii) $13.1 million related to the write-down of acquired third-party inventory and costs associated with the termination of third-party solar cell supply contracts as described above. Partially offsetting the decline in

gross margin for our UPP Segment was an increase in component sales in North America and Europe, which typically have higher gross margin percentages than our utility projects.

R&C Gross Margin: Gross margin for our R&C Segment was $37.1 million and $108.6 million for the three and nine months ended October 2, 2011, respectively, or 10% and 12%, respectively, of R&C revenue. Gross margin decreased in both periods primarily due to: (i) overall reduction in average selling prices of our solar products; (ii) increased mix of third party panels in the second and third quarters of fiscal 2011, which generally have a lower margin; and (iii) $19.4 million in charges incurred in the second quarter of fiscal 2011 related to the write-down of acquired third-party inventory and costs associated with the termination of third-party solar cell supply contracts as a result of the change in European government incentives as described above. These decreases were partially offset by increased activity and installations of rooftop and ground-mounted projects in the commercial sector in North America.

Research and Development ("R&D")

	Three Months Ended		Nine Months Ended	
(Dollars in thousands)	**October 2, 2011**	**October 3, 2010**	**October 2, 2011**	**October 3, 2010**
Stock-based compensation	$ 1,608	$ 1,886	$ 5,112	$ 5,822
Non-cash interest expense	2	—	2	—
Other R&D	11,054	11,496	36,451	29,173
Total R&D	$ 12,664	$ 13,382	$ 41,565	$ 34,995
As a percentage of revenue	2%	2%	2%	3%

During the three and nine months ended October 2, 2011, R&D expense was $12.7 million and $41.6 million, respectively, which represents a decrease of 5% and an increase of 19%, respectively, period over period. The decrease in our investment in R&D during the three months ended October 2, 2011 as compared to the same period in fiscal 2010 resulted primarily from reduced personnel related expense (including salary, employee benefits and stock based compensation) as well as a reduction in consulting on government contracts and certification due to the phase out of certain government programs during fiscal 2010.

The increase in our investment in R&D during the nine months ended October 2, 2011 as compared to the same period in fiscal 2010 resulted primarily from costs related to the improvement of our current generation solar cell manufacturing technology, development of our next generation of solar cells, solar panels, trackers and rooftop systems, and development of systems performance monitoring products.

Both the three and nine months ended October 2, 2011 had a decrease in cost reimbursements received from government entities in the United States from $1.3 million and $5.2 million in the three and nine months ended October 3, 2010, respectively, to $0.3 million and $0.7 million the three and nine months ended October 2, 2011, respectively, due to the phase out of related programs during fiscal 2010, such as the Solar America Initiative R&D agreement with the United States Department of Energy. As of October 2, 2011 we have executed three new research and development agreements with the United States federal government and California state agencies. Further payments received under these contracts will offset some of our R&D expense in future periods.

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

	Three Months Ended		Nine Months Ended	
(Dollars in thousands)	**October 2, 2011**	**October 3, 2010**	**October 2, 2011**	**October 3, 2010**
Amortization of other intangible assets	$ 6,619	$ 8,887	$ 20,189	$ 19,636
Stock-based compensation	6,531	9,396	21,813	21,218
Total investment related costs	429	—	13,552	—
Amortization of promissory notes	134	6,022	2,122	8,941
Non-cash interest expense	20	—	22	—
Other SG&A	62,596	66,710	185,666	183,876
Total SG&A	$ 76,329	$ 91,015	$ 243,364	$ 233,671
As a percentage of revenue	11%	17%	14%	18%

During the three and nine months ended October 2, 2011, SG&A expense was $76.3 million and $243.4 million, respectively, which represents a decrease of 16% and an increase of 4%, respectively, from SG&A expense reported in the comparable periods of fiscal 2010. The decrease in the three months ended October 2, 2011 as compared to the three months ended October 3, 2010 is primarily driven by our cost-control strategy implemented in response to the changes in the European market, including the overall reduction of consulting charges, specifically in Europe. The decrease is also attributable to a reduction in legal and other professional services as significant acquisition and integration related costs were incurred subsequent to our strategic acquisition in March 2010.

The increase in SG&A expense during the nine months ended October 2, 2011 as compared to the same period in fiscal 2010 resulted primarily from higher spending in all of our functional areas to support the growth of our business, as well as additional operating and development expenses consolidated into our financial results subsequent to our strategic acquisition in March 2010 including additional amortization associated with other intangible assets related to acquired project assets which were subsequently impaired in the third quarter of fiscal 2011. The increase in SG&A expense over the above period is additionally related to: (i) non-recurring transaction expenses of $13.1 million incurred in connection with the April 28, 2011 Tender Offer Agreement with Total; (ii) sales and marketing spending to expand our third-party global dealer network and global branding initiatives; and (iii) additional personnel related expense (including salary, employee benefits, stock-based compensation costs and commission) as well as rent and facility related expenses as a result of increased headcount. The increase in SG&A expense period over period is partially offset by our cost-control strategy implemented in response to the changes in the European market, and the resulting restructuring and $4.4 million of expenses incurred in the first quarter of fiscal 2010 associated with our Audit Committee's independent investigation of certain accounting entries primarily related to cost of goods sold by our Philippines operations.

Goodwill and Other Intangible Asset Impairment

	Three Months Ended		Nine Months Ended	
(In thousands)	**October 2, 2011**	**October 3, 2010**	**October 2, 2011**	**October 3, 2010**
Goodwill impairment	$ 309,457	$ —	$ 309,457	$ —
Other intangible asset impairment	$ 40,301	$ —	$ 40,301	$ —
	$ 349,758	$ —	$ 349,758	$ —
As a percentage of revenue	50%	—%	20%	—%

We conduct our annual impairment test of goodwill as of the Sunday closest to the end of the third fiscal quarter of each year. Impairment of goodwill is tested at our reporting unit level. Management determined the UPP Segment and R&C Segment each have two reporting units, UPP-International and UPP-Americas for UPP Segment, and Residential and Light Commercial and North American Commercial for R&C Segment. Based on the impairment test as of October 2, 2011, as further described above under "Change in European Market", we determined that the carrying value of the UPP-International, UPP-Americas, and Residential and Light Commercial reporting units exceeded their fair value. As a result, we recorded a goodwill impairment loss of $309.5 million, representing all of the goodwill associated with these reporting units. As of October 2, 2011, the fair value of the remaining reporting unit exceeded the carrying value under the first step of the goodwill impairment test, therefore, goodwill was not impaired (see Note 4).

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

Restructuring Charges

	Three Months Ended		Nine Months Ended	
(In thousands)	**October 2, 2011**	**October 3, 2010**	**October 2, 2011**	**October 3, 2010**
Restructuring charges	$ 637	$ —	$ 13,945	$ —
As a percentage of revenue	—%	—%	1%	—%

In response to reductions in European government incentives, primarily in Italy, which have had a significant impact on

the global solar market, on June 13, 2011, our Board of Directors approved a restructuring plan to realign our resources. During the three and nine months ended October 2, 2011, restructuring charges recognized in the Condensed Consolidated Statements of Operations amounted to $0.6 million and $13.9 million, respectively. Restructuring charges recognized during the three and nine months ended October 2, 2011 in the Condensed Consolidated Statements of Operations consisted of zero and $12.3 million, respectively, of employee severance and benefits, which includes $1.4 million of compensation associated with the accelerated vesting of promissory notes previously issued as consideration for an acquisition completed in the first quarter of fiscal 2010, zero and $0.7 million, respectively, of lease and related termination costs, and $0.6 million and $0.9 million, respectively, of legal and other related charges.

The above restructuring plan eliminates approximately 85 positions, or 2% of our workforce, in addition to the consolidation or closure of certain facilities in Europe. We expect to record restructuring charges of up to $22.0 million, related to the UPP Segment in the twelve months following the approval and implementation of the plan, of which $0.6 million and $13.9 million has been recognized in the three and nine months ending October 2, 2011, respectively. We expect greater than 90% of restructuring related charges to be cash.

Other Income (Expense), Net

	Three Months Ended		Nine Months Ended	
(In thousands)	**October 2, 2011**	**October 3, 2010**	**October 2, 2011**	**October 3, 2010**
Interest income	$ 206	$ 742	$ 1,437	$ 1,294
Non-cash interest expense	$ (6,363)	$ (5,844)	$ (18,903)	$ (20,041)
Other interest expense	(10,733)	(8,924)	(29,511)	(24,977)
Total interest expense	$ (17,096)	$ (14,768)	$ (48,414)	$ (45,018)
Gain on sale of equity interest in unconsolidated investee	$ 10,989	$ —	$ 10,989	$ —
Gain on change in equity interest in unconsolidated investee	$ —	$ —	$ 322	$ 28,348
Gain on deconsolidation of consolidated subsidiary	$ —	$ 36,849	$ —	$ 36,849
Gain (loss) on mark-to-market derivatives	$ 472	$ (2,967)	$ 331	$ 28,885
Other, net	$ 8,015	$ (11,947)	$ (10,719)	$ (28,344)
Other income (expense), net	$ 2,586	$ 7,909	$ (46,054)	$ 22,014

Interest expense during the three and nine months ended October 2, 2011 primarily related to debt under our senior convertible debentures, fees for our outstanding letters of credit with Deutsche Bank AG New York Branch ("Deutsche Bank"), the mortgage loan with International Finance Corporation ("IFC"), debt under the loan agreement with California Enterprise Development Authority ("CEDA"), and debt under the revolving credit facilities with Union Bank, N.A. ("Union Bank") and Société Générale, Milan Branch ("Société Générale"). Interest expense during the three and nine months ended October 3, 2010 primarily related to issuances of our senior convertible debentures and borrowings under the facility agreement with the Malaysian government (deconsolidated in the third quarter of fiscal 2010), fees for our outstanding letters of credit with Deutsche Bank, and acquired debt. The increase in interest expense of 16% in the three months ended October 2, 2011 and 8% in the nine months ended October 2, 2011 as compared to the same periods in fiscal 2010 was due to additional indebtedness related to our $250.0 million in principal amount of 4.50% senior cash convertible debentures ("4.50% debentures") issued in April 2010, approximately €75.0 million borrowed from Société Générale in November 2010 under the revolving credit facility, as well as the $50.0 million borrowed from Union Bank in July 2011, both of which were repaid and terminated in September 2011 in connection with a borrowing of $250.0 million under a new Revolving Credit Agreement with Credit Agricole Corporate and Investment Bank ("Credit Agricole") that provides up to $275.0 million of revolving loans, outstanding borrowings up to $75.0 million under our mortgage loan agreement with IFC beginning in November 2010, and $30 million borrowed under our loan agreement with CEDA in December 2010.

During the third quarter of 2011, we recorded a cash gain of $11.0 million from the sale of 2.9 million shares of Woongjin Energy Co., Ltd (“Woongjin Energy”) in the third quarter of fiscal 2011, which decreased our equity ownership from 31% to 27%. Non-cash gains recorded due to the dilution of our equity interest in Woongjin Energy as a result of Woongjin Energy's issuance of additional equity to other investors amounted to $0.3 million and $28.3 million in the nine months ended October 2, 2011 and October 3, 2010, respectively. The resulting impact of such dilution on our equity interest was immaterial in the nine months ended October 2, 2011. Subsequent to Woongjin Energy's completion of its initial public offering and sale of

15.9 million new shares of common stock in the second quarter of fiscal 2010, our equity interest decreased from 42% to 31% of Woongjin Energy's outstanding equity.

The $0.5 million and $0.3 million net gain on mark-to-market derivatives in the three and nine months ended October 2, 2011, respectively, related to the change in fair value of the following derivative instruments associated with the 4.50% debentures: (i) the embedded cash conversion option; and (ii) the bond hedge transaction. The $3.0 million net loss and $28.9 million net gain on mark-to-market derivatives during the three and nine months ended October 3, 2010, respectively, related to the change in fair value of the following derivative instruments associated with the 4.50% debentures: (i) the embedded cash conversion option; (ii) the over-allotment option; (iii) the bond hedge transaction; and (iv) the warrant transaction. The changes in fair value of these derivatives are reported in our Condensed Consolidated Statements 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. As a result of the terms of the warrants being amended and restated so that they are settled in shares of our class A common stock rather than in cash, the warrants have not required mark-to-market accounting treatment subsequent to December 23, 2010.

The following table summarizes the components of Other, net:

	Three Months Ended		Nine Months Ended	
(In thousands)	**October 2, 2011**	**October 3, 2010**	**October 2, 2011**	**October 3, 2010**
Loss on derivatives and foreign exchange	$ 12,426	$ (12,316)	$ (6,679)	$ (29,930)
Gain (loss) on sale of investments	—	—	(191)	1,572
Other income (expense), net	(4,411)	369	(3,849)	14
Total other, net	$ 8,015	$ (11,947)	$ (10,719)	$ (28,344)

Other, net was comprised of gains totaling $8.0 million and expenses of $10.7 million during the three and nine months ended October 2, 2011, respectively, consisting primarily of: (i) expenses totaling $0.8 million and $14.4 million, respectively, from expensing the time value of option contracts and forward points on forward exchange contracts of effective cash flow hedges; and (ii) gains totaling $13.2 million and $7.7 million, respectively, on foreign currency derivatives and foreign exchange largely due to the volatility in the currency markets. In addition, we have an active hedging program designed to reduce our exposure to movements in foreign currency exchange rates. As a part of this program, we designate certain derivative transactions as effective cash flow hedges of anticipated foreign currency revenues and record the effective portion of changes in the fair value of such transactions in "Accumulated other comprehensive income (loss)" in our Condensed Consolidated Balance Sheets until the anticipated revenues have occurred, at which point the associated income or loss would be recognized in revenue. In the nine months ended October 2, 2011, in connection with the decline in forecasted revenue, we reclassified an amount held in "Accumulated other comprehensive income (loss)" for certain previously anticipated transactions which did not occur or are now probable not to occur, which totaled a loss of $4.5 million.

Other, net was comprised of expenses totaling $11.9 million and $28.3 million during the three and nine months ended October 3, 2010, respectively, consisting primarily of: (i) losses totaling $11.3 million and $20.9 million, respectively, from expensing the time value of option contracts and forward points on forward exchange contracts; and (ii) losses totaling $1.0 million and $9.0 million, respectively, on foreign currency derivatives and foreign exchange largely due to the volatility in the current markets. These expenses during the three and nine months ended October 3, 2010 were partially offset by a gain on distributions from certain money market funds in the first quarter of fiscal 2010.

Income Taxes

	Three Months Ended		Nine Months Ended	
(Dollars in thousands)	**October 2, 2011**	**October 3, 2010**	**October 2, 2011**	**October 3, 2010**
Provision for income taxes	$ (11,077)	$ (3,376)	$ (17,963)	$ (19,493)
As a percentage of revenue	2%	1%	1%	2%

In the three and nine months ended October 2, 2011, our income tax provision of $11.1 million and $18.0 million, respectively, on a loss from continuing operations before income taxes and equity in earnings of unconsolidated investees of $360.7 million and $510.7 million, respectively, was primarily due to projected tax expense in profitable foreign jurisdictions. In the three and nine months ended October 3, 2010, our income tax provision was $3.4 million and $19.5 million, respectively, on income from continuing operations before income taxes and equity in earnings of unconsolidated investees of $16.1 million

and $25.5 million, respectively, was primarily due to domestic and foreign income in certain jurisdictions, nondeductible amortization of purchased intangible assets, nondeductible stock compensation, amortization of debt discount from convertible debentures, gain on change in our 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.

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

We record a valuation allowance to reduce our deferred tax assets to the amount that is more likely than not to be realized. In assessing the need for a valuation allowance, we consider historical levels of income, expectations and risks associated with the estimates of future taxable income and ongoing prudent and feasible tax planning strategies. In the event we determine that we would be able to realize additional deferred tax assets in the future in excess of the net recorded amount, or if we subsequently determine that realization of an amount previously recorded is unlikely, we would record an adjustment to the deferred tax asset valuation allowance, which would change income tax in the period of adjustment. As of October 2, 2011, we believe there is insufficient evidence to realize additional deferred tax assets in fiscal 2011.

Equity in Earnings of Unconsolidated Investees

	Three Months Ended		Nine Months Ended	
(Dollars in thousands)	**October 2, 2011**	**October 3, 2010**	**October 2, 2011**	**October 3, 2010**
Equity in earnings of unconsolidated investees	$ 971	$ 5,825	$ 7,932	$ 10,973
As a percentage of revenue	—%	1%	—%	1%

Our equity in earnings of unconsolidated investees was net gains of $1.0 million and $7.9 million for the three and nine months ended October 2, 2011, respectively, as compared to net gains of $5.8 million and $11.0 million in the three and six months ended October 3, 2010, respectively.

Our share of Woongjin Energy's income totaled $3.7 million and $10.4 million in the three and nine months ended October 2, 2011, respectively, as compared to $5.7 million and $10.5 million in the three and nine months ended October 3, 2010, respectively. The change in our equity share of Woongjin Energy's earnings period over period is attributable to overall declines in gross margin and the decrease in our equity ownership through dilution and sale. Our share of First Philec Solar Corporation's (“First Philec Solar”) income totaled zero and $0.7 million in the three and nine months ended October 2, 2011, respectively, as compared to $0.1 million and $0.4 million in the three and nine months ended October 3, 2010, respectively. The change in our equity share of First Philec Solar's earnings period over period represents the growth of the joint ventures' operations and changes in our equity ownership. Our share of AUOSP's loss totaled $2.7 million and $3.1 million in the three and nine months ended October 2, 2011, respectively.

Income from Discontinued Operations, Net of Taxes

	Three Months Ended		Nine Months Ended	
(Dollars in thousands)	**October 2, 2011**	**October 3, 2010**	**October 2, 2011**	**October 3, 2010**
Income from discontinued operations, net of taxes	$ —	$ 1,570	$ —	$ 9,466

In connection with a strategic acquisition on March 26, 2010, we acquired a European 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 our asset is classified as held-for-sale, we are required to segregate for all periods presented the related assets, liabilities and results of operations associated with that asset as discontinued operations. On August 5, 2010, we sold the assets and liabilities of Cassiopea. Therefore, results of operations were classified as “Income from discontinued operations, net of taxes” in the Condensed Consolidated Statement of Operations in the three and nine months ended October 3, 2010.

Liquidity and Capital Resources

Cash Flows

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

	Nine Months Ended	
(In thousands)	**October 2, 2011**	**October 3, 2010**
Net cash used in operating activities of continuing operations	$ (258,980)	$ (71,720)
Net cash used in investing activities of continuing operations	(76,398)	(322,469)
Net cash provided by financing activities of continuing operations	107,821	19,763

Operating Activities

Net cash used in operating activities of continuing operations of $259.0 million in the nine months ended October 2, 2011 was primarily the result of: (i) a net loss of $520.8 million; (ii) increases in inventories and project assets of $120.8 million and $43.2 million, respectively, for construction of future and current projects in North America and Europe; (iii) increases in prepaid and other assets of $123.0 million primarily associated with outstanding receivables due and receivable from our joint ventures. Net cash used in operating activities was partially offset by: (i) non-cash impairment charges totaling $382.2 million associated with goodwill and other intangible asset impairment in the third quarter of fiscal 2011 as well as inventories and project asset write-downs in the second quarter of fiscal 2011 associated with the change in European government incentives; (ii) other non-cash charges of $170.1 million primarily related to depreciation and amortization, stock based compensation, and non-cash interest charges; and (iii) a net decrease of $15.7 million in other operating assets and liabilities, partially offset by non-cash income of $19.2 million related to our equity share in earnings of joint ventures and gains associated with the sale of our equity interest in Woongjin Energy.

Net cash used in operating activities of continuing operations of $71.7 million in the nine months ended October 3, 2010 was primarily the result of: (i) increases in inventories and project assets of $84.2 million and $146.3 million, respectively, for construction of future and current projects in Italy; (ii) increases in costs and estimated earnings in excess of billings of $80.7 million related to contractual timing of system project billings; as well as (iii) other net charges in operating assets and liabilities of $85.7 million, partially offset by (i) income from continuing operations of $17.0 million and (ii) an increase in accounts payable and other accrued liabilities of $219.1 million. Net non-cash charges and other adjustments to net income from continuing operations amounted to $89.0 million and were primarily the result of $194.1 million associated with depreciation and amortization, stock based compensation, and non-cash interest charges, offset by non-cash gains of $105.1 million attributable to our equity share in earnings of joint ventures, gain on deconsolidation of AUOSP, gain on change in equity interest in Woongjin Energy and a net gain on mark-to-market derivatives.

Investing Activities

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

Net cash used in investing activities of continuing operations in the nine months ended October 3, 2010 was $322.5 million, of which: (i) $104.6 million relates to capital expenditures primarily associated with the continued construction of our third solar cell manufacturing facility in Malaysia prior to deconsolidation on July 5, 2010; (ii) $272.7 million in cash was paid for the acquisition of SunRay, net of cash acquired; (iii) $12.9 million relates to cash of AUOSP that was deconsolidated on July 5, 2010; and (iv) $3.8 million relates to cash paid for investments in AUOSP and non-public companies. Cash used in investing activities was partially offset by: (i) $64.7 million of decreases in restricted cash and cash equivalents primarily due to the deconsolidation of AUOSP and the repayment of the Piraeus Bank loan; (ii) $5.3 million in proceeds received from the sale of equipment to a third-party subcontractor; and (iii) $1.6 million on money market fund distributions.

Financing Activities

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

Net cash provided by financing activities of continuing operations in the nine months ended October 3, 2010 was $19.8 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 call spread overlay; and (ii) $0.7 million from stock option exercises. Cash received in the nine months ended October 3, 2010 was partially offset by: (i) repurchase of $143.8 million in principal amount of our 0.75% debentures; (ii) $63.6 million in repayments of bank loans, including $30.0 million to Union Bank to terminate our $30.0 million term loan and $33.6 million to Piraeus Bank to terminate our current account overdraft agreement in Greece; (iii) $1.4 million in net cash outflow from the issuance of project loans and subsequent assumption by customers; and (iv) $2.5 million for treasury stock purchases that were used to pay withholding taxes on vested restricted stock.

Debt and Credit Sources

Convertible Debentures

As of both October 2, 2011 and January 2, 2011, an aggregate principal amount of $250.0 million of the 4.50% debentures remain issued and outstanding. Interest on the 4.50% debentures is payable on March 15 and September 15 of each year. The 4.50% debentures mature on March 15, 2015. The 4.50% debentures are convertible only into cash, and not into shares of our 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. We may not redeem the 4.50% debentures prior to maturity. Holders may also require us to repurchase all or a portion of their 4.50% debentures upon a fundamental change, as defined in the debenture agreement, at a cash repurchase price equal to 100% of the principal amount plus accrued and unpaid interest. In the event of certain events of default, such as our failure to make certain payments or perform or observe certain obligations thereunder, Wells Fargo, the trustee, or holders of a specified amount of then-outstanding 4.50% debentures will have the right to declare all amounts then outstanding due and payable. Concurrent with the issuance of the 4.50% debentures, we entered into privately negotiated convertible debenture hedge transactions and warrant transactions which represent a call spread overlay with respect to the 4.50% debentures ("the “CSO2015”), assuming full performance of the counterparties and 4.50% Warrants strike prices in excess of the conversion price of the 4.50% debentures. According to the counterparties to the warrants, the consummation of the Total Tender Offer triggered their rights to make a downward adjustment to the strike price of the warrants. In the third quarter of fiscal 2011, the Company and the counterparties to the 4.50% Warrants agreed to reduce the exercise price of the 4.50% Warrants from $27.03 to $24.00. Please see “*Conversion of our outstanding 1.25% and 4.75% debentures, our warrants related to our outstanding 4.50% and 4.75% debentures, and future substantial issuances or dispositions of our class A or class B common stock or other securities, could dilute ownership and earnings per share or cause the market price of our stock to decrease.*” in “Part I. Item 1A: Risk Factors” in the fiscal 2010 Form 10-K.

As of both October 2, 2011 and January 2, 2011, an aggregate principal amount of $230.0 million of the 4.75% senior convertible debentures ("4.75% debentures") remain issued and outstanding. Interest on the 4.75% debentures is payable on April 15 and October 15 of each year. Holders of the 4.75% debentures are able to exercise their right to convert the debentures at any time into shares of our 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 fundamental change at a cash repurchase price equal to 100% of the principal amount plus accrued and unpaid interest. In the event of certain events of default, such as our failure to make certain payments or perform or observe certain obligations thereunder, Wells Fargo, the trustee, or holders of a specified amount of then-outstanding 4.75% debentures will have the right to declare all amounts then outstanding due and payable. Concurrent with the issuance of the 4.75% debentures, we entered into certain convertible debenture hedge transactions and warrant transactions with affiliates of certain of the underwriters of the 4.75% debentures. According to the counterparties to the warrants, the consummation of the Total Tender Offer triggered their rights to make a downward adjustment to the strike

price of the warrants. In the third quarter of fiscal 2011, the Company and the counterparties to the 4.75% Warrants agreed to reduce the exercise price of the 4.75% Warrants from $38.50 to $26.40, which is no longer above the conversion price of the 4.75% debentures. Please see "*Conversion of our outstanding 1.25% and 4.75% debentures, our warrants related to our outstanding 4.50% and 4.75% debentures, and future substantial issuances or dispositions of our class A or class B common stock or other securities, could dilute ownership and earnings per share or cause the market price of our stock to decrease.*" in "Part I. Item 1A: Risk Factors" in the fiscal 2010 Form 10-K.

As of both October 2, 2011 and January 2, 2011, an aggregate principal amount of $198.6 million of the 1.25% s enior convertible debentures ("1.25% debentures") remain issued and outstanding. Interest on the 1.25% debentures is payable on February 15 and August 15 of each year. 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 under 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. As of October 2, 2011, the 1.25% debentures were reclassified from long-term liabilities to short-term liabilities within "Convertible debt, current portion" in the Condensed Consolidated Balance Sheet as the holders may require us to repurchase all of their 1.25% debentures on February 15, 2012.

As of both October 2, 2011 and January 2, 2011, an aggregate principal amount of $0.1 million of the 0.75% debentures remain issued and outstanding. Interest on the 0.75% debentures is payable on February 1 and August 1 of each year. The 0.75% debentures mature on August 1, 2027. Holders of the 0.75% debentures could require us to repurchase all or a portion of their debentures on each of 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. 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 the remaining 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.

Mortgage Loan Agreement with IFC

On May 6, 2010, our subsidiaries SunPower Philippines Manufacturing Ltd. ("SPML") and SPML Land, Inc. ("SPML Land") entered into a mortgage loan agreement with IFC. Under the loan agreement, SPML may borrow up to $75.0 million during the first two years, and SPML is required to repay the amount borrowed, starting 2 years after the date of borrowing, in 10 equal semiannual installments over the following 5 years. SPML is required to pay interest of LIBOR plus 3% per annum on outstanding borrowings, 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. On June 9, 2011, SPML borrowed $25.0 million under the loan agreement. As of October 2, 2011 and January 2, 2011, SPML had $75.0 million and $50.0 million, respectively, outstanding under the mortgage loan agreement which is classified as "Long-term debt" in our Condensed Consolidated Balance Sheets. As of October 2, 2011, no additional amounts remained available for borrowing under the loan agreement.

Loan Agreement with CEDA

On December 29, 2010, we borrowed from CEDA the proceeds of the $30.0 million aggregate principal amount of CEDA's tax-exempt Recovery Zone Facility Revenue Bonds (SunPower Corporation - Headquarters Project) Series 2010 (the "Bonds") maturing April 1, 2031 under a loan agreement with CEDA. Certain of our obligations under the loan agreement were contained in a promissory note dated December 29, 2010 issued by us to CEDA, which assigned the promissory note, along with all right, title and interest in the loan agreement, to Wells Fargo, as trustee, with respect to the Bonds for the benefit of the holders of the Bonds. The Bonds initially bore interest at a variable interest rate (determined weekly), but at our option were converted into fixed-rate bonds (which include covenants of, and other restrictions on, us). As of January 2, 2011, the $30.0 million aggregate principal amount of the Bonds was classified as "Short-term debt" in our Condensed Consolidated Balance Sheets due to the potential for the Bonds to be redeemed or tendered for purchase on June 22, 2011 under the reimbursement agreement. On June 1, 2011, the Bonds were converted to bear interest at a fixed rate of 8.50% to maturity and the holders' rights to tender the Bonds prior to their stated maturity was removed. Therefore, the $30.0 million aggregate principal amount of the Bonds are classified as "Long-term debt" in our Condensed Consolidated Balance sheet as of October 2, 2011.

Revolving Credit Facility with Société Générale

On November 23, 2010, we entered into a revolving credit facility with Société Générale under which we may borrow up to Euro 75.0 million from Société Générale. Interest periods were monthly. On May 25, 2011 we entered into an amendment of our revolving credit facility with Société Générale which extended the maturity date to November 23, 2011. Under the amended facility we were able to borrow up to Euro 75.0 million of which amounts borrowed were able to be repaid and reborrowed until October 23, 2011. We were required to pay interest on outstanding borrowings of (1) EURIBOR plus 3.25% per annum for advances outstanding before May 26, 2011, and (2) EURIBOR plus 2.70% for advances outstanding on May 26, 2011 or thereafter; a front-end fee of 0.50% on the available borrowing; and a commitment fee of 1% per annum on funds available for borrowing and not borrowed.

As of January 2, 2011, an aggregate amount of €75.0 million, or approximately $98.0 million based on the exchange rate as of that date, remained outstanding under the revolving credit facility which is classified as "Short-term debt" in the Condensed Consolidated Balance Sheets. On September 27, 2011, the Company repaid €75.0 million, or approximately $107.7 million based on the exchange rate as of that date, of outstanding borrowings plus fees, using proceeds received from the September 2011 revolving credit facility with Credit Agricole described below, and terminated the facility.

October 2010 Collateralized Revolving Credit Facility with Union Bank

On October 29, 2010, we entered into a revolving credit facility with Union Bank. Until the maturity date of October 28, 2011, we were able to borrow up to $70.0 million under the revolving credit facility. Amounts borrowed could be repaid and reborrowed until October 28, 2011. As collateral under the revolving credit facility, we pledged our holding of 19.4 million shares of common stock of Woongjin Energy to Union Bank.

We were required to pay interest on outstanding borrowings of, at our option, (1) LIBOR plus 2.75% or (2) 1.75% plus a base rate equal to the highest of (a) the federal funds rate plus 1.5%, (b) Union Bank's prime rate as announced from time to time, or (c) LIBOR plus 1.0%, per annum; a front-end fee of 0.40% on the available borrowing; and a commitment fee of 0.25% per annum on funds available for borrowing and not borrowed.

As of January 2, 2011, an aggregate amount of $70.0 million was outstanding under the revolving credit facility which was classified as "Short-term debt" in our Condensed Consolidated Balance Sheet. We repaid $70.0 million of outstanding borrowings plus fees in the second quarter of fiscal 2011. On June 20, 2011, we terminated the facility and the pledge on all shares of Woongjin Energy we held.

July 2011 Uncollateralized Revolving Credit Facility with Union Bank

On July 18, 2011, we entered into a Credit Agreement with Union Bank under which we were able to borrow up to $50.0 million from Union Bank until October 28, 2011. Amounts borrowed were able to be repaid and reborrowed until October 28, 2011. All outstanding amounts under the facility were due and payable on October 31, 2011. On July 18, 2011, we drew down $50.0 million under the credit facility.

We were required to pay interest on outstanding borrowings of, at our option, (1) LIBOR plus 2.75% or (2) 1.75% plus a base rate equal to the higher of (a) the federal funds rate plus 0.50%, or (b) Union Bank's reference rate as announced from time to time; a front-end fee of 0.15% on the total amount available for borrowing; and a commitment fee of 0.50% per annum, calculated on a daily basis, on funds available for borrowing and not borrowed.

On September 27, 2011, we repaid $50.0 million of outstanding borrowings plus fees, using proceeds received from the July 2011 revolving credit facility with Credit Agricole described below, and terminated the facility.

April 2010 Letter of Credit Facility with Deutsche Bank

On April 12, 2010, we entered into a letter of credit facility with Deutsche Bank, as issuing bank and as administrative agent, and certain financial institutions. On May 27, 2011, we received an additional $25.0 million commitment from a financial institution under the Deutsche Bank letter of credit facility, which increased the aggregate amount of letters of credit that may be issued under the facility from $375.0 million to $400.0 million. The letter of credit facility provided for the issuance, upon our request, of letters of credit by the issuing bank in order to support our obligations. For outstanding letters of credit under the letter of credit facility we paid a fee of 0.50% plus any applicable issuances fees charged by its issuing and correspondent banks. We also paid a commitment fee of 0.20% on the unused portion of the facility. We were required to collateralize 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, with restricted cash on our Condensed Consolidated Balance Sheet.

As of January 2, 2011, letters of credit issued under the letter of credit facility totaled $326.9 million and were collateralized by short-term and long-term restricted cash of $55.7 million and $118.3 million, respectively, on our Condensed Consolidated Balance Sheet. On August 9, 2011, we terminated the April 2010 letter of credit facility agreement with Deutsche Bank subsequent to the establishment of the August 2011 letter of credit facility agreement as described below. All outstanding letters of credit under the April 2010 letter of credit facility were transferred to the August 2011 letter of credit facility and $197.8 million in collateral as of August 9, 2011 was released.

August 2011 Letter of Credit Facility with Deutsche Bank

On August 9, 2011, we entered into a letter of credit facility agreement with Deutsche Bank, as issuing bank and as administrative agent, and certain financial institutions. Payment of obligations under the letter of credit facility is guaranteed by Total S.A. pursuant to the Credit Support Agreement. The letter of credit facility provides for the issuance, upon our request, of letters of credit by the issuing banks thereunder in order to support certain of our obligations, in an aggregate amount not to exceed (a) $645.0 million for the period from August 9, 2011 through December 31, 2011; (b) $725.0 million for the period from January 1, 2012 through December 31, 2012; and (c) $771.0 million for the period from January 1, 2013 through December 31, 2013. Aggregate letter of credit amounts may be increased upon the agreement of the parties but may not exceed (i) $878.0 million for the period from January 1, 2014 through December 31, 2014; (ii) $936.0 million for the period from January 1, 2015 through December 31, 2015; and (iii) $1.0 billion for the period from January 1, 2016 through June 28, 2016.

Each letter of credit issued under the letter of credit facility must have an expiration date no later than the second anniversary of the issuance of that letter of credit, provided that up to 15% of the outstanding value the letters of credit may have an expiration date of between two and three years from the date of issuance.

As of October 2, 2011, letters of credit issued under the August 2011 letter of credit facility with Deutsche Bank totaled $638.2 million.

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

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

As of October 2, 2011 letters of credit issued under the Deutsche Bank Trust facility amounted to $199.6 million which were fully collateralized with long-term restricted cash on the Condensed Consolidated Balance Sheets.

September 2011 Revolving Credit Facility with Credit Agricole

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

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

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

As of October 2, 2011, $250.0 million was outstanding under the revolving credit facility with Credit Agricole which is classified as "Long term debt" on our Condensed Consolidated Balance Sheets.

Liquidity

As of October 2, 2011, we had unrestricted cash and cash equivalents of $374.6 million as compared to $605.4 million as of January 2, 2011, a decrease of $230.8 million attributable to the overall decline in the business climate on the market for solar systems in Europe which has driven down demand and average selling prices for our solar panels thereby increasing inventories on hand and reducing our cash and cash equivalents. 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.

On July 5, 2010, we formed our AUOSP joint venture. Under the terms of the joint venture agreement, our subsidiary SunPower Technology, Ltd. (“SPTL") and AU Optronics Singapore Pte. Ltd. ("AUO") each own 50% of AUOSP. Both SPTL and AUO are obligated to provide additional funding to AUOSP in the future. During the second half of fiscal 2010, we, through SPTL, and AUO each contributed total initial funding of $27.9 million. In the first nine months of fiscal 2011, both SPTL and AUO each contributed an additional $80.0 million in funding and will each contribute additional amounts to the joint venture in fiscal 2012 through 2014 amounting to $241.0 million, or such lesser amount as the parties may mutually agree (see the Contractual Obligations table below). In addition, if AUOSP, SPTL or AUO requests additional equity financing to AUOSP, then SPTL and AUO will each be required to make additional cash contributions of up to $50.0 million in the aggregate. Further, we could in the future guarantee certain financial obligations of AUOSP. On November 5, 2010, we entered into an agreement with AUOSP under which we will resell to AUOSP polysilicon purchased from a third-party supplier and AUOSP will provide prepayments to us related to such polysilicon, which we will use to satisfy prepayments owed to the third-party supplier. We expect to receive prepayments from AUOSP in fiscal 2011 and 2012 total amounts of $60 million and $40 million, respectively.

Holders of our 1.25% debentures may require us to repurchase all or a portion of their 1.25% debentures on February 15, 2012. Any repurchase of our 1.25% debentures pursuant to these provisions will be for cash at a price equal to 100% of the principal amount of the 1.25% debentures to be repurchased plus accrued and unpaid interest. In addition, we may redeem some or all of our 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. In the first quarter of fiscal 2011, the 1.25% debentures were reclassified from long-term liabilities to short-term liabilities within "Convertible debt, current portion" in the Condensed Consolidated Balance Sheet as the holders may require us to repurchase all of their 1.25% debentures on February 15, 2012.

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 any fiscal quarter, then holders of the 1.25% debentures would have the right to convert the debentures into cash and shares of our class A common stock on 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 October 2, 2011 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 fourth quarter of fiscal 2011. Accordingly, we classified our 1.25% debentures as long-term liabilities in our Condensed Consolidated Balance Sheet as of January 2, 2011. Due to the holders' ability to require us to repurchase all of their 1.25% debentures on February 15, 2012, as described above, the 1.25% debentures are classified as short-term liabilities in our Condensed Consolidated Balance Sheet as of October 2, 2011.

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.

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

debentures. In the third quarter of fiscal 2011, the Company and the counterparties to the 4.50% Warrants agreed to reduce the exercise price of the 4.50% Warrants from $27.03 to $24.00.

We expect total capital expenditures related to purchases of property, plant and equipment in the range of $125 million to $135 million in fiscal 2011 in order to improve our current generation solar cell manufacturing technology, leasehold improvements associated with new offices leased in San Jose, California, and other projects. In addition, we expect to invest a significant amount of capital to develop solar power systems and plants for sale to customers. The development of solar power plants can require long periods of time and substantial initial investments. Our efforts in this area may consist of all stages of development, including land acquisition, permitting, financing, construction, operation and the eventual sale of the projects. We often choose to bear the costs of such efforts prior to the final sale to a customer, which involves significant upfront investments of resources (including, for example, large transmission deposits or other payments, which may be non-refundable), land acquisition, permitting, legal and other costs, and in some cases the actual costs of constructing a project, in advance of the signing of PPAs and EPC contracts and the receipt of any revenue, much of which is not recognized for several additional months or years following contract signing. Any delays in disposition of one or more projects could have a negative impact on our liquidity.

Certain of our customers also require performance bonds issued by a bonding agency or letters of credit issued by financial institutions. Historically, obtaining letters of credit requires adequate collateral. Our letter of credit facility with Deutsche Bank Trust is fully collateralized by restricted cash, which reduces the amount of cash available for operations. As of October 2, 2011 letters of credit issued under the Deutsche Bank Trust facility amounted to $199.6 million which were fully collateralized with long-term restricted cash on the Condensed Consolidated Balance Sheets.

We believe that our current cash, cash equivalents and cash expected to be generated from operations and funds available under our revolving credit facility with Credit Agricole will be sufficient to meet our working capital and fund our committed capital expenditures over the next 12 months, including the development and construction of solar power systems and plants over the next 12 months. However, there can be no assurance that our liquidity will be adequate over time. Our capital expenditures and use of working capital may be greater than we expect if we decide to make additional investments in the development and construction of solar power plants and sales of power plants and associated cash proceeds are delayed, or if we decide to accelerate increases in our manufacturing capacity internally or through capital contributions to joint ventures. We require project financing in connection with the construction of solar power plants, which financing may not be available on terms acceptable to us. In addition, we could in the future make additional investments in our joint ventures or guarantee certain financial obligations of our joint ventures, which could reduce our cash flows, increase our indebtedness and expose us to the credit risk of our joint ventures. See also "*Due to the general economic environment, the continued market pressure driving down the average selling prices of our solar power products and other factors, we may be unable to generate sufficient cash flows or obtain access to external financing necessary to fund our operations and make adequate capital investments as planned.*" in Part II, Item 1A "Risk Factor."

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; although the current economic environment could also limit our ability to raise capital by issuing new equity or debt securities on acceptable terms, and lenders may be unwilling to lend funds on acceptable terms that would be required to supplement cash flows to support operations. The sale of additional equity securities or convertible debt securities 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 conditions in the financial and credit markets. Additional debt would result in increased expenses and would likely impose new restrictive covenants which may be similar or different than those restrictions contained in the covenants under the letter of credit facility with Deutsche Bank, the letter of credit facility with Deutsche Bank Trust, the mortgage loan agreement with IFC, the loan agreement with CEDA, the revolving credit facility with Credit Agricole, the 4.50% debentures, the 4.75% debentures or the 1.25% debentures. Financing arrangements, including project financing for our solar power plants and letters of credit facilities, may not be available to us, or may not be available in amounts or on terms acceptable to us.

Contractual Obligations

The following summarizes our contractual obligations as of October 2, 2011:

(In thousands)	Total	Payments Due by Period: 2011 (remaining 3 months)	2012-2013	2014-2015	Beyond 2015
Convertible debt, including interest (1)	$ 751,073	$ 6,165	$ 243,270	$ 501,638	$ —
IFC mortgage loan, including interest (2)	83,748	640	17,194	32,731	33,183
CEDA loan, including interest (3)	79,726	638	5,100	5,100	68,888
Credit Agricole revolving credit facility, with interest (4)	259,439	1,188	258,251	—	—
Future financing commitments (5)	245,940	900	148,270	96,770	—
Operating lease commitments (6)	103,264	4,125	26,258	21,616	51,265
Utility obligations (7)	750	—	—	—	750
Non-cancellable purchase orders (8)	143,251	143,251	—	—	—
Purchase commitments under agreements (9)	4,627,845	356,526	1,101,509	1,621,001	1,548,809
Total	$ 6,295,036	$ 513,433	$ 1,799,852	$ 2,278,856	$ 1,702,895

(1) Convertible debt, including interest, relates to the aggregate of $678.7 million in outstanding principal amount of our senior convertible debentures on October 2, 2011. 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 us to repurchase the debentures on February 15, 2012 and August 1, 2015, respectively, and upon conversion, the values of the senior convertible debentures will be equal to the aggregate principal amount with no premiums.

(2) IFC mortgage loan, including interest, relates to the $75.0 million borrowed as of October 2, 2011. Under the loan agreement, SPML is required to repay the amount borrowed, starting 2 years after the date of borrowing, in 10 equal semiannual installments over the following 5 years. SPML is required to pay interest of LIBOR plus 3% per annum on outstanding borrowings.

(3) CEDA loan, including interest, relates to the proceeds of the $30.0 million aggregate principal amount of the Bonds. The Bonds mature on April 1, 2031. On June 1, 2011 the Bonds were converted to bear interest at a fixed rate of 8.50% through maturity.

(4) Credit Agricole revolving credit facility, with interest, relates to the $250.0 million borrowed on September 27, 2011 and maturing on September 27, 2013. We are required to pay interest on outstanding borrowings of (a) with respect to any LIBO rate loan, 1.50% plus the LIBO rate divided by a percentage equal to one minus the stated maximum rate of all reserves required to be maintained against “Eurocurrency liabilities” as specified in Regulation D; and (b) with respect to any alternate base loan, 0.50% plus the greater of (1) the prime rate, (2) the Federal Funds rate plus 0.5%, and (3) the one month LIBO rate plus 1%.

(5) SPTL and AUO will contribute additional amounts to AUOSP in fiscal 2012 through 2014 amounting to $241.0 million by each shareholder, or such lesser amount as the parties may mutually agree. Further, in connection with a purchase agreement with a non-public company we will be required to provide additional financing to such party of up to $4.9 million, subject to certain conditions.

(6) Operating lease commitments primarily relate to: (i) six solar power systems leased from Wells Fargo over minimum lease terms of up to 20 years; (ii) a 10-year lease agreement with an unaffiliated third party for our headquarters in San Jose, California starting in May 2011 and expiring in April 2021; (iii) an 11-year lease agreement with an unaffiliated third party for our administrative, research and development offices in Richmond, California; (iv) a ten year lease agreement with an unaffiliated third party for our solar module facility in Mexicali, Mexico; and (v) other leases for various office space.

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

(8) Non-cancellable purchase orders relate to purchases of raw materials for inventory and manufacturing equipment from a variety of vendors.

(9) Purchase commitments under agreements relate to arrangements entered into with several suppliers, including joint ventures, for polysilicon, ingots, wafers, solar cells and solar panels as well as agreements to purchase solar renewable energy certificates from solar installation owners in New Jersey. These agreements specify future quantities and pricing of products to be supplied by the vendors for periods up to 10 years and there are certain consequences, such as forfeiture of advanced deposits and liquidated damages relating to previous purchases, in the event that we terminate the arrangements. Where pricing is specified for future periods, in some contracts, we may reduce our purchase commitment under the contract if we obtain a bona fide third party offer at a price that is a certain percentage lower than the applicable purchase price in the existing contract. If market prices decrease, we intend to use such provisions to either move our purchasing to another supplier or to force the initial supplier to reduce its price to remain competitive with market pricing.

Liabilities Associated with Uncertain Tax Positions

As of October 2, 2011 and January 2, 2011, total liabilities associated with uncertain tax positions were $27.1 million and $24.9 million, respectively, and are included in “Other long-term liabilities” in our Condensed Consolidated Balance Sheets as they are not expected to be paid within the next twelve months. Due to the complexity and uncertainty associated with our tax positions, we cannot make a reasonably reliable estimate of the period in which cash settlement will be made for our liabilities associated with uncertain tax positions in other long-term liabilities; therefore, they have been excluded from the table above.

Off-Balance-Sheet Arrangements

As of October 2, 2011, 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 42% and 39% of our total revenue in the three and nine months ended October 2, 2011, respectively, and 61% and 59% of our total revenue as of the three and nine months ended October 3, 2010, respectively. A 10% change in the Euro exchange rate would have impacted our revenue by approximately $29.6 million and $68.2 million in the three and nine months ended October 2, 2011, respectively, and $33.6 million and $75.6 million in the three and nine months ended October 3, 2010, 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 re-measurement loss by Woongjin Energy which would in turn negatively impact our equity in earnings of the unconsolidated investee. In addition, strengthening of the Malaysian Ringgit against the U.S. dollar would increase AUOSP's liability under the facility agreement with the Malaysian government which in turn would negatively impact our equity in earnings of the unconsolidated investee. An increase in the value of the U.S. dollar relative to foreign currencies could make our solar power products more expensive for international customers, thus potentially leading to a reduction in demand, our sales and profitability. Furthermore, many of our competitors are foreign companies that could benefit from such a currency fluctuation, making it more difficult for us to compete with those companies.

We currently conduct hedging activities which involve the use of option and forward contracts to address our exposure to changes in the foreign exchange rate between the U.S. dollar and other currencies. As of October 2, 2011, we had outstanding hedge option contracts and forward contracts with aggregate notional values of $348.3 million and $207.1 million, respectively. As of January 2, 2011, we held option and forward contracts totaling $358.9 million and $534.7 million, respectively, in notional value. Because we hedge some of our expected future foreign exchange exposure, if associated revenues do not materialize we could experience losses. For example, during the first and third quarter of fiscal 2011, in connection with the decline in forecasted revenue surrounding the overall change in the solar sector, we concluded that certain previously anticipated transactions were now probable not to occur and thus we reclassified the amount held in "Accumulated other comprehensive income (loss)" in our Condensed Consolidated Balance Sheets for these transactions, which totaled a loss of $0.6 million and $4.5 million to "Other, net" in our Condensed Consolidated Statement of Operations for the three and nine months ended October 2, 2011, respectively. If we conclude that we have a pattern of determining that hedged forecasted transactions probably will not occur, we may no longer be able to continue to use hedge accounting in the future to reduce our exposure to movements in foreign exchange rates. Such a conclusion and change in our foreign currency hedge program could adversely impact our revenue, margins and results of operations. We cannot predict the impact of future exchange rate fluctuations on our business and operating results.

Credit Risk

We have certain financial and derivative instruments that subject us to credit risk. These consist primarily of cash and cash equivalents, restricted cash and cash equivalents, investments, accounts receivable, note receivable, advances to suppliers, foreign currency option contracts, foreign currency forward contracts, bond hedge and warrant transactions and a share lending arrangement for our 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 10 years. Under certain agreements, we are required to make prepayments to the vendors over the terms of the arrangements. As of October 2, 2011 and January 2, 2011, advances to suppliers totaled $296.5 million and $287.1 million, respectively. Two suppliers accounted for 76% and 23% of total advances to suppliers as of October 2, 2011, and 83% and 13% of total advances to suppliers as of January 2, 2011. We may be unable to recover such prepayments if the credit conditions of these suppliers materially deteriorate.

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

Concurrent with the offering of the 0.75% debentures, we lent 1.8 million shares of our class A common stock to Credit

Suisse International ("CSI"), an affiliate of Credit Suisse Securities (USA) LLC ("Credit Suisse"), one of the underwriters of the 0.75% debentures, for a nominal lending fee of $0.001 per share. Physical settlement of the shares is required when the arrangement is terminated which is anticipated to occur on February 15, 2012 when the holders of the 1.25% debentures may require us to repurchase all of their 1.25% debentures. If Credit Suisse or its affiliates, including CSI, were to file bankruptcy or commence similar administrative, liquidating, restructuring or other proceedings, we may be unable to recover the 1.8 million shares loaned to CSI.

Interest Rate Risk

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

Our interest expense would increase to the extent interest rates rise in connection with our variable interest rate borrowings. In addition, lower interest rates have an adverse impact on our interest income. Our investment portfolio, which consists of $71.6 million in money market funds as of October 2, 2011, include a variety of financial instruments that exposes us to interest rate risk. Due to the relatively short-term nature of our investment portfolio, we do not believe that an immediate 10% increase in interest rates would have a material effect on the fair market value of our money market funds. Since we believe we have the ability to liquidate substantially all of this portfolio, we do not expect our operating results or cash flows to be materially affected to any significant degree by a sudden change in market interest rates on our investment portfolio.

Equity Price Risk involving Minority Investments in Joint Ventures and Other Non-Public Companies

Our investments held in joint ventures and other non-public companies expose us to equity price risk. As of October 2, 2011 and January 2, 2011, investments of $191.6 million and $116.4 million, respectively, are accounted for using the equity method, and $12.1 million and $16.4 million, respectively, are accounted for using the cost method. These strategic investments in third parties are subject to risk of changes in market value, which if determined to be other-than-temporary, could result in realized impairment losses. We generally do not attempt to reduce or eliminate our market exposure in equity and cost method investments. We monitor these investments for impairment and record reductions in the carrying values when necessary. Circumstances that indicate an other-than-temporary decline include the valuation ascribed to the issuing company in subsequent financing rounds, decreases in quoted market prices and declines in operations of the issuer. There can be no assurance that our equity and cost method investments will not face risks of loss in the future.

Interest Rate Risk and Market Price Risk Involving Convertible Debt

The fair market value of our 4.75%, 4.50%, 1.25% and 0.75% convertible debentures is subject to interest rate risk, market price risk and other factors due to the convertible feature of the debentures. The fair market value of the debentures will generally increase as interest rates fall and decrease as interest rates rise. In addition, the fair market value of the debentures will generally increase as the market price of our 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 into cash in certain instances. The aggregate estimated fair value of the 4.75% debentures, 4.50% debentures, 1.25% debentures and 0.75% debentures was $609.9 million and $633.7 million as of October 2, 2011 and January 2, 2011, respectively, 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 $670.9 million and $697.1 million as of October 2, 2011 and January 2, 2011, respectively, and a 10% decrease in the quoted market prices would decrease the estimated fair value of our then-outstanding debentures to $548.9 million and $570.4 million as of October 2, 2011 and January 2, 2011, respectively.

Item 4. Controls and Procedures

Evaluation of Disclosure Controls and Procedures

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

Based on their evaluation as of the end of the period covered by this Quarterly Report on Form 10-Q, our Chief Executive Officer and Chief Financial Officer have concluded that our disclosure controls and procedures were effective as of October 2, 2011 at a reasonable assurance level.

Changes in Internal Control over Financial Reporting

We regularly review our system of internal control over financial reporting and make changes to our processes and systems to improve controls and increase efficiency, while ensuring that we maintain an effective internal control environment. Changes may include such activities as implementing new, more efficient systems, consolidating activities, and migrating processes.

There were no changes in our internal control over financial reporting that occurred during our latest fiscal quarter that materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

PART II. OTHER INFORMATION

Item 1. Legal Proceedings

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

Item 1A: Risk Factors

In addition to the risk factors set forth below and other information set forth in this report, readers should carefully consider the risk factors discussed in *"Part I. Item 1A: Risk Factors"* in our Annual Report on Form 10-K for the fiscal year ended January 2, 2011, which could materially affect our business, financial condition or future results. The risks described below are risks that have arisen since we filed our Annual Report on Form 10-K for the fiscal year ended January 2, 2011 or other material updates to risk factors contained in such Annual Report on Form 10-K or our subsequent Quarterly Reports on Form 10-Q. 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.

Risks Related to Our Liquidity

Due to the general economic environment, the continued market pressure driving down the average selling prices of our solar power products and other factors, we may be unable to generate sufficient cash flows or obtain access to external financing necessary to fund our operations and make adequate capital investments as planned.

We expect total capital expenditures related to purchases of property, plant and equipment in the range of $125 million to $135 million in fiscal 2011 in order to improve our current generation solar cell manufacturing technology, leasehold improvements associated with new offices leased in San Jose, California, and other projects. We anticipate that our capital expenditures will continue to be significant. To develop new products, support future growth, achieve operating efficiencies and maintain product quality, we must make significant capital investments in manufacturing technology, facilities and capital equipment, research and development, and product and process technology. We also anticipate increased costs as we expand our manufacturing operations, make advance payments for raw materials or pay to procure such materials, especially polysilicon, increase our sales and marketing efforts, invest in joint ventures and acquisitions, and continue our research and development efforts with respect to our products and manufacturing technologies. In addition, we expect to invest a significant amount of capital to develop solar power systems and plants initially owned by us. The development and construction of solar power plants can require long periods of time and substantial initial investments. The delayed disposition of such projects could have a negative impact on our liquidity. See "Risk Factors-Risk Related to Our Operations-We may make significant investments in building solar power plants without first obtaining project financing, and the delayed sale of our projects would adversely affect our business, liquidity and results of operations" in our fiscal 2010 Form 10-K. Our capital expenditures and use of working capital may be greater than we expect if we decide to make additional investments in the development and construction of solar power plants and sales of power plants and associated cash proceeds are delayed, or if we decide to accelerate increases in our manufacturing capacity internally or through capital contributions to joint ventures. We require project financing in connection with the construction of solar power plants, which financing may not be available on terms acceptable to us. In addition, we could in the future make additional investments in our joint ventures or guarantee certain financial obligations of our joint ventures, which could reduce our cash flows, increase our indebtedness and expose us to the credit risk of our joint ventures. Certain of our customers also require performance bonds issued by a bonding agency or letters of credit issued by financial institutions. As of October 2, 2011 letters of credit issued under the Deutsche Bank Trust facility amounted to $199.6 million which were fully collateralized with long-term restricted cash.

We believe that our current cash and cash equivalents, cash generated from operations and funds available under our revolving credit facility with Credit Agricole will be sufficient to meet our working capital and fund our committed capital expenditures over the next 12 months, including the development and construction of solar power plants over the next 12 months. And as of October 2, 2011, $250.0 million was outstanding under our revolving credit facility with Credit Agricole. This revolving credit facility requires that we maintain certain financial ratios, including a ratio of our debt at the end of each quarter to our EBITDA (earnings before interest, tax, depreciation and amortization) as defined in the facility for that quarter not exceeding 4.5 to 1. The current market for our products is challenging, which makes projections of future revenue and EBITDA especially difficult. If we fail to meet one of these ratios in any future quarter it would enable the syndicate of banks to declare us in default under the credit facility, which could lead to further defaults as described below. We estimate that as of January 2, 2012 and potentially for one or more subsequent quarters we may not meet this ratio requirement. We believe, however, that we will be able to remedy any such possible default by relying on the credit facility's existing cure provisions, by reducing our outstanding debt or through another course of action.

Holders of our 1.25% debentures, of which $198.6 million in aggregate principal amount is outstanding as of October 2, 2011, may require us to repurchase all or a portion of their 1.25% debentures on February 15, 2012. Any repurchase of our 1.25% debentures pursuant to these provisions will be for cash at a price equal to 100% of the principal amount of the 1.25% debentures to be repurchased plus accrued and unpaid interest. If our financial results or operating plans change from our current assumptions, or if the holders of our outstanding 4.50% convertible debentures due 2015 or 1.25% convertible

debentures due 2027 become entitled, and elect, to convert the debentures into cash or cash and shares of class A common stock, respectively, we may not have sufficient resources to support our business plan or pay cash in connection with the redemption of outstanding 4.50% and 1.25% debentures. See "Risk Factors-Risks Related to Our Liquidity-Our substantial indebtedness and other contractual commitments could adversely affect our business, financial condition and results of operations, as well as our ability to meet any of our payment obligations under the 1.25%, 4.50% and 4.75% debentures and our other debt" in our fiscal 2010 Form 10-K.

The lenders under our credit facilities and holders of our debentures may also require us to repay our indebtedness to them in the event that our obligations under other indebtedness in excess of the applicable threshold amount, for example $25 million, are accelerated and we fail to discharge such obligations. If our capital resources are insufficient to satisfy our liquidity requirements, for example, due to cross acceleration of indebtedness, we may seek to sell additional equity securities or debt securities or obtain other debt financings; although the current economic environment could also limit our ability to raise capital by issuing new equity or debt securities on acceptable terms, and lenders may be unwilling to lend funds on acceptable terms that would be required to supplement cash flows to support operations. The sale of additional equity securities or convertible debt securities 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 conditions in the financial and credit markets. Additional debt would result in increased expenses and would likely impose new restrictive covenants which may be similar or different than those restrictions contained in the covenants under our current debt agreements and debentures. Financing arrangements, including project financing for our solar power plants and letters of credit facilities, may not be available to us, or may not be available in amounts or on terms acceptable to us. We may also seek to sell assets, reduce or delay capital investments, or refinance or restructure our debt. For additional details see Note 10 of Notes to Consolidated Financial Statements.

There can be no assurance that we will be able to generate sufficient cash flows, find other sources of capital or access capital markets to fund our operations and solar power plant projects, make adequate capital investments to remain competitive in terms of technology development and cost efficiency, meet our debt service obligations, or provide bonding or letters of credit required by our projects. If adequate funds and alternative resources are not available on acceptable terms, our ability to fund our operations, develop and construct solar power plants, develop and expand our manufacturing operations and distribution network, maintain our research and development efforts, provide collateral for our projects or otherwise respond to competitive pressures would be significantly impaired. Our inability to do the foregoing could have a material adverse effect on our business and results of operations.

Risks Related to Our Operations

We may not fully realize the anticipated benefits of our relationship with Total.

We and Total S.A. (“Parent”), parent of Total Gas & Power USA SAS (“Total”) have entered into a Credit Support Agreement under which Parent has agreed to enter into one or more guarantee agreements with banks providing letter of credit facilities to us in support of certain of our businesses and other permitted purposes. Parent will guarantee the payment to the applicable issuing bank of our obligation to reimburse a draw on a letter of credit and pay interest thereon in accordance with the letter of credit facility between such bank and us. In consideration for the commitments of Parent, we are required to pay Parent a guarantee fee for each letter of credit that is the subject of a guaranty, starting at 1% and increasing to 2.35% in the fifth year following the completion of the tender offer. We entered into a letter of credit facility agreement with Deutsche Bank AG New York Branch in August 2011 supported by a Parent guarantee.

We and Total have also entered into a Research & Collaboration Agreement that establishes a framework under which we may engage in long-term research and development collaboration with Total. The Research & Collaboration Agreement is expected to encompass a number of different projects, with a focus on advancing technologies in the area of photovoltaics.

We may not realize the expected benefits of these agreements in a timely manner, or at all. The Credit Support Agreement can provide guarantees to our letter of credit facility, but not our other indebtedness. As the guarantee fee goes up over time, it may not be price competitive for us to continue to utilize the guarantee under the Credit Support Agreement and we may choose not to do so, which may cause our lenders to seek cash collateral. If the credit quality of Parent were to deteriorate, then the guarantees would not be as beneficial to our lenders, which could reduce their willingness to lend to us and raise our costs of borrowing. We could incur additional expenses related to the Credit Support Agreement, especially relating to the guarantee fee.

We may have difficulties in fully leveraging the research and development efforts of Total while protecting our intellectual property rights and our long term strategic interests. Further, the collaboration envisioned by the parties from the Research & Collaboration Agreement could be subject to governmental controls that could limit the full set of benefits

expected by us and Total.

In addition, we are a U.S. high growth, innovative technology and alternative energy company, and the differences in corporate culture between us and that of Total may prevent us from fully realizing the anticipated benefits from our relationship with Total. If we have a potential conflict with Total, the resolution may be less favorable to us than if we were dealing with an unaffiliated party. Such disagreements may relate to any determination with respect to mergers and other business combinations, our acquisition or disposition of assets, our financing activities, allocation of business opportunities, employee retention and recruiting.

Total's ownership of our common stock may adversely affect our relationship with our customers, suppliers, lenders and partners, and adversely affect our ability to attract and retain key employees.

Total's majority ownership of our common stock may cause current or potential customers, suppliers and partners to delay or reevaluate entering into agreements with us, which could negatively affect our business. Customers, suppliers, lenders and partners may also seek to change existing agreements with us as a result of Total's ownership in our common stock. Any delay or reevaluation of those decisions or changes in existing agreements could materially impact our business. The significant influence of Total over our Board of Directors may adversely affect our relationship with our customers, suppliers, lenders and partners. Similarly, current and prospective employees may experience uncertainty about their future roles with our company, or may be uncomfortable with the cultural fit between the two companies. This may adversely affect our ability to attract and retain key management, technical, sales, marketing, and operations personnel.

A change in our anticipated foreign exchange transactions could affect the accounting of our foreign currency hedging program and adversely impact our revenues, margins, and results of operations.

We have an active hedging program designed to reduce our exposure to movements in foreign currency exchange rates. As a part of this program, we designate certain derivative transactions as effective cash flow hedges of anticipated foreign currency revenues and record the effective portion of changes in the fair value of such transactions in "Accumulated other comprehensive income (loss)" in our Condensed Consolidated Balance Sheets until the anticipated revenues have occurred, at which point the associated income or loss would be recognized in revenue. In the first and third quarters of fiscal 2011, we reclassified an amount held in "Accumulated other comprehensive income (loss)" to "Other, net" in our Condensed Consolidated Statement of Operations for certain previously anticipated transactions which did not occur or were now probable not to occur, which totaled a loss of $4.5 million. If we conclude that we have a pattern of determining that hedged forecasted transactions probably will not occur, we may no longer be able to continue to use hedge accounting in the future to reduce our exposure to movements in foreign exchange rates. Such a conclusion and change in our foreign currency hedge program could adversely impact our revenue, margins and results of operations.

Fluctuations in Solar Renewable Energy Credits spot prices may adversely impact our results of operations.

We acquire New Jersey Solar Renewable Energy Credits (SRECs) in the ordinary course of business, which are credits generated and then sold to local utilities to help them meet renewable energy portfolio requirements in New Jersey. In order to facilitate sales, we have agreed in certain cases to purchase all SRECs generated by a solar system we install for a specified period at a specified pricing. We then sell such credits to utilities at a specified pricing or we will sell the SRECs on the spot market. The SREC spot market prices have decreased significantly in recent months as supply of SREC has increased, and the decline has exposed us to potential economic losses for SRECs we expect to purchase in excess of our selling commitments. If SREC prices continue to fluctuate and or remain lower than our purchase commitment prices, we may have to recognize losses, which will adversely impact our results of operations.

Risks Related to Our Debt and Equity Securities

Total's majority ownership of class A and class B shares of our common stock, and our common stock could be more thinly traded, which may adversely affect the liquidity and value of our common stock.

Following the consummation of the tender offer on June 21, 2011, Total holds approximately 60% of our class A common stock and 60% of our class B common stock. Pursuant to the Affiliation Agreement, the Board of Directors of SunPower expanded to eleven members, and six designees from Total joined our board on July 1, 2011, giving Total majority control of our Board. As a result, subject to the restrictions in the Affiliation Agreement, Total possesses significant influence and control over our affairs. Our stockholders have reduced ownership and voting interest in our company following the tender offer and, as a result, have less influence over the management and policies of our company than they exercised previously. As long as Total controls us, the ability of our other stockholders to influence matters requiring stockholder approval is limited.

Total's stock ownership and relationships with members of our Board of Directors could have the effect of preventing minority stockholders from exercising significant control over our affairs, delaying or preventing a future change in control, impeding a merger, consolidation, takeover or other business combination or discouraging a potential acquirer from making a tender offer or otherwise attempting to obtain control of us, limiting our financing options. These factors in turn could adversely affect the market price of our common stock or prevent our stockholders from realizing a premium over the market price of our common stock. The Affiliation Agreement limits Total and any member of the Total Group from effecting, seeking, or entering into discussions with any third party regarding any transaction that would result in the Total Group beneficially owning our shares in excess of certain thresholds during a standstill period. The Affiliation Agreement also imposes certain limitations on the Total Group's ability to seek to effect a tender offer or merger to acquire 100% of our outstanding voting power. Such provisions may not be successful in preventing the Total Group from engaging in transactions which further increase their ownership and negatively impact the price of our common stock. In addition, the market for our common stock may become less liquid and more thinly traded as a result of the transaction. The lower number of shares available to be traded could result in greater volatility in the price of our common stock and affect our ability to raise capital on favorable terms in the capital markets.

If our stockholders do not approve the reclassification of our class A common stock and class B common stock at the upcoming stockholders meeting, the two classes may remain as separate classes for an indefinite period of time. The elimination of our dual-class structure could result in substantial tax liability for which we are obligated to indemnify Cypress Semiconductor Corporation (“Cypress”).

In the Tender Offer Agreement with Total, we agreed that, subject to our receipt of a tax opinion of counsel reasonably satisfactory to Total, and if applicable, reasonably satisfactory to Cypress (“Tax Opinion”), regarding the effect of reclassifying our class A common stock and class B common stock as one class of common stock on a one-for-one basis (the "Reclassification"), we will hold a meeting of stockholders to approve such Reclassification (through an amendment of our restated certificate of incorporation) promptly following the closing of the tender offer, but in no event later than the six month anniversary of the closing of the tender offer. Total has agreed to vote all common stock acquired in the tender offer in favor of the Reclassification. On September 30, 2011, we filed a definitive proxy statement with the SEC that includes a proposal for our stockholders' to approve the Reclassification at a special stockholders meeting to be held on November 15, 2011. Prior to the Reclassification, if any, class B common stock is entitled to eight votes per share and the class A common stock is entitled to one vote per share. Among other changes to our restated certificate of incorporation which eliminates the dual-class structure, following the Reclassification, each share of common stock will have only one vote per share. The Reclassification could be delayed for an indefinite amount of time if we do not receive the Tax Opinion, or if Total fails to vote its shares in favor of the Reclassification as required by the Tender Offer Agreement.

Our class A and class B common stock historically have had different trading histories, and our class B common stock has consistently maintained lower trading prices compared to the class A common stock following our spin-off from Cypress on September 28, 2008. This may be caused by the lack of a long trading history and lower trading volume of the class B common stock, compared to the class A common stock, as well as other factors. If the Reclassification does not occur, our restated certificate of incorporation will continue to impose certain limitations on the rights of holders of class B common stock to vote the full number of their shares. If the Reclassification does not occur, our class B common stock may experience lower trading prices compared to the class A common stock.

We entered into an Amended Tax Sharing Agreement with Cypress in August 2008 in connection with its distribution of all of the shares of Class B common stock it held at the time to its stockholders in the form of a pro rata dividend intended to be tax-free (the “spin-off”). Under this agreement, we agreed to indemnify Cypress for taxes and related losses if the spin-off were deemed to be taxable due to, among other things, any recapitalization involving our Class B common stock, including the Reclassification. In the event the Reclassification does result in the spin-off being treated as taxable, we could face substantial liabilities as a result of our obligations under the Amended Tax Sharing Agreement.

Item 2: Unregistered Sales of Equity Securities and Use of Proceeds

Issuer Purchases of Equity Securities

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

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
July 4, 2011 through July 31, 2011	1	$ 21.15	—	—
August 1, 2011 through August 28, 2011	29	$ 16.14	—	—
August 29, 2011 through October 2, 2011	41	$ 12.70	—	—
	71	$ 14.23	—	—

(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*†	Amendment No. 4 to Ingot Supply Agreement, dated July 5, 2011, by and between SunPower Corporation and Woongjin Energy Co., Ltd.
10.2*†	Credit Agreement, dated July 18, 2011, by and among SunPower Corporation, the Guarantors party thereto, and Union Bank, NA.
10.3*†	Letter of Credit Facility Agreement, dated August 9, 2011, by and among SunPower Corporation, Total S.A., the Subsidiary Applicants party thereto, the Banks party thereto, and Deutsche Bank AG New York Branch.
10.4*†	Warrant Adjustment Notice, dated August 26, 2011, from Wachovia Bank, National Association, regarding Warrant Transaction Confirmation, dated April 28, 2009, by and between SunPower Corporation and Wachovia Bank, National Association.
10.5*	Warrant Adjustment Notice, dated August 30, 2011, from Deutsche Bank AG, London Branch, regarding (1) Warrant Transaction Confirmation, dated April 28, 2009, by and between SunPower Corporation and Deutsche Bank AG, London Branch; (2) Warrant Transaction Confirmation, dated December 22, 2010, by and between SunPower Corporation and Deutsche Bank AG, London Branch; and (3) Warrant Transaction Confirmation, dated December 22, 2010, by and between SunPower Corporation and Deutsche Bank AG, London.
10.6*†	Warrant Adjustment Notice, dated August 31, 2011, from Credit Suisse International, regarding (1) Warrant Transaction Confirmation, dated April 28, 2009, by and between SunPower Corporation and Credit Suisse International; (2) Warrant Transaction Confirmation, dated December 22, 2010, by and between SunPower Corporation and Credit Suisse International; and (3) Warrant Transaction Confirmation, dated December 22, 2010, by and between SunPower Corporation and Credit Suisse International.
10.7*	Warrant Adjustment Notice, dated September 21, 2011, from Bank of America, N.A., regarding (1) Warrant Transaction Confirmation, dated December 22, 2010, by and between SunPower Corporation and Bank of America, N.A.; and (2) Warrant Transaction Confirmation, dated December 22, 2010, by and between SunPower Corporation and Bank of America, N.A.
10.8*	Warrant Adjustment Notice, dated September 21, 2011, from Barclays Bank PLC, regarding (1) Warrant Transaction Confirmation, dated December 22, 2010, by and between SunPower Corporation and Barclays Bank PLC; and (2) Warrant Transaction Confirmation, dated December 22, 2010, by and between SunPower Corporation and Barclays Bank PLC.
10.9*†	Revolving Credit Agreement, dated September 27, 2011, by and among SunPower Corporation, Credit Agricole Corporate and Investment Bank, and the financial institutions party thereto.
10.10*	Continuing Agreement for Standby Letters of Credit and Demand Guarantees, dated September 27, 2011, by and among SunPower Corporation, Deutsche Bank Trust Company Americas, and Deutsche Bank AG New York Branch.
10.11*†	Security Agreement, dated September 27, 2011, by and among SunPower Corporation, Deutsche Bank Trust Company Americas, and Deutsche Bank AG New York Branch.
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 (+) are director and officer compensatory arrangements.

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: November 10, 2011

By: /s/ DENNIS V. ARRIOLA

Dennis V. Arriola
Executive Vice President and
Chief Financial Officer

Index to Exhibits

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Exhibit 10.1

CONFIDENTIAL TREATMENT REQUESTED

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

AMENDMENT NO. 4 TO INGOT SUPPLY AGREEMENT

THIS AMENDMENT NO. 4 INGOT SUPPLY AGREEMENT (This "**Amendment No. 4**") is made this 5th day of July 2011 ("**Effective Date**") by and between Woongjin Energy Co., Ltd., a company organized and existing under the laws of the Republic of Korea with its office located at 1316 GwanPyeong-Dong, YuSung-Gu, DaeJeon, Korea ("**Supplier**"), SunPower Corporation, a company organized under the laws of the State of Delaware, United States of America, with its principal office located at 3939 North First Street, San Jose, California 95134, United states of America ("**SunPower**"), and SunPower Philippines Manufacturing Limited, a Cayman Islands business and wholly owned subsidiary of SunPower, with a branch office at 100 East Main Avenue, Phase 4, Special Economic Zone, Laguna Techno Park, Binan, Laguna, Philippines 4024 (together with SunPower, "**Purchaser**"). Each of Supplier and Purchaser is sometimes referred to herein as a "**Party**" and collectively, as the "**Parties**". Capitalized terms used in this Amendment No. 4 and not defined herein shall have the meaning given to such terms in the Agreement (as hereinafter defined).

RECITALS

(a) Supplier and Purchaser are parties to that certain Ingot Supply Agreement, dated as of December 22, 2006, as amended on August 4, 2008, August 1, 2009 and February 1, 2011 (the "**Agreement**"), pursuant to which Supplier agreed to manufacture and sell to Purchaser, and Purchaser agreed to purchase from Supplier, certain SP Polysilicon Based Products.

(b) The Parties desire to amend the Agreement to amend Ingot pricing and to amend certain other terms and conditions thereof.

NOW THEREFORE, in consideration of the promises set forth above, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto, intending to be legally bound, hereby agree as follows:

AGREEMENT

1. Buyer hereby agrees to target purchase of ***MT Ingot (including wafer) in 2011.

2. Schedule 3.1(a) of the Agreement is hereby amended and restated as follows:

Schedule 3.1(a)

The purchase price for SP Polysilicon Based Products per kilogram shall be $***/kg

If the official foreign ***-day average currency exchange rate, as published by the Wall Street Journal, falls below *** South Korean Won to $1US, the Parties shall negotiate in good faith a mutually acceptable adjustment to the pricing set forth above.

If Purchaser receives a bona fide offer from a third party, who is qualified to satisfy Purchaser's applicable specifications, for the supply of similar products at a price equal to or less than ***% of the applicable purchase price under this Agreement, Purchase shall deliver notice to Supplier and the parties shall negotiate in good faith to reduce the applicable purchase price under this Agreement, which price adjustment shall become effective *** days following delivery of Purchaser's notice initiating negotiations for price reductions. If the parties are unable to reach agreement regarding a reduced price for the remainder of the contract term, Supplier may elect, within *** days of receiving notice of the third party's proposal, to reduce the applicable purchase price for the same quantity of product as proposed by the third party. If Supplier is unwilling to sell such quantity of product to Purchaser at the same price as the third party, Purchaser, in its sole and absolute discretion, may reduce its outstanding obligation to purchase such products from Supplier

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

by the quantity offered by the third party during the applicable time period and instead purchase such products from the third party.

3. This Amendment No. 4 is effective from July 5, 2011 until Dec. 31, 2016, or if earlier, until further amended by the parties.

4. All other provisions of the Agreement, except as specifically amended or waived hereby, shall remain in full force and effect and are incorporated herein.

5. If any part of this Amendment No. 4 or the Agreement as amended herein is found to be void or unenforceable for any reason, the remainder of this Amendment No. 4 and the Agreement as amended hereunder, shall be enforced, to the fullest extent possible, as if such void or unenforceable provision was not part of this Amendment No. 4.

6. This Amendment No. 4 may be executed in one or more counterparts, each of which shall be deemed to be an original and shall constitute one and the same instrument. This Amendment No. 4 may be executed by facsimile, and each such facsimile signature shall be deemed to be an original.

IN WITNESS THEREOF, the Parties hereto, intending to be legally bound, have executed this Amendment No. 4 as of the date first written above.

WOONJIN ENERGY CO., LTD

By: /s/ Hakdo Yoo
Name: Hakdo Yoo
Title: CEO
Date: 8/11/18

SUNPOWER CORPORATION

By: /s/ Paul Charrette
Name: Paul Charrette
Title: VP, Strategic Procurement
Date: 8/21/11

SUNPOWERPHILIPPINES MANUFACTURING LIMITED

By: /s/ Paul Charrette
Name Paul Charrette
Title VP, Strategic Procurement
Date: 8/21/11

Exhibit 10.2

EXECUTION

CONFIDENTIAL TREATMENT REQUESTED

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

CREDIT AGREEMENT

Dated as of July 18, 2011

among

SUNPOWER CORPORATION,
as the Borrower,

THE GUARANTORS PARTY HERETO,

and

UNION BANK, N.A.,
as the Lender

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CREDIT AGREEMENT

This CREDIT AGREEMENT is entered into as of July 18, 2011 among SUNPOWER CORPORATION, a Delaware corporation (the "Borrower"), the Guarantors (defined herein), and UNION BANK, N.A. (the "Lender").

RECITALS

The Borrower has requested that the Lender provide a revolving credit facility to the Borrower while the Borrower seeks other financing, for itself, and for the direct and indirect benefit of each Guarantor, and the Lender is willing to do so on the terms and subject to the conditions set forth herein.

In consideration of the mutual covenants and agreements herein contained, the parties hereto covenant and agree as follows:

ARTICLE I

DEFINITIONS AND ACCOUNTING TERMS

1.01 Defined Terms. As used in this Agreement, the following words and phrases, whether used in their singular or plural form, shall have the meanings set forth below:

"Acquisition", by any Person, means the acquisition by such Person, in a single transaction or in a series of related transactions, of either (a) all or any substantial portion of the property of, or a line of business or division of, another Person or (b) at least a majority of the Voting Stock of another Person, in each case whether or not involving a merger or consolidation with such other Person.

"Affiliate" means, with respect to any 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; provided, however, (a) for purposes of Section 7.07(a), a Person shall not be deemed to be an Affiliate of the Borrower due exclusively to the fact that such Person possesses, directly or indirectly, power to vote 10% or more of the Voting Stock of the Borrower, so long as such Person does not possess the direct or indirect power to vote more than 20% of the Voting Stock of the Borrower, and (b) for purposes of Section 8.09, a Person shall not be deemed to be an Affiliate of the Borrower due exclusively to the fact that such Person possesses, directly or indirectly, power to vote 10% or more of the Voting Stock of the Borrower.

"Agreement" means this Credit Agreement.

"Applicable Rate" means (a) with respect to LIBOR Rate Loans, 2.75% per annum and (b) with respect to Base Rate Loans, 1.75% per annum.

"Approved Fund" means any Fund that is administered or managed by (a) the Lender, (b) an Affiliate of the Lender or (c) an entity or an Affiliate of an entity that administers or manages the Lender.

"Audited Financial Statements" means the audited consolidated balance sheet of Borrower and its Subsidiaries for the fiscal year ended January 2, 2011, and the related consolidated statements of income or operations, shareholders' equity and cash flows of Borrower and its Subsidiaries for such fiscal year, including the notes thereto.

"Availability Period" means the period from and including the Closing Date to the earliest of (a) the Business Day prior to the Maturity Date, and (b) the date of termination, or reduction to $0.00, of the Revolving Commitment pursuant to Section 2.04.

"Bankruptcy Code" means Title 11 of the United States Code (11 U.S.C. §§ 101 et seq.), as now and hereafter in effect, or any successor statute.

"Base Rate" means, for any day, a fluctuating rate per annum equal to the higher of (a) the Federal Funds Rate plus 0.50%, and (b) the rate of interest in effect for such day as most recently publicly announced from time to time by Union Bank at its corporate headquarters as the "Union Bank, N.A. reference rate". It is understood and agreed that the "Union Bank, N.A. Reference Rate" is one of Union Bank's index rates and merely serves as a basis upon which effective rates of interest are calculated for loans making reference thereto and may not be the lowest or best rate at which Union Bank calculates interest or extends credit. The "Union Bank, N.A. reference rate" is a rate set by Union Bank based upon various factors including Union Bank's costs and desired return, general economic conditions and other factors, and is used as a reference point for pricing some loans, which may be priced at, above, or below such announced rate. Any change in such "Union Bank, N.A. reference rate" announced by Union Bank shall take effect at the opening of business on the day specified in the public announcement of such change. The Base Rate, as adjusted, shall constitute the Base Rate on the date when such adjustment is made and shall continue as the applicable Base Rate until further adjustment.

"Base Rate Loan" means a Loan that bears interest based on the Base Rate.

"Borrower" has the meaning specified in the introductory paragraph hereto.

"Borrowing" means a borrowing consisting of simultaneous Loans of the same Type and, in the case of LIBOR Rate Loans, having the same Interest Period made by the Lender pursuant to Section 2.01.

"Business Day" means any day other than a Saturday, Sunday or other day on which commercial banks are authorized to close under the Laws of, or are in fact closed in, the state where the Lender's Lending Office is located and, if such day relates to any LIBOR Rate Loan or any Base Rate Loan bearing interest at a rate based on the LIBOR Rate, means any such day that is also a London Banking Day.

"Capital Lease" means, as applied to any Person, any lease of any property by that Person as lessee which, in accordance with GAAP, is required to be accounted for as a capital lease on the balance sheet of that Person.

"Capitalized Lease Obligation" 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, or disclosed in a footnote to, 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 Law" means the occurrence, after the date of this Agreement of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation or application thereof by any Governmental Authority, or (c) the making or issuance of any request, guideline or directive (whether or not having the force of law) by any Governmental Authority; provided however, for purposes of this Agreement, the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, guidelines or directives in connection therewith are deemed to have gone into effect and adopted after the date of this Agreement.

"Change in Control" means the occurrence of any of the following:

(a) if the Borrower is a publicly held Person, (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 Borrower (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 Borrower (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 Borrower 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 Borrower;

(b) if the Borrower 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 Borrower, as a result of which those Persons who held 100% of the Voting Stock of the Borrower immediately prior to such transaction do not hold (either directly or indirectly) more than fifty percent (50%) of the Voting Stock of the Borrower (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 Borrower in a transaction or series of related transactions;

(c) the failure of the Borrower to own and control, directly or indirectly at least 100% of the Equity Interests of each Guarantor; and

(d) a "Fundamental Change" (as that term is defined in the Indenture).

"Closing Date" means July 18, 2011.

"Compliance Certificate" means a certificate substantially in the form of Exhibit 7.02(b).

"Consolidated EBITDA" means, for any period, for the Borrower and its Subsidiaries on a consolidated basis, an amount equal to Consolidated Net Income for such period plus, without duplication, the following to the extent deducted in calculating such Consolidated Net Income: (a) any deduction for (or less any gain from) income or franchise taxes; plus (b) interest expense; plus (c) amortization and depreciation expense; plus (d) any non-recurring and non-cash charges resulting from application of GAAP that requires a charge against earnings for the impairment of goodwill; plus (e) any non-cash expenses that arose in connection with the grant of stock options to officers, directors and employees of the Borrower and its Subsidiaries; plus (f) non-cash restructuring charges; plus (g) non-cash charges related to mark-to-market valuation adjustments as may be required by GAAP from time to time; plus (h) non-cash charges arising from changes in GAAP occurring after the date hereof; less (i) 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 item of income in a subsequent period).

"Consolidated Interest Charges" means, for any period, for Borrower and its Subsidiaries on a consolidated basis, an amount equal to the sum of (a) all interest, premium payments, debt discount, fees, charges and related expenses in connection with borrowed money (including capitalized interest) or in connection with the deferred purchase price of assets, in each case to the extent treated as interest in

accordance with GAAP, plus (b) the portion of rent expense with respect to such period under Capital Leases that is treated as interest in accordance with GAAP.

"Consolidated Net Income" means, for any period, for Borrower and its Subsidiaries on a consolidated basis, the net income from operations determined in accordance with GAAP.

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

"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. Without limiting the generality of the foregoing, a Person shall be deemed to be Controlled by another Person if such other Person possesses, directly or indirectly, power to vote 10% or more of the securities having ordinary voting power for the election of directors, managing general partners or the equivalent.

"Credit Extension" means a Borrowing.

"DB Facility" means any letter of credit facility or sub-facility provided pursuant to or in connection with that certain Letter of Credit Facility Agreement, dated as of April 12, 2010 by and among the Loan Parties, Bank of America, N.A., as syndication agent, Deutsche Bank AG New York Branch, as issuing bank and as administrative agent, and the other parties thereto from time to time, as the same may be amended, modified, supplemented, extended or restated from time to time.

"DB LOC" means each letter of credit issued under or in connection with the DB Facility.

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

"Default" means any event or condition that constitutes an Event of Default or that, with the giving of any notice, the passage of time, or both, would be an Event of Default.

"Default Rate" means when used with respect to Obligations, an interest rate equal to (i) the Base Rate plus (ii) the Applicable Rate, if any, applicable to Base Rate Loans plus (iii) 5% per annum; provided, however, that with respect to a LIBOR Rate Loan, the Default Rate shall be an interest rate equal to the interest rate (including any Applicable Rate) otherwise applicable to such Loan plus 5% per annum, in each case to the fullest extent permitted by applicable Laws.

"Disposition" or "Dispose" means the sale, transfer, license, lease or other disposition of any property by any Loan Party or any Subsidiary, including any Sale and Leaseback Transaction and any sale, assignment, transfer or other disposal, with or without recourse, of any notes or accounts receivable or any rights and claims associated therewith.

"Dollar" "dollar" and "$" mean lawful money of the United States.

"Domestic Subsidiary" means, with respect to any Person, any Subsidiary of such Person that is organized under the laws of any state of the United States or the District of Columbia.

"Environmental Laws" means any and all federal, state, local, foreign and other applicable statutes, laws, regulations, ordinances, rules, judgments, orders, decrees, permits, concessions, grants, franchises, licenses, agreements or governmental restrictions relating to pollution and the protection of the environment or the release of any hazardous materials into the environment, including those related to hazardous substances or wastes, air emissions and discharges to waste or public systems.

"Environmental Liability" means any liability, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities), of any Loan Party or any Subsidiary directly or indirectly resulting from or based upon (a) violation of any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the release or threatened release of any Hazardous Materials into the environment or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

"Equity Interests" means, with respect to any Person, all of the shares of capital stock of (or other ownership or profit interests in) such Person, all of the warrants, options or other rights for the purchase or acquisition from such Person of shares of capital stock of (or other ownership or profit interests in) such Person, all of the securities convertible into or exchangeable for shares of capital stock of (or other ownership or profit interests in) such Person or warrants, rights or options for the purchase or acquisition from such Person of such shares (or such other interests), and all of the other ownership or profit interests in such Person (including partnership, member or trust interests therein), whether voting or nonvoting, and whether or not such shares, warrants, options, rights or other interests are outstanding on any date of determination.

"ERISA" means the Employee Retirement Income Security Act of 1974.

"ERISA Affiliate" means any trade or business (whether or not incorporated) under common control with the Borrower within the meaning of Section 414(b) or (c) of the Internal Revenue Code (and Sections 414(m) and (o) of the Internal Revenue Code for purposes of provisions relating to Section 412 of the Internal Revenue Code).

"ERISA Event" means (a) a Reportable Event with respect to a Pension Plan; (b) a withdrawal by the Borrower or any ERISA Affiliate from a Pension Plan subject to Section 4063 of ERISA during a plan year in which such entity was a substantial employer (as defined in Section 4001(a)(2) of ERISA) or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA; (c) a complete or partial withdrawal by the Borrower or any ERISA Affiliate from a Multiemployer Plan or notification that a Multiemployer Plan is in reorganization; (d) the filing of a notice of intent to terminate, the treatment of a Pension Plan amendment as a termination under Section 4041 or 4041A of ERISA, or the commencement of proceedings by the PBGC to terminate a Pension Plan or Multiemployer Plan; (e) an event or condition which constitutes grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan; (g) the determination that any Pension Plan is considered an at-risk plan or a plan in endangered or critical status within the meaning of Sections 430, 431 and 432 of the Internal Revenue Code or Sections 303, 304 and 305 of ERISA or (h) the imposition of any liability under Title IV of ERISA, other than for PBGC premiums due but not delinquent under Section 4007 of ERISA, upon the Borrower or any ERISA Affiliate.

"Event of Default" has the meaning specified in Section 9.01.

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

"Excluded Taxes" means, with respect to the Lender, or any other recipient of any payment to be made by or on account of any obligation of the Borrower hereunder, (a) taxes imposed on or measured by its overall net income (however denominated), and franchise taxes imposed on it (in lieu of net income taxes), by the jurisdiction (or any political subdivision thereof) under the Laws of which such recipient is organized or in which its principal office is located or, in the case of any Lender, in which its applicable Lending Office is located, (b) any branch profits taxes imposed by the United States or any similar tax imposed by any other jurisdiction in which the Borrower is located (c) any backup withholding tax that is required by the Internal Revenue Code to be withheld from amounts payable to the Lender if the Lender has failed to comply with clause (A) of Section 3.01(e)(ii) and (d) in the case of a Foreign Lender (other than an assignee pursuant to a request by the Borrower under Section 10.13), any United States withholding tax that (i) is required to be imposed on amounts payable to such Foreign Lender pursuant to the Laws in force at the time such Foreign Lender becomes a party hereto (or designates a new Lending Office) or (ii) is attributable to a Foreign Lender's failure or inability (other than as a result of a Change in Law) to comply with clause (B) of Section 3.01(e)(ii), except to the extent that such Foreign Lender (or its assignor, if any) was entitled, at the time of designation of a new Lending Office (or assignment), to receive additional amounts from the Borrower with respect to such withholding tax pursuant to Section 3.01(a)(ii) or 3.01(c).

"FASB ASC" means the Accounting Standards Codification of the Financial Accounting Standards Board.

"Federal Funds Rate" means, for any day, the rate per annum (rounded upwards, if necessary, to the nearest 1/100 of 1%) equal to the weighted average of the rates on overnight federal funds transactions with members of the Federal Reserve System arranged by federal funds brokers on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; provided that (a) if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day, and (b) if no such rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day shall be the average rate (rounded upward, if necessary, to a whole multiple of 1/100 of 1%) charged to Union Bank on such day on such transactions as determined by the Lender.

"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 8.03(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 Borrower 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 8.03(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 8.03(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.

"Foreign Lender" means any Lender that is organized under the Laws of a jurisdiction other than that in which the Borrower is resident for tax purposes. For purposes of this definition, the United States, each State thereof and the District of Columbia shall be deemed to constitute a single jurisdiction.

"FRB" means the Board of Governors of the Federal Reserve System of the United States.

"Fund" means any Person (other than a natural person) that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its activities.

"GAAP" means generally accepted accounting principles in the United States set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board, consistently applied and as in effect from time to time.

"Governmental Authority" means the government of the United States or any other nation, or of any political subdivision 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 (including any supra-national bodies such as the European Union or the European Central Bank).

"Guarantee" means, as to any Person, (a) any obligation, contingent or otherwise, of such Person guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation payable or performable by another Person (the "primary obligor") in any manner, whether directly or indirectly, and including any obligation of such Person, direct or indirect, (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation, (ii) to purchase or lease property, securities or services for the purpose of assuring the obligee in respect of such Indebtedness or other obligation of the payment or performance of such Indebtedness or other obligation, (iii) to maintain working capital, equity capital or any other financial statement condition or liquidity or level of income or cash flow of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation, or (iv) entered into for the purpose of assuring in any other manner the obligee in respect of such Indebtedness or other obligation of the payment or performance thereof or to protect such obligee against loss in respect thereof (in whole or in part), or (b) any Lien on any assets of such Person securing any Indebtedness or other obligation of any other Person, whether or not such Indebtedness or other obligation is assumed by such Person. The amount of any Guarantee shall be deemed to be an amount equal to the stated or determinable amount of the related primary obligation, or portion thereof, in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by the guaranteeing Person in good faith. The term "Guarantee" as a verb has a corresponding meaning.

"Guarantors" means (a) each Domestic Subsidiary of the Borrower identified as a "Guarantor" on the signature pages hereto, and (b) each other Person that joins as a Guarantor, together with their successors and permitted assigns.

"Guaranty" means the Guaranty made by the Guarantors in favor of the Lender pursuant to Article IV.

"Hazardous Materials" means all explosive or radioactive substances or wastes and all hazardous or toxic substances, wastes or other pollutants, including petroleum or petroleum distillates, asbestos or asbestos-containing materials, polychlorinated biphenyls, radon gas, infectious or medical wastes and all other substances or wastes of any nature regulated pursuant to any Environmental Law because of their hazardous, dangerous or deleterious properties or characteristics.

"Indebtedness" means, as to any Person at a particular time, without duplication, all of the following, whether or not included as indebtedness or liabilities in accordance with GAAP:

(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, loan agreements or other 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 thereof);

(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 of such Person in respect of any Indebtedness of others;

(h) all Capitalized Lease Obligations of such Person;

(i) all obligations, contingent or otherwise, of such Person as an account party in respect of letters of credit (including standby and commercial) and letters of guaranty, or in respect of bankers' acceptances; and

(j) all net payment obligations, contingent or otherwise, of such Person under Swap Contracts.

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 provide that such Person is not liable therefor.

"Indemnified Taxes" means Taxes other than Excluded Taxes.

"Indemnitees" has the meaning specified in Section 10.04(b).

"Information" has the meaning specified in Section 10.07.

"Interest Payment Date" means (a) as to any LIBOR Rate Loan, the last day of each Interest Period applicable to such Loan and the Maturity Date; provided, however, that if any Interest Period for a LIBOR Rate Loan exceeds three months, the respective dates that fall every three months after the beginning of such Interest Period until the last day of such Interest Period shall also be Interest Payment Dates; and (b) as to any Base Rate Loan, the last Business Day of each calendar month.

"Interest Period" means, as to each LIBOR Rate Loan, the period commencing on the date such LIBOR Rate Loan is disbursed or converted to or continued as a LIBOR Rate Loan and ending on the

date one, two or three months thereafter, as selected by the Borrower in its Loan Notice, during which the LIBOR Rate applicable to such LIBOR Rate Loan shall remain unchanged; provided that:

(a) any Interest Period that would otherwise end on a day that is not a Business Day shall be extended to the next succeeding Business Day unless such Business Day falls in another calendar month, in which case such Interest Period shall end on the immediately preceding Business Day;

(b) any Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Business Day of the calendar month at the end of such Interest Period; and

(c) no Interest Period shall extend beyond the Maturity Date.

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

"Investment" means, as to any Person, any acquisition or investment by such Person, whether by means of (a) the purchase or other acquisition of Equity Interests of another Person, (b) a loan, advance or capital contribution to, a Guarantee, an assumption of debt of, or purchase or other acquisition of any other debt or equity participation or interest in, another Person, or (c) an Acquisition. For purposes of covenant compliance, the amount of any Investment shall be the amount actually invested, without adjustment for subsequent increases or decreases in the value of such Investment.

"IRS" means the United States Internal Revenue Service.

"Laws" means, collectively, all international, foreign, federal, state and local statutes, treaties, rules, guidelines, regulations, ordinances, codes and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, of, and agreements with, any Governmental Authority, in each case whether or not having the force of law.

"Lender" means UNION BANK, N.A., and its successors and assigns.

"Lending Office" means the office or offices of the Lender described on Schedule 2.01, or such other office or offices as the Lender may from time to time notify the Borrower.

"LIBOR Base Rate" means,

(a) for any Interest Period with respect to a LIBOR Rate Loan, the rate determined by the Lender to be the per annum rate (rounded upward to the nearest one-hundredth of one percent (1/100%)) at which deposits in Dollars, for delivery on the first day of such Interest Period, in same day funds, in the approximate amount of the LIBOR Rate Loan being made, continued or converted and with a term equal to such Interest Period would be offered to the Lender, outside of the United States at approximately 11:00 a.m. (London time) three (3) London Banking Days before the first day of such Interest Period.

(b) for any interest calculation with respect to a Base Rate Loan on any date, the rate per annum equal to the rate per annum determined by the Lender to be the rate at which deposits in Dollars, for delivery on the date of determination, in same day funds, in the approximate amount of the Base Rate Loan being made or maintained and with a term equal to one month would be offered to the

Lender, outside of the United States at approximately 11:00 a.m. (London time) before at its request at the date and time of determination.

"LIBOR Rate" means (a) for any Interest Period with respect to any LIBOR Rate Loan, a rate per annum determined by the Lender to be equal to the quotient obtained by dividing (i) the LIBOR Base Rate for such LIBOR Rate Loan for such Interest Period by (ii) one minus the LIBOR Reserve Percentage for such LIBOR Rate Loan for such Interest Period, stated as a decimal and (b) for any day with respect to any Base Rate Loan the interest rate on which is determined by reference to the LIBOR Rate, a rate per annum determined by the Lender to be equal to the quotient obtained by dividing (i) the LIBOR Base Rate for such Base Rate Loan for such day by (ii) one minus the LIBOR Reserve Percentage for such Base Rate Loan for such day. The LIBOR Rate shall be rounded upward to the nearest 1/100 of 1%) and, once determined, shall remain unchanged during the applicable Interest Period, except for changes to reflect adjustments in the LIBOR Reserve Percentage.

"LIBOR Rate Loan" means a Loan that bears interest at a rate based on clause (a) of the definition of "LIBOR Rate."

"LIBOR Reserve Percentage" means, for any day, the reserve percentage (expressed as a decimal, carried out to five decimal places) in effect on such day, whether or not applicable to any Lender, under regulations issued from time to time by the FRB for determining the maximum reserve requirement (including any emergency, supplemental or other marginal reserve requirement) with respect to Eurocurrency funding (currently referred to as "Eurocurrency liabilities"). The LIBOR Rate for each outstanding LIBOR Rate Loan and for each outstanding Base Rate Loan the interest rate on which is determined by reference to the LIBOR Rate shall be adjusted automatically as of the effective date of any change in the LIBOR Reserve Percentage.

"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" means an extension of credit by the Lender to the Borrower under Article II in the form of a Revolving Loan.

"Loan Documents" means, collectively, this Agreement, the Note, and any and all other agreements, documents, or instruments (including financing statements) entered into in connection with the transactions contemplated by this Agreement, together with all alterations, amendments, changes, extensions, modifications, refinancings, refundings, renewals, replacements, restatements, or supplements, of or to any of the foregoing.

"Loan Notice" means a notice of (a) a Borrowing of Revolving Loans, (b) a conversion of Loans from one Type to the other, or (c) a continuation of LIBOR Rate Loans, in each case pursuant to Section 2.02(a), which, if in writing, shall be substantially in the form of Exhibit 2.02.

"Loan Parties" means, collectively, the Borrower and each Guarantor.

"London Banking Day" means any day on which dealings in Dollar deposits are conducted by and between banks in the London interbank eurodollar market.

"Material Adverse Effect" means (a) a material adverse change in, or a material adverse effect on, the operations, business, properties, liabilities (actual or contingent) or financial condition of the Borrower and its Subsidiaries taken as a whole; (b) a material impairment of the ability of any Loan Party to perform its obligations under any Loan Document to which it is a party or a material adverse effect on the rights and remedies of the Lender under any Loan Document; or (c) a material adverse effect on the legality, validity, binding effect or enforceability against any Loan Party of any Loan Document to which it is a party.

"Maturity Date" means October 31, 2011; provided, however, that, in each case, if such date is not a Business Day, the Maturity Date shall be the next preceding Business Day.

"Moody's" means Moody's Investors Service, Inc. and any successor thereto.

"Multiemployer Plan" means any employee benefit plan of the type described in Section 4001(a)(3) of ERISA, to which the Borrower or any ERISA Affiliate makes or is obligated to make contributions, or during the preceding five plan years, has made or been obligated to make contributions.

"Multiple Employer Plan" means a Plan which has two or more contributing sponsors (including the Borrower or any ERISA Affiliate) at least two of whom are not under common control, as such a plan is described in Section 4064 of ERISA.

"New Letter of Credit Facility" means an unsecured letter of credit facility entered into by the Borrower to replace the DB Facility providing for the issuance of letters of credit of up to $1,000,000,000 on terms reasonably similar to those set forth in the DB Facility, provided that such facility does not also provide for loans, advances or extensions of credit, other than letters of credit.

"Note" has the meaning specified in Section 2.09.

"Obligations" means all advances to, and all debts, liabilities, obligations, covenants and duties of every kind of, any Loan Party arising under any Loan Document or otherwise with respect to any Loan, whether direct or indirect (including those acquired by assumption), absolute or contingent, liquidated or unliquidated, legal or equitable, due or to become due, now existing or hereafter arising, voluntary or involuntary and however arising, whether such Loan Party is liable individually or jointly or with others, whether incurred before, during or after any proceeding under any Debtor Relief Laws, and including interest and fees that accrue after the commencement by or against any Loan Party or any Affiliate thereof of any proceeding under any Debtor Relief Laws naming such Person as the debtor in such proceeding, regardless of whether such interest and fees are allowed claims in such proceeding.

"Organization Documents" means, (a) with respect to any corporation, the certificate or articles of incorporation and the bylaws (or equivalent or comparable constitutive documents with respect to any non-U.S. jurisdiction); (b) with respect to any limited liability company, the certificate or articles of formation or organization and operating agreement; and (c) with respect to any partnership, joint venture, trust or other form of business entity, the partnership, joint venture or other applicable agreement of formation or organization and any agreement, instrument, filing or notice with respect thereto filed in connection with its formation or organization with the applicable Governmental Authority in the jurisdiction of its formation or organization and, if applicable, any certificate or articles of formation or organization of such entity.

"Other Taxes" means all present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies arising from any payment made hereunder or under any other

Loan Document or from the execution, delivery or enforcement of, or otherwise with respect to, this Agreement or any other Loan Document.

"Outstanding Amount" means, with respect to any Loans on any date, the aggregate outstanding principal amount thereof after giving effect to any borrowings and prepayments or repayments of any Loans occurring on such date.

"Participant" has the meaning specified in Section 10.06(d).

"Patriot Act" means the Uniting And Strengthening America By Providing Appropriate Tools Required To Intercept And Obstruct Terrorism (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) and the USA PATRIOT Improvement and Reauthorization Act of 2005 (Pub. L. 109-177). USA PATRIOT Act).

"PBGC" means the Pension Benefit Guaranty Corporation or any successor thereto.

"Pension Act" means the Pension Protection Act of 2006.

"Pension Funding Rules" means the rules of the Internal Revenue Code and ERISA regarding minimum required contributions (including any installment payment thereof) to Pension Plans and set forth in, with respect to plan years ending prior to the effective date of the Pension Act, Section 412 of the Internal Revenue Code and Section 302 of ERISA, each as in effect prior to the Pension Act and, thereafter, Section 412, 430, 431, 432 and 436 of the Internal Revenue Code and Sections 302, 303, 304 and 305 of ERISA.

"Pension Plan" means any employee pension benefit plan (including a Multiple Employer Plan or a Multiemployer Plan) that is maintained or is contributed to by the Borrower and any ERISA Affiliate and is either covered by Title IV of ERISA or is subject to the minimum funding standards under Section 412 of the Internal Revenue Code.

"Permitted Indebtedness" has the meaning given in Section 8.03.

"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 8.02;

(g) additional loans or advances by the Borrower 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 expressly permitted under Section 8.02(d);

(i) loans, advances, or investments which constitute Indebtedness permitted under Section 8.03;

(j) advances to, or investments in, a Subsidiary, in WJE, or in Philippine Electric Corp. by the Borrower 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 Loan Party or Subsidiary pursuant to the Tech Credit Agreement;

(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; and

(m) other strategic business development investments so long as the amount of such investments does not exceed (as to the Loan Parties in the aggregate) $20,000,000 at any one time.

"Permitted Liens" means, at any time, the following Liens in respect of property of any Loan Party:

(a) Liens imposed by law for taxes that are not yet due or are being contested in compliance with Section 7.04;

(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 7.04;

(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 9.01(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 Borrower or any Subsidiary;

(g) Liens on property or assets of the Borrower or any Subsidiary existing on the Closing Date and listed on Schedule 8.01; 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 Borrower 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 Borrower 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 Borrower or any Subsidiary in the ordinary course of business as conducted from time to time);

(i) Liens arising out of Capitalized 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 Borrower 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 Borrower or any Subsidiary to permit satisfaction of overdraft or similar obligations incurred in the ordinary course of business of the Borrower or any Subsidiary or (iii) relating to purchase orders and other agreements entered into with customers of the Borrower 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 Borrower 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 Borrower or any Subsidiary in any accounts receivable or other proceeds arising from inventory consigned by the Borrower 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, other than WJE Stock, held by the Borrower or a Subsidiary securing obligations of such joint venture;

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

(u) Liens on accounts receivable, inventory and cash collateral securing Permitted Indebtedness under the DB Facility granted pursuant to the documents, instruments and agreements governing the DB Facility as in effect on the Closing Date; provided that such Liens do not attach to any WJE Stock;

(v) Liens in favor of customers or suppliers of the Borrower 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 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 in the ordinary course of the Borrower'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 WJE Stock;

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

(bb) Liens on Equity Interest in project finance Subsidiaries of the Borrower or Subsidiaries of the Borrower to secure project finance related Indebtedness;

(cc) customary Liens on securities accounts of a Loan Party in favor of the securities broker with whom such accounts are maintained, provided that (i) such Liens arise in the ordinary course of business of the applicable Loan Party and such broker pursuant to such broker's standard form of brokerage agreement; (ii) such securities accounts are not subject to restrictions against access by any

Loan Party; (iii) such Liens secure only the payment of standard fees for brokerage services charged by, but not financing made available by, such broker and such Liens do not secure Indebtedness for borrowed money; and (iv) such Liens are not intended by any Loan Party to provide collateral to such broker; and

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

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

"Plan" means any employee benefit plan within the meaning of Section 3(3) of ERISA (including a Pension Plan), maintained for employees of the Borrower or any Subsidiary or any such Plan to which the Borrower or any Subsidiary is required to contribute on behalf of any of its employees.

"Rating Agency" means Moody's, S&P, Fitch Ratings Ltd. or any other nationally recognized rating agency or service.

"Related Parties" means, with respect to any Person, such Person's Affiliates and the partners, directors, officers, employees, agents, trustees and advisors of such Person and of such Person's Affiliates; provided, however, that neither the Borrower, WJE nor any of their Subsidiaries shall be treated as a Related Party of the Lender.

"Reportable Event" means any of the events set forth in Section 4043(c) of ERISA, other than events for which the thirty-day notice period has been waived.

"Request for Credit Extension" means with respect to a Borrowing, conversion or continuation of Loans, a Loan Notice.

"Responsible Officer" means, (a) in the case of the Borrower or any other Loan Party, 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. Any document delivered hereunder that is signed by a Responsible Officer of a Loan Party shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of such Loan Party and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Loan Party.

"Restricted Payment" means any dividend or other distribution (whether in cash, securities or other property) with respect to any Equity Interests of any Person, or any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, defeasance, acquisition, cancellation or termination of any such Equity Interests or on account of any return of capital to such Person's stockholders, partners or members (or the equivalent Person thereof), or any option, warrant or other right to acquire any such dividend or other distribution or payment; provided, however, that repurchases of Equity Interests of the Borrower from employees, officers, directors, and consultants pursuant to the Borrower's equity compensation plans shall not constitute "Restricted Payments" hereunder.

"Revolving Commitment" means, as to the Lender, its obligation to make Revolving Loans to the Borrower pursuant to Section 2.01, in an aggregate principal amount at any one time outstanding not to

exceed the amount set forth opposite the Lender's name on Schedule 2.01, as such amount may be adjusted from time to time in accordance with this Agreement. The amount of the Revolving Commitment in effect on the Closing Date is $50,000,000.

"Revolving Commitment Reduction Event" means any sale, assignment, lease, pledge, transfer, encumbrance or other Disposition of any WJE Stock; provided, however, the sale of the first 6,209,321 shares of WJE Stock by the Borrower to unaffiliated purchasers after the Closing Date shall not be deemed to be, individually or in the aggregate, a Revolving Commitment Reduction Event.

"Revolving Loan" has the meaning specified in Section 2.01.

"S&P" means Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc. and any successor thereto.

"SEC" means the Securities and Exchange Commission, or any Governmental Authority succeeding to any of its principal functions.

"SocGen Facility" means that certain Revolving Credit Agreement, dated as of November 23, 2010 by and among SunPower Corporation Malta Holdings Limited, as borrower ("SunPower Malta"), the Borrower, as guarantor, and Société Générale, Milan Branch ("SocGen"), as lender, as amended from time to time, including by that certain Amendment No. 1 to Revolving Credit Agreement, in the form delivered to the Lender prior to the Closing Date.

"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 such 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 Transaction" means any of the following:

(a) the acquisition by a Loan Party of all or substantially all of the assets of another Person or division of such Person;

(b) the merger or consolidation of any Loan Party with or into any other entity, provided that the surviving entity shall be a Loan Party, and provided further that, in any transaction involving the Borrower, the Borrower shall be the surviving Person;

(c) the acquisition by a Loan Party of a controlling or majority interest in any other Person; and

(d) investments in other Persons, including joint ventures, by a Loan Party.

"Subsidiary" of a Person means a corporation, partnership, joint venture, limited liability company or other business entity of which a majority of the shares of Voting Stock is at the time beneficially owned, or the management of which is otherwise controlled, directly, or indirectly through one or more intermediaries, or both, by such Person. Unless otherwise specified, all references herein to a "Subsidiary" or to "Subsidiaries" shall refer to a Subsidiary or Subsidiaries of the Borrower.

"Swap Contract" means (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such master agreement, together with any related schedules, a "Master Agreement"), including any such obligations or liabilities under any Master Agreement.

"Swap Termination Value" means, in respect of any one or more Swap Contracts, after taking into account the effect of any legally enforceable netting agreement relating to such Swap Contracts, (a) for any date on or after the date such Swap Contracts have been closed out and termination value(s) determined in accordance therewith, such termination value(s) and (b) for any date prior to the date referenced in clause (a), the amount(s) determined as the mark-to-market value(s) for such Swap Contracts, as determined based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Swap Contracts (which may include the Lender or any Affiliate of the Lender).

"Taxes" means all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

"Tech Credit Agreement" means that certain First Amended and Restated Purchase Agreement, dated November 1, 2010, between SunPower North America LLC and Technology Credit Corporation, as amended on January 25, 2011 and April 18, 2011.

"Threshold Amount" means $500,000.

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

"Total Revolving Outstandings" means the aggregate Outstanding Amount of all Revolving Loans.

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

"Type" means, with respect to any Loan, its character as a Base Rate Loan or a LIBOR Rate Loan.

"UCC" means the Uniform Commercial Code as the same may, from time to time, be in effect in the State of California, provided, if the context relates to the perfection or effect of perfection of any security interest, "UCC" shall refer to the Uniform Commercial Code of the jurisdiction governing such matter.

"Union Bank" means Union Bank, N.A. and its successors.

"United States" and "U.S." mean the United States of America.

"Voting Stock" means, with respect to any Person, Equity Interests issued by such 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 though the right so to vote has been suspended by the happening of such a contingency.

"WJE" means WOONGJIN ENERGY CO., LTD., a company organized under the laws of the Republic of Korea.

"WJE Stock" means the common stock of WJE and any other Equity Interests in WJE held by any Loan Party from time to time.

1.02 Other Interpretive Provisions. With reference to this Agreement and each other Loan Document, unless otherwise specified herein or in such other Loan Document:

(a) 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." Unless the context requires otherwise, (i) any definition of or reference to any agreement, instrument or other document (including any Organization Document) shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein or in any other Loan Document), (ii) any reference herein to any Person shall be construed to include such Person's successors and assigns, (iii) the words "hereto," "herein," "hereof" and "hereunder," and words of similar import when used in any Loan Document, shall be construed to refer to such Loan Document in its entirety and not to any particular provision thereof, (iv) all references in a Loan Document to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, the Loan Document in which such references appear, (v) any reference to any law shall include all statutory and regulatory provisions consolidating, amending, replacing or interpreting such law and any reference to any law or regulation shall, unless otherwise specified, refer to such law or regulation as amended, modified or supplemented from time to time, and (vi) the words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

(b) In the computation of periods of time from a specified date to a later specified date, the word "from" means "from and including;" the words "to" and "until" each mean "to but excluding;" and the word "through" means "to and including."

(c) Section headings herein and in the other Loan Documents are included for convenience of reference only and shall not affect the interpretation of this Agreement or any other Loan Document.

1.03 Accounting Terms.

(a) Generally. Except as otherwise specifically prescribed herein, all accounting terms not specifically or completely defined herein shall be construed in conformity with, and all financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Agreement shall be prepared in conformity with, GAAP applied on a consistent basis, as in effect from time to time, applied in a manner consistent with that used in preparing the Audited Financial Statements. Notwithstanding the foregoing, for purposes of determining compliance with any covenant (including the computation of any financial covenant) contained herein, Indebtedness of the Loan Parties and their Subsidiaries shall be deemed to be carried at 100% of the outstanding principal amount thereof, and the effects of FASB ASC 825 on financial liabilities shall be disregarded.

(b) Changes in GAAP. If at any time any change in GAAP would affect the computation of any financial ratio or requirement set forth in any Loan Document, and the Borrower shall so request, the Lender and the Borrower shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP; provided that, until so amended, (i) such ratio or requirement shall continue to be computed in accordance with GAAP prior to such change therein and (ii) the Borrower shall provide to the Lender financial statements and other documents required under this Agreement or as reasonably requested hereunder setting forth a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP.

(c) Calculations. Notwithstanding the above, the parties hereto acknowledge and agree that all calculations of the financial covenants in Section 8.14 shall be made on a pro forma basis with respect to any Disposition or acquisition occurring during the applicable period.

1.04 [Reserved].

1.05 Rounding. Any financial ratios required to be maintained by the Borrower pursuant to this Agreement shall be calculated by dividing the appropriate component by the other component, carrying the result to one place more than the number of places by which such ratio is expressed herein and rounding the result up or down to the nearest number (with a rounding-up if there is no nearest number).

1.06 Times of Day. Unless otherwise specified, all references herein to times of day shall be references to Pacific time (daylight or standard, as applicable).

ARTICLE II

THE COMMITMENTS AND CREDIT EXTENSIONS

2.01 Revolving Loans. Subject to the terms and conditions set forth herein, the Lender agrees to make loans (each such loan, a "Revolving Loan") to the Borrower in Dollars from time to time on any Business Day during the Availability Period in an aggregate amount not to exceed at any time outstanding the amount of the Revolving Commitment; provided, however, that after giving effect to any Borrowing of Revolving Loans, the Total Revolving Outstandings shall not exceed the Revolving Commitment. Within the limits of the Revolving Commitment, and subject to the other terms and conditions hereof, the Borrower may borrow under this Section 2.01, prepay under Section 2.03, and reborrow under this Section 2.01. Revolving Loans may be Base Rate Loans or LIBOR Rate Loans, as further provided herein.

2.02 Borrowings, Conversions and Continuations of Loans.

(a) Each Borrowing, each conversion of Loans from one Type to the other, and each continuation of LIBOR Rate Loans shall be made upon the Borrower's irrevocable notice to the Lender, which may be given by telephone. Each such notice must be received by the Lender not later than 11:00 a.m. (i) on the date that is three Business Days prior to the requested date of any Borrowing of, conversion to or continuation of, LIBOR Rate Loans or of any conversion of LIBOR Rate Loans to Base Rate Loans, and (ii) on the requested date of any Borrowing of Base Rate Loans. Each telephonic notice by the Borrower pursuant to this Section 2.02(a) must be confirmed promptly by delivery to the Lender of a written Loan Notice, appropriately completed and signed by a Responsible Officer of the Borrower. Each Borrowing of, conversion to or continuation of LIBOR Rate Loans shall be in a principal amount of $5,000,000 or a whole multiple of $1,000,000 in excess thereof. Each Borrowing of or conversion to Base Rate Loans shall be in a principal amount of $5,000,000 or a whole multiple of $1,000,000 in excess thereof. Each Loan Notice (whether telephonic or written) shall specify (i) whether the Borrower is requesting a Borrowing, a conversion of Loans from one Type to the other, or a continuation of LIBOR Rate Loans, (ii) the requested date of the Borrowing, conversion or continuation, as the case may be (which shall be a Business Day), (iii) the principal amount of Loans to be borrowed, converted or continued, (iv) the Type of Loans to be borrowed or to which existing Loans are to be converted, and (v) if applicable, the duration of the Interest Period with respect thereto. If the Borrower fails to specify a Type of a Loan in a Loan Notice, then the applicable Loans shall be made as Base Rate Loans. If the Borrower fails to provide a notice as to conversion or continuation, then the applicable Loan shall be continued with the same election as to Type and as to Interest Period as previously applied to the Loan. If the Borrower requests a Borrowing of, conversion to, or continuation of LIBOR Rate Loans in any Loan Notice, but fails to specify an Interest Period, it will be deemed to have specified an Interest Period of one month.

(b) Upon satisfaction of the applicable conditions set forth in Section 5.02 (and, if such Borrowing is the initial Credit Extension, Section 5.01), the Lender will fund Loans to the Borrower either by (i) crediting the account of the Borrower on the books of Union Bank with the amount of such funds or (ii) wire transfer of such funds, in each case in accordance with instructions provided to (and reasonably satisfactory to) the Lender by the Borrower.

(c) Except as otherwise provided herein, a LIBOR Rate Loan may be continued or converted only on the last day of the Interest Period for such LIBOR Rate Loan. During the existence of an Event of Default, no Loans may be requested as, converted to or continued as LIBOR Rate Loans without the consent of the Lender.

(d) The Lender shall promptly notify the Borrower of the interest rate applicable to any Interest Period for LIBOR Rate Loans upon determination of such interest rate. At any time that Base Rate Loans are outstanding, the Lender shall notify the Borrower of any change in Union Bank's prime rate used in determining the Base Rate promptly following the public announcement of such change.

(e) After giving effect to all Borrowings, all conversions of Loans from one Type to the other, and all continuations of Loans as the same Type, there shall not be more than ten Interest Periods in effect with respect to all Loans.

2.03 Prepayments.

(a) Voluntary Prepayments. The Borrower may, upon notice from the Borrower to the Lender, at any time or from time to time voluntarily prepay Revolving Loans in whole or in part

without premium or penalty; provided that (A) such notice must be received by the Lender not later than 12:00 p.m. (1) on the date that is three Business Days prior to any date of prepayment of LIBOR Rate Loans and (2) on the date of prepayment of Base Rate Loans; (B) any such prepayment of LIBOR Rate Loans shall be in a principal amount of $5,000,000 or a whole multiple of $1,000,000 in excess thereof (or, if less, the entire principal amount thereof then outstanding); and (C) any prepayment of Base Rate Loans shall be in a principal amount of $5,000,000 or a whole multiple of $1,000,000 in excess thereof (or, if less, the entire principal amount thereof then outstanding). Each such notice shall specify the date and amount of such prepayment and the Type(s) of Loans to be prepaid and, if LIBOR Rate Loans are to be prepaid, the Interest Period(s) of such Loans. If such notice is given by the Borrower, the Borrower shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein. Any prepayment of a LIBOR Rate Loan shall be accompanied by all accrued interest on the amount prepaid, together with any additional amounts required pursuant to Section 3.05. Unless otherwise instructed by the Borrower, prepayments of the Revolving Loans pursuant to this Section 2.03(a) shall not reduce the Revolving Commitment.

(b) Mandatory Prepayments.

(i) Revolving Commitment Overadvances. If for any reason the Total Revolving Outstandings at any time exceed (as a result of reductions in the Revolving Commitment from time to time or the termination of the Revolving Commitment pursuant to Section 2.04 or for any other reason) the Revolving Commitment, then in effect, the Borrower shall make a mandatory prepayment in respect of the Revolving Loans in an aggregate amount equal to such excess within two (2) Business Days of the date on which such excess first existed. Notwithstanding anything to the contrary set forth herein or in any other Loan Document, neither the Borrower's failure to deliver any the notices required under Section 7.03, shall limit or result in a waiver or suspension of the Borrower's absolute and unconditional obligation to make the payments required in this Section 2.03(b)(i); and, for the sake of clarity, such payment obligation is not subject to remedy or cure.

(ii) Application of Mandatory Prepayments. All amounts required to be paid pursuant to this Section 2.03(b) shall be applied first to Base Rate Loans and then to LIBOR Rate Loans in direct order of Interest Period maturities. All prepayments under this Section 2.03(b) shall be subject to Section 3.05, but otherwise without premium or penalty, and shall be accompanied by interest on the principal amount prepaid through the date of prepayment.

2.04 Termination or Reduction of Revolving Commitment.

(a) Voluntary Termination or Reduction. The Borrower may, upon notice to the Lender, terminate, in whole or in part, the Revolving Commitment, or from time to time permanently reduce the Revolving Commitment to an amount not less than the Total Revolving Outstandings; provided that (i) any such notice shall be received by the Lender not later than 12:00 noon three Business Days prior to the date of termination or reduction, and (ii) any such partial reduction shall be in an aggregate amount of $25,000,000 or any whole multiple of $1,000,000 in excess thereof. All fees accrued with respect thereto until the effective date of any termination of the Revolving Commitment shall be paid on the effective date of such termination. Each notice delivered pursuant to this Section by the Borrower shall be irrevocable.

(b) Mandatory Reductions of Revolving Commitment. Effective on the date that is five (5) Business Days after the effective date of each Revolving Commitment Reduction Event, the Revolving Commitment shall be automatically and permanently reduced in an amount equal to fifty percent (50%) of the net proceeds from such Revolving Commitment Reduction Event. As used in this Section 2.04(b), "net proceeds" means that gross proceeds paid or payable in connection with any

Disposition that constitutes a Revolving Commitment Reduction Event, after deducting therefrom, the directly related transaction costs and expenses of the Borrower, including advisory fees incurred by the Borrower and taxes paid or payable (as reasonably determined by the Borrower) by the Borrower on such Disposition.

(c) Termination of the Revolving Commitment. The Revolving Commitment shall be deemed canceled and terminated in its entirety upon the closing of any new domestic credit facility or an extension of an existing domestic credit facility in favor of the Borrower or any of its Subsidiaries, regardless of whether the commitments thereunder are funded or unfunded, other than the New Letter of Credit Facility.

2.05 Repayment of Loans. The Borrower shall repay to the Lender on the Maturity Date the aggregate principal amount of all Revolving Loans outstanding on such date.

2.06 Interest.

(a) Subject to the provisions of subsection (b) below, (i) each LIBOR Rate Loan shall bear interest on the outstanding principal amount thereof for each Interest Period at a rate per annum equal to the sum of the LIBOR Rate for such Interest Period plus the Applicable Rate; and (ii) each Base Rate Loan shall bear interest on the outstanding principal amount thereof from the applicable borrowing date at a rate per annum equal to the Base Rate plus the Applicable Rate.

(b) (1) If any amount of principal of any Loan is not paid when due (after giving effect to any applicable grace periods), whether at stated maturity, by acceleration or otherwise, such amount shall thereafter bear interest at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws.

(ii) If any amount (other than principal of any Loan) payable by the Borrower under any Loan Document is not paid when due (after giving effect to any applicable grace periods), whether at stated maturity, by acceleration or otherwise, then upon the request of the Lender, such amount shall thereafter bear interest at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws.

(iii) Upon the request of the Lender, while any Event of Default exists and is continuing, the Borrower shall pay interest on the principal amount of all outstanding Obligations hereunder at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws.

(iv) Accrued and unpaid interest on past due amounts (including interest on past due interest) shall be due and payable upon demand.

(c) Interest on each Loan shall be due and payable in arrears on each Interest Payment Date applicable thereto and at such other times as may be specified herein. Interest hereunder shall be due and payable in accordance with the terms hereof before and after judgment, and before and after the commencement of any proceeding under any Debtor Relief Law.

2.07 Fees. In addition to the other fees described in the Loan Documents:

(a) Commitment Fee. The Borrower shall pay to the Lender, a commitment fee equal to the sum of the products of (i) 0.50% divided by 360 times (ii) for each day during the period of calculation, the actual daily amount by which the Revolving Commitment exceeded the Outstanding

Amount of Revolving Loans. The commitment fee shall accrue at all times during the Availability Period (or until the Obligations have been repaid in full), including at any time during which one or more of the conditions in Article V is not met, and shall be due and payable quarterly in arrears on the last Business Day of each March, June, September and December, commencing with the first such date to occur after the Closing Date, and on the last day of the Availability Period. The commitment fee shall be calculated quarterly in arrears.

(b) Upfront Fee. The Borrower shall pay to the Lender, on the Closing Date, an upfront fee in the amount of $75,000. Such fee shall be fully-earned when paid and shall not be refundable for any reason whatsoever.

2.08 Computation of Interest and Fees. All computations of interest for Base Rate Loans (including Base Rate Loans determined by reference to the LIBOR Rate) shall be made on the basis of a year of 365 or 366 days, as the case may be, and actual days elapsed. All other computations of fees and interest shall be made on the basis of a 360-day year and actual days elapsed (which results in more fees or interest, as applicable, being paid than if computed on the basis of a 365-day year). Interest shall accrue on each Loan for the day on which the Loan is made, and shall not accrue on a Loan, or any portion thereof, for the day on which the Loan or such portion is paid, provided that any Loan that is repaid on the same day on which it is made shall, subject to Section 2.10(a), bear interest for one day. Each determination by the Lender of an interest rate or fee hereunder shall be conclusive and binding for all purposes, absent manifest error.

2.09 Evidence of Debt. The Credit Extensions made by the Lender shall be evidenced by one or more accounts or records maintained by the Lender in the ordinary course of business. Regardless of whether a Note is issued with respect to such Credit Extensions, the Borrower absolutely and unconditionally promises to pay to the order of the Lender, in lawful money of the United States of America, the aggregate unpaid principal amount owed to the Lender, together with interest thereon, and fees and other Obligations in accordance with the terms hereof. The accounts or records maintained by the Lender shall be conclusive absent manifest error of the amount of the Credit Extensions made by the Lender to the Borrower and the interest and payments thereon. Any failure to so record or any error in doing so shall not, however, limit or otherwise affect the obligation of the Borrower hereunder to pay any amount owing with respect to the Obligations. Upon the request of the Lender, the Borrower shall execute and deliver to the Lender a promissory note, which shall evidence the Lender's Loans in addition to such accounts or records. Each such promissory note shall be in the form of Exhibit 2.09 (a "Note"). The Lender may attach schedules to its Note and endorse thereon the date, Type (if applicable), amount and maturity of its Loans and payments with respect thereto.

2.10 Payments Generally.

(a) General. All payments to be made by the Borrower or any other Loan Party shall be made without condition or deduction for any counterclaim, defense, recoupment or setoff. Except as otherwise expressly provided herein, all payments by the Borrower hereunder shall be made to the Lender at the Lender's Lending Office in Dollars and in immediately available funds not later than 2:00 p.m. on the date specified herein. All payments received by the Lender after 2:00 p.m. shall be deemed received on the next succeeding Business Day and any applicable interest or fee shall continue to accrue. If any payment to be made by the Borrower shall come due on a day other than a Business Day, payment shall be made on the next following Business Day, and such extension of time shall be reflected in computing interest or fees, as the case may be.

(b) Funding Source. Nothing herein shall be deemed to obligate the Lender to obtain the funds for any Loan in any particular place or manner or to constitute a representation by the Lender that it has obtained or will obtain the funds for any Loan in any particular place or manner.

(c) Insufficient Funds. If at any time insufficient funds are received by and available to the Lender to pay fully all amounts of principal, interest and fees then due hereunder, such funds shall be applied (i) first, toward payment of interest and fees then due hereunder, and (ii) second, toward payment of principal then due hereunder.

ARTICLE III

TAXES, YIELD PROTECTION AND ILLEGALITY

3.01 Taxes.

(a) Payments Free of Taxes; Obligation to Withhold; Payments on Account of Taxes.

(i) Any and all payments by or on account of any obligation of the Loan Parties hereunder or under any other Loan Document shall to the extent permitted by applicable Laws be made free and clear of and without reduction or withholding for any Taxes. If, however, applicable Laws require any Loan Party to withhold or deduct any Tax, such Tax shall be withheld or deducted in accordance with such Laws as determined by such Loan Party, as the case may be, upon the basis of the information and documentation to be delivered pursuant to subsection (e) below.

(ii) If the Loan Parties shall be required by the Internal Revenue Code to withhold or deduct any Taxes, including both United States Federal backup withholding and withholding taxes, from any payment, then (A) the Loan Parties shall withhold or make such deductions as are determined by the Lender to be required based upon the information and documentation it has received pursuant to subsection (e) below, (B) the Loan Parties shall timely pay the full amount withheld or deducted to the relevant Governmental Authority in accordance with the Internal Revenue Code, and (C) to the extent that the withholding or deduction is made on account of Indemnified Taxes or Other Taxes, the sum payable by the Loan Parties shall be increased as necessary so that after any required withholding or the making of all required deductions (including deductions applicable to additional sums payable under this Section) the Lender receives an amount equal to the sum it would have received had no such withholding or deduction been made.

(b) Payment of Other Taxes by the Loan Parties. Without limiting the provisions of subsection (a) above, the Loan Parties shall timely pay any Other Taxes to the relevant Governmental Authority in accordance with applicable Laws.

(c) Tax Indemnification.

(i) Without limiting the provisions of subsection (a) or (b) above, the Loan Parties shall, and do hereby, indemnify the Lender, and shall make payment in respect thereof within ten days after demand therefor, for the full amount of any Indemnified Taxes or Other Taxes (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section) withheld or deducted by the Loan Parties or paid by the Lender, as the case may be, and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant

Governmental Authority. A certificate as to the amount of any such payment or liability delivered to the Borrower by the Lender shall be conclusive absent manifest error.

(ii) Without limiting the provisions of subsection (a) or (b) above, the Lender shall, and does hereby, indemnify the Loan Parties, and shall make payment in respect thereof within ten days after demand therefor, against any and all Taxes and any and all related losses, claims, liabilities, penalties, interest and expenses (including the fees, charges and disbursements of any counsel for the Borrower) incurred by or asserted against the Borrower by any Governmental Authority as a result of the failure by the Lender, as the case may be, to deliver, or as a result of the inaccuracy, inadequacy or deficiency of, any documentation required to be delivered by the Lender, as the case may be, to the Borrower pursuant to subsection (e). The agreements in this clause (ii) shall survive any assignment of rights by, or the replacement of, the Lender, the termination of the Revolving Commitment and the repayment, satisfaction or discharge of all other Obligations.

(d) Evidence of Payments. Upon request by any Loan Party after any payment of Taxes by such Loan Party to a Governmental Authority as provided in this Section 3.01, such Loan Party shall deliver to the Lender, as the case may be, the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of any return required by Law to report such payment or other evidence of such payment reasonably satisfactory to the Lender.

(e) Status of Lender; Tax Documentation.

(i) The Lender shall deliver to the Borrower, at the time or times prescribed by applicable Laws or when reasonably requested by the Borrower, such properly completed and executed documentation prescribed by applicable Laws or by the taxing authorities of any jurisdiction and such other reasonably requested information as will permit the Borrower to determine (A) whether or not payments made hereunder or under any other Loan Document are subject to Taxes, (B) if applicable, the required rate of withholding or deduction, and (C) the Lender's entitlement to any available exemption from, or reduction of, applicable Taxes in respect of all payments to be made to the Lender by the Borrower pursuant to this Agreement or otherwise to establish the Lender's status for withholding tax purposes in the applicable jurisdiction.

(ii) Without limiting the generality of the foregoing, if the Borrower is resident for tax purposes in the United States,

(A) if the Lender that is a "United States person" within the meaning of Section 7701(a)(30) of the Internal Revenue Code, the Lender shall deliver to the Borrower executed originals of Internal Revenue Service Form W-9 or such other documentation or information prescribed by applicable Laws or reasonably requested by the Borrower as will enable the Borrower to determine whether or not the Lender is subject to backup withholding or information reporting requirements; and

(B) if the Lender is a Foreign Lender that is entitled under the Internal Revenue Code or any applicable treaty to an exemption from or reduction of withholding tax with respect to payments hereunder or under any other Loan Document, the Lender shall deliver to the Borrower (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes the Lender under this Agreement (and from time to time thereafter upon the request of the Borrower, but only if such Foreign Lender is legally entitled to do so), whichever of the following is applicable:

(I) executed originals of Internal Revenue Service Form W-8BEN claiming eligibility for benefits of an income tax treaty to which the United States is a party,

(II) executed originals of Internal Revenue Service Form W-8ECI,

(III) executed originals of Internal Revenue Service Form W-8IMY and all required supporting documentation,

(IV) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under section 881(c) of the Internal Revenue Code, (x) a certificate to the effect that such Foreign Lender is not (A) a "bank" within the meaning of section 881(c)(3)(A) of the Internal Revenue Code, (B) a "10 percent shareholder" of the Borrower within the meaning of section 881(c)(3)(B) of the Internal Revenue Code, or (C) a "controlled foreign corporation" described in section 881(c)(3)(C) of the Internal Revenue Code and (y) executed originals of Internal Revenue Service Form W-8BEN, or

(V) executed originals of any other form prescribed by applicable Laws as a basis for claiming exemption from or a reduction in United States Federal withholding tax together with such supplementary documentation as may be prescribed by applicable Laws to permit the Borrower to determine the withholding or deduction required to be made.

(iii) The Lender shall promptly (A) notify the Borrower of any change in circumstances which would modify or render invalid any claimed exemption or reduction, and (B) take such steps as shall not be materially disadvantageous to it, in the reasonable judgment of the Lender, and as may be reasonably necessary (including the re-designation of its Lending Office) to avoid any requirement of applicable Laws of any jurisdiction that the Borrower make any withholding or deduction for taxes from amounts payable to the Lender.

(iv) The Borrower shall promptly deliver to the Lender, as the Lender shall reasonably request, on or prior to the Closing Date, and in a timely fashion thereafter, such documents and forms required by any relevant taxing authorities under the Laws of any jurisdiction, duly executed and completed by the Borrower, as are required to be furnished by the Lender under such Laws in connection with any payment by the Lender of Taxes or Other Taxes, or otherwise in connection with the Loan Documents, with respect to such jurisdiction.

(f) Treatment of Certain Refunds. If the Lender 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 any Loan Party or with respect to which any Loan Party has paid additional amounts pursuant to this Section, it shall pay to such Loan Party an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, by such Loan Party under this Section with respect to the Taxes or Other Taxes giving rise to such refund), net of all out-of-pocket expenses incurred by the Lender, as the case may be, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund), provided that each Loan Party, upon the request of the Lender, agrees to repay the amount paid over to such Loan Party the Lender in the event the Lender is required to repay such refund to such Governmental Authority. This subsection shall not be construed to require the Lender to make available its tax returns (or any other information relating to its taxes that it deems confidential) to the Borrower or any other Person.

3.02 Illegality. If the Lender determines that (a) any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for the Lender or its applicable Lending Office to make, maintain or fund Loans whose interest is determined by reference to the LIBOR Rate, or to determine or charge interest rates based upon the LIBOR Rate, or (b) any Governmental Authority has imposed material restrictions on the authority of the Lender to purchase or sell, or to take deposits of,

Dollars in the London interbank market, then, on notice thereof by the Lender to the Borrower any obligation of the Lender to make or continue LIBOR Rate Loans or to convert Base Rate Loans to LIBOR Rate Loans shall be suspended until the Lender notifies the Borrower that the circumstances giving rise to such determination no longer exist; provided, that, with respect to clause (b), the Lender is treating other similarly situated borrowers in the same manner. Upon receipt of such notice, the Borrower shall, upon demand from the Lender, prepay or, if applicable, convert all of the Lender's LIBOR Rate Loans to Base Rate Loans, either on the last day of the Interest Period therefor, if the Lender may lawfully continue to maintain such LIBOR Rate Loans to such day, or immediately, if the Lender may not lawfully continue to maintain such LIBOR Rate Loans. Notwithstanding the foregoing, and despite the illegality for such the Lender to make, maintain or fund LIBOR Rate Loans or Base Rate Loans as to which the interest rate determined by reference to the LIBOR Rate, the Lender shall remain committed to make Base Rate Loans and shall be entitled to recover interest at the Base Rate. Upon any such prepayment or conversion, the Borrower shall also pay accrued interest on the amount so prepaid or converted.

3.03 Inability to Determine Rates. If the Lender determines that for any reason in connection with any request for a LIBOR Rate Loan or a conversion to or continuation thereof that (a) Dollar deposits are not being offered to banks in the London interbank eurodollar market for the applicable amount and Interest Period of such LIBOR Rate Loan, (b) adequate and reasonable means do not exist for determining the LIBOR Base Rate for any requested Interest Period with respect to a proposed LIBOR Rate Loan or in connection with an existing or proposed Base Rate Loan, or (c) the LIBOR Base Rate for any requested Interest Period with respect to a proposed LIBOR Rate Loan or in connection with a LIBOR Rate Loan does not adequately and fairly reflect the cost to the Lender of funding such Loan, the Lender will promptly notify the Borrower. Thereafter the obligation of the Lender to make or maintain LIBOR Rate Loans shall be suspended until the Lender revokes such notice. Upon receipt of such notice, the Borrower may revoke any pending request for a Borrowing of, conversion to or continuation of LIBOR Rate Loans or, failing that, will be deemed to have converted such request into a request for a Borrowing of Base Rate Loans in the amount specified therein.

3.04 Increased Costs.

(a) Increased Costs Generally. If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, the Lender (except any reserve requirement reflected in the LIBOR Rate);

(ii) subject the Lender to any tax of any kind whatsoever with respect to this Agreement or any LIBOR Rate Loan made by it, or change the basis of taxation of payments to the Lender in respect thereof (except for Indemnified Taxes or Other Taxes covered by Section 3.01 and the imposition of, or any change in the rate of, any Excluded Tax payable by the Lender); or

(iii) impose on the Lender or the London interbank market any other condition, cost or expense affecting this Agreement or LIBOR Rate Loans made by the Lender;

and the result of any of the foregoing shall be to increase the cost to the Lender of making or maintaining any Loan the interest on which is determined by reference to the LIBOR Rate (or of maintaining its obligation to make any such Loan), or to increase the cost to the Lender, or to reduce the amount of any sum received or receivable by the Lender hereunder (whether of principal, interest or any other amount) then, upon request of the Lender, the Borrower will pay to the Lender such additional amount or amounts as will compensate the Lender for such additional costs incurred or reduction suffered.

(b) Capital Requirements. If the Lender determines that any Change in Law affecting the Lender or any Lending Office of the Lender or the Lender's holding company, if any, regarding capital requirements has or would have the effect of reducing the rate of return on the Lender's capital or on the capital of the Lender's holding company, if any, as a consequence of this Agreement, the Revolving Commitment of the Lender or the Loans made by the Lender to a level below that which the Lender or the Lender's holding company could have achieved but for such Change in Law (taking into consideration the Lender's policies and the policies of the Lender's holding company with respect to capital adequacy), then from time to time the Borrower will pay to the Lender such additional amount or amounts as will compensate the Lender or the Lender's holding company for any such reduction suffered.

(c) Certificates for Reimbursement. A certificate of the Lender setting forth the amount or amounts necessary to compensate the Lender or its holding company, as the case may be, as specified in subsection (a) or (b) of this Section and delivered to the Borrower shall be conclusive absent manifest error. The Borrower shall pay the Lender, as the case may be, the amount shown as due on any such certificate within ten days after receipt thereof.

(d) Delay in Requests. Failure or delay on the part of the Lender to demand compensation pursuant to the foregoing provisions of this Section shall not constitute a waiver of the Lender's right to demand such compensation, provided that the Borrower shall not be required to compensate the Lender pursuant to the foregoing provisions of this Section for any increased costs incurred or reductions suffered more than nine months prior to the date that the Lender notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of the Lender's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the nine-month period referred to above shall be extended to include the period of retroactive effect thereof).

3.05 Compensation for Losses. Upon demand of the Lender from time to time, the Borrower shall promptly compensate the Lender for and hold the Lender harmless from any actual and direct loss, cost or expense incurred by it as a result of:

(a) any continuation, conversion, payment or prepayment of any LIBOR Rate Loan on a day other than the last day of the Interest Period for such Loan (whether voluntary, mandatory, automatic, by reason of acceleration, or otherwise);

(b) any failure by the Borrower (for a reason other than the failure of the Lender to make a Loan) to prepay, borrow, continue or convert any LIBOR Rate Loan on the date or in the amount notified by the Borrower; or

(c) any assignment of a LIBOR Rate Loan on a day other than the last day of the Interest Period therefor as a result of a request by the Borrower pursuant to Section 10.13;

excluding any loss of anticipated profits but including any loss or expense arising from the liquidation or reemployment of funds obtained by it to maintain such Loan or from fees payable to terminate the deposits from which such funds were obtained. The Borrower shall also pay any customary administrative fees charged by the Lender in connection with the foregoing.

For purposes of calculating amounts payable by the Borrower to the Lender under this Section 3.05, the Lender shall be deemed to have funded each LIBOR Rate Loan made by it at the LIBOR Base Rate used in determining the LIBOR Rate for such Loan by a matching deposit or other borrowing in the London interbank eurodollar market for a comparable amount and for a comparable period, whether or not such LIBOR Rate Loan was in fact so funded.

3.06 **Mitigation Obligations**. If the Lender requests compensation under Section 3.04, or the Borrower is required to pay any additional amount to the Lender or any Governmental Authority for the account of the Lender pursuant to Section 3.01, or if the Lender gives a notice pursuant to Section 3.02, then the Lender shall use reasonable efforts to designate a different Lending Office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of the Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 3.01 or 3.04, as the case may be, in the future, or eliminate the need for the notice pursuant to Section 3.02, as applicable, and (ii) in each case, would not subject the Lender, as the case may be, to any unreimbursed cost or expense and would not otherwise be disadvantageous to the Lender, as the case may be. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

3.07 **Survival**. All of the Loan Parties' obligations under this Article III shall survive termination of the Revolving Commitment and repayment of all other Obligations hereunder.

ARTICLE IV

GUARANTY

4.01 **The Guaranty**. For consideration, the adequacy and sufficiency of which is acknowledged, each of the Guarantors, for the purpose of seeking to induce the Lender to enter into this Agreement and extend credit or otherwise provide financial accommodations to the Borrower, hereby jointly and severally guarantees to the Lender, as primary obligor and not as surety, the prompt payment of the Obligations in full when due (whether at stated maturity, as a mandatory prepayment, by acceleration, as a mandatory cash collateralization or otherwise) strictly in accordance with the terms thereof. Without limiting the generality of the foregoing, each Guarantor hereby unconditionally promises (a) to pay to the Lender on demand, in Dollars, all Obligations of the Borrower to the Lender, and (b) to perform all undertakings of the Borrower in connection with the Obligations. The Guarantors hereby further agree that if any of the Obligations are not paid in full when due (whether at stated maturity, as a mandatory prepayment, by acceleration, as a mandatory cash collateralization or otherwise), the Guarantors will, jointly and severally, promptly pay the same, without any demand or notice whatsoever, and that in the case of any extension of time of payment or renewal of any of the Obligations, the same will be promptly paid in full when due (whether at extended maturity, as a mandatory prepayment, by acceleration, as a mandatory cash collateralization or otherwise) in accordance with the terms of such extension or renewal. Each Guarantor acknowledges and agrees that the extensions of credit and provision of financial accommodations to or for the benefit of the Borrower will be to the direct and indirect interest, advantage and benefit of each Guarantor.

4.02 **Limitation on Liability**. Notwithstanding any provision to the contrary contained herein or in any other of the Loan Documents, the obligations of each Guarantor under Section 4.01 shall not exceed an aggregate amount equal to the largest amount that would not render such obligations subject to avoidance under applicable Debtor Relief Laws.

4.03 **Obligations Unconditional**. The obligations of the Guarantors under Section 4.01 are joint and several, absolute and unconditional, irrespective of the value, genuineness, validity, regularity or enforceability of any of the Loan Documents or other documents relating to the Obligations, or any substitution, release, impairment or exchange of any other guarantee of or security for any of the Obligations, and, to the fullest extent permitted by applicable Law, irrespective of any other circumstance whatsoever which might otherwise constitute a legal or equitable discharge or defense of a surety or guarantor, it being the intent of this Section 4.03 that the obligations of the Guarantors hereunder shall be absolute and unconditional under any and all circumstances. Each Guarantor agrees that such Guarantor

shall have no right of subrogation, indemnity, reimbursement or contribution against the Borrower or any other Guarantor for amounts paid under this Article IV until such time as the Obligations have been indefeasibly paid in full, in cash, and the Revolving Commitment has expired or terminated. Without limiting the generality of the foregoing, it is agreed that, to the fullest extent permitted by Law, the occurrence of any one or more of the following (each of which is hereby specifically authorized by each Guarantor without notice to any Guarantor) shall not alter or impair the liability of any Guarantor hereunder, which shall remain absolute and unconditional as described above:

(a) at any time or from time to time, without notice to any Guarantor, the time for any performance of or compliance with any of the Obligations shall be extended, or such performance or compliance shall be waived (including acceptance of delinquent or partial payments on the Obligations);

(b) any of the acts mentioned in any of the provisions of any of the Loan Documents or other documents relating to the Obligations shall be done or omitted;

(c) the maturity of any of the Obligations shall be accelerated or extended; or any of the Obligations (or the terms and conditions of the all or any part of the Obligations, including without limitation, interest rates, times or places for payment) shall be renewed, compromised, modified, extended, released, subordinated, waived, supplemented, amended or restated in any respect; or any right under any of the Loan Documents or other documents relating to the Obligations shall be waived; or any other guarantee of any of the Obligations or any security therefor shall be released, enforced, waived, released, subordinated, terminated, impaired or exchanged in whole or in part or otherwise dealt with;

(d) any Lien granted to, or in favor of, the Lender or any other holder of the Obligations as security for any of the Obligations shall fail to attach or be perfected, shall fail to be enforced, or shall be sold, assigned or otherwise disposed of;

(e) the proceeds of any such Lien, security or credit support for the Obligations and the order or manner of its sale or enforcement shall be applied, effected and directed as the Lender, at its sole discretion, may determine;

(f) the Borrower or any other guarantor or other person or entity liable on the Obligations shall be released or substituted; or

(g) any of the Obligations shall be determined to be void or voidable (including, without limitation, for the benefit of any creditor of any Guarantor) or shall be subordinated to the claims of any Person (including, without limitation, any creditor of any Guarantor).

With respect to its obligations hereunder, each Guarantor hereby expressly waives diligence, presentment, protest demand of payment, demand for performance, notices of non-performance, notices of dishonor, notices of acceptance, protest and all other notices whatsoever, and any requirement that the Lender or any other holder of the Obligations exhaust any right, power or remedy or proceed against any Person under any of the Loan Documents or any other document relating to the Obligations, or against any other Person under any other guarantee of, or security for, any of the Obligations.

4.04 Reinstatement. The obligations and liabilities of the Guarantors under this Article IV, and all of the Lender's rights, shall be automatically reinstated and revived, notwithstanding any surrender, termination or cancellation of this guaranty, if and to the extent that for any reason any payment by or on behalf of any Person in respect of the Obligations is rescinded or must be otherwise returned or restored by any Lender or other holder of any of the Obligations, whether as a result of any Debtor Relief Law or otherwise, all as though such amounts had not been paid to the recipient thereof.

The Lender, at its sole discretion, may determine whether any amount paid to it must be restored or returned. Guarantor agrees that it will indemnify the Lender and each other holder of the Obligations on demand for all reasonable costs and expenses (including, without limitation, the fees, charges and disbursements of counsel) incurred by the Lender or holder of the Obligations in connection with such rescission or restoration, including any such costs and expenses incurred in defending against any claim alleging that such payment constituted a preference, fraudulent transfer or similar payment under any Debtor Relief Law. If any proceeding under any Debtor Relief Law is commenced by or against the Borrower or any other Guarantor, at the Lender's election, each Guarantor's obligations under this Article IV shall immediately and without notice or demand become due and payable, whether or not then otherwise due and payable.

4.05 Waivers. To the maximum extent permitted by Law, each Guarantor waives (a) all rights to require the Lender to proceed against the Borrower, or any other guarantor, or proceed against, enforce or exhaust any security for the Obligations or to marshal assets or to pursue any other remedy in the Lender's power whatsoever; (b) all defenses arising by reason of any disability or other defense of the Borrower, the cessation for any reason of the liability of the Borrower, any defense that any other indemnity, guaranty or security was to be obtained, any claim that the Lender has made any Guarantor's obligations more burdensome or more burdensome than the Borrower's obligations, and the use of any proceeds of the Obligations other than as intended or understood by the Lender or the Guarantors; (c) all conditions precedent to the effectiveness of the obligations of Guarantor hereunder; (d) all rights to file a claim in connection with the Obligations in any proceeding under any Debtor Relief Law filed by or against the Borrower or another Guarantor; (e) all rights to require the Lender to enforce any of its remedies; (f) any setoff, defense or counterclaim against the Lender, (g) the benefit of any act or omission by the Lender which directly or indirectly results in or aids the discharge of the Borrower or any other Person from any of the Obligations by operation of law or otherwise; (h) the benefit of California Civil Code Section 2815 permitting the revocation of this guaranty as to future transactions and the benefit of California Civil Code Sections 2809, 2810, 2819, 2839, 2845, 2848, 2849, 2850, 2899 and 1432 with respect to certain suretyship defenses; and (i) until the Obligations are fully and indefeasibly satisfied and paid, in cash, with such payment not subject to return, and the Revolving Commitment has been released and terminated: (1) all rights of subrogation, contribution, indemnification or reimbursement, (2) all rights of recourse to any assets or property of the Borrower, or to any collateral or credit support for the Obligations, (3) all rights to participate in or benefit from any security or credit support the Lender may have or acquire, and (4) all rights, remedies and defenses any Guarantor may have or acquire against Borrower.

4.06 Certain Additional Waivers. Each Guarantor agrees that such Guarantor shall have no right of recourse to security for the Obligations, except through the exercise of rights of subrogation pursuant to Section 4.03 and through the exercise of rights of contribution pursuant to Section 4.08.

4.07 Remedies. The Guarantors agree that, to the fullest extent permitted by law, as between the Guarantors, on the one hand, and the Lender and the other holders of the Obligations, on the other hand, the Obligations may be declared to be forthwith due and payable as specified in Section 9.02 (and shall be deemed to have become automatically due and payable in the circumstances specified in said Section 9.02) for purposes of Section 4.01 notwithstanding any stay, injunction or other prohibition preventing such declaration (or preventing the Obligations from becoming automatically due and payable) as against any other Person and that, in the event of such declaration (or the Obligations being deemed to have become automatically due and payable), the Obligations (whether or not due and payable by any other Person) shall forthwith become due and payable by the Guarantors for purposes of Section 4.01. The Guarantors acknowledge and agree that their obligations hereunder may from time to time be secured by assets of the Borrower and that the holders of the Obligations may exercise their remedies with respect to such assets in accordance with applicable security agreements and applicable law.

4.08 Rights of Contribution. The Guarantors agree among themselves that, in connection with payments made hereunder, each Guarantor shall have contribution rights against the other Guarantors as permitted under applicable Law. Such contribution rights shall be subordinate and subject in right of payment to the obligations of such Guarantors under the Loan Documents, and no Guarantor shall exercise such rights of contribution until all Obligations have been paid in full and the Revolving Commitment has terminated.

4.09 Guarantee of Payment; Continuing Guarantee. The guarantee in this Article IV is an absolute guaranty of payment and performance and not of collection, is in addition to any other guaranties of the Obligations, is a continuing guarantee, and shall cover and apply to all Obligations whenever arising, including those arising under successive transactions which continue or increase the Obligations from time to time, renew all or part of the Obligations after they have been satisfied, or create new Obligations. Revocation by one or more Guarantors or any other guarantors of the Obligations shall not (a) affect the obligations of any other Guarantor hereunder, (b) apply to Obligations outstanding when the Lender receives written notice of revocation, or to any extensions, renewals, readvances, modifications, amendments or replacements of such Obligations, or (c) apply to Obligations, arising after the Lender receives such notice of revocation, which are created pursuant to a commitment existing at the time of the revocation, whether or not there exists an unsatisfied condition to such commitment or the Lender has another defense to its performance.

4.10 Guarantors to Keep Informed. Each Guarantor represents and warrants having established with the Borrower adequate means of obtaining, on an ongoing basis, such information as such Guarantor may require concerning all matters bearing on the risk of nonpayment or nonperformance of the Obligations. Each Guarantor assumes sole, continuing responsibility for obtaining such information from sources other than from the Lender. The Lender shall have no duty to provide any information relating to the Borrower to any Guarantor.

4.11 Subordination.

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

(b) The Guarantors shall cause the obligations of each Guarantor to any other Loan Party or Subsidiary to be subordinated to the prior payment in full in cash of the Obligations 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 Loan Party or Subsidiary may be paid 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 V

CONDITIONS PRECEDENT TO CREDIT EXTENSIONS

5.01 Conditions of Effectiveness. The occurrence of the Closing Date, and the obligation of the Lender to make the initial Extension of Credit hereunder, is subject to the satisfaction of each of the following:

(a) Loan Documents. Receipt by the Lender of executed counterparts of this Agreement and the other Loan Documents, each properly executed by a Responsible Officer of the signing Loan Party.

(b) Opinions of Counsel. Receipt by the Lender of favorable opinions of legal counsel to the Loan Parties, addressed to the Lender, dated as of the Closing Date, and in form and substance satisfactory to the Lender.

(c) No Material Adverse Change. There shall not have occurred a material adverse change since January 2, 2011 in the business, assets, liabilities (actual or contingent), operations, financial condition of Borrower and its Subsidiaries, taken as a whole.

(d) Organization Documents, Resolutions, Etc. Receipt by the Lender of the following, in form and substance satisfactory to the Lender:

(i) copies of the Organization Documents of each Loan Party certified to be true and complete within thirty (30) days of the Closing Date by the appropriate Governmental Authority of the state or other jurisdiction of its incorporation or organization, where applicable, and certified by a secretary or assistant secretary of such Loan Party to be true and correct as of the Closing Date;

(ii) such certificates of resolutions or other action, incumbency certificates and/or other certificates of Responsible Officers of each Loan Party as the Lender may require evidencing the identity, authority and capacity of each Responsible Officer thereof authorized to act as a Responsible Officer in connection with this Agreement and the other Loan Documents to which such Loan Party is a party; and

(iii) such documents and certifications as the Lender may reasonably require to evidence that each Loan Party is duly organized or formed, and is validly existing, in good standing and qualified to engage in business in its state of organization or formation, the state of its principal place of business and each other jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification, except to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect.

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

(f) Consents. Receipt by the Lender of the following:

(i) Such written waivers, consents and amendments, as the Lender may require with respect to the DB Facility; and

(ii) Such written waivers and consents, as the Lender may require with respect to the SocGen Facility.

(g) Evidence of Insurance. Receipt by the Lender of copies of insurance policies or certificates of insurance of the Loan Parties evidencing liability and casualty insurance meeting the requirements set forth in the Loan Documents, including, but not limited to, naming the Lender as additional insured (in the case of liability insurance).

(h) Closing Certificates. Receipt by the Lender of (i) a certificate signed by a Responsible Officer of the Borrower certifying the conditions specified in Section 5.01(c) and Sections 5.02(a) and (b) have been satisfied; and (ii) a Compliance Certificate signed by a Responsible Officer of the Borrower as of the Closing Date.

(i) Fees. Receipt by the Lender of any fees required to be paid on or before the Closing Date.

(j) Due Diligence. The Lender shall have completed their business and legal due diligence with results satisfactory to the Lender.

(k) Attorney Costs. The Borrower shall have paid all reasonable fees, charges and disbursements of counsel to the Lender (directly to such counsel if requested by the Lender) to the extent invoiced prior to or on the Closing Date, plus such additional amounts of such fees, charges and disbursements as shall constitute its reasonable estimate of such fees, charges and disbursements incurred or to be incurred by it through the closing proceedings (provided that such estimate shall not thereafter preclude a final settling of accounts between the Borrower and the Lender).

5.02 Conditions to all Credit Extensions. The obligation of the Lender to honor any Request for Credit Extension, including the obligation of the Lender to make the initial Extension of Credit hereunder, is subject to the following conditions precedent:

(a) The representations and warranties of each Loan Party contained in Article VI or any other Loan Document, shall be true and correct in all material respects on and as of the date of such Credit Extension, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct in all material respects as of such earlier date.

(b) No Default shall exist, or would result from such proposed Credit Extension or from the application of the proceeds thereof.

(c) At the time any disbursement is to be made and immediately thereafter, there shall have been no event or circumstance that has had a Material Adverse Effect.

(d) The Lender shall have received a Request for Credit Extension in accordance with the requirements hereof.

Each Request for Credit Extension submitted by the Borrower shall be deemed to be a representation and warranty that the conditions specified in Sections 5.02(a), (b), and (c) have been satisfied on and as of the date of the applicable Credit Extension.

ARTICLE VI

REPRESENTATIONS AND WARRANTIES

The Loan Parties represent and warrant to the Lender that:

6.01 Existence, Qualification and Power. Each Loan Party and each Subsidiary (a) is duly organized or formed, validly existing and, as applicable, in good standing under the Laws of the jurisdiction of its incorporation, organization, 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, (b) has all requisite power and authority and all requisite governmental licenses, permits, authorizations, consents and approvals to (i) own or lease its assets and carry on its business as now conducted and as proposed to be conducted, and (ii) execute, deliver and perform its obligations under the Loan Documents to which it is a party, and (c) is duly qualified and is licensed and, as applicable, in good standing under the Laws of each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification or license; except in each case referred to in clause (b)(i) or (c), to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect.

6.02 Authorization; No Contravention. The execution, delivery, and performance by each Loan Party of each Loan Document to which such Loan Party is party, and the consummation of the transactions contemplated thereby, are within the organizational powers of such Loan Party, have been duly authorized by all necessary organizational action, and do not (i) contravene the Organization Documents of such Loan Party, (ii) violate any applicable 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 Loan 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 Loan Party other than in favor of the Lender 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 Loan 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.

6.03 Approvals. No approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority or any other Person is necessary or required in connection with the due execution, delivery or performance by, or enforcement against, any Loan Party of this Agreement or any other Loan Document other than (i) those that have already been obtained and are in full force and effect, and (ii) those approvals, consents, exemptions, authorizations, actions, notices or filings the failure of which to obtain, take, give or make could not be reasonably expected to have a Material Adverse Effect.

6.04 **Enforceability**. This Agreement has been, and each other Loan Document to which a Loan Party is a party, has been or when delivered hereunder will have been, duly executed and delivered by such Loan Party. This Agreement is, and each other Loan Document to which a Loan Party is a party, is or when delivered hereunder will be, the legal, valid, and binding obligation of such Loan 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 relating to enforceability.

6.05 **Litigation**. Except as disclosed in the Borrower's filings with the SEC from time to time, there is no action, suit, investigation, litigation, claim, dispute or proceeding affecting any Loan Party pending or, to the knowledge of any Loan Party, 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.

6.06 **Financial Statements; No Material Adverse Effect**. The Borrower has heretofore furnished to the Lender 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 2, 2011, 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 2, 2011, there has been no event or circumstance, either individually or in the aggregate, that has had or could reasonably be expected to have a Material Adverse Effect.

6.07 **Properties**.

(a) Each Loan 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 Loan 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 Loan 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.

(c) None of the assets or properties of any Loan Party are subject to any Lien other than Permitted Liens, and none of the WJE Stock is subject to any Lien other than Permitted Liens of the type described in clauses (a) or (cc) of the definition of "Permitted Liens", on the brokerage account in which the WJE Stock is maintained.

6.08 **Accuracy of Information; Disclosure**. No report, financial statement, certificate or other information furnished in writing by or on behalf of any Loan Party to the Lender in connection with the transactions contemplated hereby and the negotiation of this Agreement or delivered hereunder or under any other Loan Document (in each case, as modified or supplemented by other information so furnished), taken as a whole, contains any material misstatement of fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided that, with respect to projected financial information, the Loan Parties represent only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time and the Lender recognizes and acknowledges that such projected financial information is not

to be viewed as facts and that actual results during the period or periods covered by such projections may differ from the projected results and such differences may be material.

6.09 **Margin Stock**. Following the application of the proceeds of each Borrowing, not more than 25% of the value of the assets of the Borrower and its Subsidiaries on a consolidated basis will be margin stock (within the meaning of Regulation U issued by the FRB). No Loan Party 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.

6.10 **Compliance with Laws and Agreements**. Each Loan Party is in compliance with all requirements of Laws and all orders, writs, injunctions and decrees 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 Loan Party is in default in any material respect beyond any applicable grace period under or with respect to any of its Organization 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.

6.11 **Compliance with Certain Acts**. Each Loan Party is in compliance with the (a) Trading with the Enemy Act, and each of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V) and any other enabling legislation or executive order relating thereto, and (b) Patriot Act. No part of any Credit Extension 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. None of the Loan Parties or any of their respective directors, officers, managers or principal employees (i) is a person whose property or interest in property is blocked or subject to blocking pursuant to Section 1 of Executive Order 13224 of September 23, 2001 Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism (66 Fed. Reg. 49079 (2001), (ii) engages in any dealings or transactions prohibited by Section 2 of such executive order, or is otherwise associated with any such person in any manner violative of Section 2, or (iii) is a person on the list of Specially Designated Nationals and Blocked Persons or subject to the limitations or prohibitions under any other U.S. Department of Treasury's Office of Foreign Assets Control ("OFAC") regulation or executive order.

6.12 **Investment Company Act**. No Loan Party is (or is required to be registered as) 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 Credit Extensions, nor the use of the proceeds 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, including without limitation, Regulation U issued by the FRB.

6.13 **Solvency**. Each Loan Party, is, individually and together with its Subsidiaries, Solvent.

6.14 **No Immunity**. Each Loan 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 California or the laws of its jurisdiction of organization.

6.15 **Taxes**. Each Loan Party and its Subsidiaries have filed all federal and state income and other material tax returns and reports required to be filed, and have paid all federal and state income and other material taxes, assessments, fees and other governmental charges levied or imposed upon them or their properties, income or assets otherwise due and payable, except those which are being contested in good faith by appropriate proceedings diligently conducted and for which adequate reserves have been provided in accordance with GAAP.

6.16 **No Default**. No Default has occurred and is continuing.

6.17 **Subsidiaries**. Each Loan Party other than the Borrower is a Subsidiary of the Borrower.

6.18 **Disclosure**. Each Loan Party has disclosed to the Lender 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 Loan Party to the Lender 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, in the light of the circumstances under which they were made, not misleading; provided that, with respect to projected financial information, each Loan Party represents only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time.

6.19 **ERISA Compliance**.

(a) Each Plan is in compliance in all material respects with the applicable provisions of ERISA, the Internal Revenue Code and other federal or state Laws except in such instances in which the failure to comply therewith could not reasonably be expected to have a Material Adverse Effect. Each Pension Plan that is intended to be a qualified plan under Section 401(a) of the Internal Revenue Code has received a favorable determination letter from the IRS to the effect that the form of such Plan is qualified under Section 401(a) of the Internal Revenue Code, or an application for such a letter is currently being processed by the IRS, or such Plan has time remaining in which to apply to the IRS for such a letter prior to the expiration of the requisite period under applicable Treasury regulations or Internal Revenue Service pronouncements in which to apply for such letter and to make any amendments necessary to obtain a favorable determination or has been established under a standardized prototype plan for which an Internal Revenue Service opinion letter has been obtained by the plan sponsor and is valid as to the adopting employer. To the knowledge of the Loan Parties, nothing has occurred that would prevent or cause the loss of such tax-qualified status.

(b) There are no pending or, to the best knowledge of the Loan Parties, threatened claims, actions or lawsuits, or action by any Governmental Authority, with respect to any Plan maintained by the Loan Parties or any ERISA Affiliate that could reasonably be expected to have a Material Adverse Effect. There has been no prohibited transaction or violation of the fiduciary responsibility rules with respect to any Plan that has resulted or could reasonably be expected to result in a Material Adverse Effect.

(c) Except as could not reasonably be expected to result in a Material Adverse Effect, (i) no ERISA Event has occurred, and no Loan Party nor any ERISA Affiliate is aware of any fact, event or circumstance that could reasonably be expected to constitute or result in an ERISA Event with

respect to any Pension Plan; (ii) each Loan Party and each ERISA Affiliate has met all applicable requirements under the Pension Funding Rules in respect of each Pension Plan, and no waiver of the minimum funding standards under the Pension Funding Rules has been applied for or obtained; (iii) as of the most recent valuation date for any Pension Plan, the funding target attainment percentage (as defined in Section 430(d)(2) of the Internal Revenue Code) is 60% or higher and no Loan Party nor any ERISA Affiliate knows of any facts or circumstances that could reasonably be expected to cause the funding target attainment percentage for any such plan to drop below 60% as of the most recent valuation date; (iv) no Loan Party nor any ERISA Affiliate has incurred any liability to the PBGC other than for the payment of premiums, and there are no premium payments which have become due that are unpaid; (v) no Loan Party nor any ERISA Affiliate has engaged in a transaction that could be subject to Section 4069 or Section 4212(c) of ERISA; and (vi) no Pension Plan has been terminated by the plan administrator thereof nor by the PBGC, and no event or circumstance has occurred or exists that could reasonably be expected to cause the PBGC to institute proceedings under Title IV of ERISA to terminate any Pension Plan.

6.20 **WJE Stock**.

(a) As of the Closing Date, the Borrower owns and controls 19,398,510 shares of WJE Stock. Other than such shares, neither the Borrower nor any of its Subsidiaries owns or controls, directly or indirectly, any other shares of WJE Stock.

(b) Neither the WJE Stock nor any American Depository Receipts related thereto are traded on a United States national securities exchange or quoted on an established automated over-the-counter trading market in the United States.

6.21 **Pari Passu Ranking**. Each Loan 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.

6.22 **Burdensome Agreements**. To the Loan Parties' knowledge, neither any Loan Party nor any of its Subsidiaries is a party to or bound by, nor are any of the properties or assets owned by any Loan 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 VII

AFFIRMATIVE COVENANTS

So long as the Lender shall have any Commitment hereunder or any Loan or other Obligation hereunder shall remain unpaid or unsatisfied (other than contingent indemnification obligations not yet due and payable), each Loan Party covenants and agrees that each Loan Party shall:

7.01 **Financial Statements**. Deliver to the Lender, in form and detail reasonably satisfactory to the Lender:

(a) as soon as available and in any event within ninety (90) days after the end of each fiscal year of the Borrower (commencing with the fiscal year ending on or about December 31, 2010), audited financial statements of the Borrower (with supporting schedules in form satisfactory to the Lender), including a consolidated balance sheet of the Borrower 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 Borrower had a corresponding prior fiscal period) the figures for the previous fiscal year, all in reasonable detail and prepared in accordance with GAAP, and accompanied by a report and opinion of PricewaterhouseCoopers LLC or other independent public accountants of recognized national standing reasonably acceptable to the Lender (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 Borrower and its consolidated Subsidiaries on a consolidated basis in accordance with GAAP consistently applied;

(b) as soon as available, but in any event within forty-five (45) days after the end of each of the fiscal quarters of each fiscal year of the Borrower, an unaudited consolidated balance sheet of Borrower and its Subsidiaries as of the end of such fiscal quarter, the related unaudited consolidated statements of income or operations for such fiscal quarter and for the portion of the Borrower's fiscal year then ended, and cash flows for such fiscal quarter and the portion of the Borrower's fiscal year then ended, in each case setting forth in comparative form (commencing with the first fiscal quarter for which the Borrower had a corresponding quarter in the prior fiscal year), as applicable, the figures for the corresponding fiscal quarter of the previous fiscal year and the corresponding portion of the previous fiscal year, together with supporting schedules in form satisfactory to the Lender, all in reasonable detail and certified by the chief executive officer, chief financial officer, treasurer or controller of the Borrower as fairly presenting the financial condition, results of operations, shareholders' equity and cash flows of Borrower and its Subsidiaries in accordance with GAAP, subject only to normal year-end audit adjustments and the absence of footnotes; and

(c) concurrently with any delivery under Sections 7.01(a) and 7.01(b), a management discussion and analysis describing any differences in the reported financial results as between the periods covered and the same periods during the immediately preceding fiscal year, and as between such periods and the same periods included in any budget delivered to the Lender pursuant hereto.

7.02 Certificates; Other Information. Deliver to the Lender, in form and detail reasonably satisfactory to the Lender:

(a) upon the request of the Lender, concurrently with the delivery of the financial statements referred to in Section 7.01(a), a certificate of its independent certified public accountants certifying such financial statements and stating that in making the examination necessary therefor no knowledge was obtained of any Default under the financial covenants set forth herein or, if any such Default shall exist, stating the nature and status of such event;

(b) concurrently with the delivery of the financial statements referred to in Sections 7.01(a) or (b): (i) a certificate of the chief financial officer or the chief accounting officer of the Borrower, certifying (A) 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 Borrower 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 (B) 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 Borrower during the period beginning on the date through which the last such review was made pursuant to this Section 7.02(b) (or, in the case of the first certification pursuant to this Section 7.02(b), the Closing Date) and ending on a date that is not more than

10 Business Days before the date of such delivery and that on the basis of such review of the Loan Documents, the use of the proceeds of the Loans, and the business and condition of the Loan Parties, 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 Loan Parties are taking or propose to take in respect thereof; and (ii) a duly completed Compliance Certificate signed by the chief executive officer or chief financial officer of the Borrower;

(c) as soon as available, but in any event within five (5) days after the end of each of each fiscal month of the Borrower (commencing with the fiscal month ending July 31, 2011) a statement, in reasonable detail, of the Borrower's unrestricted and restricted consolidated cash and cash equivalents as of the last day of such fiscal month and if requested by the Lender, copies of all deposit account, securities account and brokerage account statements, provided however, that such statements shall be provided as soon as they become commercially available, and further, such statements may include downloads from internet-based bank balance reporting and information systems;

(d) to the extent that any Loan Party is a public company, promptly after the same are available (and in any event within ten (10) days thereof), copies of each annual report, proxy or financial statement sent to equityholders of any Loan Party or any Subsidiary, and copies of all annual, regular, periodic and special reports and registration statements which a Loan Party or any Subsidiary may file or be required to file with the SEC under Section 13 or 15(d) of the Exchange Act, and not otherwise required to be delivered to the Lender pursuant hereto; and

(e) promptly, such additional information regarding the business or financial condition of any Loan Party or any Subsidiary, or compliance with the terms of the Loan Documents, as the Lender may from time to time reasonably request.

Documents required to be delivered pursuant to Section 7.01(a), (b) or (c) or Section 7.02(d) (to the extent any such documents 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 (i) on which the Borrower posts such documents, or provides a link thereto on the Borrower's website on the Internet at the website address listed on Schedule 10.02 or on which such reports are filed with the SEC and become publicly available; or (ii) on which such documents are posted on the Borrower's behalf on an Internet or intranet website, if any, to which the Lender has access (whether a commercial, third-party website or whether sponsored by the Lender); provided that: (i) the Borrower shall deliver paper copies of such documents to the Lender upon its request to the Borrower to deliver such paper copies until a written request to cease delivering paper copies is given by the Lender, and (ii) the Borrower shall notify the Lender (by telecopier or electronic mail) of the posting of any such documents and provide to the Lender by electronic mail electronic versions (i.e., soft copies) of such documents.

7.03 Notices.

(a) Promptly, and in any event within ten (10) Business Days, provide the Lender with written notice of the occurrence of each assignment or other Disposition of any WJE Stock (other than a Revolving Commitment Reduction Event), and promptly, and in any event within 24 hours, provide the Lender with written notice of the occurrence of each Revolving Commitment Reduction Event.

(b) Promptly, and in any event within twenty-four (24) hours of any determination that, at any time, the Total Revolver Outstandings exceed the Revolving Commitment, deliver written notice to the Lender of such determination.

(c) Promptly, and in any event within two (2) Business Days of the occurrence thereof, deliver written notice to the Lender of the occurrence of any Default.

(d) Promptly and in any event within five (5) calendar days after any Responsible Officer obtains notice or knowledge thereof, written notice of:

(i) any matter that has resulted or could reasonably be expected to result in a Material Adverse Effect;

(ii) any action, suit, proceeding, claim or dispute threatened in writing at law, in equity, in arbitration or before any Governmental Authority, affecting any Loan Party or any Subsidiary 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 Material Adverse Effect (unless the Borrower has reasonably determined that an adverse determination would not, individually or in the aggregate, result in a Material Adverse Effect); and

(iii) any monetary default in excess of $25,000,000 or other material default that is then continuing under any Indebtedness.

(e) Within fifteen (15) calendar days after any Responsible Officer obtains notice or knowledge thereof, written notice of 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 Loan Party and its Subsidiaries in an aggregate amount exceeding $25,000,000.

(f) Within three (3) Business Days, notify the Lender of any material change in accounting policies or financial reporting practices by any Loan Party or any Subsidiary.

(g) Promptly, and in any event within three (3) Business Days, written notice of any default under the DB Facility and written notice of any and all amendments, renewals, extensions, modifications, supplements, restatements or replacements to the DB Facility, together with copies of all related documentation.

Each notice pursuant to this Section 7.03 shall be accompanied by a certificate of a Responsible Officer of the Borrower setting forth details of the occurrence referred to therein and stating what action the Borrower has taken and proposes to take with respect thereto. Each notice pursuant to Section 7.03(c) shall describe with particularity any and all provisions of this Agreement and any other Loan Document that have been breached.

7.04 Payment of Obligations. Pay and discharge, and 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 (a) the validity or amount thereof is being contested in good faith by appropriate proceedings diligently pursued, (b) such Loan Party or such Subsidiary has set aside on its books adequate reserves with respect thereto in accordance with GAAP, and (c) 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.

7.05 Preservation of Existence, Etc. Do or cause to be done all things necessary to preserve and keep in full force and effect its legal existence and good standing under the Laws of the jurisdiction of its organization 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.

7.06 **Maintenance of Properties**. Keep, maintain, preserve and protect, and cause each of its Subsidiaries to keep, maintain, preserve and protect, 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.

7.07 **Maintenance of Insurance**.

(a) Maintain in full force and effect insurance (including worker's compensation insurance, liability insurance, casualty insurance and business interruption insurance) with financially sound and reputable insurance companies not Affiliates of the Borrower, 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 Borrower and the Subsidiaries), with such deductibles and covering such risks as are customarily carried by companies engaged in similar businesses and owning similar properties in localities where such Loan Party or such Subsidiary operates.

(b) Cause the Lender to be named as an additional insured with respect to any such insurance providing liability coverage, and Borrower shall notify Lender within five business days if Borrower receives notice from any provider of any such liability insurance policy that any such policy or policies will be materially altered or canceled. The Borrower represents and warrants that such liability insurance policies provide for the Borrower to receive thirty (30) days prior written notice prior to any such material alteration or cancellation.

(c) Furnish to the Lender 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 Lender may reasonably request.

7.08 **Compliance with Laws**. Comply with the requirements of all Laws, all orders, writs, injunctions and decrees applicable to it or to its business or property and all requirements of Governmental Authorities (including ERISA), except in such instances in which the failure to comply therewith could not reasonably be expected to have a Material Adverse Effect.

7.09 **Inspections; Books and Records**. Keep, and 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 permit representatives of the Lender to visit and inspect (upon one (1) Business Day's notice, so long as no Event of Default then exists and is continuing) 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 Lender in any 12-month period).

7.10 **Use of Proceeds**. Use the proceeds of the Credit Extensions to finance working capital, capital expenditures and other lawful corporate purposes, provided that in no event shall the proceeds of the Credit Extensions be used to purchase or carry margin stock (within the meaning of Regulation U issued by the FRB) or to extend credit to others for the purpose of purchasing or carrying margin stock or to refund, repay or refinance indebtedness originally incurred for such purpose, or, otherwise, in contravention of any Law or of any Loan Document.

7.11 **ERISA Compliance**. Do, and cause each of its ERISA Affiliates to do, each of the following: (a) maintain each Plan in compliance in all material respects with the applicable provisions of ERISA, the Internal Revenue Code and other federal or state law; (b) cause each Plan that is qualified under Section 401(a) of the Internal Revenue Code to maintain such qualification; and (c) make, and verify that all ERISA Affiliates make, all required contributions to any Plan subject to Section 412, Section 430 or Section 431 of the Internal Revenue Code, except as could not reasonably be expected to result in material liability.

7.12 **[Reserved]**.

7.13 **Deposit Accounts, Etc**. (i) Open and maintain with Union Bank a deposit account that the Lender is authorized to charge for any amounts then due from Borrower or any other Loan Party under this Agreement, the Note or any other Loan Documents, including interest, principal, fees, costs, expenses or other amounts due hereunder or thereunder, and (ii) ensure that such account has immediately available funds sufficient to pay any such amounts payable to the Lender as and when they become due and payable. The Borrower agrees that each payment of any amounts owing pursuant to this Agreement or the other Loan Documents may be made by automatic deduction from the Borrower's designated deposit account with Union Bank and that such debits shall not constitute a set-off.

7.14 **Further Assurances**. Execute, deliver, and acknowledge such documents, instruments and agreements, and take such further actions from time to time, as the Lender may reasonably request from time to time.

7.15 **Annual Budget**. During the continuance of a Default or an Event of Default, at the request of any Lender, the Borrower will furnish to the Lender, within ten (10) Business Days after such request, a copy of the Borrower's annual budget for the then current fiscal year.

ARTICLE VIII

NEGATIVE COVENANTS

So long as the Lender shall have any Commitment hereunder or any Loan or other Obligation hereunder shall remain unpaid or unsatisfied (other than contingent indemnification obligations not yet due and payable), each Loan Party covenants and agrees that no Loan Party shall:

8.01 **Liens**. Create, incur, assume or suffer to exist any Lien, other than Permitted Liens, upon any of its property, assets or revenues, whether now owned or hereafter acquired. Notwithstanding the foregoing, in no event shall any Loan Party create, incur, assume or suffer to exist any Lien on any of the WJE Stock, other than Liens of the type described in clauses (a) or (cc) of the definition of Permitted Liens. In addition, no Loan Party shall agree or consent to any restriction on such Loan Party's ability to create, assume or suffer to exist any Lien on any of its property to secure its obligations under this Agreement, except (i) agreements set forth in the Loan Documents or (ii) prohibitions or conditions under (A) purchase money debt or Capital Leases solely to the extent that the agreement or instrument governing such purchase money debt or capital lease obligation prohibits a Lien on the property acquired with the proceeds of such purchase money debt or capital lease, and (B) the DB Facility documents as in effect on the date hereof.

8.02 **Investments, Loans and Advances**. Purchase, hold or acquire (including pursuant to any merger with any Person that was not a wholly-owned Subsidiary prior to such merger) any Equity Interests, 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 Borrower or a Subsidiary) or made by any Subsidiary (or any special-purpose entity created or sponsored by the Borrower or a Subsidiary) to the Borrower or any other Subsidiary (or any special-purpose entity created or sponsored by the Borrower or a Subsidiary);

(c) Guarantees constituting Permitted Indebtedness;

(d) Specified Transactions, other than:

(i) Specified Transactions with respect to which the Total Non-Stock Consideration paid or payable by the Loan Parties 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 Loan Party 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 only such Loan Party 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).

8.03 Indebtedness. Create, incur, assume, guarantee or suffer to exist any Indebtedness, except (the following, collectively, "Permitted Indebtedness"):

(a) Indebtedness under the Loan Documents;

(b) Indebtedness that is non-recourse to such Loan Party (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 8.03,

(d) Indebtedness arising from the endorsement of instruments for collection in the ordinary course of business,

(e) Indebtedness of any Loan Party (on the one hand) to the Borrower 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 Article IV;

(f) Guarantees by any Loan Party in the ordinary course of business as conducted from time to time of any Loan Party or any Subsidiary, for any obligation other than Financial Indebtedness;

(g) Indebtedness in favor of customers and suppliers of the Borrower 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 Borrower'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 Borrower and Wells Fargo Bank, National Association (the "Trustee"), that certain First Supplemental Indenture, dated as of February 7, 2007 by and among the Borrower and the Trustee with respect to the Borrower'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 Borrower's 0.75% Senior Convertible Debentures issued under the Indenture and that certain Second Supplemental Indenture, dated as of July 25, 2007, by and between the Borrower and the Trustee with respect to the Borrower'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 Borrower'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 Borrower and the Trustee, in the maximum aggregate principal amount of $230,000,000, and refinancings thereof, and (iv) the Borrower'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 Borrower 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 Borrower and the Subsidiaries for the benefit of their customers and contract counterparties;

(j) Indebtedness of the Borrower 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 Borrower, 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) (i) Indebtedness of any Loan Party pursuant to the DB Facility in an aggregate outstanding amount not to exceed $400,000,000; and (ii) following termination of the DB Facility, Indebtedness consisting of reimbursement obligations under letters of credit issued under the New Letter of Credit Facility;

(m) liabilities of the Loan Parties under Swap Contracts, with nationally recognized financial institutions reasonably satisfactory to the Lender pursuant to bona fide hedging transactions and not for speculation;

(n) Indebtedness in connection with the factoring of the accounts receivable of any Loan Party 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 Loan Parties of payment obligations of customers under purchase agreements entered into by such customers with the Borrower or any of its Subsidiaries, in an aggregate amount for all the Loan Parties combined not to exceed $50,000,000;

(p) Indebtedness consisting of Borrower's guaranty in favor of SocGen of up to €100,000,000 under the SocGen Facility on the terms and subject to the conditions in effect on the Closing Date;

(q) Unsecured Indebtedness of the Borrower in the amount of $30,000,000 owing to the California Enterprise Development Authority (the "Issuer"), related to the Issuer's issuance of $30,000,000 in aggregate principal amount of fixed-rate Recovery Zone Facility Revenue Bonds (SunPower Corporation - Headquarters Project) Series 2010 (the "Bonds"), which Indebtedness is subject to the terms of the Loan Agreement, dated as of December 1, 2010, by and between the Issuer and the Borrower, as amended by the First Supplement to Loan Agreement, dated as of June 1, 2011 (collectively, the "CEDA Loan Agreement") and which Indebtedness is evidenced by a Note dated December 29, 2010, by the Borrower in favor of the Issuer and assigned by the Issuer, along with all right, title and interest in the CEDA Loan Agreement, to the trustee with respect to the Bonds, for the benefit of the holders of the Bonds; and

(r) other Indebtedness in an aggregate amount for all Loan Parties not in excess of $25,000,000.

8.04 Pari Passu Ranking. Each Loan Party will ensure that at all times the claims of the Lender 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.

8.05 Consolidation, Merger and Sale of Assets.

(a) Enter into any merger or consolidation with any Person, liquidate, wind-up or dissolve (or suffer any liquidation, winding up or dissolution), terminate or discontinue its business, or sell, assign, lease or otherwise transfer, in one transaction or a series of transactions, all or substantially all of its business or property, or permit any Subsidiary to do so, except that so long as no Default or Event of Default exists or would result therefrom (i) any Loan Party may merge with or into any other Loan Party; provided that if such transaction involves the Borrower, the Borrower is the continuing or surviving Person, (ii) any Subsidiary of the Borrower may merge or consolidate with any other Subsidiary of the Borrower provided that if a Loan Party is a party to such transaction, the continuing or surviving Person is a Loan Party, (iii) the Borrower or any Subsidiary may merge with any other Person in connection with a Specified Transaction expressly permitted under Section 8.02(d) provided that if a Loan Party is party to transaction, such Loan Party shall be the surviving Person and (d) any Subsidiary may dissolve, liquidate or wind up its affairs at any time provided that such dissolution, liquidation or

winding up, as applicable, could not reasonably be expected to have a Material Adverse Effect and all of its assets and business is transferred to a Loan Party.

(b) Without providing written notice to the Lender required under Section 7.03, assign or otherwise Dispose of any of the WJE Stock now held or hereafter acquired; provided however, in no event shall any Loan Party assign, pledge, or otherwise Dispose of any WJE Stock if a Default or Event of Default then exists or would exist immediately after giving effect thereto. Each assignment, or other Disposition of WJE Stock that constitutes a Revolving Commitment Reduction Event, shall be subject to the requirements of Section 2.04 hereof.

8.06 Swap Contracts. Enter into any Swap Contract, except Swap Contracts 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 Loan Party 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 Borrower convertible into equity securities of the Borrower (or cash settled, with settlement calculated with reference to the price of the Borrower's equity securities) for the benefit of the holders of the Borrower's equity securities.

8.07 Fiscal Year; Fiscal Quarters. Change the method of identifying its fiscal periods without the Lender's written consent (not to be unreasonably withheld).

8.08 Use of Proceeds; Margin Stock. Use the proceeds of any Credit Extension, whether directly or indirectly, and whether immediately, incidentally or ultimately, (a) to purchase or carry margin stock (within the meaning of Regulation U of the FRB), (b) 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, (c) to extend credit to others for the purpose of purchasing or carrying margin stock or to refund, repay or refinance indebtedness originally incurred for such purpose, or (d) to acquire any security in any transaction that is subject to Section 13 or 14 of the Exchange Act.

8.09 Transactions with Affiliates. 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 Loan Party than could be obtained on an arm's-length basis from unrelated third parties, (b) transactions between or among the Borrower and its wholly owned Subsidiaries, (c) any dividends or distributions permitted by Section 8.12, (d) transactions constituting the incurrence of Indebtedness permitted under Section 8.03, (e) transactions constituting Permitted Investments, (f) Specified Transactions expressly permitted hereunder, (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.

8.10 Conduct of Business. Engage to any material extent in any business other than businesses of the type conducted by such Loan Party on the date of execution of this Agreement and any businesses reasonably related thereto from time to time.

8.11 [Reserved].

8.12 Restricted Payments. Declare or pay any Restricted Payments (a) except as permitted under its Organization 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 Lender has

given the Borrower notice of such Event of Default, or (d) from and after notice from the Lender 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 Borrower shall not declare or pay any Restricted Payments to its stockholders which, in the aggregate, exceed $200,000,000 in any fiscal year.

8.13 [Reserved].

8.14 Financial Covenants.

(a) Minimum Consolidated Liquidity. Permit or allow the Borrower's unrestricted cash and cash equivalents, on a consolidated basis, to be less than $125,000,000.

(b) Capitalization Ratio. Permit or allow the ratio of (i) the aggregate Financial Indebtedness of the Borrower 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 Borrower 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 Borrower and its consolidated Subsidiaries at such time, to exceed fifty-five percent (55%).

(c) Consolidated Interest Coverage Ratio. Permit or allow the interest coverage ratio, calculated on a rolling four quarters basis, of Consolidated EBITDA to Consolidated Interest Charges (including all fees and charges with respect to DB LOCs) to be less than 3.0 to 1.0 at the end of any fiscal quarter of the Borrower.

(d) Maximum Leverage Ratio. Permit or allow, at any time, the ratio of gross Financial Indebtedness to Consolidated EBITDA for the four immediately preceding completed fiscal quarters of the Borrower to be more than 4.0 to 1.0 at the end of any fiscal quarter of the Borrower. As used herein, the term "gross Financial Indebtedness" means at any time the aggregate Financial Indebtedness of the Borrower 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).

8.15 Organization Documents; Fiscal Year; Legal Name, State of Formation and Form of Entity.

(a) Amend, modify or change its Organization Documents in a manner materially adverse to the Lender.

(b) Change its fiscal year.

(c) Without providing ten days prior written notice to the Lender, change its name, state of formation or form of organization.

ARTICLE IX

EVENTS OF DEFAULT AND REMEDIES

9.01 **Events of Default**. The occurrence and continuance of any of the following shall constitute an "Event of Default":

(a) Non-Payment. Any Loan Party fails to pay (i) when and as required to be paid herein, any amount of principal of any Loan, or (ii) within three Business Days after the same becomes due, any interest on any Loan, or any fee due hereunder, or (iii) within five Business Days after the same becomes due, any other amount payable hereunder or under any other Loan Document; or

(b) Specific Covenants. Any Loan Party fails to perform or observe any term, covenant or agreement contained in Section 7.01, 7.02, 7.03, 7.05 (with respect to any Loan Party's existence), 7.10, 7.13 or Article VIII; or

(c) Other Defaults. Any Loan Party fails to perform or observe any other covenant or agreement (not specified in subsection (a) or (b) above) contained in any Loan Document on its part to be performed or observed and such failure continues for thirty days after the earlier of (i) a Responsible Officer of any Loan Party becoming aware of such failure or (ii) notice thereof to any Loan Party by the Lender; or

(d) Representations and Warranties. Any representation, warranty, certification or statement of fact made or deemed made by or on behalf of any Loan Party herein, in any other Loan Document, or in any document delivered in connection herewith or therewith shall be incorrect or misleading in any material respect when made or deemed made; or

(e) Cross-Default. (i) Any Loan Party or any Subsidiary (A) fails to make any payment when due (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise) in respect of any Indebtedness or Guarantee (other than Indebtedness hereunder) having an aggregate principal amount (including undrawn committed or available amounts and including amounts owing to all creditors under any combined or syndicated credit arrangement) of more than $25,000,000 or the equivalent amount of foreign currency, or (B) fails to observe or perform any other agreement or condition relating to any such Indebtedness or Guarantee or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event occurs, the effect of which default or other event is to cause, or to permit the holder or holders of such Indebtedness or the beneficiary or beneficiaries of such Guarantee (or a trustee or agent on behalf of such holder or holders or beneficiary or beneficiaries) to cause, with the giving of notice if required, such Indebtedness to be demanded or to become due or to be repurchased, prepaid, defeased or redeemed (automatically or otherwise), or an offer to repurchase, prepay, defease or redeem such Indebtedness to be made, prior to its stated maturity, or such Guarantee to become payable or cash collateral in respect thereof to be demanded; provided, that an Event of Default under this clause shall continue only so long as the applicable event or condition constituting such Event of Default is not waived or rescinded by the holders of such Indebtedness; or (ii) 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 or 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; or

(f) Insolvency Proceedings, Etc. Any Loan Party or any Subsidiary institutes or consents to the institution of any proceeding under any Debtor Relief Law, or makes an assignment for the benefit of creditors; or applies for or consents to the appointment of any receiver, trustee, custodian,

conservator, liquidator, rehabilitator or similar officer for it or for all or any material part of its property; or any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer is appointed without the application or consent of such Person and the appointment continues undischarged or unstayed for sixty calendar days; or any proceeding under any Debtor Relief Law relating to any such Person or to all or any material part of its property is instituted without the consent of such Person and continues undismissed or unstayed for sixty calendar days, or an order for relief is entered in any such proceeding; or

(g) Inability to Pay Debts; Attachment. (i) Any Loan Party or any Subsidiary shall for any reason cease to be Solvent or otherwise become unable, or admit in writing its inability, or fail generally to pay its debts as they become due, or (ii) any writ or warrant of attachment or execution or similar process is issued or levied against all or any material part of the property of any such Person and is not released, vacated or fully bonded within thirty days after its issue or levy; or

(h) Judgments. There is entered against any Loan Party or any Subsidiary one or more judgments or orders for the payment of money in an aggregate amount (as to all such judgments or orders) exceeding $25,000,000, and (A) enforcement proceedings are commenced by any creditor upon such judgment or order, or (B) there is a period of ten consecutive days during which a stay of enforcement of such judgment, by reason of a pending appeal or otherwise, is not in effect; or

(i) ERISA.

(i) An ERISA Event occurs with respect to a Pension Plan or Multiemployer Plan which has resulted or could reasonably be expected to result in liability of any Loan Party under Title IV of ERISA to the Pension Plan, Multiemployer Plan or the PBGC in an aggregate amount in excess of the Threshold Amount, or

(ii) the Borrower or any ERISA Affiliate fails to pay when due, after the expiration of any applicable grace period, any installment payment with respect to its withdrawal liability under Section 4201 of ERISA under a Multiemployer Plan in an aggregate amount in excess of the Threshold Amount; or

(j) Invalidity of Loan Documents. Any Loan Document, at any time after its execution and delivery and for any reason or the indefeasible satisfaction in full, in cash, of all the Obligations, ceases to be in full force and effect; or any Loan Party or any other Person contests in any manner the validity or enforceability of any Loan Document; or any Loan Party denies that it has any or further liability or obligation under any Loan Document, or purports to revoke, terminate or rescind any Loan Document (including any purported revocation of the guaranty under Article IV hereof); or

(k) Guaranty Called. The Borrower is called upon to satisfy any Guarantee obligation or simultaneous Guarantee obligations with an aggregate liability in excess of $10,000,000, where the Borrower's performance of such obligations, as substantiated by the beneficiary thereof, is not contingent on any additional condition, including the passage of time; or

(l) Change of Control. There occurs any Change of Control.

9.02 Remedies Upon Event of Default. If any Event of Default occurs and is continuing, the Lender may take any or all of the following actions:

(a) declare the commitment of the Lender to make Loans to be terminated, whereupon such commitments and obligation shall be terminated;

(b) declare the unpaid principal amount of all outstanding Loans, all interest accrued and unpaid thereon, and all other amounts owing or payable hereunder or under any other Loan Document to be immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Borrower; and

(c) exercise all rights and remedies available to it under the Loan Documents or applicable Law;

provided, however, that upon the occurrence of an actual or, in the case of a voluntary proceeding, deemed entry of an order for relief with respect to the Borrower under the Bankruptcy Code, the obligation of the Lender to make Loans shall automatically terminate, the unpaid principal amount of all outstanding Loans and all interest and other amounts as aforesaid shall automatically become due and payable, without further act of the Lender.

9.03 Application of Funds. After the exercise of remedies provided for in Section 9.02 (or after the Loans have automatically become immediately due and payable), any amounts received on account of the Obligations shall be applied by the Lender in the following order:

First, to payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts (other than principal and interest) payable to the Lender (including fees, charges and disbursements of counsel to the Lender and amounts payable under Article III);

Second, to payment of that portion of the Obligations constituting accrued and unpaid interest on the Loans and fees, premiums and scheduled periodic payments;

Third, to (a) payment of that portion of the Obligations constituting unpaid principal of the Loans; and

Last, the balance, if any, after all of the Obligations have been indefeasibly paid in full, in cash, to the Borrower or as otherwise required by Law.

ARTICLE X

MISCELLANEOUS

10.01 Amendments, Etc. No amendment or waiver of any provision of this Agreement or any other Loan Document, and no consent to any departure by any Loan Party therefrom, shall be effective unless in writing signed by the Lender and the Borrower or the applicable Loan Party, as the case may be, and each such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

10.02 Notices; Effectiveness; Electronic Communications.

(a) Notices Generally. Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in subsection (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by telecopier as follows, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, as follows if to any Loan Party or the Lender, to the address, telecopier number, electronic mail address or telephone number specified for such Person on Schedule 10.02.

Notices and other communications sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices and other communications sent by telecopier shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next Business Day for the recipient). Notices and other communications delivered through electronic communications to the extent provided in subsection (b) below, shall be effective as provided in such subsection (b).

(b) Electronic Communications. Notices and other communications to the Lender hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by the Lender, provided that the foregoing shall not apply to notices to the Lender pursuant to Article II if the Lender, as applicable, has notified the Borrower that it is incapable of receiving notices under such Article by electronic communication. The Lender or the Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it, provided that approval of such procedures may be limited to particular notices or communications.

Unless the Lender otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), provided that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next Business Day for the recipient, and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor.

(c) [Reserved].

(d) Change of Address, Etc. Each of the Loan Parties and the Lender may change its address, telecopier or telephone number for notices and other communications hereunder by notice to the other parties hereto.

(e) Reliance by Lender. The Lender shall be entitled to rely and act upon any notices (including telephonic Loan Notices) purportedly given by or on behalf of any Loan Party even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. The Loan Parties shall indemnify the Lender and the Related Parties of each of them from all losses, costs, expenses and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of a Loan Party. All telephonic notices to and other telephonic communications with the Lender may be recorded by the Lender, and each of the parties hereto hereby consents to such recording.

10.03 No Waiver; Cumulative Remedies; Enforcement. No failure by the Lender to exercise, and no delay by any such Person in exercising, any right, remedy, power or privilege hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder or under any other Loan Document preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided, and provided under each other Loan Document are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

10.04 Expenses; Indemnity; and Damage Waiver.

(a) Costs and Expenses. The Loan Parties shall pay (i) all reasonable expenses incurred by the Lender and its Affiliates (including the reasonable fees, charges and disbursements of counsel for the Lender), in connection with the syndication of the credit facilities provided for herein, the preparation, negotiation, execution, delivery and administration of this Agreement and the other Loan Documents or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), and (ii) all reasonable expenses incurred by the Lender (including the fees, charges and disbursements of any counsel for the Lender) in connection with the enforcement or protection of its rights (A) in connection with this Agreement or any of the other Loan Documents, including its rights under this Section, or (B) in connection with the Loans made hereunder, including all such expenses incurred during any workout, restructuring or negotiations in respect of such Loans.

(b) Indemnification by the Loan Parties. The Loan Parties shall indemnify the Lender, and each Related Party of any of the foregoing Persons (each such Person being called an "Indemnitee") against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related expenses (including the reasonable fees, charges and disbursements of any counsel for any Indemnitee) incurred by any Indemnitee or asserted against any Indemnitee by any third party or by any Loan Party arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or thereunder or the consummation of the transactions contemplated hereby or thereby, or, in the case of the Lender and its Related Parties only, the administration of this Agreement and the other Loan Documents (including in respect of any matters addressed in Section 3.01), (ii) any Loan or the use or proposed use of the proceeds therefrom, (iii) any actual or alleged presence or release of Hazardous Materials on or from any property owned or operated by a Loan Party or any of its Subsidiaries, or any Environmental Liability, in each case related in any way to a Loan Party or any of its Subsidiaries, 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, whether brought by a third party or by any Loan Party, and regardless of whether any Indemnitee is a party thereto; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses (x) are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee (or such Indemnitee's officers, directors employees or agents) or (y) result from a claim brought by any Loan Party against an Indemnitee for breach in bad faith of such Indemnitee's obligations hereunder or under any other Loan Document, if such Loan Party has obtained a final and nonappealable judgment in its favor on such claim as determined by a court of competent jurisdiction.

(c) [Reserved].

(d) Waiver of Consequential Damages, Etc. To the fullest extent permitted by applicable law, no Loan Party shall assert, and each Loan Party hereby waives, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Loan or the use of the proceeds thereof. No Indemnitee referred to in subsection (b) above shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed to such unintended recipients by such Indemnitee through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby other than

for direct or actual damages resulting from the gross negligence or willful misconduct of such Indemnitee as determined by a final and nonappealable judgment of a court of competent jurisdiction.

(e) Payments. All amounts due under this Section shall be payable not later than twenty (20) Business Days after written demand therefor.

(f) Survival. The agreements in this Section shall survive the termination of the Revolving Commitment and the repayment, satisfaction or discharge of all the other Obligations.

10.05 Payments Set Aside. To the extent that any payment by or on behalf of any Loan Party is made to the Lender, or the Lender exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by the Lender in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Law or otherwise, then to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred.

10.06 Successors and Assigns.

(a) Successors and Assigns Generally. The provisions of this Agreement and the other Loan Documents shall be binding upon and inure to the benefit of the parties hereto and thereto and their respective successors and assigns permitted hereby, except that the Borrower may not assign or otherwise transfer any of its rights or obligations hereunder or thereunder without the prior written consent of the Lender, which may be granted or withheld in the Lender's sole discretion. The Lender may not assign or otherwise transfer any of its rights or obligations hereunder except (i) to an assignee in accordance with the provisions of subsection (b) of this Section, (ii) by way of participation in accordance with the provisions of subsection (d) of this Section or (iii) by way of pledge or assignment of a security interest subject to the restrictions of subsection (f) of this Section (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in subsection (d) of this Section and, to the extent expressly contemplated hereby, the Related Parties of the Lender) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Assignments by Lender. The Lender may at any time assign to one or more assignees all or a portion of its rights and obligations under this Agreement and the other Loan Documents (including all or a portion of its Revolving Commitment and the Loans at the time owing to it); provided that any such assignment shall be subject to the following conditions:

(i) in the case of an assignment to an Affiliate of the Lender or an Approved Fund, no consent of any Loan Party shall be required; and

(ii) in any case not described in subsection (b)(i) of this Section, no consent shall be required for any assignment except that, the consent of the Borrower (such consent not to be unreasonably withheld or delayed) shall be required unless (1) an Event of Default has occurred and is continuing at the time of such assignment or (2) such assignment is to an Affiliate of the Lender or an Approved Fund; provided that the Borrower shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to the Lender within five (5) Business Days after having received notice thereof.

From and after the effective date of each assignment, the assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned, have the rights and obligations of the Lender under this Agreement, and the Lender shall, to the extent of the interest assigned, be released from its obligations under this Agreement (and, in the case of an assignment covering all of the Lender's rights and obligations under this Agreement, the Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Sections 3.01, 3.04, 3.05 and 10.04 with respect to facts and circumstances occurring prior to the effective date of such assignment). Upon request, the Borrower (at its expense) shall execute and deliver a Note to the new Lender. Any assignment or transfer by the Lender of rights or obligations under this Agreement that does not comply with this subsection shall be treated for purposes of this Agreement as a sale by the Lender of a participation in such rights and obligations in accordance with subsection (d) of this Section.

(c) [Reserved].

(d) Participations. The Lender may at any time, without the consent of, or notice to, the Borrower, sell participations to any Person (other than a natural person) (each, a "Participant") in all or a portion of the Lender's rights and/or obligations under this Agreement and the other Loan Documents (including all or a portion of its Revolving Commitment and/or the Loans owing to it); provided that (i) the Lender's obligations under this Agreement shall remain unchanged, (ii) the Lender shall remain solely responsible to the Borrower for the performance of such obligations and (iii) the Borrower shall continue to deal solely and directly with the Lender in connection with the Lender's rights and obligations under this Agreement. Subject to subsection (e) of this Section, the Borrower agrees that each Participant shall be entitled to the benefits of Sections 3.01, 3.04 and 3.05 to the same extent as if it were the Lender and had acquired its interest by assignment pursuant to subsection (b) of this Section. To the extent permitted by Law, each Participant also shall be entitled to the benefits of Section 10.08 as though it were the Lender.

(e) Limitation on Participant Rights. A Participant shall not be entitled to receive any greater payment under Section 3.01 or 3.04 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Borrower's prior written consent. A Participant that would be a Foreign Lender if it were the Lender shall not be entitled to the benefits of Section 3.01 unless the Borrower is notified of the participation sold to such Participant and such Participant agrees, for the benefit of the Borrower, to comply with Section 3.01(e) as though it were the Lender.

(f) Certain Pledges. The Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement (including under its Note, if any) to secure obligations of the Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; provided that no such pledge or assignment shall release the Lender from any of its obligations hereunder or substitute any such pledgee or assignee for the Lender as a party hereto.

(g) Lender Securitization. In addition to any other assignment permitted pursuant to this Section 10.06, the Loan Parties hereby acknowledge that (x) the Lender, its Affiliates and Approved Funds (the "Lender Parties") may sell or securitize the Loans (a "Lender Securitization") through the pledge of the Loans as collateral security for loans to a Lender Party or the assignment or issuance of direct or indirect interests in the Loans (such as, for instance, collateralized loan obligations), and (y) the Lender Securitization may be rated by a Rating Agency. The Loan Parties shall reasonably cooperate with the Lender Parties to effect the Lender Securitization including by providing such information as may be reasonably requested by the Lender or Rating Agencies in connection with the rating of the Loans or the Lender Securitization.

10.07 **Treatment of Certain Information; Confidentiality**. The Lender agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its Affiliates and to its and its Affiliates' respective partners, directors, officers, employees, agents, trustees, advisors and representatives (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential) or to Rating Agencies, (b) to the extent requested by any regulatory authority purporting to have jurisdiction over it (including any self-regulatory authority, such as the National Association of Insurance Commissioners), (c) to the extent required by applicable Laws or regulations or by any subpoena or similar legal process, provided that such Person disclosing such Information shall use reasonable efforts (but without liability for failure to do so) to provide the Loan Parties with advance notice of such disclosure to the extent practical and not prohibited by Law, (d) to any other party hereto, (e) in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement or (ii) any actual or prospective counterparty (or its advisors) to any swap or derivative transaction relating to a Loan Party and its obligations, (g) with the consent of the Borrower or (h) to the extent such Information (x) becomes publicly available other than as a result of a breach of this Section or (y) becomes available to the Lender or any of their respective Affiliates on a nonconfidential basis from a source other than the Borrower.

For purposes of this Section, "Information" means all information received from a Loan Party relating to the Loan Parties or any of their respective businesses, designated as confidential, other than any such information that is available to the Lender on a nonconfidential basis prior to disclosure by such Loan Party or any Subsidiary. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

The Lender acknowledges that (a) the Information may include material non-public information concerning a Loan Party or a Subsidiary, as the case may be, (b) it has developed compliance procedures regarding the use of material non-public information and (c) it will handle such material non-public information in accordance with applicable Law, including United States Federal and state securities Laws.

10.08 **Set-off**. If an Event of Default shall have occurred and be continuing, the Lender and each of their respective Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by applicable law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by the Lender or any such Affiliate to or for the credit or the account of any Loan Party against any and all of the obligations of such Loan Party now or hereafter existing under this Agreement or any other Loan Document to the Lender, irrespective of whether or not the Lender shall have made any demand under this Agreement or any other Loan Document and although such obligations of such Loan Party may be contingent or unmatured or are owed to a branch or office of the Lender different from the branch or office holding such deposit or obligated on such indebtedness. The rights of the Lender and its Affiliates under this Section are in addition to other rights and remedies (including other rights of setoff) that the Lender or its Affiliates may have. The Lender agrees to notify the Borrower promptly after any such setoff and application, provided that the failure to give such notice shall not affect the validity of such setoff and application.

10.09 **Interest Rate Limitation**. Notwithstanding anything to the contrary contained in any Loan Document, the interest paid or agreed to be paid under the Loan Documents shall not exceed the

maximum rate of non-usurious interest permitted by applicable Law (the "Maximum Rate"). If the Lender shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the Loans or, if it exceeds such unpaid principal, refunded to the Borrower. In determining whether the interest contracted for, charged, or received by the Lender exceeds the Maximum Rate, such Person may, to the extent permitted by applicable Law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Obligations hereunder.

10.10 Counterparts; Integration; Effectiveness. This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement and the other Loan Documents constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 5.01, this Agreement shall become effective when it shall have been executed by the Lender and when the Lender shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto. Delivery of an executed counterpart of a signature page of this Agreement by telecopy or other electronic imaging means shall be effective as delivery of a manually executed counterpart of this Agreement.

10.11 Survival of Representations and Warranties. All representations and warranties made hereunder and in any other Loan Document or other document delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery hereof and thereof. Such representations and warranties have been or will be relied upon by the Lender, regardless of any investigation made by the Lender or on their behalf and notwithstanding that the Lender may have had notice or knowledge of any Default at the time of any Credit Extension, and shall continue in full force and effect as long as any Loan or any other Obligation hereunder shall remain unpaid or unsatisfied.

10.12 Severability. If any provision of this Agreement or the other Loan Documents is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of this Agreement and the other Loan Documents shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

10.13 [Reserved].

10.14 Governing Law; Jurisdiction; Etc.

(a) GOVERNING LAW. THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS, UNLESS EXPRESSLY STATED OTHERWISE THEREIN, SHALL BE GOVERNED BY, AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAW OF THE STATE OF CALIFORNIA, WITHOUT REGARD TO THE PRINCIPLES THEREOF REGARDING CONFLICTS OF LAWS, AND ANY APPLICABLE LAWS OF THE UNITED STATES OF AMERICA.

(b) SUBMISSION TO JURISDICTION. EACH LOAN PARTY IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE NONEXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF CALIFORNIA SITTING IN SANTA CLARA COUNTY, CALIFORNIA AND OF THE UNITED STATES DISTRICT COURT

OF THE NORTHERN DISTRICT OF CALIFORNIA, AND ANY APPELLATE COURT FROM ANY THEREOF, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT, AND EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH CALIFORNIA STATE COURT OR, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE 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. NOTHING IN THIS AGREEMENT OR IN ANY OTHER LOAN DOCUMENT SHALL AFFECT ANY RIGHT THAT THE LENDER MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AGAINST ANY LOAN PARTY OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.

(c) WAIVER OF VENUE. EACH LOAN PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT IN ANY COURT REFERRED TO IN PARAGRAPH (B) OF THIS SECTION. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

(d) SERVICE OF PROCESS. EACH LOAN PARTY HEREBY IRREVOCABLY WAIVES PERSONAL SERVICE OF THE SUMMONS, COMPLAINTS AND OTHER PROCESS ISSUED IN ANY SUCH ACTION OR SUIT. EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 10.02. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

10.15 Disputes; Waiver of Right to Trial by Jury. TO THE EXTENT PERMITTED BY LAW, IN CONNECTION WITH ANY CLAIM, CAUSE OF ACTION, PROCEEDING OR OTHER DISPUTE CONCERNING THE LOAN DOCUMENTS (EACH A "CLAIM"), THE PARTIES TO THIS AGREEMENT EXPRESSLY, INTENTIONALLY, AND DELIBERATELY WAIVE ANY RIGHT EACH MAY OTHERWISE HAVE TO TRIAL BY JURY. IN THE EVENT THAT THE WAIVER OF JURY TRIAL SET FORTH IN THE PREVIOUS SENTENCE IS NOT ENFORCEABLE UNDER THE LAW APPLICABLE TO THIS AGREEMENT, THE PARTIES TO THIS AGREEMENT AGREE THAT ANY CLAIM, INCLUDING ANY QUESTION OF LAW OR FACT RELATING THERETO, SHALL, AT THE WRITTEN REQUEST OF ANY PARTY, BE DETERMINED BY JUDICIAL REFERENCE PURSUANT TO THE STATE LAW APPLICABLE TO THIS AGREEMENT. THE PARTIES SHALL SELECT A SINGLE NEUTRAL REFEREE, WHO SHALL BE A RETIRED STATE OR FEDERAL JUDGE. IN THE EVENT THAT THE PARTIES CANNOT AGREE UPON A REFEREE, THE COURT SHALL APPOINT THE REFEREE. THE REFEREE SHALL REPORT A STATEMENT OF DECISION TO THE COURT. NOTHING IN THIS PARAGRAPH SHALL LIMIT THE RIGHT OF ANY PARTY AT ANY TIME TO EXERCISE SELF-HELP REMEDIES, FORECLOSE AGAINST COLLATERAL OR OBTAIN PROVISIONAL REMEDIES. THE REFEREE SHALL ALSO DETERMINE ALL ISSUES RELATING TO THE APPLICABILITY, INTERPRETATION, AND ENFORCEABILITY OF THIS PARAGRAPH. THE PARTIES

ACKNOWLEDGE THAT IF A REFEREE IS SELECTED TO DETERMINE THE CLAIMS, THEN THE CLAIMS WILL NOT BE DECIDED BY A JURY. WITHOUT LIMITING THE GENERALITY OF SECTION 10.04, THE BORROWER SHALL BE SOLELY RESPONSIBLE TO PAY ALL FEES AND EXPENSES OF ANY REFEREE APPOINTED IN SUCH ACTION OR PROCEEDING.

10.16 No Advisory or Fiduciary Responsibility. In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document), each of the Loan Parties acknowledges and agrees, and acknowledges its Affiliates' understanding, that: (i) (A) the arranging and other services regarding this Agreement provided by the Lender are arm's-length commercial transactions between the Loan Parties and their respective Affiliates, on the one hand, and the Lender, on the other hand, (B) each of the Loan Parties has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (C) each of the Loan Parties is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents; (ii) (A) the Lender is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for the Loan Parties or any of their respective Affiliates, or any other Person and (B) the Lender has no obligation to the Loan Parties or any of their respective Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; and (iii) the Lender and its respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Loan Parties and their respective Affiliates, and the Lender has no obligation to disclose any of such interests to the Loan Parties and their respective Affiliates. To the fullest extent permitted by Law, each of the Loan Parties hereby waives and releases any claims that it may have against the Lender and its Affiliates with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

10.17 Electronic Execution of Assignments and Certain Other Documents. The words "execution," "signed," "signature," and words of like import in any assignment or in any amendment or other modification hereof (including waivers and consents) shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act or any other similar state laws based on the Uniform Electronic Transactions Act.

10.18 USA PATRIOT Act Notice. The Lender is subject to the Patriot Act, and the Lender hereby notifies the Borrower and the other Loan Parties that pursuant to the requirements of the Patriot Act, it is required to obtain, verify and record information that identifies the Borrower and the other Loan Parties, which information includes the name and address of the Borrower and the other Loan Parties and other information that will allow the Lender to identify the Borrower and the other Loan Parties in accordance with the Patriot Act. The Borrower and each other Loan Party shall, promptly following a request by the Lender, provide all documentation and other information that the Lender requests in order to comply with its ongoing obligations under applicable "know your customer" and anti-money laundering rules and regulations, including the Patriot Act.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first above written.

BORROWER:

SUNPOWER CORPORATION,
a Delaware corporation

By: /s/ Dennis V. Arriola
Name: Dennis V. Arriola
Title: EVP & Chief Financial Officer

GUARANTORS:

SUNPOWER CORPORATION, SYSTEMS,
a Delaware corporation

By: /s/ Dennis V. Arriola
Name: Dennis V. Arriola
Title: SVP & Chief Financial Officer

GUARANTORS:

SUNPOWER NORTH AMERICA, LLC,
a Delaware limited liability company

By: /s/ Dennis V. Arriola
Name: Dennis V. Arriola
Title: Chief Financial Officer

[Signature Page to Credit Agreement]

LENDER: UNION BANK, N.A.,
as Lender

By: /s/ Michael J. McCutchin

Name: Michael J. McCutchin
Title: Vice President

[Signature Page to Credit Agreement]

SCHEDULE 2.01

REVOLVING COMMITMENT
(As of Closing Date)

LENDER NAME AND ADDRESS	REVOLVING COMMITMENT
UNION BANK, N.A. Attention: Michael J. McCutchin and James B. Goudy 99 Almaden Boulevard, Suite 200 San Jose, California 95113 Facsimile: (408) 280-7163	$ 50,000,000.00
TOTAL COMMITMENT:	$ 50,000,000.00

WIRE TRANSFER
INFORMATION FOR PAYMENTS

Party	***Wire Transfer Instructions (or address) for Payments***
Union Bank, N.A.	Bank Name: Union Bank, N.A. Address: 1980 Saturn Street Monterey Park, CA 91754-7417 Account No.: *** ABA No.: 122000496 Reference: SUNPOWER CORPORATION

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

SCHEDULE 8.01

EXISTING LIENS

1. Liens on accounts receivable, inventory, and specific cash collateral specifically described in that certain financing statement filed with the Delaware Secretary of State on April 13, 2010, as Filing Number 2010 1269319, identifying SunPower Corporation as debtor, and Deutsche Bank AG New York Branch, as administrative agent, as secured party, as amended to exclude the WJE Stock.

2. Liens on escrowed cash pursuant to that Agreement, dated April 27, 2009, by and between the Company and Addison Avenue Federal Credit Union, as amended on January 28, 2011, relating to residential solar loan guarantees.

3. Liens on equipment pursuant to that Financing Agreement for the Development or Rehabilitation of Property in Milpitas California for Specified Solar Panel Manufacturing Purposes, dated February 1, 2011, between The Redevelopment Agency of the City of Milpitas and the Company.

4. Liens on equipment pursuant to that Capital Equipment and Assistance Agreement, dated as of March 28, 2011, by and between The Redevelopment Agency of the City of San Jose, the City of San Jose and the Company.

5. Lien on escrowed cash pursuant to that Escrow Agreement for Security Deposits in Lieu of Retention by and between the *** and SunPower Corporation, Systems and dated March 24, 2011, in connection with that certain Design-Build Contract Photovoltaic Systems by and between the *** and SunPower Corporation, Systems and dated October 26, 2010.

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

***

SCHEDULE 8.02

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. 1% member interest in SPWR Galaxy Holdco 2007 LLC.
7. Investment in a privately-held company accepted in connection with ***, with a current value that does not exceed $***.

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

***

SCHEDULE 8.03

EXISTING INDEBTEDNESS

1. Indebtedness of the Borrower in connection with the Borrower's guarantee of leasing arrangements, pursuant to a Term Leasing Master Agreement between the Borrower's former Malaysian subsidiary, now a joint venture, AUO SunPower Sdn. Bhd., as lessee and IBM Malaysia Sdn. Bhd. as lessor. [Desktop and laptop computers for use by the Borrower's Malaysian Subsidiary]

2. Indebtedness of the Borrower in connection with the Borrower's guarantee of leasing arrangements, pursuant to a Corporate Guarantee by the Borrower 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 Borrower's Philippines subsidiary]

3. Indebtedness of the Borrower under the Borrower'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 Borrower and its Subsidiaries]

4. Indebtedness of the Borrower in connection with leasing arrangements with US Bancorp (the "US Bancorp Leasing Indebtedness"). [Office copiers and printers for use by the Borrower and its Subsidiaries]

5. Indebtedness of the Borrower 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 Borrower and its Subsidiaries]

6. Indebtedness of the Borrower 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 Borrower'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 $***.

7. Agreement, dated April 27, 2009, by and between the Company and Addison Avenue Federal Credit Union, as amended on January 28, 2011 relating to residential solar loan guarantees, for up to $5,000,000.

8. Financing Agreement for the Development or Rehabilitation of Property in Milpitas California for Specified Solar Panel Manufacturing Purposes, dated February 1, 2011, between The Redevelopment Agency of the City of Milpitas and the Company, for up to $1,500,000.

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

9. Capital Equipment and Assistance Agreement, dated as of March 28, 2011, by and between The Redevelopment Agency of the City of San Jose, the City of San Jose and the Company, for up to $1,000,000.

***

SCHEDULE 10.02

CERTAIN ADDRESSES FOR NOTICES

Lender:

Notices (other than Requests for Extensions of Credit after the Closing Date):

UNION BANK, N.A.
Attention: Michael J. McCutchin and
James B. Goudy
99 Almaden Boulevard, Suite 200
San Jose, California 95113
Facsimile: (408) 280-7163

For Payments and Requests for Credit Extensions after the Closing Date:

UNION BANK, N.A.
Commercial Loan Operations
601 East Potrero Grande Drive
Monterey Park, CA 91754
Facsimile: (323) 720-2

With a copy to:
UNION BANK, N.A.
Attention: Michael J. McCutchin and
James B. Goudy
99 Almaden Boulevard, Suite 200
San Jose, California 95113
Facsimile: (408) 280-7163

Facsimile: (323) 720-2

Payments:

Bank Name: Union Bank, N.A.
Address: 1980 Saturn Street
Monterey Park, CA 91754-7417
Account No.: ***
ABA No.: 122000496
Reference: SUNPOWER CORPORATION

Loan Parties:

SUNPOWER CORPORATION
77 Rio Robles
San Jose, CA 95134-1859
Attn: Dennis V. Arriola, Senior Vice President
and Chief Financial Officer
Telephone: 408-240-5500
Facsimile: 408-240-5404
Electronic Mail: dennis.arriola@sunpowercorp.com
Website: www.sunpowercorp.com

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

EXHIBIT 2.02

[FORM OF] LOAN NOTICE

Date:_____

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

with a copy to:

Union Bank, N.A.
Attention: Michael J. McCutchin
James B. Goudy
Northern California Commercial Banking Group
99 Almaden Boulevard, Suite 200
San Jose, CA 95113

Ladies and Gentlemen:

SUNPOWER CORPORATION, a Delaware corporation (the "Borrower") submits this Loan Notice pursuant to Section 2.02 of the Credit Agreement, dated as of July 18, 2011 (as amended, modified, supplemented, restated or renewed from time to time, the "Credit Agreement") by and among Borrower, SUNPOWER CORPORATION, SYSTEMS, a Delaware corporation ("SCS"), SUNPOWER NORTH AMERICA, LLC, a Delaware limited liability company (together with SCS and the other guarantors from time to time party to the Credit Agreement, the "Guarantors"), and UNION BANK, N.A., as lender (the "Lender"). All capitalized terms used in this Loan Notice shall have the meanings specified in the Credit Agreement unless otherwise defined herein.

The undersigned hereby certifies that (a) [he][she] is the acting and incumbent [President] [Chief Executive Officer] [Vice President- Finance] [Chief Financial Officer] of the Borrower, and (b) in such capacity, [he][she] is authorized to execute this Loan Notice and request credit hereunder for and on behalf of the Borrower in connection with the Credit Agreement.

We hereby represent, warrant and certify to you that (a) the proceeds specified herein shall be used in strict accordance with the provisions of the Credit Agreement, (b) the representations and warranties of the Borrower and the other Loan Parties contained in the Credit Agreement or otherwise made by the Borrower or any other Loan Party in connection with the transactions contemplated thereby were true and correct in all material respects when made, and are true and correct in all material respects on and as of the date hereof with the same effect as if made herein (except to the extent that such representations and warranties relate expressly to an earlier date); provided, however, the foregoing materiality qualification does not apply to those representations and warranties that already are qualified or modified by materiality in the text thereof, (c) each Loan Parties has performed and complied with all of the terms and conditions contained in the Credit Agreement required to be performed or complied with by such Loan Party prior to or at the time of this notice and request, (d) at and as of the date of hereof, neither Borrower nor any Loan Party is in default of any of its obligations under the Credit Agreement, and no Default or Event of Default exists and (e) the execution and delivery of this Loan Notice has been authorized by all necessary corporate action/proceedings on behalf of the Borrower.

1. The Borrower requests (select one):

a. ____ a Borrowing of Revolving Loans.

b. ____ a continuation or conversion of Revolving Loans.

2. [Use if 1.a. is selected] The Borrower requests that the Lender make a [Base Rate] [LIBOR Rate] Loan on [proposed drawdown date][1] for the Interest Period commencing on [proposed drawdown date] and ending on [_____][2] in the principal amount of [$_____][3].

2. [Use if 1.b. is selected] The Borrower requests on _, 20_ a LIBOR Rate Loan as follows:

(a) (i) _____ A rate conversion of an existing Base Rate Loan to a LIBOR Rate Loan; or

(ii) _____ A continuation of an existing LIBOR Rate Loan as a LIBOR Rate Loan.

[Check (i) or (ii) above]

(b) The date on which the LIBOR Rate Loan is to be made is _____, 20___

(c) The amount of the LIBOR Rate Loan is to be _____ ($_____), for an LIBOR Loan Period of _____ month(s).

Very Truly Yours,

SUNPOWER CORPORATION

By: _____

Print Name: _____

Title: _____

For Internal Bank Use Only

LIBOR Pricing Date	LIBOR Rate	LIBOR Rate Variance	Maturity Date
		__%	

[1] Loan Notice must be made by 11 a.m. on the Business Day of the proposed drawdown date of any Base Rate Loan and 3 Business Days prior to the proposed drawdown date of any LIBOR Rate Loan.

[2] For Base Rate Loans, the last day of the calendar quarter following the proposed drawdown date; for LIBOR Rate Loans, 1, 2, or 3 months after the proposed drawdown date.

[3] Each Loan Notice relating to a LIBOR Rate Loan shall be in a minimum aggregate amount of $5,000,000.

EXHIBIT 2.09

[FORM OF] REVOLVING LOAN NOTE

[$_____] **_____ ___, 20_**

FOR VALUE RECEIVED, the undersigned SUNPOWER CORPORATION, a Delaware corporation ("Borrower"), hereby absolutely and unconditionally promises to pay to the order of UNION BANK, N.A. (the "Lender") at the Lender's Lending Office (as defined in the Credit Agreement referred to below):

(a) the principal amount of _____ Dollars ($_____) or, if less, the aggregate unpaid principal amount of Loans advanced by the Lender to the Borrower pursuant to the Credit Agreement, dated as of July 18, 2011 (as amended, modified, supplemented, restated or renewed from time to time, the "Credit Agreement") by and among Borrower, SUNPOWER CORPORATION, SYSTEMS, a Delaware corporation ("SCS"), SUNPOWER NORTH AMERICA, LLC, a Delaware limited liability company (together with SCS and the other guarantors from time to time party to the Credit Agreement, the "Guarantors"), and UNION BANK, N.A., as Lender (the "Lender"), in the amounts and at the times specified in the Credit Agreement with a final payment on the Maturity Date of all Loans made by the Lender which are outstanding on such date; and

(b) interest on the principal balance hereof from time to time outstanding from the date hereof through and including the date on which such principal amount is paid in full, at the times and at the rates provided in the Credit Agreement.

This Revolving Loan Note evidences borrowings under and is subject to the terms of the Credit Agreement and the documents referred to therein. This Revolving Loan Note has been issued by the Borrower in accordance with the terms of the Credit Agreement. The Lender and any holder hereof are entitled to the benefits of the Credit Agreement and the Loan Documents and may enforce the agreements of the Borrower contained therein, and any holder may exercise the respective remedies provided for thereby or otherwise available in respect thereof, all in accordance with the respective terms thereof. All capitalized terms which are used in this Revolving Loan Note and not otherwise defined herein and which are defined in the Credit Agreement shall have the same meanings herein as in the Credit Agreement.

Borrower irrevocably authorizes the Lender to make or cause to be made, at or about the time of the drawdown date of any Loan or at or about the time of receipt of any payment of principal of this Revolving Loan Note, an appropriate notation on the grid attached to this Revolving Loan Note, or the continuation of such grid, or any other similar record, including computer records, reflecting the making of such Loan or (as the case may be) the receipt of such payment. The outstanding amount of the Loans set forth on such grid, or the continuation of such grid, or any other similar record, including computer records, maintained by the Lender with respect to any Loans shall be prima facie evidence of the principal amount thereof owing and unpaid to the Lender, but the failure to record, or any error in so recording, any such amount on any such grid, continuation or other record shall not limit or otherwise affect the obligation of the Borrower hereunder or under the Credit Agreement to make payments of principal of and interest on this Revolving Loan Note when due.

The Borrower has the right in certain circumstances and the obligation under certain other circumstances to prepay the whole or part of the principal of this Revolving Loan Note on the terms and conditions specified in the Credit Agreement.

If any one or more Events of Default shall occur, the entire unpaid principal amount of this Revolving Loan Note and all of the unpaid interest accrued thereon may become or be declared due and payable in the manner and with the effect provided in the Credit Agreement.

Borrower and every endorser and guarantor of this Revolving Loan Note or the obligation represented hereby waive presentment, demand, notice, protest and all other demands and notices in connection with the delivery, acceptance, performance, default or enforcement of this Revolving Loan Note, assent to any extension or postponement of the time of payment or any other indulgence, to any substitution, exchange or release of collateral and to the addition or release of any other party or person primarily or secondarily liable.

THIS REVOLVING LOAN NOTE SHALL BE GOVERNED BY, AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAW OF THE STATE OF CALIFORNIA, WITHOUT REGARD TO THE PRINCIPLES THEREOF REGARDING CONFLICTS OF LAWS, AND ANY APPLICABLE LAWS OF THE UNITED STATES OF AMERICA. THE BORROWER IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE NONEXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF CALIFORNIA SITTING IN SANTA CLARA COUNTY, CALIFORNIA AND OF THE UNITED STATES DISTRICT COURT OF THE NORTHERN DISTRICT OF CALIFORNIA, AND ANY APPELLATE COURT FROM ANY THEREOF, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS REVOLVING LOAN NOTE, OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT, AND THE BORROWER IRREVOCABLY AND UNCONDITIONALLY AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH CALIFORNIA STATE COURT OR, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN SUCH FEDERAL COURT. THE BORROWER AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS REVOLVING LOAN NOTE SHALL AFFECT ANY RIGHT THAT THE LENDER MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS REVOLVING LOAN NOTE OR ANY OTHER LOAN DOCUMENT AGAINST ANY LOAN PARTY OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION. THE BORROWER IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS REVOLVING LOAN NOTE IN ANY COURT REFERRED TO HEREIN. THE BORROWER HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT. THE BORROWER HEREBY WAIVES PERSONAL SERVICE OF THE SUMMONS, COMPLAINTS AND OTHER PROCESS ISSUED IN ANY SUCH ACTION OR SUIT. THE BORROWER IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 10.02 OF THE CREDIT AGREEMENT. NOTHING IN THIS REVOLVING LOAN NOTE WILL AFFECT THE RIGHT OF ANY PARTY TO THE CREDIT AGREEMENT TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW. THE BORROWER CONSENTS TO THE DISPUTE RESOLUTION PROVISIONS OF SECTION 10.15 OF THE CREDIT AGREEMENT.

IN WITNESS WHEREOF, the undersigned has caused this Revolving Loan Note to be signed as an instrument under seal by its duly authorized officer as of the day and year first above written.

SUNPOWER CORPORATION

By: _____

Print Name: _____

Title: _____

Date	Amount of Revolving Credit Loan	Amount of Principal Paid or Prepaid	Balance of Principal Unpaid	Notation Made By:

EXHIBIT 7.02(b)

[FORM OF] COMPLIANCE CERTIFICATE

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

with a copy to:

Union Bank, N.A.
Attention: Michael J. McCutchin
James B. Goudy
Northern California Commercial Banking Group
99 Almaden Boulevard, Suite 200
San Jose, CA 95113

Re: Compliance Certificate as of and for period ending: _____ __, 2011

Ladies and Gentlemen:

This certificate (this "Compliance Certificate") is submitted pursuant to the Credit Agreement, dated as of July 18, 2011 (as amended, modified, supplemented, restated or renewed from time to time, the "Credit Agreement") by and among Borrower, SUNPOWER CORPORATION, SYSTEMS, a Delaware corporation ("SCS"), SUNPOWER NORTH AMERICA, LLC, a Delaware limited liability company (together with SCS and the other guarantors from time to time party to the Credit Agreement, the "Guarantors"), and UNION BANK, N.A., as lender (the "Lender"). All capitalized terms used herein shall have the meanings specified in the Credit Agreement unless otherwise defined herein.

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

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

The undersigned hereby further represents, warrants and certifies that:

1. Each of the Borrower and the other Loan Parties are in complete and strict compliance, as of, and for the period ending, _____ __, 2011 (the "Compliance Date"), with all agreements, conditions and covenants contained in the Credit Agreement and the other Loan Documents, except as noted below.

2. The representations and warranties of each Loan Party contained in the Credit Agreement and the other Loan Documents are true and correct in all material respects as of the

Compliance Date as if made on such date (or, in the case of representations and warranties stated as having been made only as of the Closing Date, such representations and warranties remain true and correct in all material respects as of the Closing Date); provided, however, the foregoing materiality qualification does not apply to those representations and warranties that already are qualified or modified by materiality in the text thereof.

3. There exists no Default or Event of Default under the Credit Agreement or any of the other Loan Documents.

4. Each Loan Party is in compliance with each of the covenants in Section 8.14 of the Credit Agreement, as of, and for the period ending on, the Compliance Date, and attached hereto as Schedule 1 is a true and correct copy of the calculation of such financial covenants, prepared by the undersigned.

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

6. Since July 18, 2011 (a) there has been no Material Adverse Effect as to any Loan Party, and (b) except as set forth on Schedule 3 hereto, there have been no pledges, assignments or Dispositions of WJE Stock.

7. Each of Loan Party is in compliance with each of the reporting and notice covenants in Sections 7.01, 7.02, and 7.03 of the Credit Agreement, as of, and for the period ending on the Compliance Date, and attached hereto as Schedule 2 are the quarterly and annual (as applicable) financial statements required under Section 7.01 of the Credit Agreement and the other reports, letters, opinions, notices and other required under the Credit Agreement;

8. The financial statements furnished on Schedule 2 attached hereto are complete and correct and have been prepared in accordance with GAAP (except for the lack of footnotes required by GAAP and changes resulting for normal year end adjustments, in the case of financial statements other than those as of a Fiscal Year end), consistently applied from one period to the next, and fairly present the financial condition of the Loan Parties and their Subsidiaries.

9. Each Loan Party is Solvent.

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

11. No Liens have arisen, been granted or otherwise exist with respect to any assets or properties of any Loan Party other than Permitted Liens.

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

Very Truly Yours,

SUNPOWER CORPORATION

By: _____

Print Name: _____

Title: _____

SCHEDULE 1
TO
COMPLIANCE CERTIFICATE

SCHEDULE 2
TO
COMPLIANCE CERTIFICATE

REQUIRED FINANCIAL STATEMENTS

SCHEDULE 3
TO
COMPLIANCE CERTIFICATE

DETAILS REGARDING WJE STOCK DISPOSITIONS

EXHIBIT 10.3

CONFIDENTIAL TREATMENT REQUESTED

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

Execution Version

LETTER OF CREDIT FACILITY AGREEMENT

dated as of August 9, 2011

among

SUNPOWER CORPORATION,

TOTAL S.A.,

the SUBSIDIARY APPLICANTS parties hereto from time to time,

the BANKS parties hereto from time to time,

and

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

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SCHEDULES AND EXHIBITS

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LETTER OF CREDIT FACILITY AGREEMENT

This LETTER OF CREDIT FACILITY AGREEMENT (this "Agreement"), dated as of August 9, 2011, is made by and among SunPower Corporation, a Delaware corporation (the "Company"), Total S.A., a société anonyme organized under the laws of the Republic of France (the "Parent Guarantor"), the Subsidiary Applicants parties hereto from time to time, the financial institutions parties hereto from time to time, 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" has the meaning given thereto in the preamble.

"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 reasonable 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 8.06** 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 Rate" as announced from time to time in the so called money rates section of the United States Edition of The Wall Street Journal. Each change in such 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.

"Block Notice" means a Notice of Block (as defined in the Parent Guaranty) delivered by the Parent Guarantor pursuant to the Parent Guaranty suspending the right of the Company or a Subsidiary Applicant to obtain LOCs hereunder.

"Business Day" means a day of the year other than (i) Saturdays, (ii) Sundays or (ii) any day on which banks are required or authorized by law to close in either or both of New York, New York or Paris, France.

"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.

"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 (provided that compliance with such request, guideline, or directive is in accordance with the general practice (if any) of the applicable Bank to whom such request, guideline, or directive is intended to apply) made or issued after the date of this Agreement; provided, however, that

notwithstanding anything herein to the contrary, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, regulations, guidelines or directives thereunder or issued in connection therewith or in implementation thereof and (ii) all requests, rules, guidelines, requirements and directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case referred to in clause (i) or (ii) be deemed to be a "Change in Law", regardless of the date enacted, adopted or issued.

"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 8.01**).

"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 8.06(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**. Except as provided for in **Section 2.04(b)**, at no time shall the aggregate Commitment Amount exceed the lower of the then applicable Maximum LOC Amount and $771,000,000.

"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 six (6) basis points (0.06%) per annum on the then applicable daily unused Commitment Amount of such Bank.

"Company" has the meaning given thereto in the preamble.

"Confidential Information" means all information that the Company or any Affiliate thereof furnishes to the Administrative Agent or any Bank that is identified 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.

"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.

"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 Company.

"DB" means Deutsche Bank AG New York Branch, a New York licensed branch of a German banking corporation.

"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, or (iii) asserts or is entitled to assert any immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or such Bank (or any relevant Governmental Authority or instrumentality) rejects, repudiates, disavows or disaffirms any contracts or agreements made by such Bank (or is permitted to do the same).

"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 amount of dollars of such amount based on the "Euro foreign exchange reference rate" and such other foreign exchange reference rate published by the European Central Bank as may be necessary to convert the applicable currency from such currency to euros (if necessary) and from euros to dollars 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.

"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 in each case is covered by any of clauses (a) through (c) 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.

"euro" means the official currency of the European Union.

"Event of Default" has the meaning specified in **Section 6.01**.

"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 based on the "Euro foreign exchange reference rate" and such other foreign exchange reference rate published by the European Central Bank. In the event that such rate is not published, 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 Administrative 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 Facility" means the letter of credit facility established pursuant 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.

"Existing LOCs" means the letters of credit described on **Schedule IV** .

"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 the Company.

"Fee Letter" means that Fee Letter by and among the Company and DB, as the Administrative Agent and the Issuing Bank, substantially in the form attached hereto as **Exhibit H**.

"Final LOC Expiration Date" means June 28, 2018.

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

"Governmental Authority" means any supra-national body, 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.

"Impacted Bank" means, at any time, any Bank, as determined by the Administrative Agent and the Company, that (a) is not a Defaulting Bank and (b) (i) has a long term senior unsecured indebtedness rating by S&P and/or Moody's less than BBB+ (if rated by S&P) and less than Baa1 (if rated by Moody's) or (ii) neither S&P nor Moody's maintains a long term senior unsecured indebtedness rating for such Bank.

"Indemnified Party" has the meaning specified in **Section 8.04(b)**.

"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, as the issuer of the Existing LOCs, DB in its capacity as the issuer of LOCs hereunder and any additional Issuing Bank that becomes a party hereto in accordance with **Section 2.14(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 Affiliates.

"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 2.14(f)**.

"Judgment Currency" has the meaning specified in **Section 2.16(b)**.

"Judgment Currency Conversion Date" has the meaning specified in **Section 2.16(b)**.

“LComm” means the large commercial portion of the residential and commercial business segment of the Company with projects of at least 1 megawatt (DC or direct current) in peak capacity sold directly to a commercial end-user and not via a dealer.

"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.

"Loan Documents" means, collectively, this Agreement, the Parent Guaranty, each LOC Request, any Adherence Agreements 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 and each Existing LOC.

"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 Fee” means, as to any Bank, a participation fee with respect to its participations in LOCs which shall accrue at the rate of twenty (20) basis points (0.20%) 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.

"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**.

"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 (c) the ability of the Company or any other Applicant to perform their obligations, taken as a whole, under the Loan Documents.

“Maximum LOC Amount” means, in each case, calculated noncumulatively and on a Dollar-Equivalent basis: (a) for the period from the Closing Date through December 31, 2011, $645,000,000; (b) for the period from January 1, 2012 through December 31, 2012, $725,000,000; (c) for the period from January 1, 2013 through December 31, 2013, $771,000,000 (d) for the period from January 1, 2014 through December 31, 2014, $878,000,000; (e) for the period from January 1, 2015 through December 31, 2015, $936,000,000; and (f) for the period from January 1, 2016 through the Termination Date, $1,000,000,000.

“Montalto Project” means the Montalto di Castro solar park in Lazio, Italy, which was sold by the Company prior to the date hereof.

"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 8.01** (or all Banks directly affected thereby) at a time when the Required Banks have agreed to such consent, waiver, or amendment.

“NorSun Supply Agreement” means the Long-Term Polysilicon Supply Agreement, dated as of August 9, 2007, by and between the Company and NorSun AS.

"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 Permitted Purposes" means (a) development obligations or guaranties of the Company or a Wholly-Owned Subsidiary with respect to project development obligations such as transmission reservations and land options for the Company's UPP and LComm businesses, (b) remediation work, landscaping and other related obligations or guarantees of the Company or a Wholly-Owned Subsidiary in favor of government entities for reparation of land and surrounding environment after construction for the Company's UPP and LComm businesses, and (c) obligations or guarantees of the Company or a Wholly-Owned Subsidiary with respect to obligations to local tax authorities relating to doing business in that locality with respect to the Company's UPP or LComm businesses.

"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.

"Parent Guarantor" has the meaning given thereto in the preamble.

"Parent Guaranty" means the Guaranty of even date herewith by the Parent in respect of the Repayment Obligations substantially in the form of **Exhibit G**.

"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)).

"Permitted LOCs" means LOCs that are classified as a performance standby letters 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 and constitute (a) performance guarantees (for a period of up to two (2) years after completion of the applicable project) and completion guarantees (until completion of the applicable project) of the Company or such Wholly-Owned Subsidiary with respect to engineering, procurement and construction services provided in connection with the Company's UPP and LComm businesses (including replacing Existing LOCs), (b) performance guarantees for engineered hardware packages not including engineering, procurement and construction services for UPP projects for a period of up to two (2) years after completion of the applicable project, (c) the Other Permitted Purposes for a period of up to two (2) years, (d) certain purchase, repayment and tax indemnity obligations of the Company or a Wholly-Owned Subsidiary existing as of the Closing Date supported by no more than three (3) LOCs (of which two (2) LOCs in an aggregate face amount of €10,675,609 relate to the Montalto Project and one (1) LOC in a face amount of $40,000,000 relates to the NorSun Supply Agreement) (which Existing LOCs will be replaced by LOCs issued under this Agreement), and (e) the Existing LOCs; provided, that, notwithstanding anything to the contrary in this definition but subject to the other terms and conditions of this Agreement, the Company will be permitted to have LOCs outstanding at any one time until the Termination Date for the purposes described in clauses (a) and (b) above with an expiry of between two (2) and three (3) years from the date of issuance thereof and for an aggregate initial face amount of up to fifteen per cent (15%) of the then-applicable Maximum LOC Amount.

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

"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.

"Repayment Obligations" means the obligations of a Credit Party (with respect to the Company, for itself or as guarantor) now existing or hereafter arising under **Section 2.03(a)** to reimburse to the Banks the amount of any draw on any LOC issued hereunder (with respect to the Company, for itself or for another Applicant) and all interest accrued on such reimbursement obligation from the date of such reimbursement until the date paid. "Repayment Obligations" shall also include all fees, expenses or other amounts payable by any Credit Party to the Banks or the Administrative Agent.

"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.

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

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

"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 Wholly-Owned Subsidiary listed on **Schedule II** and (b) each other Wholly-Owned 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 substantially in the form of **Exhibit I**.

"Subsidiary Applicant" means (a) each Wholly-Owned Subsidiary that is a party to this Agreement and is listed on **Schedule III** and (b) each other Wholly-Owned 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 2.17**.

"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 Company 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.

"Termination Date" means June 28, 2016.

"Upfront Fee" means a fee, which shall be payable by the Company on the Closing Date to the Administrative Agent for distribution pro rata to the Banks, of $387,000.

"UPP" means the utility and power plant business segment of the Company, which includes power plant project development, construction and project sales, turnkey engineering, procurement and construction services for power plant construction, and power plant operations and maintenance services, but excludes component sales.

"Wholly-Owned Subsidiary" means a direct or indirect wholly-owned Subsidiary of the Company.

"Withholding Agent" means each Applicant and the Administrative Agent.

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 otherwise 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 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.

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 2.16**, 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 amend the expiry, amount or operative language 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 or amend the expiry, amount or language 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 or amendment) would exceed such Bank's Commitment Amount, or (iii) such issuance or amendment 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) three (3) years from the date of issuance thereof, and (ii) the Final LOC Expiration Date; provided that 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 Final LOC Expiration Date); 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 Permitted 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 any 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), a summary of the arrangement to which such LOC pertains, 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 for 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). The applicable Applicant agrees to promptly deliver to the Parent Guarantor a copy of each request made by it pursuant to the foregoing sentence. 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, the applicable Applicant and the Parent Guarantor.

(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 amend the expiration date of an outstanding LOC, the Available Amount of an outstanding LOC or the language of an outstanding LOC by delivering to the Issuing Bank (with a copy to the Parent Guarantor) 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 notice 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 satisfied, (ii) notice from the applicable Applicant directing the Issuing Bank not to permit the extension of such LOC, unless (in the case of this clause (ii)) the Required Banks or the Administrative Agent shall have notified the Issuing Bank that an Event of 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)), or (iii) a Block Notice from the Parent Guarantor.

(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, amending the expiration date, the Available Amount of an outstanding LOC, the language 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, amend the Available Amount of, or amend the expiration of, or amend the language of 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 have of an Event of Default, of any event or condition that would constitute an Event of Default but for the requirement that notice be given or time elapse or both, 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 (other than those conditions set forth in **Section 3.02**), without the consent of, and without liability to, the Administrative Agent or any Bank; provided that any such amendment, modification, or supplement that amends the expiration date, the Available Amount or the language of an outstanding LOC shall be subject to **Section 2.01**.

(e) LOC Participating Interests. On the Closing Date with respect to the Existing LOCs and concurrently with the issuance of each other 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 8.06**, LOC Participating Interests in all outstanding 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 shall 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 the Dollar Equivalent of 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 thereafter, 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 copies to the Company and the Parent Guarantor) prompt written notice of each (i) issuance or amendment of the expiry, amount or language 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, Applicant and the Parent Guarantor promptly upon request and, in any case, prior to the fifteenth Business Day of each calendar quarter a written report summarizing issuance and amendment of LOCs issued or amended during the preceding calendar quarter and payments and reductions in Available Amounts during such 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 applicable Applicant 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 may 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 8.13**.

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 within five (5) Business Days of the date the Issuing Bank notifies such Applicant of such LOC Disbursement. Such reimbursement obligation shall be payable without further notice, protest or demand, all of which are hereby waived, and an action therefor shall immediately 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 1.00%) 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; or

(vi) 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 against the Issuing Bank following reimbursement of each LOC Disbursement in full by such Applicant to the extent of any direct (but not consequential) damages suffered by the

applicable 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 and (ii) the applicable Applicant's aggregate remedies against the Issuing Bank for wrongfully honoring a presentation shall not exceed the aggregate amount paid by 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 disregard 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 described 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 fifteen (15) 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.

(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 Street, 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 three (3) 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 Amount 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. Except as specifically provided in this Agreement, no fees or expenses shall be payable by any Credit Party or Subsidiary Applicant in respect of any such termination.

(b) Subject to the terms and conditions of this **Section 2.04(b)**, 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 the then-applicable Maximum LOC Amount. 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 Commitment Amounts shall be on the same terms and conditions as the other Commitment Amounts hereunder; (v) no Event of 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 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 the Company as to the matters set forth in clauses (v) and (vi) 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 increase and the use of such amounts to make payments to such other relevant Banks, each Bank's portion of the funded 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 Upfront Fee and 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 an LOC Fee with respect to its participations in LOCs. LOC 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 LOC 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) 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 the Upfront Fee, Commitment Fees and LOC Fees, to the Banks. Other than amounts erroneously paid as the result of administrative or technical errors, fees paid shall not be refundable under any circumstances. The Commitment Fees due to a Bank shall cease to accrue on the date on which the Commitment of such Bank shall expire or be terminated as provided herein.

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 (i) Taxes or Other Taxes (as to which **Section 2.08** shall exclusively govern), (ii) 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, (iii) any increased cost in respect of which a Bank is entitled to compensation under any other provision of this Agreement, (iv) any payment to the extent that it is attributable to the requirement of any Governmental Authority which regulates a Bank or its holding company which is imposed by reason of the quality of such Bank’s assets or those of its holding company and not generally imposed on all entities of the same kind regulated by the same authority, or (v) any increased cost arising by reason of a Bank voluntarily breaching any lending limit or other similar restriction imposed by any provision of any relevant law or regulation after the introduction thereof), then the Company agrees to pay, from time to time, within fifteen (15) 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 pursuant hereto that has or would have the effect of reducing the rate of return on such Bank's (or such Bank's parent corporation's) capital to a level below that which such Bank (or such Bank's parent corporation) could have achieved but for such Change in Law (excluding, for purposes of this Section, any such increased costs resulting from any change to the extent that it is attributable to the requirement of any Governmental Authority which regulates a Bank or its holding company which is imposed by reason of the quality of such Bank's assets or those of its holding company and not generally imposed on all entities of the same kind regulated by the same authority) then, within fifteen (15) 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) Promptly after an officer with responsibility for its participation in the Facility becomes aware of the relevant circumstances and their results, each Bank shall promptly notify the Company and the Administrative Agent of any event of which 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 entitled 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 Alternate Currency, 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 for the Base 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.

(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 any Withholding Agent determines, in its sole discretion exercised in good faith, that it is required by law to deduct any taxes, levies, imposts, deductions, charges, or withholdings, and all liabilities with respect thereto, from or in

respect of any sum payable hereunder to any Bank or the Administrative Agent, (i) the sum payable by the applicable Applicant shall be increased as may be necessary so that after such Withholding Agent has 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 would have received had no such deductions been made, (ii) such Withholding Agent shall make all such deductions, and (iii) such Withholding Agent 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 in accordance with applicable law.

(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 8.02**, 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 Agent 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 Agreement and the Parent Guaranty. 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 future 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 and the Parent Guarantor that, as of the date such Bank becomes a party to this Agreement, such Bank is entitled to receive payments hereunder from such Applicant and the Parent Guarantor without deduction or withholding for or on account of any Taxes.

(h) If the Administrative Agent or a Bank determines, in its reasonable discretion, that it has received a refund of any Taxes or Other Taxes as to which it has been indemnified by the Company, the Parent Guarantor or any Applicant or with respect to which such Applicant has paid additional amounts pursuant to this **Section 2.08** or the Parent Guarantor pursuant to the Parent Guaranty, it shall reimburse to such Applicant or the Parent Guarantor, as the case may be, such amount as the Administrative Agent or such Bank determines to be the proportion of such refund as will leave the Administrative Agent or such Bank (after that reimbursement) in no better or worse position in respect of the worldwide liabilities for Taxes and Other Taxes of the Administrative Agent or such Bank (including in each case its Affiliates) than it would have been if no such indemnity had been required under this **Section 2.08**. 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.

(i) Each Bank shall severally indemnify the Administrative Agent for any Taxes (but only to the extent that the Applicants have not already indemnified the Administrative Agent for such Taxes and without limiting the obligation of the Applicants to do so) attributable to such Bank that are paid or payable by the Administrative Agent in connection with any Loan Document and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. The indemnity under this **Section 2.08(i)** shall be paid within 30 days after the Administrative Agent delivers to the applicable Bank a certificate stating the amount of Taxes so paid or payable by the Administrative Agent. Such certificate shall be conclusive of the amount so paid or payable absent manifest error.

2.09 Sharing of Payments, Etc. If any Bank shall obtain at any time any payment (whether voluntary or involuntary, other than as a result of an assignment pursuant to **Section 8.06**) (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 obtained 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 Bank 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 the purposes set out in the definition of "Permitted LOCs" in **Section 1.01**.

2.11 Replacement of Affected Bank, Nonconsenting Bank, Impacted Bank or Defaulting Bank. At any time that any Bank other than the Issuing Bank is an Affected Bank, a Nonconsenting Bank, an Impacted Bank or a Defaulting Bank, the Company may, at its sole expense (including the assignment fee specified in **Section 8.06(a)**) and effort and with the written consent of the Issuing Bank (such consent not to be unreasonably withheld), replace such Affected Bank, Nonconsenting Bank, Impacted Bank or Defaulting 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, Nonconsenting Bank, Impacted Bank or Defaulting Bank (in accordance with **Section 2.12**) 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, Nonconsenting Bank's, Impacted Bank's or Defaulting Bank's (in accordance with **Section 2.12**) ratable share of all accrued and unpaid fees payable pursuant to **Section 2.05** and all other obligations owed to such Affected Bank, Nonconsenting Bank, Impacted Bank or Defaulting Bank (in accordance with **Section 2.12**) hereunder and under the other Loan Documents. Notwithstanding the foregoing, (a) no Affected Bank, Impacted 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, an Event of 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 8.01**); 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 reimbursement 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 may cash collateralize such Defaulting Bank's Credit Exposure (after giving effect to any partial reallocation pursuant to clause (i) above) in a manner reasonably satisfactory to the Administrative Agent and the Issuing Bank 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 a manner satisfactory to the Administrative Agent and the Issuing Bank in their sole discretion, 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 Impacted Banks. So long as any Bank is an Impacted Bank, then notwithstanding any other Section of this Agreement to the contrary but subject to **Section 2.12**, the Issuing Bank shall not be required to issue, amend or increase any LOC, unless the Issuing Bank is satisfied that, after giving effect thereto, the related exposure would be 100% covered by the Commitments of Banks that are neither Defaulting Banks nor Impacted Banks (after giving effect to any reallocation that would be effected under **Section 2.12** if each Impacted Bank were treated as a Defaulting Lender) and/or cash collateral provided by the applicable Applicant in a manner satisfactory to the Administrative Agent and the Issuing Bank in their sole discretion.

2.14 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 agreements 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 liable 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 Event of 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 Event of Default unless the Issuing Bank has received notice from a Bank, the Administrative Agent, or the Company referring to this Agreement, describing such Event of 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**. From and after the effective date of any such replacement, (i) the successor Issuing Bank shall have all the rights and 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. The replaced Issuing Bank shall use commercially reasonable efforts to cooperate with the Company and the successor Issuing Bank at no charge to the Company in replacing the LOCs issued by the replaced Issuing Bank with those issued by the successor Issuing Bank. No fees or expenses shall be payable by the Company, any Credit Party or any Subsidiary Applicant in respect of the replacement of the Issuing Bank.

(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 8.04** 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 the 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.

2.15 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.

2.16 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 additional 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.

2.17 Subsidiary Applicants. 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 Administrative Agent; provided, that no Subsidiary shall become a party hereto or a Subsidiary Applicant hereunder unless the Administrative Agent shall not have been notified by any Bank, within five (5) Business Days after any such request to add a Subsidiary Applicant hereunder, that such Bank believes that it would violate any applicable law or regulation for any LOCs to be issued at such proposed Subsidiary Applicant's request or that the Administrative Agent or any Bank would be subject to any unindemnified withholding taxes. 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 shall 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**.

2.18 Parent Guaranty. Payment of certain of the Repayment Obligations by the Company is guaranteed by the Parent Guarantor pursuant to the Parent Guaranty. Subject to (a) the Parent Guarantor's obligations under the Parent Guaranty and (b) **Section 2.20**, the obligations of each Credit Party under this Agreement are several and not joint and no Credit Party shall be responsible for the obligations of any other Credit Party under this Agreement.

2.19 Cash Collateralization. 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 five (5) 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 shall be required to cash collateralize any amounts attributable to an LOC issued at the request of any other Applicant.

2.20 Company Guaranty.

(a) The Company 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 Repayment Obligations of each of the other Credit Parties (the "Guaranteed Obligations"). The Company 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 hereunder as each cause of action arises.

(b) To the fullest extent permitted by applicable law, the Company 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 the Company hereunder shall not be affected by (i) the failure of the Administrative Agent, the Issuing Bank or any other Bank 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 the Parent Guarantor under the Parent Guaranty; (iv) any default, failure or delay, willful or otherwise, in the performance of any Repayment Obligations; or (v) 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 the Company under this **Section 2.20** or otherwise operate as a discharge or exoneration of the Company as a matter of law or equity or which would impair or eliminate any right of the Company to subrogation.

(c) The Company 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 the Company 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. The obligations of the Company 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. The obligations of the Company hereunder shall extend to all Repayment Obligations of the other Applicants without limitation of amount.

(d) To the fullest extent permitted by applicable law, the Company 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 right or remedy available to them against any Applicant or any other Person, without affecting or impairing in any way the liability of the Company hereunder except to the extent the Guaranteed Obligations have been fully and finally paid. To the fullest extent permitted by applicable law, the Company 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 the Company against any Applicant or any other Person, as the case may be. The Company agrees that, as between the Company, 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 the Company's guarantee herein, notwithstanding any stay, injunction or other prohibition preventing such acceleration 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 the Company for purposes of this Agreement.

(e) 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 the Company 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) 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, the Company hereby promises to and will forthwith 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 the Company of any sums as provided above, all rights of the Company 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. If any amount shall erroneously be paid to the Company on account of (i) such subrogation, contribution, reimbursement, indemnity, or similar right, or (ii) any such indebtedness of any Applicant, such amount shall be held in trust for the benefit of the Issuing Bank and the other Banks and shall be paid to the Administrative Agent to be credited against the payment of the Guaranteed Obligations, whether matured or unmatured.

(f) The Company 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 the Company hereunder except the full and final performance and payment in cash of the Guaranteed Obligations.

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 8.01**) 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 and the Parent Guaranty 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 Parent Guaranty.

(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, 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 Event of Default.

(c) The Administrative Agent shall have received documents and certificates relating to the organization, existence, and good standing of each Credit Party, and the authorization of the

transactions contemplated hereby, all in form 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.

(d) The Administrative Agent shall have received a written opinion (addressed to the Administrative Agent and the Banks and dated the Closing Date) of counsel to the Company covering the matters set forth in Exhibit C and of in-house counsel to the Parent Guarantor with regard to matters of French law, in each case in form and substance reasonably satisfactory to the Administrative Agent. Each of the Company and the Parent Guarantor 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.

(e) The Administrative Agent shall have received evidence, reasonably satisfactory to it, that the Existing Facility has been terminated on or prior to the date hereof.

(f) The Administrative Agent shall have received all fees and other amounts due and payable on or prior to the Closing Date and, to the extent invoiced, reimbursement or payment of all expenses required to be reimbursed or paid by any Applicant hereunder, including the previously agreed fees and disbursements of Moses & Singer LLP as special counsel to the Administrative Agent and the Issuing Bank.

3.02 Conditions Precedent to Each Issuance, Extension or Increase of an LOC. In addition to the conditions to issuance or amendment set forth in **Section 2.01**, the obligation of the Issuing Bank to issue or amend the expiry, amount or language 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 or amendment:

(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, unless waived in accordance with **Section 8.01**;

(b) no Block Notice is in effect;

(c) no Event of Default, or event or condition that would constitute an Event of Default described in **Section 6.01(a)**, **Section 6.01(f)**, or **Section 6.01(g)** but for the requirement that notice be given or time elapse or both, has occurred and is continuing or would result from such issuance, extension, or increase;

(d) the Parent Guarantor shall not have repudiated, or asserted the unenforceability of the Parent Guaranty and the Parent Guaranty shall continue to be in full force and effect; and

(e) 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

The Company represents and warrants as follows:

4.01 Existence, Etc. Each Credit Party (i) is duly organized or formed, validly existing, and in good standing under the laws of the jurisdiction of its incorporation or formation, (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, or (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, or (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, which, in the case of any violation, conflict, breach or default under clause (ii) or (iii) 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 has been obtained and is in full force and effect 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 the Company pending or, to the

knowledge of the Company, threatened in writing before any Governmental Authority that could reasonably be expected to have a Material Adverse Effect.

4.06 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.

4.07 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.

4.08 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.

4.09 No Event of Default. No Event of Default has occurred and is continuing.

ARTICLE V

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, the Company covenants and agrees with the Administrative Agent and each Bank that:

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

(a) within ninety (90) days after the end of each fiscal year of the Company, its audited consolidated balance sheet and related statements of earnings, shareholders' equity and cash flows as of the end of and for such year, setting forth in each case in comparative form the figures for the previous fiscal year, all reported on by independent public accountants of recognized national standing and reasonably acceptable to the Agent (without a "going concern" explanatory note or any similar qualification or exception 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;

(b) within forty-five (45) days after the end of each of the first three fiscal quarters of each fiscal year of the Company, its consolidated balance sheet and related statements of earnings, shareholders' equity and cash flows as of the end of and for such fiscal quarter and the then elapsed portion of the fiscal year, setting forth in each case in comparative form 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, all certified by one of its Financial Officers as presenting 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, subject to normal year-end audit adjustments and the absence of footnotes; and

(c) written notice of the occurrence of an Event of Default, which notice shall be given within five (5) Business Days after the actual knowledge of an officer of the Company of such occurrence, specifying the nature and extent thereof and, if continuing, the action the Company or relevant Credit Party is taking or proposes to take in respect thereof.

The Parent Guarantor shall promptly (and not later than three (3) Business Days after the occurrence thereof) notify the Company of any Event of Default occurring under **Section 6.01(d)**, **(e)**, **(f)**, or **(g)** and relating to the Parent Guarantor.

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 Credit Party 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 Compliance with Laws. Each Credit Party will comply with all applicable laws, ordinances, rules, regulations, and requirements of Governmental Authorities except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

5.04 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, 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).

ARTICLE VI

EVENTS OF DEFAULT

6.01 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, other than as a result of administrative or technical error so long as such error is corrected within three (3) Business Days of notification to such Applicant of such error, fail to pay any reimbursement obligation in respect of any LOC Disbursement made by the Issuing Bank pursuant to an LOC, any 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, in each case within five (5) Business Days after the same becomes due and payable with respect to a payment required to be made pursuant to **Section 2.03** or ten (10) Business Days after the same becomes due and payable with respect to any other payment required to be made hereunder;

(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 and such inaccuracy is not remedied within thirty (30) days after receipt of notice to the applicable Credit Party and the Parent Guarantor from the Administrative Agent specifying such inaccuracy;

(c) Any Credit Party shall fail to perform or observe any term, covenant, or agreement contained herein 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 to the applicable Credit Party and the Parent Guarantor from the Administrative Agent or the applicable Bank specifying such failure;

(d) The Parent Guarantor shall fail to pay (i) any indebtedness for borrowed money pursuant to a loan agreement, or (ii) any noncontingent payment obligation pursuant to a letter of credit agreement of similar nature to this Agreement, in either case individually or in the aggregate, in excess of the Dollar Equivalent of $200,000,000, 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 or obligation, provided, however, that a written waiver of such failure by the Person to whom such indebtedness or obligation is owed shall be a written waiver of the Event of Default resulting pursuant to this subclause from such failure; or the maturity of such indebtedness or obligation is accelerated, provided, however, that a written waiver of such failure by the Person to whom such indebtedness or obligation is owed shall be a written waiver of the Event of Default resulting pursuant to this subclause from such failure;

(e) The Parent Guarantor shall repudiate, or assert the unenforceability of the Parent Guaranty, or the Parent Guaranty shall for any reason not be in full force and effect or the Company shall repudiate, or assert the unenforceability of this Agreement;

(f) The entry by a court having jurisdiction in the premises of (i) a decree or order for relief in respect of the Parent Guarantor, the Company or any other Credit Party 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 Parent Guarantor, the Company or any other Credit Party bankrupt or insolvent, or approving as properly filed a petition seeking reorganization, arrangement, adjustment or composition of or in respect of the Parent Guarantor, the Company or any other Credit Party under any applicable United States federal, state, or foreign law, or appointing a custodian, receiver, liquidator, assignee, trustee, sequestrator or other similar official of the Parent Guarantor, the Company or any other Credit Party or any substantial part of the property of the Parent Guarantor or the Company, or ordering the winding up or liquidation of the affairs of the Parent Guarantor, the Company or any other Credit Party, 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 ninety (90) consecutive days; or

(g) The commencement by the Parent Guarantor, the Company or any other Credit Party 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 Parent Guarantor, the Company or any other Credit Party to the entry of a decree or order for relief in respect of the Company or any other Credit Party 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 Parent Guarantor, the Company or any other Credit Party 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 Parent Guarantor, the Company or any other Credit Party 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 Parent Guarantor, the Company or any other Credit Party or of any substantial part of the property of, or the making by the Parent Guarantor, the Company or any other Credit Party of an assignment for the benefit of creditors, or the admission by the Parent Guarantor, the Company or any other Credit Party in writing of its inability to pay its debts generally as they become due, or the taking of corporate action by the Parent Guarantor, the Company or any other Credit Party in furtherance of any such action;

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 or amend the expiry, amount or language 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 under such LOC in accordance with (and to the extent permitted by) such LOC and/or (iv) 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 (v) 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, amend, or amend the expiry, amount or language 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 Applicant, and (z) the obligation of each Applicant to provide cash collateral under **Section 6.02** shall automatically become effective.

6.02 Actions in Respect of the Letters of Credit upon Event of 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 6.01**, 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 that the Company 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 VII

THE ADMINISTRATIVE AGENT

7.01 Authorization and Action. 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 8.01**) or in the absence of its own gross negligence or willful misconduct.

7.02 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 Event of 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 any Loan Document or any other instrument or document furnished pursuant thereto; (e) 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 (f) shall have no fiduciary or other implied duties or responsibilities.

7.03 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 trustee 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.

7.04 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.

7.05 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 8.04** 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 8.04**, 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 relieve 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.

7.06 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 VII** 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.

7.07 Successor Administrative Agent. The Administrative Agent may, and in the event it becomes a Defaulting Bank (as determined by the Company or the Required Banks) shall upon the Company's request, 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 discharged 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 VII** 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.

ARTICLE VIII

MISCELLANEOUS

8.01 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 Banks, (iv) release the Parent Guarantor from the Parent Guaranty, (v) amend this **Section 8.01** 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 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) in the event that any Bank is a Credit Party or an Affiliate of a Credit Party, then such Bank shall be disregarded for purposes of determining the Required Banks required for any amendment, waiver or consent, (y) 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 (z) 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.

8.02 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 such 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, the Issuing Bank or any other Bank pursuant to **Article II**, shall not be effective until received by such Person; 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.

8.03 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.

8.04 Costs and Expenses.

(a) Each Credit Party agrees to pay on demand all reasonable and documented costs and expenses of the Administrative Agent and the Issuing Bank (including the legal fees and disbursements of Moses & Singer LLP as special counsel to the Administrative Agent and Issuing Bank to the extent previously agreed) in connection with the preparation, execution and delivery of the Loan

Documents; provided, however, that no Applicant 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) the enforcement of this Agreement or any other Loan Document or (ii) 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 2.14(g)** or **Section 7.05**, respectively, except to the extent such claim, damage, loss, liability or expense shall have resulted from the negligence, willful misconduct or fraud of such Indemnified Party. 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 contract, 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 8.04** 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.

8.05 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.

8.06 Assignments and Participations.

(a) Each Bank may, and so long as no Event of 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 and the other Loan Documents (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 $25,000,000 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, (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, together 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 **8.04** 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 any Loan Document or any other instrument or document furnished pursuant thereto; (ii) such assigning Bank makes no representation 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 authorizes 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 8.02** 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 8.06(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 and the other Loan Documents (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, (iv) so long as there then exists no Event of Default, such participation is consented to and approved by the Company (not to be unreasonably withheld), and (v) 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 8.06**, 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 8.06**.

(g) Any Bank may, in connection with any assignment or participation or proposed assignment or participation pursuant to this **Section 8.06**, 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.

8.07 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).

8.08 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.

8.09 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 with a need to know, 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 (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such information and instructed to keep such information confidential), (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. 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.

8.10 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.

8.11 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.

8.12 Jurisdiction, Etc.

(a) Each of the parties hereto hereby irrevocably and unconditionally submits, for itself and its property, to the exclusive jurisdiction of any New York state court sitting in New York

County or the United States District Court for the Southern District of New York, 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. 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 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 New York County.

(c) Each of the parties hereto, to the fullest extent permitted by applicable law, hereby irrevocably waives all right to trial by jury as to any action or proceeding arising out of or relating to this Agreement or any of the other Loan Documents.

(d) 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 8.02**. The Parent Guarantor hereby irrevocably appoints and designates the Company as its agent for acceptance of service of legal process, summons, notices and documents in any action or proceeding arising out of or in connection with this Agreement; any such service may be effected by delivery to the Company at: Total S.A., c/o SunPower Corporation, Attn: Corporate Secretary, 77 Rio Robles, San Jose, California 95134. The Parent Guarantor agrees that any failure of (I) the Company to deliver to the Parent Guarantor a copy of any such process or (II) the Parent Guarantor to receive any such copy shall not affect in any way the service of such process.

(e) Nothing in this Agreement shall affect any right that any party may otherwise have to serve process in any other manner.

8.13 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.

[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: EVP & Chief Financial Officer

Address:	77 Rio Robles San Jose, CA 95134
Attention:	Dennis Arriola
Telephone:	408-240-5500
Facsimile:	408-240-5417
E-mail:	Dennis.Arriola@sunpowercorp.com

TOTAL S.A.

By: /s/ Jerôme Schmitt
Name:
Title:

Address:	2, place Jean Millier La Défense 6 92400 Courbevoie France
Attention:	Jerôme Schmitt
Telephone:	+33 147 4450 82
Facsimile:	+33 147 4457 75
E-mail:	jerome.schmitt@total.com

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

By: /s/ Yvonne Tilden
Name: Yvonne Tilden
Title: Director

By: /s/ Migh K. Chu
Name: Ming K. Chu
Title: Vice Presient

Address: Deutsche Bank AG New York Branch
c/o Deutsche Bank Securities Inc.
One International Place, 12th 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
Mail Stop NYC60-0926
New York, NY 10005
Attention: Mr. Charles Ferris
Telephone: 212-250-1214
Facsimile: 212-797-0403
E-mail: charles.ferris@db.com

BANCO SANTANDER, S.A., NEW YORK BRANCH, as a Bank

By: /s/ Jesus Lopez
Name: Jesus Lopez
Title: Senior Vice President

By: /s/ Carl W. Carrier
Name: Carl W. Carrier
Title: Executive Director

Address:	Banco Santander, S.A., New York Branch 45 E. 53rd Street New York, NY 10022
Attention:	Mr. Jorge A. Saavedra
Telephone:	212-350-3626
Facsimile:	212-350-3691
E-mail:	jsaavedra@santander.us

Address:	Banco Santander, S.A., New York Branch 45 E. 53rd Street New York, NY 10022
Attention:	Mr. Vladimir Arrieta
Telephone:	212-350-3693
Facsimile:	212-350-3691
E-mail:	varrieta@santander.us

Address:	Banco Santander, S.A., New York Branch 45 E. 53rd Street New York, NY 10022
Attention:	Mr. Ligia Castro
Telephone:	212-350-3677
Facsimile:	212-350-3647
E-mail:	lcastro@santander.us

Address:	Banco Santander, S.A., New York Branch 45 E. 53rd Street New York, NY 10022
Attention:	Ms. Sandra Ortiz
Telephone:	212-350-3623
Facsimile:	212-350-3647
E-mail:	mvasquez@santander.us

CREDIT AGRICOLE CORPORATE AND INVESTMENT BANK, as a Bank

By: /s/ Dianne M. Scott
Name: Dianne M. Scott
Title: Managing Director

By: /s/ Laure Duvernay
Name: Laure Duvernay
Title: Vice President

Address: Credit Agricole CIB

Attention: Mr. Tony Mau
Telephone: 732-590-7635
Facsimile: 917-849-5439
E-mail: tony.mau@ca-cib.com

Address: Credit Agricole CIB

Attention: Mr. Bob Vaeth
Telephone: 732-590-7475
Facsimile: 732-744-8568
E-mail: bob.vaeth@ca-cib.com

HSBC BANK USA, NATIONAL ASSOCIATION, as a Bank

By: /s/ Christopher M. Samms

Name: Christopher M. Samms
Title: Senior Vice President
ID # 9426

Address:
HSBC Bank
USA, National
Association
452 Fifth Avenue
New York, NY 10018
Attention: Mr. Christopher Samms
Telephone: 212-525-2569
Facsimile: 212-642-4081
E-mail: Christopher.samms@us.hsbc.com

LLOYDS TSB BANK PLC, as a Bank

By: /s/ Karen Weich
Name: Karen Weich
Title: Vice President
W011

By: /s/ Dennis McClellan
Name: Dennis McClellan
Title: Vice President
Operations
M040

Address:	Lloyds TSB Bank plc 1021 Main St. Suite 1370 Houston, TX 77002
Attention:	Mr. Neil Backhouse
Telephone:	832-200-9833
Facsimile:	713-651-9714
E-mail:	Neil.Backhouse@lbusa.com

Address:	Lloyds TSB Bank plc 1021 Main St. Suite 1370 Houston, TX 77002
Attention:	Mr. Michael Meiss
Telephone:	832-200-9866
Facsimile:	713-651-9714
E-mail:	Michael.Meiss@lbusa.com

THE BANK OF TOKYO – MITSUBISHI UFJ, LTD., PARIS BRANCH, as a Bank

By: /s/ Motoshi Imura
Name: Motoshi Imura
Title: General Manager

Address:	16 – 18 rue du quatre septembre 75002 Paris
Attention:	Jerôme Poret
Telephone:	+33144774829
Facsimile:	+33149264901
E-mail:	jerome.poret@fr.mufg.jp

UNICREDIT BANK AG, as a Bank

By: /s/ Rudi Stuetzle
Name: Rudi Stuetzle
Title: Director

By: /s/ Anja Link
Name: Anja Link
Title: Credit Analyst

Address:	UniCredit Bank AG Arabellastr. 14 D-81925 Munich, Germany
Attention:	Mr. Rudolf Stutzle
Telephone:	+4989-378-31261
Facsimile:	+4989-378-25559
E-mail:	Rudolf.stuetzle@unicreditgroup.de

Address:	UniCredit Bank AG Arabellastr. 14 D-81925 Munich, Germany
Attention:	Ms. Anja Link
Telephone:	+4989-378-21228
Facsimile:	+4989-378-21801
E-mail:	anja.link@unicreditgroup.de

Address:	UniCredit Bank AG Ratsfreischulstr. 5 D-04109 Leipzig
Attention:	Mr. Wolfgang Pfander
Telephone:	+49341-9858-1139
Facsimile:	+49341-9858-1160
E-mail:	wolfgang.pfaender@unicreditgroup.de

SCHEDULE I

BANKS, PRO RATA SHARES, AND COMMITMENT AMOUNTS

Name	Pro Rata Share	Commitment Amount
Deutsche Bank AG New York Branch	22.70%	$ 175,000,000
Banco Santander, S.A., New York Branch	22.70%	$ 175,000,000
Unicredit Bank AG	10.92%	$ 84,200,000
Lloyds TSB Bank PLC	10.92%	$ 84,200,000
HSBC Bank USA, National Association	10.92%	$ 84,200,000
The Bank of Tokyo Mitsubishi – UFJ, Ltd., Paris Branch	10.92%	$ 84,200,000
Credit Agricole Corporate and Investment Bank	10.92%	$ 84,200,000
TOTALS:	**100%**	**$ 771,000,000**

SCHEDULE II

SUBSIDIARY ACCOUNT PARTIES

Name	Jurisdiction and Type of Organization
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
High Plains Ranch III, LLC	Delaware LLC
Cassiopea PV S.r.l.	Italy S.r.l.
Centauro PV S.r.l.	Italy S.r.l.
High Plains Ranch II, LLC	Delaware LLC
SunPower Energy Systems Canada Corporation	Canada Corporation
SunPower Corporation Malta Holding Ltd	Malta Ltd
Andromeda PV S.r.l.	Italy S.r.l.
Solar Star North Carolina II, LLC	North Carolina LLC
Orione PV S.r.l.	Italy S.r.l.
Orsa Minore PV S.r.l.	Italy S.r.l.
Mivtachim Green Energies Ltd	Israel Ltd
Talmey Bilu Green Energies Ltd	Israel Ltd
Urim Green Energies Ltd	Israel Ltd
Solar Star California XIII, LLC	Delaware LLC
Solar Star California XIX, LLC	Delaware LLC
Solar Star California XX, LLC	Delaware LLC
Gilat Green Energies Ltd	Israel Ltd
Nevatim Green Energies Ltd	Israel Ltd
Talmey Eliyahu Green Energies Ltd	Israel Ltd
Teashur Green Energies Ltd	Israel Ltd

SCHEDULE III

SUBSIDIARY APPLICANTS

Name	Jurisdiction and Type of Organization
SunPower Corporation, Systems	Delaware corporation

SCHEDULE IV

EXISTING LETTERS OF CREDIT

Applicant	Issuer	Beneficiary	Amount and Currency	Issuance Date	Expiry Date
SunPower Corporation	Deutsche Bank AG New York Branch ("DB")	***	***	4/22/2010	***
SunPower Corporation, Systems ("SCS")	DB	***	***	4/22/2010	***
SCS	DB	***	***	4/29/2010	***
SCS	DB	***	***	4/29/2010	***
SCS	DB	***	***	4/29/2010	***
SCS	DB	***	***	4/29/2010	***
SCS	DB	***	***	5/5/2010	***
SCS	DB	***	***	5/5/2010	***
SCS	DB	***	***	5/5/2010	***
SCS	DB	***	***	5/6/2010	***
SCS	DB	***	***	5/6/2010	***
SCS	DB	***	***	5/19/2010	***
SCS	DB	***	***	5/18/2010	***
SCS	DB	***	***	5/18/2010	***
SCS	DB	***	***	5/27/2010	***
SCS	DB	***	***	5/25/2010	***

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

Applicant	Issuer	Beneficiary	Amount and Currency	Issuance Date	Expiry Date
SCS	DB	***	***	5/25/2010	***
SCS	DB	***	***	5/25/2010	***
SCS	DB	***	***	5/27/2010	***
SCS	DB	***	***	5/27/2010	***
SCS	DB	***	***	5/27/2010	***
SCS	DB	***	***	5/27/2010	***
SCS	DB	***	***	5/27/2010	***
SCS	DB	***	***	5/27/2010	***
SCS	DB	***	***	5/27/2010	***
SCS	DB	***	***	6/3/2010	***
SCS	DB	***	***	6/15/2010	***
SCS	DB	***	***	6/15/2010	***
SCS	DB	***	***	6/17/2010	***
SCS	DB	***	***	6/17/2010	***
SCS	DB	***	***	8/20/2010	***
SCS	DB	***	***	6/23/2010	***
SCS	DB	***	***	6/23/2010	***
SCS	DB	***	***	6/23/2010	***
SCS	DB	***	***	6/29/2010	***
SunPower Corporation	DB	***	***	8/4/2010	***
SCS	DB	***	***	8/11/2010	***
SCS	DB	***	***	8/17/2010	***
SCS	DB	***	***	8/17/2010	***
SCS	DB	***	***	8/17/2010	***
SCS	DB	***	***	8/25/2010	***
SCS	DB	***	***	9/14/2010	***
SCS	DB	***	***	9/14/2010	***

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

Applicant	Issuer	Beneficiary	Amount and Currency	Issuance Date	Expiry Date
SCS	DB	***	***	9/15/2010	***
SCS	DB	***	***	9/8/2010	***
SCS	DB	***	***	8/24/2010	***
SCS	DB	***	***	9/14/2010	***
SCS	DB	***	***	9/24/2010	***
SCS	DB	***	***	9/24/2010	***
SCS	DB	***	***	10/12/2010	***
SCS	DB	***	***	10/4/2010	***
SCS	DB	***	***	10/15/2010	***
SCS	DB	***	***	10/29/2010	***
SCS	DB	***	***	10/29/2010	***
SCS	DB	***	***	11/11/2010	***
SCS	DB	***	***	11/11/2010	***
SCS	DB	***	***	11/17/2010	***
SCS	DB	***	***	11/23/2010	***
SCS	DB	***	***	11/19/2010	***
SCS	DB	***	***	11/17/2010	***
SCS	DB	***	***	11/23/2010	***
SCS	DB	***	***	11/23/2010	***
SCS	DB	***	***	12/15/2010	***
SCS	DB	***	***	12/15/2010	***
SCS	DB	***	***	12/15/2010	***
SCS	DB	***	***	12/17/2010	***
SCS	DB	***	***	12/20/2010	***

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

Applicant	Issuer	Beneficiary	Amount and Currency	Issuance Date	Expiry Date
SCS	DB	***	***	12/20/2010	***
SCS	DB	***	***	1/26/2011	***
SCS	DB	***	***	1/26/2011	***
SCS	DB	***	***	1/26/2011	***
SCS	DB	***	***	2/9/2011	***
SCS	DB	***	***	2/9/2011	***
SCS	DB	***	***	2/9/2011	***
SCS	DB	***	***	2/16/2011	***
SCS	DB	***	***	2/16/2011	***
SCS	DB	***	***	2/16/2011	***
SCS	DB	***	***	2/16/2011	***
SCS	DB	***	***	2/16/2011	***
SCS	DB	***	***	2/16/2011	***
SCS	DB	***	***	2/17/2011	***
SCS	DB	***	***	2/22/2011	***
SCS	DB	***	***	3/22/2011	***
SCS	DB	***	***	3/22/2011	***
SCS	DB	***	***	3/22/2011	***
SCS	DB	***	***	3/22/2011	***
SCS	DB	***	***	4/26/2011	***

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

Applicant	Issuer	Beneficiary	Amount and Currency	Issuance Date	Expiry Date
SCS	DB	***	***	5/27/2011	***
SCS	DB	***	***	5/27/2011	***
SCS	DB	***	***	5/27/2011	***
SCS	DB	***	***	5/27/2011	***
SCS	DB	***	***	5/27/2011	***
SCS	DB	***	***	5/27/2011	***
SCS	DB	***	***	5/27/2011	***
SCS	DB	***	***	6/2/2011	***
SCS	DB	***	***	6/16/2011	***
SCS	DB	***	***	6/23/2011	***
SCS	DB	***	***	6/28/2011	***
SCS	DB	***	***	6/28/2011	***
SCS	DB	***	***	6/28/2011	***
SCS	DB	***	***	6/24/2011	***
SCS	DB	***	***	6/29/2011	***
SCS	DB	***	***	7/1/2011	***
SCS	DB	***	***	7/14/2011	***
SCS	DB	***	***	7/14/2011	***
SCS	DB	***	***	7/22/2011	***

*** 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 Agreement"), 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 $[____] Letter of Credit Facility Agreement dated as of [____] among SunPower Corporation, Total S.A., the Subsidiary Applicants parties thereto from time to time, the Banks parties thereto from time to time, and **[_____]**, 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][2] Accepted:

[NAME OF ADMINISTRATIVE AGENT],
as Administrative Agent

By: _____
Name
Title

[Consented to:][3]

[NAME OF ISSUING BANK], as Issuing Bank

By: _____
Name
Title

[Consented to:][4]

[NAME OF RELEVANT PARTY]

By: _____
Title

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[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 [_____] among SunPower Corporation, Total S.A., the Subsidiary Applicants parties thereto from time to time, the Banks parties thereto from time to time, and [_____], 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, (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 obligations 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 5.01 thereof 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.

* * * * *

EXHIBIT B

[FORM OF]
LOC REQUEST

Date:_____

Deutsche Bank AG New York Branch,
as Issuing Bank
60 Wall Street
Mail Stop NYC 60-0926
New York, NY 10005
Attention: Mr. Charles P. Ferris
Telecopy No.: 212-797-0403

Ladies and Gentlemen:

Reference is hereby made to the Letter of Credit Facility Agreement dated as of August 9, 2011 (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"), Total S.A., 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
c/o Deutsche Bank Securities Inc.
One International Place, 12th 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 o LOC to be issued with the terms and conditions set forth in the attached specimen.	**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 August 9, 2011 among SunPower Corporation, Total S.A., 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-1

MATTERS TO BE COVERED IN OPINION OF COUNSEL TO THE CREDIT PARTIES

The following matters will be addressed in the opinion of counsel to the Company and the Subsidiary Applicants, subject to (a) customary and appropriate assumptions, qualifications, limitations and exclusions, (b) reliance on certificates of officers of the Company and public officials and agencies, and (c) such other matters as such counsel deems necessary or appropriate in the preparation and delivery of the opinion

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1. The Company is a corporation duly incorporated and existing in good standing under the laws of the State of Delaware and is authorized or qualified to do business and in good standing as a foreign corporation in the State of California. The Company has the corporate power and authority (i) to conduct its business substantially as described in [an officer's certificate of the Company], and (ii) to enter into and to incur and perform its obligations under the Facility Agreement.

2. The execution and delivery to the Banks by the Company of the Facility Agreement and the performance by the Company of its respective obligations thereunder:

    a. have been authorized by all necessary corporate action by the Company;

    b. 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 any Credit Party with, or approval or consent to such Credit 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 (i) those required in the ordinary course of business in connection with the performance by the Company of its obligations under certain covenants contained in the Facility Agreement, (ii) filings under securities laws, and (iii) filings, registrations, consents or approvals in each case not required to be made or obtained by the date hereof;

    c. do not contravene any provision of the Certificate of Incorporation or By-laws of the Company;

    d. do not violate (i) 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 the Company or its property or (ii) any of the "Material Agreements" to which it is a party or that is applicable to its properties or any court decree or order binding upon it that is listed on Annex I to the [officer's certificate]; and

    e. 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 Material Agreement.

3. The Facility Agreement has been duly executed and delivered on behalf of the Company and constitutes a valid and binding obligation of the Company, enforceable against the Company in accordance with its terms.

4. Each of the Facility Agreement and the Guaranty constitutes a valid and binding obligation of the Parent Guarantor, enforceable against the Parent Guarantor in accordance with its terms.

5. The borrowings by the Company or any Applicant under the Agreement and the application of the proceeds thereof will not be used to purchase or carry any margin stock and will not violate Regulation T, U or X of the Board of Governors of the Federal Reserve System.

6. The Company is not required to register as an "investment company" under, and as defined in, the Investment Company Act of 1940, as amended (the "1940 Act") and is not a company controlled by a company required to register as such under the 1940 Act.

EXHIBIT C-2

MATTERS TO BE COVERED IN OPINION OF COUNSEL TO THE PARENT GUARANTOR

The following matters will be addressed in the opinion of counsel to the Parent Guarantor under the laws of the Republic of France, subject to (a) customary and appropriate assumptions, qualifications, limitations and exclusions, (b) reliance on certificates of officers of the Parent Guarantor and public officials and agencies, and (c) such other matters as such counsel deems necessary or appropriate in the preparation and delivery of the opinion

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1. The Parent Guarantor is duly incorporated, validly existing as a société anonyme and in good standing under the law of France and has the corporate power to enter into the Facility Agreement and the Parent Guaranty and to exercise its rights and perform its obligations thereunder, and has duly executed and delivered each of the Agreement and the Parent Guaranty.

2. The Parent Guarantor is not entitled to claim for itself or its assets or revenues immunity (sovereign or otherwise) from any action, suit, proceeding, judgment or enforcement of any of the foregoing.

3. The Parent Guarantor is validly bound pursuant to its signing of the Facility Agreement and the Parent Guaranty, and the terms of the Facility Agreement and the Parent Guaranty constitute legal, valid, binding and enforceable obligations of the Parent Guarantor in accordance with their respective terms.

4. No authorizations, approvals, licenses, exemptions, notatizations or consents are required under the laws of the Republic of France for the execution and delivery by the Parent Guarantor of the Facility Agreement or the Parent Guaranty, or performance by the Parent Guarantor of its obligations under the Facility Agreement or the Parent Guaranty.

5. No further acts, conditions or things are required by French law to be done, fulfilled or performed in France in order to enable the Parent Guarantor lawfully to enter into, exercise its rights or perform its obligations under the Facility Agreement and the Parent Guaranty.

6. The execution, delivery and performance of the obligations of the Parent Guarantor under the Facility Agreement and the Parent Guaranty will not contravene any existing applicable French law, statute or published rule or regulation or any judgment, decree or permit to which the Parent Guarantor is subject nor will it contravene the Parent Guarantor's constitutive documents.

7. Each of [ ] in his capacity as Chief Financial Officer of the Parent Guarantor and [ ] in his capacity of Treasurer of the Parent Guarantor are duly authorized to execute the Facility Agreement and the Parent Guaranty on its behalf.

8. No stay of legal action or proceedings prior to an amicable settlement (*règlement amiable*) has been granted to the Parent Guarantor and no notice of judicial reorganisation (*redressement judiciaire*), judicial liquidation (*liquidation judiciaire*) or voluntary liquidation has been filed with the *Registre du Commerce et des Sociétés*, or any other governmental authority or agency thereof.

9. On the basis of French domestic tax law, interest payable by the Parent Guarantor under the Facility Agreement and the Parent Guaranty is payable without deductions or withholdings on account of any present or future tax, levy, impost, duty, deduction or withholding of any nature

and whatever called, by whomsoever, on whomsoever and wherever imposed, levied, collected, withheld or assessed.

10. It is not necessary in order to ensure the validity, effectiveness, performance and enforceability of the Facility Agreement or the Parent Guaranty that either of them be filed or registered in any public office or that any other instrument relating thereto be executed, delivered, filed or registered except that the admissibility in evidence of the Facility Agreement and the Parent Guaranty in the French Courts is subject to the production of a translation thereof into French by an officially sworn translator.

11. No registration taxes, documentary taxes, income taxes, withholdings or other similar tax, imposition or duty of any kind is payable under the laws of France in connection with the admissibility in evidence in the Republic of France of the Documents or the activities or obligations to be performed by the Parent Guarantor thereunder.

12. The submission by the Parent Guarantor in the Facility Agreement and the Parent Guaranty to the jurisdiction of the courts the State of New York sitting in New York County and of the United States District Court for the Southern District of New York, and any appellate court from any thereof (assuming it to be effective in such courts) is binding on the Parent Guarantor. The choice of New York law to govern the Facility Agreement and the Parent Guaranty is valid and would be given effect in any proceedings brought against the Parent Guarantor in the French courts, provided that the relevant content of New York law is duly proven and not held to be contrary to French Ordre Public International. The provisions of the Facility Agreement and the Parent Guaranty are not in my opinion contrary to French Ordre Public International.

13. A final judgment for a sum of money in relation to the Facility Agreement and/or the Parent Guaranty obtained against the Parent Guarantor in New York courts would be recognized and enforceable against the Parent Guarantor by the French courts subject to and in accordance with the Regulation EC N°. 44/2001 of 22 December 2000 on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial matters, as amended on 16 January 2001.

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"), Total S.A., a société anonyme organized under the laws of the Republic of France, 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 [_____] among the Company, the Subsidiary Applicants parties thereto from time to time, the Banks party thereto from time to time, and [_____], 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 2.17 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 2.17 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 representations 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 any 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. The New Subsidiary Applicant hereby agrees to be liable under the Facility Agreement, with respect to each Existing LOC listed on Schedule IV to the Facility Agreement as being issued at its request, as though such Existing LOC were issued as an LOC pursuant to the Facility Agreement.

4. 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.

5. Each of the New Subsidiary Applicant and the Company represents and warrants that no Event of Default has occurred and is continuing immediately after giving effect to the execution and delivery of this Agreement.

6. 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.

7. 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.

8. Except as expressly supplemented hereby, the Facility Agreement shall remain in full force and effect.

9. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

10. 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.

11. All communications and notices hereunder shall be in writing and given as provided in Section 8.02 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.

12. Neither this Agreement nor any provision hereof may be waived, amended, or modified except as provided in Section 8.01 of the Facility Agreement.

13. 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:

TOTAL S.A.

By: _____
Name:
Title:

[__], individually, as Administrative Agent, and as Issuing Bank

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 [_____] among SunPower Corporation (the "Company"), Total S.A., the Subsidiary Applicants parties thereto from time to time, the Banks party thereto from time to time, and [____], 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 Administrative 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]
COMMITMENT INCREASE REQUEST

Date:_____

[_____],
as Administrative Agent
[address]
Attention:
Telecopy No.:
Ladies and Gentlemen:

Reference is hereby made to the Letter of Credit Facility Agreement dated as of [_____] (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"), Total S.A., a société anonyme organized under the laws of the Republic of France, the Subsidiary Applicants parties thereto from time to time, the Banks parties thereto from time to time, and [_____], 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 $1,000,000,000)*	$_____

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:

EXHIBIT F

[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"), Total S.A., a société anonyme organized under the laws of the Republic of France (the "Parent Guarantor"), [_____], 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 [_____] among the Company, the Subsidiary Applicants parties thereto from time to time, the Banks parties thereto from time to time, and [_____], 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 2.14(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 2.14(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 Agreement 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 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 8.02 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 8.01 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:

TOTAL S.A.

By: _____
Name:
Title:

[__], individually, as Administrative Agent, and as Issuing Bank

By: _____
Name:
Title:

EXHIBIT G

[FORM OF]
PARENT GUARANTY

Guaranty

This **GUARANTY** (the "Guaranty"), dated as of August 9, 2011, is between Total S.A., a société anonyme organized under the laws of the Republic of France (the "Guarantor"), and Deutsche Bank AG New York Branch, a New York licensed branch of a German banking corporation, having an office at 60 Wall Street, New York, New York, 10005, as Administrative Agent for the benefit of itself and all of the Banks (in such capacity, the "Agent").

RECITALS

A. SunPower Corporation (the "Obligor") and one or more Subsidiary Applicants wish to enter into a Letter of Credit Facility Agreement
dated as of the date hereof among the Obligor, the Guarantor, the Banks parties thereto from time to time, and Deutsche Bank AG New York Branch, as Issuing Bank and Administrative Agent (as amended, supplemented, or otherwise modified from time to time, the "Contract"), the form of which Contract has been provided to the Obligor and to the Guarantor. Terms not otherwise defined herein shall have the meanings ascribed to them in the Contract.

B. It is a condition precedent to the extensionsof credit under the Contract that the Guarantor guarantee the payment of the Obligor's payment obligations under the Contract with respect to the reimbursement of draws on letters of credit and interest thereon.

C. Guarantor owns a majority of the issued and outstanding equity interests of the Obligor and will receive direct and indirect benefits from the Banks' performance of the Contract.

AGREEMENT

For good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, and intending to be legally bound, the parties hereby agree as follows:

1. Guaranty. (a) Guarantor unconditionally guarantees and promises to pay to the Agent, in accordance with the payment instructions contained in the Contract, on demand after the default by the Obligor in the performance of its payment obligations under the Contract, in lawful money of the United States (or, if applicable, in an Alternate Currency or at the Agent's option the Dollar Equivalent thereof), any and all Obligations (as hereinafter defined). For purposes of this Guaranty, the term "Obligations" means and includes the obligations of the Obligor (for itself or as guarantor) now existing or hereafter arising to reimburse the amount of any draw on any letter of credit issued pursuant to the Contract (including any letters of credit issued on request of the Obligor or for any Subsidiary Applicant) and all interest accrued on such reimbursement obligation from the date of such reimbursement until the date paid, including without limitation 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. For the avoidance of doubt, the term "Obligations" does not include fees, expenses or other amounts payable by the Obligor or anyone else to the Agent.

(b) This Guaranty is absolute, unconditional, continuing and irrevocable, constitutes an independent guaranty of payment and is in no way conditioned on or contingent upon any attempt to enforce in whole or in part any of the Obligor's Obligations, the existence or continuance of the Obligor as a legal entity, the consolidation or merger of the Obligor with or into any other entity, the sale, lease or disposition by the Obligor of all or substantially all of its assets to any other entity, or the bankruptcy or insolvency of the Obligor, the admission by the Obligor of its inability to pay its debts as they mature, or the making by the Obligor of a general assignment for the benefit of, or entering into a composition or arrangement with, creditors. If the Obligor fails to pay or perform any Obligations that are subject to this Guaranty as and when they are due, the Guarantor shall forthwith pay to the Agent all such liabilities or obligations in immediately available funds. Each failure by the Obligor to pay any Obligations shall give rise to a separate cause of action, and separate suits may be brought hereunder as each cause of action arises.

(c) The Agent may at any time and from time to time, without the consent of or notice to the Guarantor, except such notice as may be required by applicable statute that cannot be waived, without incurring responsibility or liability to the Guarantor, and without impairing or releasing the obligations of the Guarantor hereunder, (i) exercise or refrain from exercising any rights against the Obligor or others (including the Guarantor) or otherwise act or refrain from acting, (ii) settle or compromise any Obligations hereby guaranteed and/or any other obligations and liabilities (including any of those hereunder) incurred directly or indirectly in respect thereof or hereof, and may subordinate the payment of all or any part thereof to the payment of any obligations and liabilities which may be due to the Agent or others, and (iii) sell, exchange, release, surrender, realize upon or otherwise deal with in any manner or in any order any property pledged or mortgaged by anyone to secure or in any manner securing the Obligations hereby guaranteed.

(d) The Agent and each Bank may not, without the prior written consent of the Guarantor, (i) change the manner, place and terms of payment or change or extend the time of payment of, renew, or alter any Obligation hereby guaranteed, or in any manner modify, amend or supplement the terms of the Contract or any documents, instruments or agreements executed in connection therewith (other than the addition of a Subsidiary Applicant or Subsidiary Account Party or the termination of a Subsidiary Applicant or Subsidiary Account Party pursuant to the terms and conditions of the Contract), (ii) take and hold security (or additional security) of or from a Credit Party for any or all of the obligations or liabilities covered by this Guaranty, except as provided in the Contract, or (iii) except as provided in the Contract, assign its rights and interests under this Guaranty, in whole or in part.

(e) No invalidity, irregularity or unenforceability of any of the Obligations hereby guaranteed shall affect, impair, or be a defense to this Guaranty,
including without limitation any law, rule, or regulation of any jurisdiction or any other event affecting any term of any of the Obligations. This is a continuing Guaranty for which the Guarantor receives continuing consideration and all obligations to which it applies or may apply under the terms hereof shall be conclusively presumed to have been created in reliance hereon and this Guaranty is therefore irrevocable without the prior written consent of the Agent.

(f) All payments by the Guarantor hereunder shall be made free and clear of and without deduction for any Taxes. If the Guarantor shall be required by law to deduct any Taxes from or in respect of any sum payable hereunder to the Agent or to the Agent on behalf of any Bank, (i) the sum payable shall be increased as may be necessary so that after the Guarantor and the Agent have made all required deductions the Agent receives an amount equal to the sum it would have received had no such deductions been made, (ii) the Guarantor shall make all such deductions, and (iii) the Guarantor shall pay the full amount deducted to the relevant taxation authority or other authority in accordance with applicable law.

(g) The 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 Obligation is rescinded or must otherwise be restored by the Agent, the Issuing Bank, or any other Bank upon the bankruptcy or reorganization of the Obligor or otherwise. Nothing shall discharge or satisfy the liability of the Guarantor hereunder except the full and final performance and payment in cash of the Obligations.

2. Representations and Warranties. The Guarantor represents and warrants to the Agent that (a) the Guarantor is a société anonyme duly organized, validly, existing and in good standing under the laws of its jurisdiction of incorporation or formation, (b) the execution, delivery and performance by the Guarantor of this Guaranty are within the power of the Guarantor and have been duly authorized by all necessary actions on the part of the Guarantor, (c) this Guaranty has been duly executed and delivered by the Guarantor and constitutes a legal, valid and binding obligation of the Guarantor, enforceable against it in accordance with its terms, except as limited by bankruptcy, insolvency or other laws of general application relating to or affecting the enforcement of creditors' rights generally, (d) the execution, delivery and performance of this Guaranty do not (i) violate any law, rule or regulation of any governmental authority, or (ii) result in the creation or imposition of any material lien, charge, security interest or encumbrance upon any property, asset or revenue of the Guarantor, (e) no consent, approval, order or authorization of, or registration, declaration or filing with, any governmental authority or other person (including, without limitation, the shareholders of the Guarantor) is required in connection with the execution, delivery and performance of this Guaranty, except such consents, approvals, orders, authorizations, registrations, declarations and filings that are so required and which have been obtained and are in full force and effect, (f) the Guarantor is not in violation of any law, rule or regulation other than those the consequences of which cannot reasonably be

expected to have material adverse effect on the ability of the Guarantor to perform its obligations under this Guaranty, and (g) no litigation, investigation or proceeding of any court or other governmental tribunal is pending or, to the knowledge of the Guarantor, threatened against the Guarantor which, if adversely determined, could reasonably be expected to have a material adverse effect on the ability of the Guarantor to perform its obligations under this Guaranty.

3. Waivers. (a) The Guarantor, to the extent permitted under applicable law, hereby waives any right to require Agent or any other party to the Contract to (i) proceed against the Obligor or any other guarantor of the Obligor's obligations under the Contract, (ii) proceed against or exhaust any security received from the Obligor or any other guarantor of the Obligor's Obligations under the Contract, or (iii) pursue any other right or remedy in the Agent's or any other such party's power whatsoever.

(b) The Guarantor further waives, to the extent permitted by applicable law, (i) any defense resulting from the absence, impairment or loss of any right of reimbursement, subrogation, contribution or other right or remedy of the Guarantor against the Obligor, any other guarantor of the Obligations or any security, (ii) any setoff or counterclaim of the Obligor or any defense which results from any disability or other defense of the Obligor or the cessation or stay of enforcement from any cause whatsoever of the liability of the Obligor (including, without limitation, the lack of validity or enforceability of the Contract), (iii) any right to exoneration of sureties that would otherwise be applicable, (iv) any right of subrogation or reimbursement and, if there are any other guarantors of the Obligations, any right of contribution, and right to enforce any remedy that the Agent or any other party to the Contract, now has or may hereafter have against the Obligor, and any benefit of, and any right to participate in, any security now or hereafter received by Agent or any other party to the Contract, (v) all presentments, demands for performance, notices of non-performance, notices delivered under the Contract, protests, notice of dishonor, and notices of acceptance of this Guaranty and of the existence, creation or incurring of new or additional Obligations and notices of any public or private foreclosure sale, (vi) the benefit of any statute of limitations, (vii) any appraisement, valuation, stay, extension, moratorium redemption or similar law or similar rights for marshalling, and (viii) any right to be informed by the Agent or any other party to the Contract, of the financial condition of the Obligor or any other guarantor of the Obligations or any change therein or any other circumstances bearing upon the risk of nonpayment or nonperformance of the Obligations. The Guarantor has the ability to and assumes the responsibility for keeping informed of the financial condition of the Obligor and any other guarantors of the Obligations and of other circumstances affecting such nonpayment and nonperformance risks.

4. Notice of Issuance of Letters of Credit and Draws Thereon; Block Notice.

(a) Notice of Issuance of Letter of Credit and Draws Thereon. Within ten (10) days after the Agent receives notice of each issuance of a letter of credit under the Contract or ten (10) days after the Agent receives notice thereof if it is not the Issuing Bank, the Agent

will notify the Guarantor of (i) the amount of such letter of credit (including a copy thereof) and (ii) the aggregate amount of letters of credit that are outstanding under the Contract, after giving effect to such issuance. In addition the Agent will notify the Guarantor of any draw on any letter of credit (including the date and amount of such draw) issued pursuant to the Contract within two business days of such draw or two business days after the Agent receives notice thereof if it is not the Issuing Bank, even if such draw is reimbursed by the Obligor prior to the delivery of such notice. Any failure to furnish any notice required under this paragraph shall not affect the obligations of the Guarantor hereunder regarding any outstanding letter of credit.

(b) Right of Guarantor to Block Issuances of Letters of Credit.

(i) Delivery of Block Notice. The Guarantor may (A) suspend the right of the Obligor to obtain additional issuances of letters of credit under the Contract that are subject to this Guaranty at any time following the occurrence and during the continuance of a Trigger Event (as defined in the Credit Support Agreement, dated April 28, 2011 as amended, supplemented and modified from time to time (provided that the Guarantor will give notice, reasonably promptly, to the Agent of any material amendment to or modification thereof), between the Obligor and the Guarantor, the current version of which is attached hereto as Exhibit A) or (B) limit the aggregate undrawn amount of letters of credit that are subject to this Guaranty at any time following a reduction of the Maximum L/C Amount or Available Facility Amount pursuant to such Credit Support Agreement, in each case by delivering to the Agent (who shall immediately deliver to each Issuing Bank) a written notice to such effect (a "Notice of Block"). Such Notice of Block shall be made and shall be deemed effective when properly given in the manner specified in Section 5(a) of this Guaranty. The Agent will have no duty to investigate or make any determination with respect to any Notice of Block received by it and will comply with any Notice of Block given by the Guarantor. The Agent may rely upon any instructions from any person that it reasonably believes to be an authorized representative of the Guarantor. Notwithstanding any other provision herein, the Guarantor acknowledges and agrees that it shall remain liable in accordance with the terms hereof in respect of all Obligations arising out of or in connection with any issued and outstanding letter of credit that was requested under the Contract prior to the Agent's receipt of a Notice of Block.

(ii) Compliance with Notice. From and after the date a Notice of Block is delivered to the Agent pursuant to and in accordance with the provisions of clause (i) above, and until either (A) the Guarantor delivers to the Agent a written notice rescinding such Notice of Block or (B) this Guaranty is terminated, no additional letters of credit may be issued pursuant to the Contract without the prior written consent of the Guarantor.

5. Miscellaneous.

(a) Notices. All notices, requests, demands and other communications that are required or may be given under this Guaranty shall be in writing and shall be personally

delivered or sent by certified or registered mail. If personally delivered, notices, requests, demands and other communications will be deemed to have been duly given at time of actual receipt. If delivered by certified or registered mail, deemed receipt will be at time evidenced by confirmation of receipt with return receipt requested. In each case notice shall be sent:

if to the Agent, to:

Deutsche Bank AG New York Branch
c/o Deutsche Bank Securities Inc.
One International Place, 12th Floor
Boston, MA 02110
Attention: Mr. David Dickinson
Telephone: 617-217-6381
Fax: 617-217-6300
e-mail: david.dickinson@db.com

with a copy to:

Deutsche Bank Trust Company Americas
60 Wall Street
Mail Stop NYC60-0926
New York, NY 10005
Attention: Charles Ferris
Telephone: 212-250-1214
Fax: 212-797-0403
e-mail: charles.ferris@db.com

if to the Guarantor, to:

Total S.A.
2, place Jean Millier
La Défense 6
92400 Courbevoie
France
Attention: Olivier Devouassoux, VP Subsidiary FinanceOperations
Telephone: +33 1 47 44 45 64
Facsimile: + 33 1 47 44 48 74
Email: olivier.devouassoux@total.com

With a copy to:

Total S.A.
2, place Jean Millier
La Défense 6
92400 Courbevoie
France

Attention: Christine Souchet, Subsidiary Finance Operations -Gas and Power
Telephone: +33 1 47 44 72 11
Facsimile: +33 1 47 44 47 92
Email: christine.souchet@total.com

With a copy to:

Total S.A.
2, place Jean Millier
La Défense 6
92400 Courbevoie
France
Attention: Jonathan Marsh, Vice President, Legal Director
Mergers, Acquisitions & Finance
Telephone: +33 (0) 1 47 44 74 70
Facsimile: +33 (0)1 47 44 43 05
Email: jonathan.marsh@total.com

or to such other place and with such other copies as the Agent or the Guarantor may designate as to itself by written notice to the other pursuant to this Section 5(a).

(b) Nonwaiver. No failure or delay on the Agent's part in exercising any right hereunder shall operate as a waiver thereof or of any other right nor shall any single or partial exercise of any such right preclude any other further exercise thereof or of any other right.

(c) Amendments and Waivers. This Guaranty may not be amended or modified, nor may any of its terms be waived, except by written instruments signed by the Guarantor and the Agent. Each waiver or consent under any provision hereof shall be effective only in the specific instances for the purpose for which given.

(d) Assignments. This Guaranty shall be binding upon and inure to the benefit of the Agent and the Guarantor and their respective successors and permitted assigns. This Guaranty may not be assigned by the Guarantor without the express written approval of the Banks, which may not be unreasonably withheld, conditioned or delayed.

(e) Cumulative Rights, etc. The rights, powers and remedies of the Agent under this Guaranty shall be in addition to all rights, powers and remedies given to the Agent by virtue of any applicable law, rule or regulation, the Contract or any other agreement, all of which rights, powers, and remedies shall be cumulative and may be exercised successively or concurrently without impairing the Agent's rights hereunder.

(f) Partial Invalidity. If at any time any provision of this Guaranty is or becomes illegal, invalid or unenforceable in any respect under the law or any jurisdiction, neither

the legality, validity or enforceability of the remaining provisions of this Guaranty nor the legality, validity or enforceability of such provision under the law of any other jurisdiction shall in any way be affected or impaired thereby.

(g) Currency Indemnity. Any payments by the Guarantor 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 Agent of the full amount of the Specified Currency payable under this Agreement. The Guarantor shall indemnify the Agent for any shortfall and the Guarantor's obligation to make payments in the Specified Currency shall be enforceable as an alternative or additional 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.

(h) GOVERNING LAW. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK, UNITED STATES OF AMERICA, WITHOUT REFERENCE TO CONFLICTS OF LAWS (OTHER THAN SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW).

(i) JURISDICTION. EACH PARTY (A) IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE EXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK SITTING IN NEW YORK COUNTY AND OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK, AND ANY APPELLATE COURT FROM ANY THEREOF AND (B) WAIVES ANY OBJECTION WHICH SUCH PARTY MAY HAVE TO THE LAYING OF VENUE OF ANY SUCH SUIT, ACTION OR PROCEEDING IN ANY SUCH COURT. EACH PARTY IRREVOCABLY WAIVES THE DEFENSE OF AN INCONVENIENT FORUM FOR THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT SITTING IN NEW YORK COUNTY. 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.

(i) SERVICE OF PROCESS. EACH PARTY AGREES THAT SERVICE OF PROCESS IN ANY SUCH ACTION OR PROCEEDING MAY BE MADE BY THE MAILING OF COPIES THEREOF BY EXPRESS OR OVERNIGHT MAIL OR COURIER, POSTAGE PREPAID, TO SUCH PARTY AT ITS ADDRESS REFERRED TO IN SECTION 5(a). NOTHING IN THIS GUARANTY SHALL AFFECT ANY RIGHT THAT ANY PARTY MAY OTHERWISE HAVE TO SERVE PROCESS IN ANY OTHER MANNER. THE

GUARANTOR HEREBY IRREVOCABLY APPOINTS AND DESIGNATES SUNPOWER CORPORATION, A DELAWARE CORPORATION, AS ITS AGENT FOR ACCEPTANCE OF SERVICE OF LEGAL PROCESS, SUMMONS, NOTICES, AND DOCUMENTS IN ANY ACTION OR PROCEEDING ARISING OUT OF OR IN CONNECTION WITH THE GUARANTY; ANY SUCH SERVICE MAY BE EFFECTED BY DELIVERY TO SUNPOWER CORPORATION AT: TOTAL S.A., C/O SUNPOWER CORPORATION, ATTN: CORPORATE SECRETARY, 77 RIO ROBLES, SAN JOSE, CALIFORNIA 95134. THE GUARANTOR AGREES THAT ANY FAILURE OF (I) SUNPOWER CORPORATION TO DELIVER TO THE GUARANTOR A COPY OF ANY SUCH PROCESS OR (II) THE GUARANTOR TO RECEIVE ANY SUCH COPY SHALL NOT AFFECT IN ANY WAY THE SERVICE OF SUCH PROCESS.

(j) JURY TRIAL. EACH OF THE GUARANTOR AND THE AGENT, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY AS TO ANY ISSUE RELATING HERETO IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS GUARANTY.

[Remainder of page intentionally left blank]

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

TOTAL S.A.

By: _____
Name:
Title:

DEUTSCHE BANK AG NEW YORK BRANCH,
as Administrative Agent

By: _____
Name:
Title:

By: _____
Name:
Title:

EXHIBIT A
CREDIT SUPPORT AGREEMENT DATED APRIL 28, 2011
AMENDMENT TO CREDIT SUPPORT AGREEMENT DATED JUNE 7, 2011

EXHIBIT H

[FORM OF]
FEE LETTER

[Letterhead of Administrative Agent [and Issuing Bank]]

SunPower Corporation
77 Rio Robles
San Jose, CA 95134
Attention: [_____]

Dear Sirs:

This fee letter is delivered to you in connection with (i) the commitment letter dated _____, 2011 (the "Commitment Letter") and (ii) the Letter of Credit Facility Agreement of even date herewith (the "Facility Agreement") among SunPower Corporation ("SunPower"), Total S.A., the Subsidiary Applicants parties thereto from time to time, the Banks parties thereto from time to time, and [_____], [as Issuing Bank and] as Administrative Agent (the "Agent"), regarding the commitment and syndication in the amount of up to $771,000,000 letter of credit facility (the "Facility"). Unless otherwise defined herein, capitalized terms shall have the meanings set forth in the Facility Agreement. In connection with, and in consideration of the agreements contained in the Commitment Letter and the Facility Agreement, SunPower agrees with the Agent and Issuing Bank as follows:

SunPower agrees to pay to the Agent and the Issuing Bank, as applicable, the following fees:

ISSUER FEE:	to the Issuing Bank, $_____, per annum on the Dollar Equivalent amount of the LOCs issued by the Issuing Bank, payable quarterly 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 such 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).
ADMINISTRATIVE AGENT FEE:	to the Administrative Agent, $_____, payable at closing and $_____, payable on each anniversary of the closing date until the later of the Termination Date or the date on which there is no longer any Credit Exposure.

You and we agree that, except as otherwise specifically provided for in the Facility Agreement, the fees stated herein are the only fees due and payable under the Facility and each of the above fees will be fully earned on the date it is payable as provided above. Your obligations under this fee letter will survive the closing. This fee letter shall prevail over any general terms and conditions of the Agent and the Issuing Bank.

It is understood and agreed that this Fee Letter shall not constitute or give rise to any obligation to provide any financing; such an obligation will arise only to the extent provided in the Facility Agreement if accepted in accordance with its terms. This Fee Letter may not be amended or waived except by an instrument in writing signed by us and you. This Fee Letter shall be governed by, and construed in accordance with, the laws of the State of New York. This Fee Letter may be executed in any number of counterparts, each of which shall be an original, and all of which, when taken together, shall constitute one agreement. Delivery of an executed counterpart of a signature page to this Fee Letter by facsimile or

e-mail (in a pdf or similar file) shall be effective as delivery of an original executed counterpart of this Fee Letter.

Very truly yours,

[___], as Agent[, and as Issuing Bank]

By: _____
Name:
Title:

Accepted and Agreed:
SUNPOWER CORPORATION

By: _____
Name:
Title:

EXHIBIT I

[FORM OF]
REQUEST RE SUBSIDIARY ACCOUNT PARTY

SUNPOWER CORPORATION

Date

To the Administrative Agent and the Issuing Bank referred to in the Facility Agreement
referred to below

Re: Request to Approve "[_]" as a "Subsidiary Account Party"

Reference is made to the Letter of Credit Facility Agreement, dated as of [ ] (as it may be amended, supplemented or otherwise modified from time to time, the "Facility Agreement"), among SunPower Corporation (the "Company"), Total S.A., the Subsidiary Applicants parties thereto from time to time, the Banks parties thereto from time to time, and [ ], as Issuing Bank and as Administrative Agent. Capitalized terms used herein without definition shall have the meanings given to such terms in the Facility Agreement.

The Company hereby requests that the Administrative Agent and the Issuing Bank approve [ ], an [ ]limited liability company ("[ ]"), as a Subsidiary Account Party under the Facility Agreement. In connection therewith, the Company hereby represents and warrants to each of the Secured Parties that [ ] is an [direct/indirect] Subsidiary of the Company.

Kindly sign this consent in the space provided below to approve [ ] as a Subsidiary Account Party as provided herein.

This approval to treat [ ] as a Subsidiary Account Party shall not become effective until each party hereto shall have executed and delivered this approval or a separate approval to the same effect. This approval may be executed in any number of counterparts, which together shall constitute one instrument. Delivery of an executed counterpart of a signature page to this approval by facsimile or e-mail (in a pdf or similar file) shall be effective as delivery of an original executed counterpart of this approval. This approval constitutes one of the Loan Documents referred to in the Facility Agreement. This approval shall be governed by, and construed in accordance with, the law of the State of New York.

Very truly yours,

SUNPOWER COROPRATION

By: _____
Name:
Title:

THE FOREGOING REQUEST TO APPROVE
[ ]
AS A "SUBSIDIARY ACCOUNT PARTY" IS HEREBY

APPROVED:

[ ],
as Administrative Agent and as Issuing Bank

By: _____
Name:
Title:

CONFIDENTIAL TREATMENT REQUESTED

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

ADJUSTMENT NOTICE

To: SunPower Corporation

From: Wachovia Bank, National Association
375 Park Avenue
New York, NY 10152

Re: Issuer Warrant Transaction

Date: August 26, 2011

Reference is made to the Warrant Transaction entered into on April 28, 2009 (the "Transaction") among SunPower Corporation ("Counterparty"), Wells Fargo Securities, Inc. ("Agent") and Wells Fargo Bank, National Association ("Wells Fargo"), on the Class A Common Stock of Counterparty, the Confirmation of which bears Wells Fargo's Reference Numbers 6845039. All capitalized terms used and not otherwise defined herein shall have their meanings as defined in the Confirmation.

This letter is being sent to you by Wells Fargo, as Calculation Agent under the Transaction, as notification of an adjustment to the Transaction due to the Tender Offer which occurred on June 14, 2011.

As of the date hereof (x) the Strike Price under the Warrant Transaction shall be USD 26.40 and (y) *** on August 31, 2011.

Except as otherwise set out herein and unless otherwise agreed between the parties, the Confirmation and the Transaction it confirms shall remain in full force and effect.

Very truly yours,

WELLS FARGO SECURITIES, LLC,
Acting solely in its capacity as Agent
of Wells Fargo Bank, National Association

By: /s/ Cathleen Burke
Title: Managing Director

WELLS FARGO BANK, NATIONAL ASSOCIATION
By: Wells Fargo Securities, LLC
acting solely in its capacity as its Agent

By: /s/ Cathleen Burke
Title: Managing Director

Accepted and confirmed as
of the date first above written:

SUNPOWER CORPORATION
By: /s/ Dennis Arriola
Name: Dennis Arriola
Title: EVP & Chief Financial Officer

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

EXHIBIT 10.5

To: Deutsche Bank AG, London Branch
Winchester House
1 Great Winchester Street
London EC2N 2DB

Re: Calculation Agent Adjustment Notice

Date: August 30, 2011

Ladies and Gentlemen:

We are in receipt of the Calculation Agent Adjustment Notice (the "**Notice**") dated June 29, 2011 sent by the Calculation Agent to us. Capitalized terms not otherwise defined in this letter will have their definitions set forth in the Notice.

We agree that the table set forth in the Notice under "Tender Offer Adjustment" is hereby superseded with the following revised Strike Price Adjustments (the "**Revised Strike Price Adjustments**"):

	Deutsche Reference Number	**Old Strike Price**	**New Strike Price**
2014 Warrants	328335	$38.50	$26.40
2015 Warrants (Base)	375283	$27.03	$24.00
2015 Warrants (Additional)	376539	$27.03	$24.00

We acknowledge and accept that neither this letter nor the Revised Strike Adjustments limit or modify the other provisions of the Confirmations.

Very truly yours,

SUNPOWER CORPORATION

By: /s/ Dennis Arriola

Name: Dennis Arriola

Title: EVP & Chief Financial Officer

Agreed and accepted:

DEUTSCHE BANK AG, LONDON BRANCH,

as Calculation Agent

By: /s/ Lars Kestner
Name: Lars Kestner
Title: Managing Director

By: /s/ Michael Sanderson
Name: Michael Sanderson
Title: Managing Director

EXHIBIT 10.6

CONFIDENTIAL TREATMENT REQUESTED

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

CREDIT SUISSE INTERNATIONAL
One Cabot Square Telephone 020 7888 8888
London E14 4QJ www.crcdit-suisse.com

ADJUSTMENT NOTICE

DATE: August 31, 2011

FROM: Credit Suisse International
One Cabot Square
London E 14 4QJ
England

TO: SunPower Corporation
3939 N. First Street
San Jose, CA 95134
Attn: Dennis Arriola/CFO
Telephone: (408) 240-5574
Facsimile: (408) 240-5404

This letter agreement is in reference to (i) the issuer warrant transaction (the "**2009 Transaction**") entered into by Credit Suisse International ("**Party A**") and SunPower Corporation ("Party B"), with Credit Suisse AG, New York Branch acting as agent (the **"Agent"**), pursuant to a letter agreement dated as of April 28, 2009 (the **"2009 Confirmation")**; (ii) the base issuer warrant transaction (the **"2010 Base Transaction"**) among Party A, Party B and the Agent, pursuant to a letter agreement dated as of March 25, 2010, as amended and restated by the letter agreement dated as of December 22, 2010 (the **"2010 Base Confirmation"**); and (iii) the additional issuer warrant transaction (the **"2010 Additional Transaction"**) among Party A, Party B and the Agent, pursuant to a letter agreement dated as of April 5, 2010, as amended and restated by the letter agreement dated as of December 22, 2010 (the **"2010 Additional Confirmation"**; together with the 2009 Confirmation and the 2010 Base Confirmation, the **"Confirmations"**).

Party A, as the Calculation Agent for each of the 2009 Transaction, the 2010 Base Transaction and the 2010 Additional Transaction, hereby notifies Party B that, as a result of the occurrence of a Share-for-Other Tender Offer (as defined in the Confirmations) to which Modified Calculation Agent Adjustment (as defined in the 2002 ISDA Equity Derivatives Definitions) applies pursuant to the terms of the Confirmations, (i) the Strike Price (as defined in the 2009 Confirmation) for the 2009 Transaction shall be adjusted to USD 26.40; (ii) the Strike Price (as defined in the 2010 Base Confirmation) for the 2010 Base Transaction shall be adjusted to USD 24.00; and (iii) the Strike Price (as defined in the 2010 Additional Confirmation) for the 2010 Additional Transaction shall be adjusted to USD 24.00, In addition, in connection with the adjustment of the Strike Price (as defined in the 2009 Confirmation) for the 2009 Transaction, ***.

Yours faithfully,

Credit Suisse International, Calculation Agent	SunPower Corporation
By: /s/ Anthony Fisher	By: /s/ Dennis Arriola
Name: Anthony Fisher	Name: Dennis Arriola
Title: Director	Title: EVP & CFO

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

EXHIBIT 10.7

September 21, 2011

SunPower Corporation
3939 N. First Street
San Jose, CA 95134
Attn: Dennis Arriola, Chief Financial Officer

Re: The Base Issuer Warrant Transaction, Dated March 25, 2010, Transaction Reference Number: NY - 40065, as amended on December 22, 2010, with a Strike Price of $27.03 on the Number of Warrants as provided on Annex A thereto (the "Base Warrant"); the Additional Issuer Warrant Transaction, Dated April 5, 2010. Transaction Reference Number: NY - 40103, as amended on December 22, 2010, with a Strike Price of $27.03 on the Number of Warrants as provided on Annex A thereto (the "Additional Warrant", and together with the Base Warrant, collectively, the "Warrants"); The Base Convertible Debenture Hedge Transaction, Dated March 25, 2010, Transaction Reference Number: NY - 40064, relating to the $220,000,000 principal amount of 4.50% senior convertible debentures due 2015 (the "Base Bond Hedge"); and the Additional Convertible Debenture Hedge Transaction, Dated April 5, 2010, Transaction Reference Number: NY - 40102, Additional Convertible Debenture Hedge Transaction relating to the $250,000,000 principal amount of 4.50% senior convertible debentures due 2015 (the "Additional Bond Hedge", and together with the Base Bond Hedge, collectively, the "Bond Hedges").

Dear Mr. Arriola:

This letter memorializes the agreements of the Parties with respect to the effect, if any, the consummation of the Tender Offer (the "Tender") on or about June 21, 2011 by Total SA in respect of the Shares of SunPower had on the Warrants and Bond Hedges. The Parties agree as follows:

(1) The Strike Price under each of the Warrants shall, as a result of the Tender, change from $27.03 to $24.00.

(2) All Terms, other than the Strike Price, of each of the Warrants, shall be unaffected by the Tender and each shall remain in full force and effect.

(3) The Terms of the Bond Hedges shall not be adjusted as a result of the Tender and each shall remain in full force and effect.

Please confirm SunPower Corporation's acknowledgement and agreement with the foregoing and your authority to act on behalf of SunPower Corporation by countersigning where indicated below.

Very truly yours,

Bank of America, N.A.

By: /s/ Chris Hutmaker
Chris Hutmaker, Managing Director

Agreed and acknowledged:

SunPower Corporation

By: /s/ Dennis Arriola
Dennis Arriola, Chief Financial Officer

1 Bryant Park, New York, NY 10036

EXHIBIT 10.8

ADJUSTMENT NOTICE

To: SunPower Corporation
77 Rio Robles
San Jose, CA 95134
Attn: Dennis Arriola/CFO
Telephone:(408) 240-5574
Facsimile:(408) 240-5404

From: Barclays Bank PLC
5 The North Colonnade
Canary Wharf, London E14 4BB
Facsimile:+44 (20) 777 36461
Telephone: +44 (20) 777 36810

c/o Barclays Capital Inc.
as Agent for Barclays Bank PLC
745 Seventh Ave
New York, NY 10019
Telephone: +1 212 412 4000

Re: Base Issuer Warrant Transaction

Date: September 21, 2011

Reference is made to the Base Issuer Warrant Transaction letter agreement entered into on March 25, 2010, as amended and restated on December 22, 2010 (the "Transaction") among SunPower Corporation ("Counterparty"), Barclays Bank PLC ("Barclays"), through its agent Barclays Capital Inc., on the Class A Common Stock of Counterparty. All capitalized terms used and not otherwise defined herein shall have their meanings as defined in the Confirmation.

This letter is being sent to you by Barclays, as Calculation Agent under the Transaction, as notification of an adjustment to the Transaction due to the Tender Offer which occurred on June 14, 2011.

As of the date hereof the Strike Price under the Warrant Transaction shall be USD 24.00.

Except as otherwise set out herein and unless otherwise agreed between the parties, the Confirmation and the Transaction it confirms shall remain in full force and effect.

Very truly yours,

BARCLAYS CAPITAL INC.,
as Agent for BARCLAYS BANK PLC

By: /s/ Adam Lawlor
Name: Adam Lawlor
Title: Authorised Signatory

Accepted and confirmed as
of the date first above written:

SUNPOWER CORPORATION

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

Exhibit 10.9

EXECUTION VERSION

CONFIDENTIAL TREATMENT REQUESTED

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

REVOLVING CREDIT AGREEMENT

Dated as of September 27, 2011

Among

THE FINANCIAL INSTITUTIONS PARTY HERETO,
as the Lenders,

and

CRÉDIT AGRICOLE CORPORATE AND INVESTMENT BANK,
as Administrative Agent,

and

SUNPOWER CORPORATION,
as Borrower

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REVOLVING CREDIT AGREEMENT

This REVOLVING CREDIT AGREEMENT (this "Agreement") dated as of September 27, 2011 is made by and among SunPower Corporation, a Delaware corporation (the "Borrower"), the financial institutions parties hereto from time to time (the "Lenders"), and Crédit Agricole Corporate and Investment Bank, as Administrative Agent (the "Agent").

The Borrower has requested the Lenders to extend credit in the form of Revolving Loans at any time and from time to time prior to the Revolving Credit Maturity Date in an initial aggregate principal amount at any time outstanding not in excess of $275,000,000. The proceeds of the Revolving Loans are to be used for general corporate purposes.

The Lenders are willing to extend such credit to the Borrower on the terms and subject to the conditions set forth herein. Accordingly, the parties hereto agree as follows:

ARTICLE I

Definitions

SECTION 1.01. Defined Terms. As used in this Agreement, the following terms have the meanings specified below:

"ABR", when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are bearing interest at a rate determined by reference to the Alternate Base Rate.

"Adjusted LIBO Rate" means, for any Interest Period, the rate per annum equal to the rate obtained by dividing (i) the LIBO Rate for such Interest Period by (ii) a percentage equal to 1 minus the stated maximum rate (stated as a decimal) of all reserves, if any, required to be maintained against "Eurocurrency liabilities" as specified in Regulation D (including any marginal, emergency, special or supplemental reserves).

"Administrative Questionnaire" means an Administrative Questionnaire in the form of Exhibit A, or such other form as may be supplied from time to time by the Agent.

"Affiliate" means, with respect to any specified Person, any other Person who directly or indirectly through one or more intermediaries controls, or is controlled by, or is under common control with, such specified Person. The term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise, and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

"Agent" has the meaning assigned to such term in the preamble to this Agreement.

"Agent Fee Letter" means that certain Fee Letter dated September 26, 2011 by and between the Borrower and the Agent.

"Agent Fees" has the meaning assigned to such term in Section 2.10(b).

"Aggregate Revolving Credit Exposure" means the aggregate amount of the Lenders' Revolving Credit Exposures.

"Alternate Base Rate" means, for any day, a rate per annum equal to the greater of (a) the Prime Rate in effect on such day, (b) the Federal Funds Effective Rate in effect on such day plus ½ of 1%, and (c) the LIBO Rate for a period of one month commencing on such day (which rate shall in no event be less than zero) plus 1%. If the Agent shall have reasonably determined (which determination shall be conclusive absent manifest error) that it is unable to ascertain the Federal Funds Effective Rate for any reason, including the inability or failure of the Agent to obtain sufficient quotations in accordance with the terms of the definition of Federal Funds Effective Rate, the Alternate Base Rate shall be determined without regard to clause (b) of the preceding sentence until the circumstances giving rise to such inability no longer exist. Any change in the Alternate Base Rate due to a change in the Prime Rate or the Federal Funds Effective Rate shall be effective from and including the effective date of such change in the Prime Rate or the Federal Funds Effective Rate, respectively.

"Applicable Percentage" means, with respect to any Lender, a percentage equal to a fraction the numerator of which is the aggregate outstanding principal amount of the Loans (or, if no Loans are then outstanding, the Revolving Credit Commitment) of such Lender and the denominator of which is the aggregate outstanding principal amount of the Loans (or, if no Loans are then outstanding, the Total Revolving Credit Commitment) of all Lenders.

"Applicable Rate" means, for any day, (a) with respect to any LIBO Rate Loan, 1.50%, (b) with respect to any ABR Loan, 0.50%, and (c) with respect to the Commitment Fees, 0.25%.

"Approved Fund" means any Person (other than a natural person) that is engaged in making, purchasing, holding or investing in bank loans and similar extensions of credit in the ordinary course and that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers, advises or manages a Lender.

"Assignment and Assumption" means an assignment and assumption entered into by a Lender and an assignee (with the consent of any party whose consent is required by Section 9.04), and accepted by the Agent, in the form of Exhibit B or any other form approved by the Agent.

"Board" means the Board of Governors of the Federal Reserve System of the United States of America.

"Board of Directors" means (a) with respect to a corporation, the board of directors of the corporation, (b) with respect to a partnership, the board of directors of the general partner of the partnership and (c) with respect to any other Person, the board or committee of such Person serving a similar function.

"Borrower" has the meaning assigned to such term in the preamble to this Agreement.

"Borrowing" means any Loans of the same Class and Type made, converted or continued on the same date and, in the case of LIBO Rate Loans, as to which a single Interest Period is in effect.

"Borrowing Request" means a request by the Borrower for a Borrowing in accordance with Section 2.03 and substantially in the form attached hereto as Exhibit E, or such other form as shall be approved by the Agent.

"Business Day" means a day of the year other than (a) Saturdays, (b) Sundays or (c) any day on which banks are required or authorized by law to close in either or both of New York or Paris, France; provided that, when used in connection with a LIBO Rate Loan, the term "Business Day" shall also exclude any day on which banks are not open for dealings in dollar deposits in the London interbank market.

"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 Total S.A. shall fail to directly or indirectly beneficially own or control at least 40% of the voting power represented by the issued and outstanding Equity Interests of the Borrower and no Person (other than Total S.A. or any Total S.A. controlled entity) shall beneficially own or control such voting power in an amount exceeding that of Total S.A.

"Change in Control Amendment" means a Change in Control Amendment implementing the adoption of a Substitute Basis.

"Change in Control Amendment Date" has the meaning assigned to such term in Section 2.20(b).

"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 Agent or any Lender (or, for purposes of Section 2.13(b), by any lending office of such Lender or by the corporation controlling such Lender, if any) with any request, guideline or directive (whether or not having the force of law) of any Governmental Authority (provided that compliance with such request, guideline or directive is in accord with the general practice of Persons to whom such request, guideline or directive is intended to apply) made or issued after the date of this Agreement; provided, however, that notwithstanding anything herein to the contrary, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, regulations, guidelines or directives thereunder or issued in connection therewith or in implementation thereof and (ii) all requests, rules, guidelines, requirements and directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case referred to in clause (i) or (ii) be deemed to be a "Change in Law", regardless of the date enacted, adopted or issued.

"Class," when used in reference to any Loan or Borrowing hereunder, refers to whether such Loan is, or the Loans comprising such Borrowing are, a Revolving Loan or an Other Revolving Loan.

"Closing Date" means the date on which the conditions specified in Section 4.02 are satisfied (or waived in accordance with Section 9.02).

"Closing Date Certificate" means a Closing Date Certificate substantially in the form of Exhibit D.

"Code" means the Internal Revenue Code of 1986, as amended from time to time, and any references to any Code section shall include references to the Treasury Regulations promulgated thereunder.

"Commitment Fee" has the meaning assigned to such term in Section 2.10(a).

"Commitment Schedule" means the Schedule attached hereto as Schedule 1 and identified as such.

"Credit Event" has the meaning assigned to such term in Section 4.01.

"Defaulting Lender" means any Lender that (a) defaults in its obligation to extend credit required to be extended by it hereunder, (b) has notified the Agent or the Borrower in writing that it does not intend to satisfy any such obligations or has made a public statement with respect to any such obligations hereunder or generally with respect to all agreements in which it commits to extend credit or (c) has become the subject of a bankruptcy or insolvency proceeding, or has had a receiver, conservator, trustee, custodian, administrator, assignee for the benefit of creditors or similar Person charged with the reorganization or liquidation of its business, 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 direct or indirect parent company that has

become the subject of a bankruptcy or insolvency proceeding, or has had a receiver, conservator, trustee, custodian, administrator, assignee for the benefit of creditors or similar Person charged with the reorganization or liquidation of its business, 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; provided that if a Lender would be a "Defaulting Lender" solely by reason of events relating to a direct or indirect parent company of such Lender or solely because a Governmental Authority holds or acquires Equity Interests in such Lender or has been appointed as receiver, conservator, trustee or custodian for such Lender or its direct or indirect parent company, such Lender shall not be a "Defaulting Lender" if and for so long as such Lender confirms in writing, upon request by the Agent, that it will continue to comply with its obligations to make Loans required to be made by it hereunder.

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

"EBITDA" means, for any period, the total of the following calculated for the Borrower and its Subsidiaries on a consolidated basis and without duplication, with each component thereof determined in accordance with GAAP consistently applied by the Borrower for such period (except as otherwise required by GAAP): (a) consolidated net income; 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 charges and any non-cash charges resulting from application of GAAP insofar as GAAP requires a charge against earnings for the impairment of goodwill and other acquisition related charges to the extent deducted in determining such consolidated 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 equity or equity-based awards to officers, directors, employees and consultants of the Borrower 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 negative 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)(x) non-cash adjustments related to positive mark-to-market valuation adjustments as may be required by GAAP from time to time and (y) any non-recurring or extraordinary gains; less (k) other quarterly cash and non-cash adjustments that are deemed by the Controller and Chief Financial Officer of the Borrower not to be part of the normal course of business and not necessary to reflect the regular, ongoing operations of the Borrower and its Subsidiaries. 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).

"Eligible Assignee" means (a) a Lender, (b) an Affiliate of a Lender, or (c) an Approved Fund; provided that neither the Borrower 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 Employee Retirement Income Security Act of 1974 and the regulations promulgated thereunder, as amended from time to time.

"ERISA Affiliate" means any trade or business (whether or not incorporated) that is under common control with the Borrower within the meaning of Section 4001 of ERISA, or that, together with the Borrower, is treated as a single employer under Section 414(b), or (c), (m) or (o) of the Code or, solely for purposes of Section 302 of ERISA and Section 412 of the Code, is treated as a single employer under Section 414 of the 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) a failure by any Plan to meet the minimum funding standards within the meaning of Section 412 of the Code or Section 302 of ERISA, in each case, whether or not waived; (c) the filing pursuant to Section 412(c) of the Code or Section 302(c) of ERISA of an application for a waiver of the minimum funding standard with respect to any Plan; (d) the incurrence by the Borrower 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 the Borrower or any ERISA Affiliate from the PBGC or a plan administrator of any notice of an intent to terminate any Plan or Plans or to appoint a trustee to administer any Plan; (f) the incurrence by the Borrower 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 the Borrower or any ERISA Affiliate of any notice, or the receipt by any Multiemployer Plan from the Borrower or any ERISA Affiliate of any notice, concerning the imposition of Withdrawal Liability or a determination that a Multiemployer Plan is insolvent or in reorganization, within the meaning of Title IV of ERISA, (h) a determination that any Plan or Multiemployer Plan is, or is expected to be, in at-risk status (within the meaning of Title IV of ERISA), or (i) the filing of a notice of intent to terminate or the termination of any Plan under Section 4041(c) of ERISA.

"Event of Default" has the meaning assigned to such term in Article VII.

"Exchange Act" means the Securities Exchange Act of 1934, as amended, and the rules and regulations of the SEC promulgated thereunder.

"Excluded Taxes" means, with respect to the Agent, any Lender or any other recipient of any payment to be made by or on account of any obligation of the Borrower hereunder, (a) income or franchise Taxes imposed on (or measured by) its net income by the jurisdiction under the laws of which such recipient is organized or in which its principal office is located or, in the case of any Lender, in which its applicable

lending office is located, (b) any branch profits Taxes imposed by the United States of America or any similar tax imposed by any other jurisdiction in which such recipient is located, (c) in the case of a Lender, any U.S. Federal withholding Taxes attributable to such Lender's failure to comply with Section 2.15(f), (d) except in the case of an assignee pursuant to a request by the Borrower under Section 2.17(b), any U.S. Federal withholding Tax that is imposed on amounts payable to such recipient at the time such recipient becomes a party to this Agreement (or designates a new lending office), except to the extent that such recipient (or its assignor, if any) was entitled, at the time of designation of a new lending office (or assignment), to receive additional amounts from the Borrower with respect to such withholding Tax pursuant to Section 2.15(a) and (e) any U.S. Federal withholding Taxes imposed by FATCA.

"Existing Facilities" means (a) the Credit Agreement dated October 29, 2010, as amended, by and among the Borrower, SunPower Corporation, Systems, SunPower North America, LLC, Union Bank, N.A., as administrative agent, and the lenders party thereto, and (b) the Revolving Credit Agreement dated as of November 23, 2010, as amended, among the Borrower, SunPower Corporation Malta Holdings Limited and Société Générale, Milan Branch.

"Exiting Lender" means a Lender who declines to participate in making Revolving Loans available on a Substitute Basis.

"fair market value" means, with respect to any asset or property, 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, neither of whom is under undue pressure or compulsion to complete the transaction. Fair market value shall be determined by the Board of Directors of the Borrower acting reasonably and in good faith.

"FATCA" means Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), and any regulations or official interpretations thereof.

"Federal Funds Effective 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 Agent from three federal funds brokers of recognized standing selected by the Borrower.

"Fee Letter" means (i) that certain Fee Letter dated September 26, 2011 by and among the Borrower and the Agent and (ii) the Agent Fee Letter.

"Fees" means the Commitment Fees and the Agent Fees.

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

"Financial Officer" means the chief financial officer, treasurer or controller of the Borrower.

"Foreign Lender" means a Lender that is not a "United States person" within the meaning of Section 7701(a)(30) of the Code.

"GAAP" means generally accepted accounting principles set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other entity as may be approved by a significant segment of the accounting profession of the United States of America, (a) except as otherwise expressly provided in this Agreement, as in effect as of the Closing Date, (b) with respect to all financial statements and reports required to be delivered under the Loan Documents, as in effect from time to time, and (c) solely with respect to computations of the financial covenant contained in Section 5.02, subject to the proviso in Section 1.05.

"Governmental Authority" means any supra-national body, 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.

"Historical Financial Statements" has the meaning assigned to such term in Section 3.04.

"Incremental Lender" means (i) each Lender with an Incremental Revolving Credit Commitment or an outstanding Incremental Revolving Loan and (ii) each Lender with an Other Revolving Credit Commitment or an outstanding Other Revolving Loan.

"Incremental Revolving Credit Amount" means, at any time, the excess, if any, of (a) $50,000,000 over (b) the aggregate amount of all Incremental Revolving

Credit Commitments and Other Revolving Credit Commitments established prior to such time pursuant to Section 2.19.

"Incremental Revolving Credit Assumption Agreement" means an Incremental Revolving Credit Assumption Agreement in form and substance reasonably satisfactory to the Agent, among the Borrower, the Agent and one or more Incremental Lenders.

"Incremental Revolving Credit Borrowing" means a Borrowing comprised of Incremental Revolving Loans.

"Incremental Revolving Credit Commitment" means the commitment of any Lender, established pursuant to Section 2.19, to make Incremental Revolving Loans to the Borrower.

"Incremental Revolving Credit Exposure" means, with respect to any Lender at any time, the aggregate principal amount at such time of all outstanding Incremental Revolving Loans of such Lender.

"Incremental Revolving Loans" means Revolving Loans made by one or more Lenders to the Borrower pursuant to Section 2.01(b).

"Indebtedness" shall mean and include the aggregate amount of, without duplication (i) all obligations for borrowed money, (ii) all obligations evidenced by bonds, debentures, notes or other similar instruments, (iii) all obligations to pay the deferred purchase price of property or services (other than accounts payable and accrued expenses incurred in the ordinary course of business determined in accordance with GAAP), (iv) all obligations with respect to capital leases, (v) all obligations created or arising under any conditional sale or other title retention agreement with respect to property acquired by such Person, (vi) all non-contingent reimbursement and other payment obligations in respect of letters of credit and similar surety instruments (including construction performance bonds), and (vii) all guaranty obligations with respect to the types of Indebtedness listed in clauses (i) through (vi) above.

"Indemnified Taxes" means Taxes other than Excluded Taxes.

"Information" has the meaning set forth in Section 9.11.

"Interest Election Request" means a request by the Borrower to convert or continue a Borrowing in accordance with Section 2.05.

"Interest Payment Date" means (a) with respect to any ABR Loan, the last Business Day of each March, June, September and December and the Revolving Credit Maturity Date (or, in the case of any Other Revolving Loan, the final maturity date thereof as specified in the applicable Incremental Revolving Credit Assumption Agreement) and (b) with respect to any LIBO Rate Loan, the last day of the Interest Period applicable to the Borrowing of which such Loan is a part and, in the case of a LIBO Rate Borrowing with an Interest Period of more than three months' duration, each

day prior to the last day of such Interest Period that occurs at intervals of three months' duration after the first day of such Interest Period (or if such day is not a Business Day, the next succeeding Business Day).

"Interest Period" means with respect to any LIBO Rate Borrowing, the period commencing on the date of such Borrowing and ending on the numerically corresponding day in the calendar month that is one, two, three or six months (or, to the extent agreed to by each relevant Lender, nine or twelve months) thereafter, as the Borrower may elect; provided, that (i) if any Interest Period would end on a day other than a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless such next succeeding Business Day would fall in the next calendar month, in which case such Interest Period shall end on the next preceding Business Day and (ii) any Interest Period that commences on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the last calendar month of such Interest Period) shall end on the last Business Day of the last calendar month of such Interest Period. For purposes hereof, the date of a Borrowing initially shall be the date on which such Borrowing is made and thereafter shall be the effective date of the most recent conversion or continuation of such Borrowing.

"Joint Venture" means a joint venture, partnership or other similar arrangement, whether in corporate, partnership or other legal form.

"Lenders" means the Persons listed on the Commitment Schedule 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.

"LIBO Rate" means, with respect to any Interest Period, the rate which is quoted for that Interest Period on the relevant page on Bloomberg L.P.'s (the "Service") Page BBAM1/(Official BBA USD Dollar Libor Fixings) (or on any successor or substitute page of such Service, or any successor to or substitute for such Service) at or about 11.00 a.m. (London time) on the date that is two Business Days prior to the commencement of such Interest Period as being the interest rate offered in the London Interbank Market for deposits in the relevant currency for the same period as the relevant Interest Period (or, if the periods are not the same, such rate determined by the Agent by reference to the rates offered for the next longest period to the Interest Period, if any); provided that, to the extent that an interest rate is not ascertainable pursuant to the foregoing provisions of this definition, the "LIBO Rate" shall be the interest rate per annum reasonably determined by the Agent to be the average of the rates per annum at which deposits in the relevant currency are offered for such relevant Interest Period by the Reference Banks at approximately 11:00 a.m. (London time) on the date that is two Business Days prior to the beginning of such Interest Period. If the LIBO Rate (as determined pursuant to the foregoing provisions of this definition) for any Interest Period is below zero, then the LIBO Rate for such Interest Period shall be deemed to be zero.

"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.

"Loans" means the loans made by the Lenders to the Borrower pursuant to this Agreement.

"Loan Documents" means this Agreement, each Fee Letter and any promissory notes issued pursuant to this Agreement. Any reference in this Agreement or any other Loan Document to a Loan Document shall include all appendices, exhibits or schedules thereto, and all amendments, restatements, supplements or other modifications thereto.

"Margin Stock" has the meaning assigned to such term in Regulation U.

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

"Material Indebtedness" means Indebtedness (other than the Revolving Loans) for borrowed money (including notes, bonds and other similar instruments) and reimbursement obligations in respect of drawn letters of credit of any one or more of the Borrower and its Subsidiaries in an aggregate principal amount outstanding exceeding $50,000,000.

"Material Subsidiary" means each Subsidiary now existing or hereafter acquired or formed by the Borrower which, on a consolidated basis for such Subsidiary and its Subsidiaries, (i) for the most recently completed fiscal year accounted for 10.0% or more of the consolidated revenues of the Borrower and its Subsidiaries or (ii) as at the end of such fiscal year, was the owner of assets with a book value equal to or greater than 10.0% of the book value of the consolidated assets of the Borrower and its Subsidiaries.

"Multiemployer Plan" means a multiemployer plan as defined in Section 3(37) or 4001(a)(3) of ERISA then, or at any time during the previous five years maintained for, or contributed to (or for which there was an obligation to contribute) on behalf of, employees of the Borrower or any ERISA Affiliate.

"Non-Consenting Lender" has the meaning assigned to such term in Section 9.02(c).

"obligations" means, for purposes of the definition of the term "Indebtedness", all obligations for principal, premium, interest, penalties, fees, indemnifications, reimbursements, damages and other liabilities payable under the documentation governing any Indebtedness.

"Obligations" means all obligations, liabilities, and Indebtedness of every nature of the Borrower from time to time owing to the Agent or any Lender, under or in connection with this Agreement or any other Loan Document, in each case whether primary, secondary, direct, indirect, contingent, fixed or otherwise, 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.

"Officer" means the Chairman of the Board, the Chief Executive Officer, the Chief Financial Officer, the President, any Executive Vice President, Senior Vice President or Vice President, the Treasurer or the Secretary of the Borrower.

"Other Revolving Credit Commitment" means the commitment of any Lender, established pursuant to Section 2.19, to make Other Revolving Loans to the Borrower.

"Other Revolving Loans" has the meaning assigned to such term in Section 2.19(a).

"Other Taxes" means any and all present or future stamp or documentary Taxes or any other excise or property Taxes, charges or similar levies arising from any payment made hereunder or from the execution, delivery or enforcement of, or otherwise with respect to, this Agreement.

"Participant" has the meaning assigned to such term in Section 9.04(c).

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

"Permitted Encumbrances" means:

(a) Liens imposed by law for taxes that are not yet due or are being contested in good faith;

(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 good faith;

(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;

(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 Borrower or any Subsidiary;

(g) Liens on property or assets of the Borrower or any Subsidiary existing on the Closing Date granted pursuant to agreements existing on the Closing Date and listed on Schedule 2; provided that such Liens shall secure only those obligations that they secure on the Closing Date and any obligations arising under such agreements after the Closing Date (and permitted extensions, renewals, and refinancings thereof to the extent that the amount of such obligations secured by such Liens is not increased, except in accordance with the then current terms of such agreements);

(h) purchase money security interests in equipment or other property or improvements thereto hereafter acquired (or, in the case of improvements, constructed) by the Borrower 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 Borrower 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 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 Borrower 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 Borrower or any Subsidiary to permit satisfaction of overdraft or similar obligations incurred in the ordinary course of business of the Borrower or any Subsidiary or (iii) relating to purchase orders and other agreements entered into with customers of the Borrower 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 Borrower 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) Liens arising from precautionary UCC financing statements regarding operating leases;

(r) Liens on Equity Interests in Joint Ventures held by the Borrower or a Subsidiary securing obligations of such Joint Venture;

(s) Liens on securities that are the subject of fully collateralized repurchase agreements with a term of not more than 30 days for 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, and entered into with 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;

(t) Liens in favor of customers or suppliers of the Borrower or any Subsidiary on equipment, supplies and inventory purchased with the proceeds of advances made by such customers or suppliers under or securing obligations in connection with supply agreements;

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

(v) 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;

(w) 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 in the ordinary course of the Borrower’s business as conducted from time to time;

(x) Liens on Equity Interests in and assets of project finance Subsidiaries of the Borrower or Subsidiaries of the Borrower to secure project finance related Indebtedness;

(y) customary Liens on securities accounts of the Borrower in favor of the securities broker with whom such accounts are maintained, provided that (i) such Liens arise in the ordinary course of business of the Borrower, as applicable, and such broker pursuant to such broker's standard form of brokerage agreement; (ii) such securities accounts are not subject to restrictions against access by the Borrower; (iii) such Liens secure only the payment of standard fees for brokerage services charged by, but not financing made available by, such broker and such Liens do not secure Indebtedness for borrowed money; and (iv) such Liens are not intended by the Borrower to provide collateral to such broker;

(z) cash collateral securing reimbursement obligations with respect to letters of credit issued to secure liabilities of the Borrower or any Subsidiary incurred in the ordinary course of business; and

(aa) other Liens so long as the outstanding principal amount of the obligations secured by such Liens does not exceed (in the aggregate) $10,000,000 at any one time.

"Person" means an individual, partnership, corporation, association, limited liability company, unincorporated organization, trust or Joint Venture, or a governmental agency or political subdivision thereof.

"Plan" means any "employee pension benefit plan" as defined in Section 3(2) of ERISA (other than a Multiemployer Plan) subject to the provisions of Title IV of ERISA or Section 412 of the Code or Section 302 of ERISA then, or at any time during the past five years, sponsored, maintained or contributed to (or to which there is or was an obligation to contribute) on behalf of employees of the Borrower or any ERISA Affiliate.

"Prime Rate" means the rate of interest per annum determined from time to time by the Agent as its prime rate in effect at its principal office in New York City and notified to the Borrower.

"Reference Banks" means Deutsche Bank AG, The Bank of Tokyo – Mitsubishi UFJ, Ltd., and JPMorgan Chase Bank, N.A. or such other leading banks as may be appointed by the Agent and approved by the Borrower.

"Register" has the meaning assigned to such term in Section 9.04.

"Regulation D" means Regulation D of the Board as from time to time in effect and all official rulings and interpretations thereunder or thereof, and any successor provision thereto.

"Regulation T" means Regulation T of the Board as from time to time in effect and all official rulings and interpretations thereunder or thereof, and any successor provision thereto.

"Regulation U" means Regulation U of the Board as from time to time in effect and all official rulings and interpretations thereunder or thereof, and any successor provision thereto.

"Regulation X" means Regulation X of the Board as from time to time in effect and all official rulings and interpretations thereunder or thereof, and any successor provision thereto.

"Related Parties" means, with respect to any specified Person, such Person's Affiliates and the respective directors, officers, trustees, employees, agents and advisors of such Person and such Person's Affiliates.

"Required Class Lenders" means at any time, in respect of any Class, Lenders that have Loans outstanding and unused Revolving Credit Commitments of such Class representing more than 50% of the sum of all Loans outstanding and unused Revolving Credit Commitments of such Class; provided that the Loans and unused Revolving Credit Commitments of any Defaulting Lender or Exiting Lender shall be disregarded in the determination of the Required Class Lenders at any time.

"Required Lenders" means at any time, Lenders that have Revolving Loans and unused Revolving Credit Commitments representing more than 50% of the sum of all Revolving Loans outstanding and unused Revolving Credit Commitments; provided that the Revolving Loans and unused Revolving Credit Commitments of any Defaulting Lender shall be disregarded in the determination of the Required Lenders at any time.

"Requirement of Law" means, as to any Person, the Certificate of Incorporation and By-Laws or other organizational or governing documents of such Person, and any law, treaty, rule or regulation or determination of an arbitrator or a court or other Governmental Authority, in each case applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

"Review Period" has the meaning assigned to such term in Section 2.20(b).

"Revolving Credit Borrowing" means a Borrowing comprised of Revolving Loans.

"Revolving Credit Commitment" means, with respect to each Lender, (a) the commitment of such Lender to make Revolving Loans hereunder as set forth in the Commitment Schedule or in the most recent Assignment and Assumption executed by such Lender, as applicable, as the same may be (i) reduced from time to time pursuant to Section 2.06 and (ii) reduced or increased from time to time pursuant to assignments by

or to such Lender pursuant to Section 9.04 and (b) any Incremental Revolving Credit Commitment of such Lender.

"Revolving Credit Exposure" means, with respect to any Lender at any time, the aggregate principal amount at such time of all outstanding Revolving Loans of such Lender.

"Revolving Credit Maturity Date" means September 27, 2013.

"Revolving Loans" means the revolving loans made by the Lenders to the Borrower pursuant to clause (a) of Section 2.01. Unless the context shall otherwise require, the term "Revolving Loans" shall include Incremental Revolving Loans.

"SEC" means the Securities and Exchange Commission, or any Governmental Authority succeeding to any or all of its functions.

"Securities Act" means the Securities Act of 1933, as amended.

"subsidiary" with respect to any Person, means:

(i) any corporation of which the outstanding Equity Interests having at least a majority of the votes entitled to be cast in the election of directors under ordinary circumstances shall at the time be owned, directly or indirectly by such Person; or

(ii) any other Person of which at least a majority of the voting interest under ordinary circumstances is at the time, directly or indirectly, owned by such Person.

"Subsidiary" means, unless the context otherwise requires, a Subsidiary of the Borrower.

"Substitute Basis" has the meaning set forth in Section 2.20(a).

"Taxes" means any and all present or future taxes, levies, imposts, duties, deductions, similar charges or withholdings imposed by any Governmental Authority.

"Tech Credit Agreement" means that certain First Amended and Restated Purchase Agreement, dated November 1, 2010, between SunPower North America LLC and Technology Credit Corporation, as amended on January 25, 2011 and April 18, 2011.

"Total Revolving Credit Commitment" means, at any time, the aggregate amount of Revolving Credit Commitments, as in effect at such time. The initial Total Revolving Credit Commitment as of the Closing Date is $275,000,000.

"Transactions" means, collectively, the execution, delivery and performance by the Borrower of the Loan Documents, the making of the Borrowings hereunder, and the use of proceeds thereof in accordance with the terms hereof.

"Type", when used in reference to any Loan or Borrowing, refers to whether the rate of interest on such Loan, or on the Loans comprising such Borrowing, is determined by reference to the Adjusted LIBO Rate or the Alternate Base Rate.

"UCC" means the Uniform Commercial Code as in effect from time to time in the State of New York.

"USA PATRIOT Act" means The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Title III of Pub. L. No. 107-56 (signed into law October 26, 2001)), as amended from time to time.

"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.

"Withholding Agent" means the Borrower or the Agent.

SECTION 1.02. Classification of Revolving Loans and Borrowings. For purposes of this Agreement, Loans may be classified and referred to by Type (e.g., a "LIBO Rate Loan"). Borrowings may also be classified and referred to by Type (e.g., a "LIBO Rate Borrowing").

SECTION 1.03. Terms Generally. 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". Unless otherwise specifically indicated, the term "consolidated" with respect to any Person refers to such Person consolidated with its Subsidiaries. The word "will" shall be construed to have the same meaning and effect as the word "shall". Unless the context requires otherwise (a) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein), (b) any reference herein to any Person shall be construed to include such Person's successors and assigns, (c) 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, (d) 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 and (e) the words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

SECTION 1.04. Effectuation of Transactions. Each of the representations and warranties of the Borrower contained in this Agreement (and all

corresponding definitions) are made after giving effect to the Transactions, unless the context otherwise requires.

SECTION 1.05. Accounting Terms; GAAP. Except as otherwise expressly provided herein, all terms of an accounting or financial nature shall be construed in accordance with GAAP or, if not defined in GAAP (as determined by the Borrower in good faith) as determined by the Borrower in good faith, as in effect from time to time; provided that, to the extent set forth in clause (c) of the definition of "GAAP", if the Borrower notifies the Agent that the Borrower requests an amendment to any provision hereof to eliminate the effect of any change occurring after the date hereof in GAAP or in the application thereof on the operation of such provision (or if the Agent notifies the Borrower that the Required Lenders request an amendment to any provision thereof for such purpose), regardless of whether any such notice is given before or after such change in GAAP or in the application thereof, then such provision shall be interpreted on the basis of GAAP as in effect and applied immediately before such change shall have become effective until such notice shall have been withdrawn or such provision amended in accordance herewith. The Borrower hereby agrees that any election pursuant to FASB Statement No. 159 (*The Fair Value Option for Financial Assets and Financial Liabilities*) shall be disregarded for purposes of Section 5.02 and Section 5.12.

ARTICLE II

The Credits

SECTION 2.01. Commitments. (a) Subject to the terms and conditions set forth herein, each Lender agrees, severally and not jointly, to make Revolving Loans to the Borrower, at any time and from time to time after the Closing Date, and until the earlier of the Revolving Credit Maturity Date and the termination of the Revolving Credit Commitment of such Lender in accordance with the terms hereof, in an aggregate principal amount at any time outstanding that will not result in such Lender's Revolving Credit Exposure exceeding such Lender's Revolving Credit Commitment. Within the limits set forth in the preceding sentence and subject to the terms, conditions and limitations set forth herein, the Borrower may borrow, pay or prepay and reborrow Revolving Loans.

(b) Each Lender having an Incremental Revolving Credit Commitment hereby agrees, severally and not jointly, on the terms and subject to the conditions set forth herein and in the applicable Incremental Revolving Credit Assumption Agreement, to make Incremental Revolving Loans to the Borrower, in an aggregate principal amount at any time outstanding that will not result in such Lender's Incremental Revolving Credit Exposure exceeding such Lender's Incremental Revolving Credit Commitment. Within the limits set forth in the preceding sentence and subject to the terms, conditions and limitations set forth herein, the Borrower may borrow, pay or prepay and reborrow Incremental Revolving Loans.

SECTION 2.02. Revolving Loans and Borrowings. (a) Each Revolving Loan shall be made as part of a Borrowing consisting of Revolving Loans of the same

Type made by the Lenders ratably in accordance with their applicable Revolving Credit Commitments. The failure of any Lender to make any Revolving Loan required to be made by it shall not relieve any other Lender of its obligations hereunder; provided that the Revolving Credit Commitments of the Lenders are several and no Lender shall be responsible for any other Lender's failure to make Revolving Loans as required. The Revolving Loans comprising any Borrowing shall be in an aggregate principal amount that is (i) in an integral multiple of $1,000,000 and not less than $1,000,000 or (ii) equal to the remaining available balance of the applicable Revolving Credit Commitments.

(b) Subject to Section 2.12, each Borrowing shall be comprised entirely of ABR Loans or LIBO Rate Loans as the Borrower may request in accordance herewith. Each Lender at its option may make any LIBO Rate Loan by causing any domestic or foreign branch or Affiliate of such Lender to make such Loan; provided that (i) any exercise of such option shall not affect the obligation of the Borrower to repay such Loan in accordance with the terms of this Agreement, and (ii) in exercising such option, such Lender shall use reasonable efforts to minimize any increase in the Adjusted LIBO Rate or increased costs to the Borrower resulting therefrom (which obligation of such Lender shall not require it to take, or refrain from taking, actions that it determines would result in increased costs for which it will not be compensated hereunder or that it otherwise determines would be disadvantageous to it and in the event of such request for costs for which compensation is provided under this Agreement, the provisions of Section 2.13 shall apply).

(c) At the commencement of each Interest Period for any LIBO Rate Borrowing, such Borrowing shall comprise an aggregate principal amount that is an integral multiple of $1,000,000 and not less than $1,000,000. Each ABR Borrowing when made shall be in a minimum principal amount of $1,000,000; provided that an ABR Borrowing may be maintained in a lesser amount equal to the difference between the aggregate principal amount of all other Borrowings and the total amount of Loans at such time outstanding. Borrowings of more than one Type may be outstanding at the same time; provided that there shall not at any time be more than a total of ten different Interest Periods in effect for LIBO Rate Borrowings at any time outstanding.

(d) Notwithstanding any other provision of this Agreement, the Borrower shall not be entitled to request, or to elect to convert or continue, any Revolving Credit Borrowing if the Interest Period requested with respect thereto would end after the Revolving Credit Maturity Date.

SECTION 2.03. Requests for Borrowing. (a) In order to request a Revolving Credit Borrowing, the Borrower shall notify the Agent of such request either in writing by delivery of a Borrowing Request (by hand, electronic mail, or facsimile) signed by the Borrower or by telephone (to be confirmed promptly by hand delivery, electronic mail, or facsimile of written notice) not later than 11:00 a.m., New York City time, (A) in the case of a LIBO Rate Borrowing, three (3) Business Days before a proposed Revolving Credit Borrowing (or such later time on such Business Day as shall be acceptable to the Agent) and (B) in the case of an ABR Borrowing, one (1) Business Day before a proposed Revolving Credit Borrowing (or such later time as shall be

acceptable to the Agent and each Lender). Each such telephonic and written Borrowing Request shall be irrevocable and shall specify the following information in compliance with Section 2.01:

(i) the aggregate amount of the requested Revolving Credit Borrowing;

(ii) the date of the Revolving Credit Borrowing, which shall be a Business Day;

(iii) whether the Revolving Credit Borrowing then being requested is to be an Incremental Revolving Credit Borrowing, and whether such Revolving Credit Borrowing is to be an ABR Borrowing or a LIBO Rate Borrowing;

(iv) in the case of a LIBO Rate Borrowing, the initial Interest Period to be applicable thereto, which shall be a period contemplated by the definition of the term "Interest Period"; and

(v) the location and number of the Borrower's account to which funds are to be disbursed;

provided, however, that notwithstanding any contrary specification in any Borrowing Request, each requested Revolving Credit Borrowing shall comply with the requirements set forth in Section 2.02 and Section 2.04.

(b) If no election as to the Type of Revolving Credit Borrowing is specified, then the requested Revolving Credit Borrowing shall be an ABR Borrowing. If no Interest Period is specified with respect to any LIBO Rate Borrowing, then the Borrower shall be deemed to have selected an Interest Period of one month's duration. Promptly following receipt of the Borrowing Request in accordance with this Section 2.03 (but in any event on the same day such Borrowing Request is received by the Agent), the Agent shall advise each Lender of the details thereof and of the amount of such Lender's Revolving Loan to be made as part of the requested Revolving Credit Borrowing.

SECTION 2.04. Funding of Borrowings. (a) Each Lender shall make each Revolving Loan to be made by it hereunder on the proposed date thereof by wire transfer of immediately available funds by 12:00 (noon), New York City time, to the account of the Agent most recently designated by it for such purpose by notice to the Lenders.

(b) Unless the Agent shall have received notice from a Lender prior to the date of any Borrowing that such Lender will not make available to the Agent such Lender's share of such Borrowing, the Agent may assume that such Lender has made such share available on the date of such Borrowing in accordance with Section 2.04(a) and may, in reliance upon such assumption, make available to the Borrower a corresponding amount. In such event, if a Lender has not in fact made its share of the

Borrowing available to the Agent, then the applicable Lender and the Borrower severally agree to pay to the Agent forthwith on demand (without duplication) such corresponding amount with interest thereon, for each day from and including the date such amount is made available to the Borrower to but excluding the date of payment to the Agent, at (i) in the case of such Lender, the greater of the Federal Funds Effective Rate and a rate determined by the Agent in accordance with banking industry rules on interbank compensation or (ii) in the case of the Borrower, the interest rate applicable to ABR Loans. If such Lender pays such amount to the Agent, then such amount shall constitute such Lender's Loan as part of such Borrowing for purposes of this Agreement. Nothing herein shall be deemed to relieve any Lender from its obligation to fulfill its Commitments or to prejudice any rights which the Agent or the Borrower may have against any Lender as a result of any default by such Lender hereunder.

SECTION 2.05. Type; Interest Elections. (a) Revolving Loans shall initially be of the Type specified in the applicable Borrowing Request and, in the case of a LIBO Rate Borrowing, shall have an initial Interest Period as specified in such Borrowing Request. Thereafter, the Borrower may elect to convert all or any portion of any Revolving Credit Borrowing (subject to the minimum amounts for Revolving Credit Borrowings of the applicable Type specified in Section 2.02(c)) to a different Type or to continue such Revolving Credit Borrowing and, in the case of a LIBO Rate Borrowing, may elect Interest Periods therefor, all as provided in this Section 2.05. The Borrower may elect different options with respect to different portions of the affected Revolving Credit Borrowing, in which case each such portion shall be allocated ratably among the Lenders holding the Revolving Loans comprising such Revolving Credit Borrowing, and the Revolving Loans comprising each such portion shall be considered a separate Revolving Credit Borrowing.

(b) To make an election pursuant to this Section 2.05, the Borrower shall notify the Agent of such election by telephone (i) in the case of an election to convert to or continue as a LIBO Rate Borrowing, not later than 11:00 a.m., New York City time, three (3) Business Days before the date of the proposed conversion or continuation or (ii) in the case of an election to convert to or continue as an ABR Borrowing, not later than 10:00 a.m., New York City time, on the date of the proposed conversion or continuation. Each such telephonic Interest Election Request shall be irrevocable and shall be confirmed promptly by hand delivery, electronic mail, or facsimile to the Agent of a written Interest Election Request in a form approved by the Agent and signed by the Borrower.

(c) Each telephonic and written Interest Election Request shall specify the following information in compliance with Section 2.02:

(i) the Borrowing to which such Interest Election Request applies and, if different options are being elected with respect to different portions thereof, the portions thereof to be allocated to each resulting Borrowing (in which case the information to be specified pursuant to clauses (iii) and (iv) below shall be specified for each resulting Borrowing);

(ii) the effective date of the election made pursuant to such Interest Election Request, which shall be a Business Day;

(iii) whether the resulting Borrowing is to be an ABR Borrowing or a LIBO Rate Borrowing; and

(iv) if the resulting Borrowing is a LIBO Rate Borrowing, the Interest Period to be applicable thereto after giving effect to such election, which shall be a period contemplated by the definition of the term "Interest Period".

If any such Interest Election Request requests a LIBO Rate Borrowing but does not specify an Interest Period, then the Borrower shall be deemed to have selected an Interest Period of one month's duration.

(d) Promptly following receipt of an Interest Election Request, the Agent shall advise each Lender of the details thereof and of such Lender's portion of each resulting Borrowing.

(e) If the Borrower fails to deliver a timely Interest Election Request with respect to a LIBO Rate Borrowing prior to the end of the Interest Period applicable thereto, then, unless such Borrowing is repaid as provided herein, at the end of such Interest Period such Borrowing shall be converted to an ABR Borrowing. Notwithstanding any contrary provision hereof, if an Event of Default of the type set forth in clause (a) or (b) of Article VII (without giving effect to any grace period set forth therein) has occurred and is continuing and the Agent, at the request of the Required Lenders, so notifies the Borrower, then, so long as an Event of Default is continuing, (i) no outstanding Borrowing may be converted to or continued as a LIBO Rate Borrowing and (ii) unless repaid, each LIBO Rate Borrowing shall be converted to an ABR Borrowing at the end of the then current Interest Period applicable thereto.

SECTION 2.06. Termination and Reduction of Commitments. (a) The Revolving Credit Commitments shall automatically terminate on the Revolving Credit Maturity Date and as set forth in Section 2.20.

(b) Upon at least three Business Days' prior irrevocable written or fax notice (or telephonic notice promptly confirmed by written notice) to the Agent, the Borrower may at any time in whole permanently terminate, or from time to time in part permanently reduce, the Revolving Credit Commitments; provided, however, that (i) each partial reduction of the Revolving Credit Commitments shall be in an integral multiple of $1,000,000 and in a minimum amount of $1,000,000, (ii) the Total Revolving Credit Commitment shall not be reduced to an amount that is less than the Aggregate Revolving Credit Exposure at the time, (iii) the Borrower may condition a notice of termination of all of the Revolving Credit Commitments upon the effectiveness of a replacement financing, and (iv) the Borrower may condition a notice of termination of the Revolving Credit Commitments (or, if applicable, the Revolving Credit Commitments of the Exiting Lenders) upon the consummation of a Change in Control.

(c) Each reduction in the Revolving Credit Commitments hereunder, other than a reduction resulting from the termination of Exiting Lenders' Revolving Credit Commitments in connection with a Change in Control Amendment, shall be made ratably among the non-Exiting Lenders in accordance with their respective Revolving Credit Commitments. The Borrower shall pay to the Agent for the account of the applicable Lenders, on the date of termination of the Revolving Credit Commitments (or the Exiting Lenders' Revolving Credit Commitments, as the case may be), all accrued and unpaid Commitment Fees relating to the same but excluding the date of such termination.

SECTION 2.07. Repayment of Revolving Loans; Evidence of Debt. (a) The Borrower hereby unconditionally promises to pay to each Lender, through the Agent, the then unpaid principal amount of each Revolving Loan of such Lender on the Revolving Credit Maturity Date.

(b) Each Lender shall maintain in accordance with its usual practice an account or accounts evidencing the indebtedness of the Borrower to such Lender resulting from each Loan made by such Lender from time to time, including the amounts of principal and interest payable and paid to such Lender from time to time hereunder.

(c) The Agent shall maintain accounts in which it shall record (i) the amount of each Loan made hereunder, the Type thereof and the Interest Period (if any) applicable thereto, (ii) the amount of any principal or interest due and payable or to become due and payable from the Borrower to each Lender hereunder and (iii) the amount of any sum received by the Agent hereunder for the account of the Lenders and each Lender's share thereof.

(d) The entries made in the accounts maintained pursuant to paragraph (b) or (c) of this Section shall be prima facie evidence of the existence and amounts of the obligations recorded therein; provided that the failure of any Lender or the Agent to maintain such accounts or any error therein shall not in any manner affect the obligation of the Borrower to repay the Loans in accordance with the terms of this Agreement.

(e) Any Lender may request that Loans made by it be evidenced by a promissory note. In such event, the Borrower shall prepare, execute and deliver to such Lender a promissory note payable to such Lender and its registered assigns and in substantially the form of Exhibit F hereto. Thereafter, the Loans evidenced by such promissory note and interest thereon shall at all times (including after assignment pursuant to Section 9.04) be represented by one or more promissory notes in such form payable to the payee named therein and its registered assigns.

SECTION 2.08. Optional Prepayment of Revolving Loans. (a) Upon prior notice in accordance with paragraph (b) of this Section, the Borrower shall have the right at any time and from time to time to prepay any Revolving Credit Borrowing in whole or in part without premium or penalty (but subject to Section 2.14); provided that

each partial prepayment shall be in an amount that is an integral multiple of $1,000,000 and not less than $1,000,000.

(b) The Borrower shall notify the Agent by telephone (confirmed by facsimile) of any prepayment hereunder (i) in the case of prepayment of a LIBO Rate Borrowing, not later than 11:00 a.m., New York City time, three (3) Business Days before the date of prepayment or (ii) in the case of prepayment of an ABR Borrowing, not later than 10:00 a.m., New York City time, on the day of prepayment. Each such notice shall be irrevocable (except in the case of a repayment in full of all of the Obligations, which may be conditioned upon the effectiveness of a new financing) and shall specify the prepayment date and the principal amount of each Revolving Credit Borrowing or portion thereof to be prepaid. Promptly following receipt of any such notice relating to a Revolving Credit Borrowing, the Agent shall advise the Lenders of the contents thereof. Each partial prepayment of any Revolving Credit Borrowing shall be in an amount that would be permitted in the case of a Revolving Credit Borrowing of the same Type as provided in Section 2.02. Each prepayment of a Revolving Credit Borrowing shall be applied ratably to the Revolving Loans included in the prepaid Revolving Credit Borrowing; provided that any prepayments made to Exiting Lenders in connection with a termination of their Revolving Credit Commitments shall be applied ratably to the applicable Revolving Loans of such Exiting Lenders. Prepayments shall be accompanied by accrued interest as required by Section 2.11 and any prepayment of LIBO Rate Loans shall be subject to the provisions of Section 2.14; provided, however, that in the case of a prepayment of an ABR Revolving Loan that is not made in connection with a termination of the Revolving Credit Commitments, the accrued and unpaid interest on the principal amount prepaid shall be payable on the next scheduled Interest Payment Date with respect to such ABR Revolving Loan.

SECTION 2.09. Mandatory Prepayment of Revolving Loans. (a) In the event of any termination of all the Revolving Credit Commitments, the Borrower shall, on the date of such termination, repay or prepay all its outstanding Revolving Credit Borrowings, together with accrued interest thereon, accrued Fees and all other amounts payable to the Lenders hereunder.

(b) If as a result of any partial reduction of the Revolving Credit Commitments (including any such reduction pursuant to Section 2.20) the Aggregate Revolving Credit Exposure would exceed the Total Revolving Credit Commitment after giving effect thereto, then the Borrower shall, on the date of such reduction, repay or prepay Revolving Credit Borrowings in an amount sufficient to eliminate such excess.

SECTION 2.10. Fees. (a) The Borrower agrees to pay to each Lender (other than a Defaulting Lender), through the Agent, on the last Business Day of March, June, September and December in each year and on each date on which any Revolving Credit Commitment of such Lender shall expire or be terminated as provided herein, a commitment fee (a "Commitment Fee") equal to the Applicable Rate per annum in effect from time to time on the daily unused amount of the Revolving Credit Commitments of such Lender during the preceding quarter (or other period commencing with the Closing Date or ending with the Revolving Credit Maturity Date or the date on which the

Revolving Credit Commitments of such Lender shall expire or be terminated). All Commitment Fees shall be computed on the basis of the actual number of days elapsed in a year of 360 days. The Commitment Fee due to each Lender shall commence to accrue on the Closing Date and shall cease to accrue on the date on which the Revolving Credit Commitments of such Lender shall expire or be terminated as provided herein.

(b) The Borrower agrees to pay to the Agent, for its own account, the agency fees set forth in the Fee Letters, as amended, restated, supplemented or otherwise modified from time to time, or such agency fees as may otherwise be separately agreed upon by the Borrower and the Agent payable in the amounts and at the times specified therein or as so otherwise agreed upon (the "Agent Fees").

(c) All Fees shall be paid on the dates due, in immediately available funds, to the Agent for distribution, if and as appropriate, among the Lenders.

SECTION 2.11. Interest. (a) The Revolving Loans comprising each ABR Borrowing shall bear interest at the Alternate Base Rate plus the Applicable Rate.

(b) The Revolving Loans comprising each LIBO Rate Borrowing shall bear interest at the Adjusted LIBO Rate for the Interest Period in effect for such Borrowing plus the Applicable Rate.

(c) Notwithstanding the foregoing, upon the occurrence and during the continuance of an Event of Default referred to in paragraphs (a), (b), (f), and (g) of Article VII, at the written request of the Required Lenders, any principal of or interest on any Loan or any fee or other amount payable by the Borrower hereunder shall bear interest, payable on demand, after as well as before judgment, at a rate per annum equal to (i) in the case of overdue principal of any Loan, 2.0% plus the rate otherwise applicable to such Loan as provided in the preceding paragraphs of this Section or (ii) in the case of any other amount, 2.0% plus the rate applicable to ABR Loans as provided in paragraph (a) of this Section. Payment or acceptance of the increased rates of interest provided for in this Section 2.11(c) is not a permitted alternative to timely payment and shall not constitute a waiver of any Event of Default or otherwise prejudice or limit any rights or remedies of the Agent or any Lender.

(d) Accrued interest on each Loan shall be payable to the applicable Lenders, through the Agent, in arrears on each Interest Payment Date for such Loan; provided that (i) interest accrued pursuant to paragraph (c) of this Section shall be payable on demand, (ii) in the event of any repayment or prepayment of any Loan, accrued interest on the principal amount repaid or prepaid shall be payable on the date of such repayment or prepayment and (iii) in the event of any conversion of any LIBO Rate Loan prior to the end of the current Interest Period therefor, accrued interest on such Loan shall be payable on the effective date of such conversion.

(e) All interest hereunder shall be computed on the basis of a year of 360 days, except that interest computed by reference to the Alternate Base Rate at times when the Alternate Base Rate is based on the Prime Rate shall be computed on the basis

of a year of 365 days (or 366 days in a leap year), and in each case shall be payable for the actual number of days elapsed (including the first day but excluding the last day). The applicable Alternate Base Rate, Adjusted LIBO Rate or LIBO Rate shall be determined by the Agent, and such determination shall be conclusive absent manifest error.

SECTION 2.12. Alternate Rate of Interest. If prior to the commencement of any Interest Period for a LIBO Rate Borrowing:

(a) the Agent determines (which determination shall be conclusive absent manifest error) that dollar deposits in the principal amount of the Loans comprising such Borrowing are not generally available in the London interbank market;

(b) the Agent determines (which determination shall be conclusive absent manifest error) that adequate and reasonable means do not exist for ascertaining the Adjusted LIBO Rate or the LIBO Rate, as applicable, for such Interest Period; or

(c) the Agent is advised by the Required Lenders that the Adjusted LIBO Rate or the LIBO Rate, as applicable, for such Interest Period will not adequately and fairly reflect the cost to such Lenders of making or maintaining their Loans included in such Borrowing for such Interest Period;

then the Agent shall promptly give notice thereof to the Borrower and the Lenders by telephone or facsimile as promptly as practicable thereafter and, until the Agent notifies the Borrower and the Lenders that the circumstances giving rise to such notice no longer exist, any request by the Borrower for a LIBO Rate Borrowing pursuant to Section 2.03 or 2.05 shall be deemed to be a request for an ABR Borrowing. In the event that the Agent shall give such a notice, the Borrower and the Agent (in consultation with the Lenders) shall promptly enter into negotiations in good faith with a view to agreeing on an alternative basis acceptable to the Borrower and the Lenders for the interest rate which shall be applicable to future LIBO Rate Borrowings.

SECTION 2.13. Increased Costs. (a) If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit or similar requirement against assets of, deposits with or for the account of, or credit extended by, any Lender (except any such reserve requirement reflected in the Adjusted LIBO Rate); or

(ii) impose on any Lender or the London interbank market any other condition affecting this Agreement or LIBO Rate Loans made by such Lender;

and the result of any of the foregoing shall be to increase the cost to such Lender of making or maintaining any LIBO Rate Loan or to reduce the amount of any sum received or receivable by such Lender hereunder (whether of principal, interest or otherwise), in each case by an amount the Lender reasonably determines to be material, then, following delivery of the certificate contemplated by paragraph (c) of this Section, within fifteen

(15) days after demand the Borrower will pay to such Lender such additional amount or amounts as will compensate such Lender for such additional costs incurred or reduction suffered (except for (i) any Taxes, which shall be dealt with exclusively pursuant to Section 2.15, (ii) 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 Lender is organized or has its lending office for the Revolving Loans or any political subdivision thereof, (iii) any increased cost in respect of which a Lender is entitled to compensation under any other provision of this Agreement, (iv) any payment to the extent that it is attributable to the requirement of any Governmental Authority which regulates a Lender or its holding company which is imposed by reason of the quality of such Lender's assets or those of its holding company and not generally imposed on all entities of the same kind regulated by the same authority, or (v) any increased cost arising by reason of a Lender voluntarily breaching any lending limit or other similar restriction imposed by any provision of any relevant law or regulation after the introduction thereof).

(b) If any Lender determines that any Change in Law regarding capital requirements has or would have the effect of reducing the rate of return on such Lender's capital or on the capital of such Lender's holding company, if any, as a consequence of this Agreement or the Loans made to a level below that which such Lender or such Lender's holding company could have achieved but for such Change in Law (excluding, for purposes of this Section, any such increased costs resulting from any change to the extent that it is attributable to the requirement of any Governmental Authority which regulates a Lender or its holding company which is imposed by reason of the quality of such Lender's assets or those of its holding company and not generally imposed on all entities of the same kind regulated by the same authority) other than due to Taxes, which shall be dealt with exclusively pursuant to Section 2.15 (taking into consideration such Lender's policies and the policies of such Lender's holding company with respect to capital adequacy), then from time to time following delivery of the certificate contemplated by paragraph (c) of this Section the Borrower will within fifteen (15) days after demand pay to such Lender such additional amount or amounts as will compensate such Lender or such Lender's holding company for any such reduction suffered.

(c) A certificate of a Lender setting forth the amount or amounts necessary to compensate such Lender or its holding company as specified in paragraph (a) or (b) of this Section and setting forth in reasonable detail the manner in which such amount or amounts was determined shall be delivered to the Borrower and shall be conclusive absent manifest error. The Borrower shall pay such Lender, as the case may be, the amount shown as due on any such certificate within ten (10) days after receipt thereof.

(d) Failure or delay on the part of any Lender to demand compensation pursuant to this Section shall not constitute a waiver of such Lender's right to demand such compensation; provided that the Borrower shall not be required to compensate a Lender pursuant to this Section for any increased costs or reductions incurred more than 180 days prior to the date that such Lender notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender's intention to claim

compensation therefor; provided further that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the 180-day period referred to above shall be extended to include the period of retroactive effect thereof.

SECTION 2.14. Break Funding Payments. In the event of (a) the payment of any principal of any LIBO Rate Loan other than on the last day of an Interest Period applicable thereto (including as a result of an Event of Default), (b) the conversion of any LIBO Rate Loan or the conversion of the Interest Period with respect to any LIBO Rate Loan other than on the last day of the Interest Period applicable thereto, (c) the failure to borrow, convert, continue or prepay any LIBO Rate Loan on the date specified in any notice delivered pursuant hereto, or (d) the assignment of any LIBO Rate Loan other than on the last day of the Interest Period applicable thereto as a result of a request by the Borrower pursuant to Section 2.17, then, in any such event, the Borrower shall compensate each Lender for the loss, cost and expense attributable to such event. In the case of a LIBO Rate Loan, such loss, cost or expense to any Lender shall not include loss of profit or margin and shall be deemed to be the amount reasonably determined by such Lender to be the excess, if any, of (i) the amount of interest which would have accrued on the principal amount of such Loan had such event not occurred, at the Adjusted LIBO Rate that would have been applicable to such Loan, for the period from the date of such event to the last day of the then current Interest Period therefor (or, in the case of a failure to borrow, convert or continue, for the period that would have been the Interest Period for such Loan), over (ii) the amount of interest which would accrue on such principal amount for such period at the interest rate which such Lender would bid were it to bid, at the commencement of such period, for dollar deposits of a comparable amount and period from other banks in the eurodollar market. A certificate of any Lender setting forth any amount or amounts that such Lender is entitled to receive pursuant to this Section and the basis therefor and setting forth in reasonable detail the manner in which such amount or amounts was determined shall be delivered to the Borrower and shall be conclusive absent manifest error. The Borrower shall pay such Lender the amount shown as due on any such certificate within ten (10) days after receipt thereof.

SECTION 2.15. Taxes. (a) Any and all payments by or on account of any obligation of the Borrower hereunder or under any other Loan Document shall be made free and clear of and without deduction for any Indemnified Taxes or Other Taxes; provided that if the Borrower shall be required to deduct any Indemnified Taxes or Other Taxes from such payments, then (i) the sum payable shall be increased as necessary so that after making all such required deductions (including such deductions applicable to additional sums payable under this Section), the Agent or Lender (as applicable) receives an amount equal to the sum it would have received had no such deductions been made, (ii) the Borrower shall make such deductions and (iii) the Borrower shall timely pay the full amount so deducted to the relevant Governmental Authority in accordance with applicable law. If at any time the Borrower is required by applicable law to make any deduction or withholding from any sum payable hereunder, the Borrower shall promptly notify the relevant Lender and the Agent upon becoming aware of the same. In addition, each Lender or the Agent shall promptly notify the Borrower upon becoming aware of any circumstances as a result of which the Borrower is or would be required to make any deduction or withholding from any sum payable hereunder.

(b) In addition, the Borrower shall pay any Other Taxes to the relevant Governmental Authority in accordance with applicable law.

(c) The Borrower shall indemnify the Agent and each Lender, within ten (10) days after written demand therefor, for the full amount of any Indemnified Taxes or Other Taxes paid by the Agent or such Lender on or with respect to any payment by or on account of any obligation of the Borrower hereunder or under any other Loan Document (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section) and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Other Taxes (or related penalties, interest, or additions to tax) were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Borrower by a Lender or by the Agent on its own behalf or on behalf of a Lender shall be conclusive absent manifest error.

(d) Each Lender shall severally indemnify the Agent, within ten (10) days after written demand therefor, for the full amount of any Excluded Taxes paid by the Agent on behalf of such Lender on or with respect to any payment by or on account of any obligation of the Borrower hereunder or under any other Loan Document and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Excluded Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to a Lender by the Agent shall be conclusive absent manifest error.

(e) As soon as practicable after any payment of Indemnified Taxes or Other Taxes by the Borrower to a Governmental Authority, the Borrower shall deliver to the Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Agent.

(f) (i) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments under any Loan Document shall deliver to the Borrower (with a copy to the Agent), at the time or times as reasonably requested by the Borrower or the Agent, such properly completed and executed documentation as reasonably requested by the Borrower or the Agent as will permit such payments to be made without withholding or at a reduced rate.

(ii) Without limiting the generality of the foregoing, any Lender shall, if it is legally eligible to do so, deliver to the Borrower (with a copy to the Agent), on or prior to the date on which such Lender becomes a party hereto, two duly signed, properly completed copies of whichever of the following is applicable:

(A) in the case of a Lender that is not a Foreign Lender, IRS Form W-9;

(B) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party (1) with respect to payments of interest under any Loan Document, IRS Form W-8BEN establishing an exemption from, or reduction of, U.S. Federal withholding Tax pursuant to the "interest" article of such tax treaty and (2) with respect to any other applicable payments under any Loan Document, IRS Form W-8BEN establishing an exemption from U.S. Federal withholding Tax pursuant to the "business profits" or "other income" article of such tax treaty;

(C) in the case of a Foreign Lender for whom payments under any Loan Document constitute income that is effectively connected with such Lender's conduct of a trade or business in the United States, IRS Form W-8ECI;

(D) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code both (1) IRS Form W-8BEN and (2) a certificate (a "U.S. Tax Certificate") to the effect that such Lender is not (a) a "bank" within the meaning of Section 881(c)(3)(A) of the Code, (b) a "10 percent shareholder" of the Borrower within the meaning of Section 881(c)(3)(B) of the Code and (c) a "controlled foreign corporation" described in Section 881(c)(3)(C) of the Code;

(E) in the case of a Foreign Lender that is not the beneficial owner of payments made under any Loan Document (including a partnership or a Participant) (1) an IRS Form W-8IMY on behalf of itself and (2) the relevant forms prescribed in clauses (A), (B), (C), (D), (F) and (G) of this paragraph (f)(ii) that would be required of each such beneficial owner or partner of such partnership if such beneficial owner or partner were a Lender; provided, however, that if the Lender is a partnership and one or more of its partners are claiming the exemption for portfolio interest under Section 881(c) of the Code, such Lender may provide a U.S. Tax Certificate on behalf of such partners;

(F) if a payment made to a Foreign Lender under any Loan Document would be subject to any withholding Taxes as a result of such Foreign Lender's failure to comply with the requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code), at the time or times prescribed by law and at such time or times reasonably requested by the Withholding Agent, such

documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Withholding Agent as may be necessary for the Withholding Agent to comply with its obligations under FATCA, to determine that such Foreign Lender has or has not complied with such Foreign Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment; or

(G) any other form prescribed by law as a basis for claiming exemption from, or a reduction of, U.S. Federal withholding Tax together with such supplementary documentation necessary to enable the Borrower or the Agent to determine the amount of Tax (if any) required by law to be withheld.

(iii) Thereafter and from time to time, each Foreign Lender shall, if it is legally eligible to do so, (A) promptly submit to the Borrower (with a copy to the Agent) such additional duly completed and signed copies of one or more of the forms or certificates described in Section 2.15(f)(ii)(A), (B), (C), (D) or (E) above (or such successor forms or certificates as shall be adopted from time to time by the relevant United States taxing authorities) as may then be available under then current United States laws and regulations to avoid, or such evidence as is reasonably satisfactory to the Borrower and the Agent of any available exemption from, or reduction of, United States withholding Taxes in respect of all payments to be made to such Foreign Lender by the Borrower pursuant to this Agreement, or any other Loan Document, in each case, (1) after the occurrence of any event requiring a change in the most recent form, certificate or evidence previously delivered by it to the Borrower and (2) from time to time thereafter if reasonably requested by the Borrower or the Agent, and (B) promptly notify the Borrower and the Agent of any change in circumstances which would modify or render invalid any claimed exemption or reduction.

(g) If the Agent or a Lender determines, in its reasonable discretion, that it has received a refund of any Indemnified Taxes or Other Taxes as to which it has been indemnified by the Borrower or with respect to which the Borrower has paid additional amounts pursuant to this Section 2.15, it shall reimburse to the Borrower such amount as the Agent or such Lender determines to be the proportion (but not more than 100%) of such refund as will leave the Agent or such Lender (after that reimbursement) in no better or worse position in respect of the worldwide liability for Taxes or Other Taxes of the Agent, or such Lender (including in each case its Affiliates) than it would have been if no such indemnity had been required under this Section. This Section shall not be construed to require the Agent or any Lender to make available its tax returns (or

any other information relating to its Taxes which it deems confidential) to the Borrower or any other Person.

SECTION 2.16. Payments Generally; Allocation of Proceeds; Sharing of Set-offs. (a) Unless otherwise specified, the Borrower shall make each payment required to be made by it hereunder and under any other Loan Document (whether of principal, interest or fees, or of amounts payable under Section 2.13, 2.14 or 2.15, or otherwise) prior to 12:00 (noon), New York City time, on the date when due, in immediately available funds, without set-off or counterclaim. Any amounts received after such time on any date may, in the discretion of the Agent, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. All such payments shall be made to the Agent to the applicable account designated to the Borrower by the Agent, except that payments pursuant to Sections 2.13, 2.14, 2.15 and 9.03 shall be made directly to the Persons entitled thereto. The Agent shall distribute any such payments received by it, except as otherwise provided, for the account of any other Person to the appropriate recipient promptly following receipt thereof. If any payment hereunder shall be due on a day that is not a Business Day, the date for payment shall be extended to the next succeeding Business Day, and, in the case of any payment accruing interest, interest thereon shall be payable for the period of such extension. All payments hereunder shall be made in Dollars. Any payment required to be made by the Agent hereunder shall be deemed to have been made by the time required if the Agent shall, at or before such time, have taken the necessary steps to make such payment in accordance with the regulations or operating procedures of the clearing or settlement system used by the Agent to make such payment.

(b) If any Lender shall, by exercising any right of set-off or counterclaim or otherwise, obtain payment in respect of any principal of or interest on any of its Revolving Loans resulting in such Lender receiving payment of a greater proportion of the aggregate amount of its Revolving Loans and accrued interest thereon than the proportion received by any other Lender, then the Lender receiving such greater proportion shall purchase (for cash at face value) participations in the Revolving Loans of other Lenders at such time outstanding to the extent necessary so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Revolving Loans; provided that (i) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest, and (ii) the provisions of this paragraph shall not be construed to apply to any payment made by the Borrower pursuant to and in accordance with the express terms of this Agreement or any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Revolving Loans to any assignee or participant, other than to the Borrower or any subsidiary thereof (as to which the provisions of this paragraph shall apply). The Borrower consents to the foregoing and agrees, to the extent it may effectively do so under applicable law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against the Borrower rights of set-off and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of the Borrower in the amount of such participation.

(c) Unless the Agent shall have received notice from the Borrower prior to the date on which any payment is due to the Agent for the account of the Lenders that the Borrower will not make such payment, the Agent may assume that the Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders the amount due. In such event, if the Borrower has not in fact made such payment, then each of the Lenders severally agrees to repay to the Agent forthwith on demand the amount so distributed to such Lender 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 Agent, at the greater of the Federal Funds Effective Rate and a rate determined by the Agent in accordance with banking industry rules on interbank compensation.

(d) If any Lender shall fail to make any payment required to be made by it pursuant to Sections 2.04(a), 2.16(c) or 9.03(c), then the Agent may, in its discretion (notwithstanding any contrary provision hereof), apply any amounts thereafter received by the Agent for the account of such Lender to satisfy such Lender's obligations under such Sections until all such unsatisfied obligations are fully paid.

(e) Except as otherwise provided herein, each Borrowing, each payment or prepayment of principal of any Borrowing, each payment of interest on the Revolving Loans, each payment of the Commitment Fees, each reduction of the Revolving Credit Commitments and each conversion of any Borrowing to or continuation of any Borrowing as a Borrowing of any Type shall be allocated pro rata among the Lenders in accordance with their respective applicable Revolving Credit Commitments (or, if such Revolving Credit Commitments shall have expired or been terminated, in accordance with the respective principal amounts of their outstanding Revolving Loans).

SECTION 2.17. Mitigation Obligations; Replacement of Lenders. (a) If any Lender requests compensation under Section 2.13, or if the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.15, then such Lender shall use reasonable efforts to designate a different lending office for funding or booking its Revolving Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the reasonable judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 2.13 or 2.15, as applicable, in the future and (ii) would not subject such Lender to any material unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender in any material respect. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(b) In the event (i) any Lender requests compensation under Section 2.13, or (ii) the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.15, or (iii) any Lender becomes a Defaulting Lender or an Exiting Lender, then the Borrower may, at its sole expense and effort, upon notice to such Lender and the Agent, replace such Lender by requiring such Lender to assign and delegate (and such Lender shall be

obligated to assign and delegate), without recourse (in accordance with and subject to the restrictions contained in Section 9.04), all its interests, rights and obligations under this Agreement to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment); provided that (i) the Borrower shall have received the prior written consent of the Agent, which consent shall not unreasonably be withheld, (ii) such Lender shall have received payment of an amount equal to the outstanding principal of its Revolving Loans, accrued interest thereon, accrued Fees and all other amounts payable to it hereunder, from the assignee (to the extent of such outstanding principal and accrued interest and Fees) or the Borrower (in the case of all other amounts) and (iii) in the case of any such assignment resulting from a claim for compensation under Section 2.13 or payments required to be made pursuant to Section 2.15, such assignment will result in a reduction in such compensation or payments. A Lender shall not be required to make any such assignment and delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrower to require such assignment and delegation cease to apply.

SECTION 2.18. Illegality. If any Lender reasonably determines that any Change in Law has made it unlawful, or that any Governmental Authority has asserted after the Closing Date that it is unlawful, for such Lender or its applicable lending office to make or maintain any LIBO Rate Loans, then, on notice thereof by such Lender to the Borrower through the Agent, any obligations of such Lender to make or continue LIBO Rate Loans or to convert ABR Borrowings to LIBO Rate Borrowings shall be suspended until such Lender notifies the Agent and the Borrower that the circumstances giving rise to such determination no longer exist and until such notice is given by such Lender, the Borrower shall only request ABR Borrowings from such Lender. Upon receipt of such notice, the Borrower shall upon demand from such Lender (with a copy to the Agent), either convert all LIBO Rate Borrowings of such Lender to ABR Borrowings, either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such LIBO Rate Borrowings to such day, or immediately, if such Lender may not lawfully continue to maintain such Revolving Loans. Upon any such prepayment or conversion, the Borrower shall also pay accrued interest on the amount so prepaid or converted. Each Lender agrees to designate a different lending office if such designation will avoid the need for such notice and will not, in the determination of such Lender, otherwise be disadvantageous to it.

SECTION 2.19. Increase in Commitments. (a) The Borrower may, by written notice to the Agent from time to time, request Incremental Revolving Credit Commitments and/or Other Revolving Credit Commitments in an aggregate amount not to exceed the Incremental Revolving Credit Amount from one or more Incremental Lenders, which may include any existing Lender (each of which shall be entitled to agree or decline to participate in its sole discretion); provided that each Incremental Lender, if not already a Lender hereunder, shall be subject to the approval of the Agent (which approval shall not be unreasonably withheld). Such notice shall set forth (i) the amount of the Incremental Revolving Credit Commitments

or Other Revolving Credit Commitments being requested (which shall be in minimum increments of $1,000,000 and a minimum amount of $10,000,000 or equal to the remaining Incremental Revolving Credit Amount), (ii) the date on which such Incremental Revolving Credit Commitments or Other Revolving Credit Commitments are requested to become effective (which shall not be less than 10 Business Days nor more than 60 days after the date of such notice, unless otherwise agreed to by the Agent) and (iii) whether the Borrower is requesting Incremental Revolving Credit Commitments or commitments to make revolving loans with terms different from the Revolving Loans ("Other Revolving Loans").

(b) The Borrower may seek Incremental Revolving Credit Commitments and/or Other Revolving Credit Commitments from existing Lenders (each of which shall be entitled to agree or decline to participate in its sole discretion) and, subject to the approval of the Agent (which approval shall not be unreasonably withheld), additional banks, financial institutions and other institutional lenders who will become Incremental Lenders in connection therewith. The Borrower and each Incremental Lender shall execute and deliver to the Agent an Incremental Revolving Credit Assumption Agreement and such other documentation as the Agent shall reasonably specify to evidence the Incremental Revolving Credit Commitment or the Other Revolving Credit Commitments, as applicable, of such Incremental Lender. Each Incremental Revolving Credit Assumption Agreement shall specify the terms of the Incremental Revolving Loans or Other Revolving Loans to be made thereunder; provided that, without the prior written consent of all Lenders, the final maturity of any Other Revolving Loans shall be no earlier than the Revolving Credit Maturity Date.

(c) The Applicable Rate with respect to any Incremental Revolving Loans shall be the same as the Applicable Rate for the existing Revolving Loans and the Applicable Rate with respect to any Other Revolving Loans shall not be greater than the Applicable Rate for the existing Revolving Loans; provided that the Applicable Rate of the existing Revolving Loans may be increased (but may not be decreased) to equal the Applicable Rate for such Incremental Revolving Loans or such Other Revolving Loans to satisfy the requirements of this paragraph (c). The other terms of any Incremental Revolving Loans shall be the same as the terms of the other Revolving Loans. The other terms of any Other Revolving Loans and the Incremental Revolving Credit Assumption Agreement in respect thereof, to the extent not consistent with the terms applicable to the Revolving Loans hereunder, shall otherwise be reasonably satisfactory to the Agent and, to the extent that such Incremental Revolving Credit Assumption Agreement contains any covenants, events of default, representations or warranties or other rights or provisions that place greater restrictions on the Borrower or are more favorable to the Lenders making such Other Revolving Loans, the existing Lenders shall be entitled to the benefit of such rights and provisions so long as such Other Revolving Loans remain outstanding and such additional rights and provisions shall be deemed automatically incorporated by reference into this Agreement, *mutatis mutandis*, as if fully set forth herein, without any further action required on the part of any Person effective as of the date of such Incremental Revolving Credit Assumption Agreement. The Agent shall promptly notify each Lender as to the effectiveness of each Incremental Revolving Credit Assumption Agreement. Each of the parties hereto hereby agrees that, upon the effectiveness of any Incremental Revolving Credit Assumption Agreement, this Agreement shall be amended to the extent (but only to the extent) necessary to reflect the existence and terms of the Incremental Revolving Credit Commitments or Other Revolving Credit Commitments evidenced thereby as provided for in Section 9.02. Any

such deemed amendment may be memorialized in writing by the Agent with the Borrower's consent (not to be unreasonably withheld) and furnished to the other parties hereto.

SECTION 2.20. Change in Control. (a) If a Change in Control occurs prior to expiration or termination of the Revolving Credit Commitments, the Borrower shall promptly so notify the Agent, who shall promptly give notice thereof to each of the Lenders (with a copy to the Borrower). Upon the Agent giving such notice, (i) the Revolving Credit Commitments shall be suspended until the effectiveness of a Change in Control Amendment, if any, in accordance with this Section 2.20, and (ii) the Agent (in consultation with the Lenders) and the Borrower may enter into negotiations in good faith with a view to agreeing on a revised basis for making Loans available to the Borrower hereunder consistent with terms and conditions and market practice for similarly situated borrowers (a "Substitute Basis").

(b) If, before the expiration of thirty (30) days from the date of such notice from the Agent (the "Review Period"), the Borrower and the Required Lenders shall agree on a Substitute Basis, then the Agent shall promptly so notify the Lenders. Each Lender must then notify the Agent within five days whether such Lender will participate in future Loans made under a Substitute Basis or be an Exiting Lender, and agrees that it will be deemed to be an Exiting Lender if it does not provide such notice to the Agent on a timely basis. Within the later of (i) five days of receipt by the Agent of such notifications from all of the Lenders and (ii) the expiration of the Review Period (the "Change in Control Amendment Date"), the Borrower, the Agent and each non-Exiting Lender shall enter into a Change in Control Amendment and such other documentation as the Agent shall reasonably specify to evidence the Substitute Basis and revised terms and conditions, in each case in form and substance satisfactory to the Borrower, the Agent and each Lender party thereto. If the Borrower and the Required Lenders do not agree on a Substitute Basis before the end of the Review Period, then (i) the Agent shall so notify the Lenders, (ii) the Borrower shall prepay all principal, interest, Fees and other amounts relating to the Loans within five days of the end of the Review Period, and (iii) all of the Revolving Credit Commitments shall automatically be terminated on such date.

(c) Each Lender shall be entitled to agree or decline to participate in its sole discretion in future Loans made under a Substitute Basis. On the Change in Control Amendment Date and as a condition to the effectiveness of any Change in Control Amendment, each Exiting Lender shall (i) have its Revolving Credit Commitment terminated or be replaced as a Lender pursuant to and in accordance with Section 2.17(b) and (ii) receive payment in full of all amounts then outstanding in respect of principal, interest, Fees and other amounts relating to its Loans, whether pursuant to Section 2.17(b) or otherwise. Upon the effectiveness of any Change in Control Amendment (i) this Agreement shall be amended to the extent (but only to the extent) necessary to reflect the existence and terms of the Change in Control Amendment, evidenced thereby as provided for in Section 9.02, and (ii) each Exiting Lender shall no longer be a party to this Agreement.

(d) Nothing in this Section 2.20 shall limit or otherwise modify (i) the obligation of the Borrower to satisfy all of its Obligations on the Revolving Credit Maturity Date or (ii) the rights and remedies of the Agent and the Lenders under Article VII.

ARTICLE III

Representations and Warranties

The Borrower represents and warrants to the Agent and each of the Lenders that:

SECTION 3.01. Organization; Powers. The Borrower is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, has all requisite power and authority to own its property and assets and to carry on its business as now conducted and, except where the failure to do so, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect, is qualified to do business in, and is in good standing in, every jurisdiction where such qualification is required. All of the Subsidiaries of the Borrower and their jurisdictions of organization, in each case, as of the Closing Date, are identified in Schedule 3. Schedule 3 correctly illustrates the corporate organizational structure of the Borrower and each Subsidiary and sets forth the ownership interest of the Borrower and each Subsidiary in each Subsidiary as of the Closing Date.

SECTION 3.02. Authorization; Enforceability. The Transactions are within the Borrower's organizational powers and have been duly authorized by all necessary organizational action of the Borrower. Each Loan Document has been duly executed and delivered by the Borrower and is a legal, valid and binding obligation of the Borrower, enforceable in accordance with its terms, subject to applicable bankruptcy, insolvency or similar laws affecting creditors' rights generally and to general principles of equity.

SECTION 3.03. Governmental Approvals; No Conflicts. The Transactions (a) do not require any consent or approval of, registration or filing with, or any other action by, any Governmental Authority, except such as have been obtained or made and are in full force and effect, except to the extent that any such failure to obtain such consent or approval or to take any such action, would not reasonably be expected to result in a Material Adverse Effect, (b) will not violate any Requirement of Law applicable to the Borrower, (c) will not violate or result in a default under any other material indenture, agreement or other instrument binding upon the Borrower its assets, or give rise to a right thereunder to require any payment to be made by the Borrower, and (d) will not result in the creation or imposition of any Lien on any asset of the Borrower.

SECTION 3.04. Financial Condition. The Borrower has heretofore furnished to the Lenders its consolidated balance sheet and statements of income, shareholders' equity and cash flows as of and for the fiscal year ended January 2, 2011, reported on by PricewaterhouseCoopers LLP, independent public accountants

(collectively, the "Historical Financial Statements"). Such Historical Financial Statements present fairly, in all material respects, the financial position and results of operations and cash flows of Borrower and its consolidated Subsidiaries as of such date and for such period in accordance with GAAP.

SECTION 3.05. Properties. The Borrower has good and insurable fee simple title to, or valid leasehold interests in, or easements or other limited property interests in, all its real properties and has good and marketable title to its personal property and assets, in each case, except where the failure to have such title would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

SECTION 3.06. Litigation. Except as disclosed in the Borrower's filings with the SEC from time to time, there are no actions, suits, proceedings or investigations by or before any arbitrator or Governmental Authority pending against or, to the knowledge of the Borrower, threatened against or affecting the Borrower as to which there is a reasonable possibility of an adverse determination and that, if adversely determined, would reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect.

SECTION 3.07. Compliance with Laws and Agreements; Licenses and Permits. The Borrower is in compliance with all Requirements of Law 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, would not reasonably be expected to result in a Material Adverse Effect.

SECTION 3.08. Investment Company Status. The Borrower is not an "investment company" as defined in, and is not required to be registered under, the Investment Company Act of 1940.

SECTION 3.09. Taxes. The Borrower has timely filed or caused to be filed all Tax returns and reports required to have been filed and has paid or caused to be paid all Taxes required to have been paid by it, except (a) Taxes that are being contested in good faith by appropriate proceedings and for which it has set aside on its books adequate reserves in accordance with GAAP or (b) to the extent that the failure to do so, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect.

SECTION 3.10. ERISA. No ERISA Event has occurred and is continuing or is reasonably expected to occur that either on its own or, when taken together with all other such ERISA Events for which liability is reasonably expected to occur, would reasonably be expected to result in a Material Adverse Effect. Except as would not reasonably be expected to have a Material Adverse Effect, the present value of all accumulated benefit obligations under all Plans (based on the assumptions used for purposes of Financial Accounting Standards Board Accounting Standards Codification Topic 715) did not, as of the date of the most recent financial statements reflecting such amounts, exceed the fair market value of the assets of such Plans, in the aggregate.

SECTION 3.11. Material Agreements. The Borrower is not is in default in any material respect in the performance, observance or fulfillment of any of its obligations contained in any material agreement to which it is a party, except where such default would not reasonably be expected to have a Material Adverse Effect.

SECTION 3.12. Federal Reserve Regulations. (a) The Borrower is not engaged principally, or as one of its important activities, in the business of extending credit for the purpose of buying or carrying Margin Stock.

(b) No part of the proceeds of any Revolving Loan will be used, whether directly or indirectly, and whether immediately, incidentally or ultimately, for any purpose that entails a violation of, or that is inconsistent with, the provisions of Regulation T, U or X.

SECTION 3.13. USA PATRIOT Act and Other Regulations. To the extent applicable, the Borrower is in compliance, in all material respects, with (a) the Trading with the Enemy Act, as amended, and each of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) and any other enabling legislation or executive order relating thereto, and (b) the USA PATRIOT Act.

SECTION 3.14. Joint Ventures. Except as disclosed in the Borrower's filings with the SEC from time to time, as of the Closing Date the Borrower owns no Equity Interest in any Joint Venture.

SECTION 3.15. Disclosure. No exhibit, report or other writing furnished by or on behalf of the Borrower to the Agent or any Lender in connection with the negotiation of this Agreement or pursuant to the terms of the Loan Documents (as modified or supplemented by other information so furnished) contained any untrue statement of a material fact or omitted to state a material fact necessary to make the statements made therein, in the light of the circumstances under which they were made, not misleading as of the date it was dated (or if not dated, so delivered); provided that, with respect to projected financial information, the Borrower represents only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time and the Agent and the Lenders recognize and acknowledge that such projected financial information is not to be viewed as facts and that actual results during the period or periods covered by such projections may differ from the projected results and such differences may be material.

ARTICLE IV

Conditions

The obligations of the Lenders to make Revolving Loans hereunder are subject to the satisfaction of the following conditions:

SECTION 4.01. All Credit Events. On the date of each Borrowing (each such event being called a "Credit Event"):

(a) The Agent shall have received a notice of such Borrowing as required by Section 2.03.

(b) The representations and warranties set forth in Article III hereof (other than Section 3.04) and in each other Loan Document shall be true and correct in all material respects on and as of the date of such Credit Event with the same effect as though made on and as of such date, except to the extent such representations and warranties expressly relate to an earlier date, in which case they shall be true and correct in all material respects on and as of such earlier date; provided that, in each case, such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof.

(c) At the time of and immediately after such Credit Event, no (i) Event of Default, or (ii) event or condition that would constitute an Event of Default described in Sections (a), (b), (f), (g) or (h) of Article VII but for the requirement that notice be given or time elapse or both, has occurred and is continuing or would result from such issuance, extension or increase, shall have occurred and be continuing.

Each Credit Event shall be deemed to constitute a representation and warranty by the Borrower on the date of such Credit Event as to the matters specified in paragraphs (b) and (c) of this Section 4.01.

SECTION 4.02. Closing Date. On the Closing Date:

(a) Credit Agreement and other Loan Documents. The Agent (or its counsel) shall have received (i) from each party hereto either (A) a counterpart of this Agreement signed on behalf of such party or (B) written evidence satisfactory to the Agent (which may include facsimile transmission of a signed signature page of this Agreement) that such party has signed a counterpart of this Agreement, (ii) any promissory notes requested by a Lender pursuant to Section 2.07, and (iii) the Fee Letters signed on behalf of the Borrower.

(b) Legal Opinion. The Agent shall have received, on behalf of itself and the Lenders on the Closing Date, a favorable written opinion of counsel for the Borrower in the form of Exhibit G.

(c) USA PATRIOT Act. The Agent shall have received, at least five Business Days prior to the Closing Date, all documentation and other information reasonably requested by it that is required by regulatory authorities under applicable “know your customer” and anti-money laundering rules and regulations, including the USA PATRIOT Act.

(d) Closing Certificates; Certified Certificate of Incorporation; Good Standing Certificates. The Agent shall have received (i) a certificate of the Borrower, dated the Closing Date and executed by its Secretary or Assistant Secretary or an Officer, which shall (A) certify the resolutions of its Board of Directors authorizing the execution, delivery and performance of the Loan Documents by the Borrower, (B) identify by name and title and bear the signatures of the Financial Officers and any other officers of the

Borrower authorized to sign the Loan Documents, and (C) contain appropriate attachments, including the certificate or articles of incorporation of the Borrower certified by the relevant authority of the jurisdiction of organization of the Borrower and a true and correct copy of its by-laws, and (ii) a good standing certificate for the Borrower dated the Closing Date or a recent date prior to the Closing Date satisfactory to the Agent from the Borrower's jurisdiction of organization.

(e) Closing Date Certificate. The Agent shall have received an executed Closing Date Certificate, together with all attachments thereto, signed by the chief financial officer of the Borrower, dated the Closing Date.

(f) Fees. The Lenders and the Agent shall have received all fees required to be paid on or before the Closing Date.

(g) Financial Statements. The Agent shall have received the Historical Financial Statements.

(h) Comfort Letter. The Lenders and the Agent shall have received a comfort letter from Total S.A. in the form set forth on Exhibit H.

ARTICLE V

Affirmative Covenants

The Borrower covenants and agrees that, until the Revolving Credit Commitments have expired or been terminated and the Revolving Loans have been repaid in full:

SECTION 5.01. Financial Statements and Other Information. The Borrower will furnish to the Agent (which will promptly furnish such information to the Lenders):

(a) within ninety (90) days after the end of each fiscal year of the Borrower, its audited consolidated balance sheet and related statements of earnings, shareholders' equity and cash flows as of the end of and for such year, setting forth in each case in comparative form the figures for the previous fiscal year, all reported on by independent public accountants of recognized national standing and reasonably acceptable to the Agent (without a "going concern" explanatory note or any similar qualification or exception 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 Borrower and its consolidated Subsidiaries on a consolidated basis in accordance with GAAP;

(b) within forty-five (45) days after the end of each of the first three fiscal quarters of each fiscal year of the Borrower, its consolidated balance sheet and related statements of earnings, shareholders' equity and cash flows as of the end of and for such fiscal quarter and the then elapsed portion of the fiscal year, setting forth in each case in comparative form 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, all certified by one of its Financial Officers as presenting fairly, in all material respects, the financial condition and results of operations of the Borrower and its consolidated Subsidiaries on a consolidated basis in accordance with GAAP, subject to normal year-end audit adjustments and the absence of footnotes;

(c) concurrently with any delivery of financial statements under clause (a) or (b) above, a certificate of a Financial Officer of the Borrower in substantially the form of Exhibit C (i) certifying that no Event of Default has occurred and, if an Event of Default has occurred, specifying the details thereof and any action taken or proposed to be taken with respect thereto and (ii) setting forth computations in reasonable detail satisfactory to the Agent demonstrating compliance with the covenants set forth in Section 5.02;

(d) promptly following the Agent's request therefor, all documentation and other information that the Agent reasonably requests on its behalf or on behalf of any Lender in order to comply with its ongoing obligations under applicable "know your customer" and anti-money laundering rules and regulations, including the USA PATRIOT Act; and

(e) written notice of the occurrence of an Event of Default, which notice shall be given within five (5) Business Days after the actual knowledge of an officer of the Borrower of such occurrence, specifying the nature and extent thereof and, if continuing, the action the Borrower is taking or proposes to take in respect thereof.

Anything required to be delivered pursuant to clauses (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 Borrower posts such reports, or provides a link thereto, on the Borrower's website on the Internet, or on the date on which such reports are filed with the SEC and become publicly available.

SECTION 5.02. Financial Covenant. At all times from and after the Closing Date, the Borrower shall maintain a ratio of gross Financial Indebtedness to EBITDA for the four immediately preceding completed fiscal quarters of the Borrower of not more than 4.5 to 1.0 at the end of any fiscal quarter of the Borrower. As used herein, the term "gross Financial Indebtedness" means at any time the aggregate Financial Indebtedness of the Borrower 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)).

SECTION 5.03. Existence; Conduct of Business. The Borrower will do or cause to be done all things reasonably 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.

SECTION 5.04. Maintenance of Properties. The Borrower will (a) at all times maintain and preserve all material property necessary to the normal conduct of its business in good repair, working order and condition, ordinary wear and tear excepted and casualty or condemnation excepted and (b) make, or cause to be made, all needful and proper repairs, renewals, additions, improvements and replacements thereto as necessary in accordance with prudent industry practice in order that the business carried on in connection therewith, if any, may be properly conducted at all times, except, in each case, where the failure to do so, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect.

SECTION 5.05. Compliance with Laws. The Borrower will comply in all material respects with all Requirements of Law applicable to it or its property, except where the failure to do so, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect.

SECTION 5.06. Use of Proceeds. The proceeds of the Revolving Loans will be used only for the purposes specified in the introductory statement to this Agreement or, in the case of Incremental Revolving Loans, in the applicable Incremental Revolving Credit Assumption Agreement. No part of the proceeds of any Revolving Loan will be used, whether directly or indirectly, for any purpose that would entail a violation of Regulation T, U or X.

SECTION 5.07. Insurance. The Borrower will maintain, with financially sound and reputable insurance companies, insurance in such amounts and against such risks as are customarily maintained by similarly situated companies engaged in the same or similar businesses operating in the same or similar locations (after giving effect to any self-insurance reasonable and customary for similarly situated companies). The Borrower will furnish to the Agent, upon request, information in reasonable detail as to the insurance so maintained.

SECTION 5.08. Retirement of Existing Facilities. Within ten (10) Business Days of the Closing Date the Borrower shall pay in full and terminate, or cause one or more of its Affiliates to pay in full and terminate, each of the Existing Facilities and provide reasonably satisfactory evidence of such payment and termination to the Agent.

SECTION 5.09. Books and Records. The Borrower will maintain proper books of record and account, in which full, true and correct entries in conformity with GAAP consistently applied shall be made of all financial transactions and matters involving the assets and business of the Borrower.

SECTION 5.10. Inspection Rights. The Borrower will permit representatives and independent contractors of the Agent to visit and inspect any of its properties, to examine its corporate, financial and operating records, and make copies

thereof or abstracts therefrom, and to discuss its affairs, finances and accounts with its directors, officers, and independent public accountants, all at the expense of the Borrower and at such reasonable times during normal business hours and as often as may be reasonably desired, upon reasonable advance notice to the Borrower; provided, that so long as no Event of Default has occurred and is continuing, the Borrower shall not be required to pay for more than one such visit by the Agent per fiscal year.

SECTION 5.11. Payment of Taxes, Etc. The Borrower will pay and discharge, before the same shall become delinquent, (i) all material taxes, assessments and governmental charges or levies imposed upon it or upon its property or assets or in respect of any of its income, business or franchises before any penalty accrues thereon and (ii) all lawful claims that, if unpaid, might by law become a Lien upon its property or assets or in respect of any of its income, business or franchises before any penalty accrues thereon; provided, however, that Borrower shall not be required to pay or discharge any such tax, assessment, charge or claim that is being contested in good faith and by proper proceedings and as to which appropriate reserves are being maintained, unless and until any Lien resulting therefrom attaches to its property and becomes enforceable against its other creditors.

SECTION 5.12. Minimum Consolidated Liquidity. The Borrower shall have on the last day of each fiscal quarter, on a consolidated basis, unrestricted cash and cash equivalents plus short-term investments plus all unused Revolving Credit Commitments, all in an aggregate amount not less than $100,000,000.

ARTICLE VI

Limitation on Liens

The Borrower covenants and agrees that, until the Revolving Credit Commitments have expired or been terminated and the Revolving Loans have been repaid in full, neither the Borrower nor any Material Subsidiary shall create or suffer to exist any Lien on (a) any of its accounts receivable or the resulting credit balances arising from the factoring of accounts receivables, except for Liens granted under the Tech Credit Agreement, on accounts receivable in an aggregate amount not to exceed $50,000,000 at any time and the resulting credit balances arising from the factoring of such accounts receivable, or (b) any of its other assets or properties, except in any case for Permitted Encumbrances.

ARTICLE VII

Events of Default

If any of the following events (each, an "Event of Default") shall occur and be continuing:

(a) the Borrower shall fail to pay any principal of any Revolving Loan when and as the same shall become due and payable, whether at the due date thereof or at a date fixed for prepayment thereof or by acceleration thereof or otherwise;

(b) the Borrower shall fail to pay any interest, fee or other amount (other than an amount referred to in clause (a) of this Article VII) payable under this Agreement or any other Loan Document, when and as the same shall become due and payable, and such failure shall continue unremedied for a period of three Business Days;

(c) any representation or warranty made by the Borrower (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 (unless, if the circumstances giving rise to such misrepresentation or breach of warranty are capable of being remedied, the Borrower remedies such circumstances within thirty (30) days after receipt of notice to the Borrower from the Agent specifying such inaccuracy);

(d) the Borrower shall fail to perform or observe any term, covenant, or agreement contained herein on its part to be performed or observed (other than a failure to comply with any term or condition contained in Section 5.02 or Article VI) if such failure shall remain unremedied for thirty (30) days after written notice thereof shall have been given to the Borrower by the Agent or the Required Lenders, except where such default cannot be reasonably cured within 30 days but can be cured within 60 days, the Borrower 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 to the Borrower from the Agent or the Required Lenders specifying such failure;

(e) (1) the Borrower shall fail to make any payment when the same becomes due and payable with respect to any Material Indebtedness, and such failure shall continue beyond the applicable grace period, if any, specified in the agreement or instrument relating to such Material Indebtedness; or (ii) any other event shall occur or condition shall exist under any agreement or instrument relating to any Material 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 Material Indebtedness; or (iii) any Material Indebtedness shall be declared to be due and payable, or required to be prepaid or redeemed (other than by a regularly scheduled required prepayment or redemption), purchased or defeased, or an offer to prepay, redeem, purchase or defease such Material 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 Borrower or any Material 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 Borrower or any Material Subsidiary bankrupt or insolvent, or approving as properly filed a petition seeking reorganization, arrangement, adjustment or composition of or in respect of the Borrower or any Material Subsidiary under any applicable United States federal, state, or foreign law, or appointing a custodian, receiver, liquidator, assignee, trustee, sequestrator or other similar official of the Borrower or any Material Subsidiary, or

ordering the winding up or liquidation of the affairs of the Borrower or any Material 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 Borrower or any Material 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 Borrower or any Material Subsidiary to the entry of a decree or order for relief in respect of the Borrower or any Material 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 Borrower or any Material 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 Borrower or any Material 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 Borrower or any Material Subsidiary or of any substantial part of the property of, or the making by the Borrower or any Material Subsidiary of an assignment for the benefit of creditors, or the admission by the Borrower or any Material Subsidiary in writing of its inability to pay its debts generally as they become due, or the taking of corporate action by the Borrower or any Material Subsidiary in furtherance of any such action;

(h) failure by the Borrower or any Material Subsidiary to pay final non-appealable judgments, which (i) remain unpaid, undischarged and unstayed for a period of more than sixty (60) days after such judgment becomes final, and (ii) would have a Material Adverse Effect;

(i) an ERISA Event occurs which results in the imposition or granting of security, or the incurring of a liability that individually and/or in the aggregate has or would have a Material Adverse Effect; or

(j) the Borrower fails to perform the covenant contained in Section 5.02 or the covenant contained in Article VI;

then, and in every such event (other than an event described in clause (f) or (g) of this Article VII), and at any time thereafter during the continuance of such event, the Agent may, and at the request of the Required Lenders shall, by notice to the Borrower, take any of the following actions, at the same or different times: (i) terminate the Revolving Credit Commitments and thereupon the Revolving Credit Commitments shall terminate immediately and (ii) declare the Revolving Loans then outstanding to be due and payable in whole (or in part, in which case any principal not so declared to be due and payable

may thereafter be declared to be due and payable), and thereupon the principal of the Revolving Loans so declared to be due and payable, together with accrued interest thereon and all fees and other obligations of the Borrower accrued hereunder, shall become due and payable immediately, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrower; provided that upon the occurrence of an event described in clause (f) or (g) of this Article VII, the Revolving Credit Commitments shall automatically terminate and the principal of the Revolving Loans then outstanding, together with accrued interest thereon and all fees and other obligations of the Borrower accrued hereunder, shall automatically become due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrower, without further action of the Agent or any Lender. Upon the occurrence and the continuance of an Event of Default, the Agent may, and at the request of the Required Lenders shall, exercise any rights and remedies provided to the Agent under the Loan Documents or at law or equity, including all remedies provided under the UCC.

In the event of any Event of Default specified in clause (e) of the preceding paragraph of this Article, such Event of Default and all consequences thereof (excluding any resulting payment default) shall be annulled, waived and rescinded automatically and without any action by the Agent or the Lenders if, within ten (10) days after such Event of Default arose, (i) the Indebtedness or guarantee that is the basis for such Event of Default has been discharged, (ii) the holders thereof have rescinded or waived the acceleration, notice or action (as the case may be) giving rise to such Event of Default or (iii) the default that is the basis for such Event of Default has been cured to the satisfaction of the holders thereof.

Notwithstanding anything to the contrary contained in this Article VII, in the event that the Borrower fails to comply with the requirements of Section 5.02 and an Event of Default shall occur and be continuing pursuant to clause (i) above, the Borrower may within twenty (20) days subsequent to the date of such breach elect to issue equity securities for cash, and upon the receipt with thirty days after such election by the Borrower of such cash (the "Cure Amount"), Section 5.02 shall be recalculated giving effect to the following pro forma adjustments:

(i) EBITDA shall be increased, solely for the purpose of measuring the performance under Section 5.02 and not for any other purpose under this Agreement, by an amount equal to the Cure Amount; and

(ii) If, after giving effect to the foregoing recalculations, the Borrower shall then be in compliance with the requirements of Section 5.02 (and shall deliver to the Agent a pro forma certificate of a Financial Officer demonstrating such compliance), the Borrower shall be deemed to have satisfied the requirements thereof as of the relevant date of determination with the same effect as though there had been no failure to comply therewith at such date, and the applicable breach or default that had occurred shall be deemed cured for the purposes of this Agreement;

provided that (i) no more than three such equity contributions may be made after the Closing Date, and (ii) no Indebtedness repaid with the proceeds of any such equity contribution shall be deemed repaid for purposes of determining compliance with Section 5.02 on the last day of the fiscal period for which the Cure Amount was received.

ARTICLE VIII

The Agent

Each of the Lenders hereby irrevocably appoints the Agent as its agent and authorizes the Agent to take such actions on its behalf, including execution of the other Loan Documents, and to exercise such powers as are delegated to the Agent by the terms of the Loan Documents, together with such actions and powers as are reasonably incidental thereto.

The bank serving as the Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Agent, and such bank and its Affiliates may accept deposits from, lend money to and generally engage in any kind of business with the Borrower or any Affiliate thereof as if it were not the Agent hereunder.

The Agent shall not have any duties or obligations except those expressly set forth in the Loan Documents. Without limiting the generality of the foregoing, (a) the Agent shall not be subject to any fiduciary or other implied duties, regardless of whether an Event of Default has occurred and is continuing, (b) the Agent shall not have any duty to take any discretionary action or exercise any discretionary powers, except, subject to the last paragraph of this Article VIII, discretionary rights and powers expressly contemplated by the Loan Documents that the Agent is required to exercise in writing as directed by the Required Lenders (or such other number or percentage of the Lenders as shall be necessary under the circumstances as provided in Section 9.02), and (c) except as expressly set forth in the Loan Documents, the Agent shall not have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Borrower or any of its Subsidiaries that is communicated to or obtained by the bank serving as Agent or any of its Affiliates in any capacity. The Agent shall not be liable for any action taken or not taken by it with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary under the circumstances as provided in Section 9.02) or in the absence of its own gross negligence or willful misconduct. The Agent shall be deemed not to have knowledge of any Event of Default unless and until written notice thereof is given to the Agent by the Borrower or a Lender, and the Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with any Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or in connection with any Loan Document, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth in any Loan Document, (iv) the validity, enforceability, effectiveness or genuineness of any Loan Document or any other agreement, instrument or document, or (v) the satisfaction

of any condition set forth in Article IV or elsewhere in any Loan Document, other than to confirm receipt of items expressly required to be delivered to the Agent.

The Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing believed by it to be genuine and to have been signed or sent by the proper Person. The Agent also may rely upon any statement made to it orally or by telephone and believed by it to be made by the proper Person, and shall not incur any liability for relying thereon. The Agent may consult with legal counsel (who may be counsel for the Borrower), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

The 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 Agent. The Agent and any such sub-agent may perform any and all its duties and exercise its rights and powers through their respective Related Parties. The exculpatory provisions of the preceding paragraphs shall apply to any such sub-agent and to the Related Parties of the Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Agent.

Subject to the appointment and acceptance of a successor Agent as provided in this paragraph, the Agent may resign at any time by notifying the Lenders and the Borrower. Upon any such resignation, the Required Lenders shall have the right, with the consent (not to be unreasonably withheld or delayed) of the Borrower, to appoint a successor, which shall be another Lender; provided that during the existence and continuation of an Event of Default, no consent of the Borrower shall be required. If no successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within thirty (30) days after the retiring Agent gives notice of its resignation, then the retiring Agent may, on behalf of the Lenders, appoint a successor Agent which shall be a commercial bank or an Affiliate of any such commercial bank reasonably acceptable to Borrower. Upon the acceptance of its appointment as Agent hereunder by a successor, such successor shall succeed to and become vested with all the rights, powers, privileges and duties of the retiring Agent, and the retiring Agent shall be discharged from its duties and obligations hereunder. The fees payable by the Borrower to a successor Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After the Agent's resignation hereunder, the provisions of this Article and Section 9.03 shall continue in effect for the benefit of such retiring Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while it was acting as Agent.

Each Lender acknowledges that it has, independently and without reliance upon the Agent or any other Lender and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender also acknowledges that it will, independently and without

reliance upon the Agent or any other Lender and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or related agreement or any document furnished hereunder or thereunder.

ARTICLE IX

Miscellaneous

SECTION 9.01. Notices. (a) Except in the case of notices and other communications expressly permitted to be given by telephone (and subject to paragraph (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by facsimile, as follows:

(i) if to the Borrower, to SunPower Corporation at:

77 Rio Robles
San Jose, CA 95134
Attention: Dennis V. Arriola, Chief Financial Officer
Facsimile : 408-240-5417
Email: Dennis.Arriola@SunPowerCorp.com

with a copy (which shall not constitute notice) to:

77 Rio Robles
San Jose, CA 95134
Attention: General Counsel
Facsimile: 408-240-5400

(ii) if to the Agent, to Crédit Agricole Corporate and Investment Bank at:

1301 Avenue of the Americas
New York, NY 10019
Attention: Agnes Castillo
Telecopy No.: 917-849-5463 or 917-849-5456
Email: Agnes.Castillo@ca-cib.com

(iii) if to any other Lender, to it at its address or facsimile number set forth in its Administrative Questionnaire.

(b) All such notices and other communications (i) sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received or (ii) sent by facsimile shall be deemed to have been given when sent and when receipt has been confirmed by telephone, provided that if not

given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next Business Day for the recipient.

(c) Notices and other communications to the Lenders hereunder may be delivered or furnished by electronic communications (including e-mail and internet or intranet websites) pursuant to procedures approved by the Agent; provided that the foregoing shall not apply to notices pursuant to Article II or to compliance and no Event of Default certificates delivered pursuant to Section 5.01(e) unless otherwise agreed by the Agent and the applicable Lender. The Agent or the Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it; provided that approval of such procedures may be limited to particular notices or communications. All such notices and other communications (i) sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), provided that if not given during the normal business hours of the recipient, such notice or communication shall be deemed to have been given at the opening of business on the next Business Day for the recipient, and (ii) posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (b)(i) of notification that such notice or communication is available and identifying the website address therefor.

(d) Any party hereto may change its address or facsimile number for notices and other communications hereunder by notice to the other parties hereto.

SECTION 9.02. Waivers; Amendments. (a) No failure or delay by the Agent or any Lender in exercising any right or power hereunder or under any other Loan Document shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the Agent and the Lenders hereunder and under any other Loan Document are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of any Loan Document or consent to any departure by the Borrower therefrom shall in any event be effective unless the same shall be permitted by paragraph (b) of this Section, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. Without limiting the generality of the foregoing, to the extent permitted by law, the making of a Loan shall not be construed as a waiver of any Event of Default, regardless of whether the Agent or any Lender may have had notice or knowledge of such Event of Default at the time.

(b) Neither this Agreement nor any other Loan Document nor any provision hereof or thereof may be waived, amended or modified except (i) in the case of this Agreement, pursuant to an agreement or agreements in writing entered into by the Borrower and the Required Lenders, provided that the Borrower and the Agent may enter into (A) an amendment to effect the provisions of Section 2.19(b) upon the effectiveness

of any Incremental Revolving Credit Assumption Agreement and (B) a Change in Control Amendment under Section 2.20, or (ii) in the case of any other Loan Document (other than any such amendment to effectuate any modification thereto expressly contemplated by the terms of such other Loan Documents), pursuant to an agreement or agreements in writing entered into by the Agent and the Borrower, with the consent of the Required Lenders; provided that no such agreement shall (A) increase the Revolving Credit Commitment of any Lender without the written consent of such Lender; it being understood that the waiver of any Event of Default or mandatory prepayment shall not constitute an increase of any Revolving Credit Commitment of any Lender, (B) reduce or forgive the principal amount of any Loan or reduce the rate of interest thereon, or reduce or forgive any interest or fees (including any prepayment fees) payable hereunder, without the written consent of each Lender directly affected thereby, (C) postpone any scheduled date of payment of the principal amount of any Loan, or any date for the payment of any interest, Fees or other Obligations payable hereunder, or reduce the amount of, waive or excuse any such payment, or postpone the scheduled date of expiration of any Revolving Credit Commitment, without the written consent of each Lender directly affected thereby; provided that only the consent of the Required Lenders shall be necessary to amend the provisions of Section 2.11(c) providing for the default rate of interest, or to waive any obligations of the Borrower to pay interest at such default rate, (D) change Sections 2.08(b), 2.16(b) or 2.16(e) in a manner that would alter the manner in which payments are shared, without the written consent of each Lender, (E) change any of the provisions of this Section 9.02, the definition of "Required Lenders", the definition of "Required Class Lenders" or any other provision of any Loan Document specifying the number or percentage of Lenders required to waive, amend or modify any rights thereunder or make any determination or grant any consent thereunder, without the written consent of each Lender, (F) change any of the provisions of Section 2.20 or the definition of "Change in Control" without the written consent of each Lender, or (G) waive any conditions precedent set out in Article IV in respect of any Credit Event without the written consent of each Lender; provided, further, that no such agreement shall amend, modify or otherwise affect the rights or duties of the Agent hereunder without the prior written consent of the Agent. The Agent may without the consent of any Lender also amend the Commitment Schedule to reflect assignments entered into pursuant to Section 9.04. Notwithstanding the foregoing, with the consent of the Borrower and the Required Lenders, this Agreement (including Sections 2.08(b), 2.16(b) and 2.16(e)) may be amended (x) to allow the Borrower to prepay Revolving Loans on a non-pro rata basis in connection with offers made to all the Lenders pursuant to procedures approved by the Agent and (y) to allow the Borrower to make loan modification offers to all the Lenders that, if accepted, would (A) allow the maturity and scheduled amortization of the Revolving Loans of the accepting Lenders to be extended, (B) increase the Applicable Rates and/or Fees payable with respect to the Revolving Loans and Revolving Credit Commitments of the accepting Lenders and (C) treat the modified Revolving Loans and Revolving Credit Commitments of the accepting Lenders as a new class of Revolving Loans and Revolving Credit Commitments for all purposes under this Agreement.

(c) If, in connection with any proposed amendment, waiver or consent requiring the consent of "each Lender" or "each Lender directly affected thereby", the

consent of the Required Lenders is obtained, but the consent of other necessary Lenders is not obtained (any such Lender whose consent is necessary but not obtained being referred to herein as a "Non-Consenting Lender"), then (x) the Agent may elect to purchase all (but not less than all) of (1) such Lender's Revolving Credit Commitments, the corresponding Revolving Loans owing to it and all of its rights and obligations hereunder and under the other Loan Documents in respect thereof or (2) such Lender's Revolving Credit Commitments, the Revolving Loans owing to it and all of its rights and obligations hereunder and under the other Loan Documents, provided that the Borrower shall pay to such Non-Consenting Lender on the day of such purchase all interest, fees and other amounts then accrued but unpaid to such Non-Consenting Lender by the Borrower hereunder to and including the date of termination, including, without limitation, payments due to such Non-Consenting Lender under Sections 2.13 and 2.15 and an amount, if any, equal to the payment which would have been due to such Lender on the day of such purchase under Section 2.14 had the Revolving Loans of such Non-Consenting Lender been prepaid on such date rather than sold to the Agent or (y) the Borrower may elect to replace a Non-Consenting Lender as a Lender party to this Agreement, provided that, concurrently with such replacement by the Borrower, (i) another bank or other entity which is reasonably satisfactory to the Borrower and the Agent shall agree, as of such date, to purchase for cash the Revolving Loans due to the Non-Consenting Lender pursuant to an Assignment and Assumption and to become a Lender for all purposes under this Agreement and to assume all obligations of the Non-Consenting Lender to be terminated as of such date and to comply with the requirements of clause (b) of Section 9.04, (ii) the replacement Lender shall grant its consent with respect to the applicable proposed amendment, waiver or consent and (iii) the Borrower shall pay to such Non-Consenting Lender in same day funds on the day of such replacement (1) all interest, fees and other amounts then accrued but unpaid to such Non-Consenting Lender by the Borrower hereunder to and including the date of termination, including, without limitation, payments due to such Non-Consenting Lender under Sections 2.13 and 2.15, and (2) an amount, if any, equal to the payment which would have been due to such Lender on the day of such replacement under Section 2.14 had the Revolving Loans of such Non-Consenting Lender been prepaid on such date rather than sold to the replacement Lender. Each Lender agrees that if the Agent or the Borrower, as the case may be, exercises its option hereunder, it shall promptly execute and deliver all agreements and documentation necessary to effectuate such assignment as set forth in Section 9.04. If any Lender does not promptly execute and deliver all agreements and documentation necessary to effectuate such assignment as set forth in Section 9.04, then the Agent or the Borrower shall be entitled (but not obligated) to execute and deliver such agreement and documentation relating to such assignment on behalf of such Non-Consenting Lender and any such agreement and/or documentation so executed by the Agent or the Borrower shall be effective for purposes of documenting an assignment pursuant to Section 9.04.

(d) The Agent and the Borrower may amend any Loan Document to correct administrative or manifest errors or omissions, or to effect administrative changes that are not adverse to any Lender; provided, however, that no such amendment shall become effective until the fifth Business Day after it has been posted to the Lenders, and

then only if the Required Lenders have not objected in writing thereto within such five Business Day period.

(e) Anything in this Agreement to the contrary notwithstanding, no waiver or modification of any provision of this Agreement that has the effect (either immediately or at some later time) of enabling the Borrower to satisfy a condition precedent to the making of a Loan of any Class shall be effective against the Lenders of such Class for purposes of the Revolving Credit Commitments of such Class unless the Required Class Lenders of such Class shall have concurred with such waiver or modification, and no waiver or modification of any provision of this Agreement or any other Loan Document that could reasonably be expected to adversely affect the Lenders of any Class in a manner that does not affect all Classes equally shall be effective against the Lenders of such Class unless the Required Class Lenders of such Class shall have concurred with such waiver or modification.

SECTION 9.03. Expenses; Indemnity; Damage Waiver. (a) The Borrower agrees to pay on demand all reasonable and documented costs and expenses of the Agent (including the fees and expenses of Linklaters LLP as special counsel to the Lenders to the extent previously agreed) in connection with the preparation, execution, delivery and administration of the Loan Documents.

(b) The Borrower shall indemnify the Agent and each Lender, and each Related Party of any of the foregoing Persons (each such Person being called an "Indemnitee") against, and hold each Indemnitee harmless from, any and all losses, claims, damages, penalties, liabilities and related expenses (including reasonable and documented fees and expenses of counsel), but excluding Taxes which shall be dealt with exclusively pursuant to Section 2.15 above, incurred by or asserted against any Indemnitee arising out of, in connection with, or as a result of (i) the execution or delivery of the Loan Documents or any agreement or instrument contemplated thereby, the performance by the parties hereto of their respective obligations thereunder or the consummation of the Transactions or any other transactions contemplated hereby, (ii) any Environmental Liability related in any way to the Borrower or any of its Subsidiaries or to any property owned or operated by the Borrower or any of its Subsidiaries, or (iii) 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 a party thereto (and regardless of whether such matter is initiated by a third party or by the Borrower or any of its Affiliates); provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, penalties, liabilities or related expenses are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the negligence or willful misconduct of such Indemnitee.

(c) To the extent that the Borrower fails to pay any amount required to be paid by it to the Agent under paragraph (a) or (b) of this Section, each Lender severally agrees to pay to the Agent such Lender's Applicable Percentage (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount; provided that the unreimbursed expense or indemnified loss, claim,

damage, penalty, liability or related expense, as the case may be, was incurred by or asserted against the Agent in its capacity as such.

(d) To the extent permitted by applicable law, no party to this Agreement shall assert, and each hereby waives, any claim against any other party hereto or any Related Party thereof, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement or any agreement or instrument contemplated hereby, the Transactions, any Revolving Loan or the use of the proceeds thereof.

SECTION 9.04. Successors and Assigns. (a) The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that (i) the Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of each Lender (and any attempted assignment or transfer by the Borrower without such consent shall be null and void) and (ii) no Lender may assign or otherwise transfer its rights or obligations hereunder except in accordance with this Section (any attempted assignment or transfer not complying with the terms of this Section shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants (to the extent provided in paragraph (c) of this Section) and, to the extent expressly contemplated hereby, the Related Parties of each of the Agent and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) (i) Subject to the conditions set forth in paragraph (b)(ii) below, any Lender may assign to one or more commercial banks, savings banks, financial institutions or other institutional investors all or a portion of its rights and obligations under this Agreement (including all or a portion of its Revolving Credit Commitment or the Revolving Loans at the time owing to it) with the prior written consent (such consent not to be unreasonably withheld or delayed) of:

(A) the Borrower, provided that no consent of the Borrower shall be required (1) for an assignment to an Eligible Assignee or (2) if an Event of Default has occurred and is continuing, and provided further that no consent of the Borrower shall be required for an assignment during the primary syndication of the Revolving Loans to Persons identified by the Agent to the Borrower on or prior to the Closing Date and reasonably acceptable to the Borrower; and

(B) the Agent.

(ii) Assignments shall be subject to the following additional conditions:

(A) except in the case of an assignment to another Lender, an Affiliate of a Lender or an Approved Fund or an assignment of the entire remaining amount of the assigning Lender's Revolving Credit Commitment or Revolving Loans, the amount of the Revolving Credit Commitment or the principal amount of Revolving Loans of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Agent and determined on an aggregate basis in the event of concurrent assignments to Related Funds (as defined below)) shall be in a minimum amount of at least $5,000,000 unless each of the Borrower and the Agent otherwise consent;

(B) each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement;

(C) the parties to each assignment shall execute and deliver to the Agent an Assignment and Assumption via an electronic settlement system acceptable to the Agent (or, if previously agreed with the Agent, manually); and

(D) the assignee, if it shall not be a Lender, shall deliver on or prior to the effective date of such assignment, to the Agent (1) an Administrative Questionnaire and (2) if applicable, an appropriate Internal Revenue Service form (such as Form W-8BEN or W-8ECI or any successor form adopted by the relevant United States taxing authority) as required by applicable law supporting such assignee's position that no withholding by any Borrower or the Agent for United States income tax payable by such assignee in respect of amounts received by it hereunder is required.

The term "Related Funds" shall mean with respect to any Lender that is an Approved Fund, any other Approved Fund that is managed or advised by the same investment advisor as such Lender or by an Affiliate of such investment advisor.

(iii) Subject to acceptance and recording thereof pursuant to paragraph (b)(iv) of this Section, from and after the effective date specified in each Assignment and Assumption, the assignee thereunder shall be a party hereto and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the

assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Sections 2.13, 2.14, 2.15 (subject to the requirements of Section 2.15) and 9.03 with respect to facts and circumstances occurring on or prior to the effective date of such assignment). Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this Section 9.04 shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with paragraph (c) of this Section.

(iv) The Agent, acting for this purpose as an agent of the Borrower, shall maintain at one of its offices a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Revolving Credit Commitment of, or principal amount of, and any interest on, the Revolving Loans owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive, absent manifest error, and the Borrower, the Agent and the Lenders may treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrower and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(v) Upon its receipt of a duly completed Assignment and Assumption executed by an assigning Lender and an assignee, the assignee's completed Administrative Questionnaire and tax certifications required by Section 9.04(b)(ii)(D)(2) (unless the assignee shall already be a Lender hereunder), the processing and recordation fee referred to in paragraph (b) of this Section and any written consent to such assignment required by paragraph (b) of this Section, the Agent shall accept such Assignment and Assumption and record the information contained therein in the Register; provided that if either the assigning Lender or the assignee shall have failed to make any payment required to be made by it pursuant to Section 2.04(a), 2.16(c) or 9.03(c), the Agent shall have no obligation to accept such Assignment and Assumption and record the information therein in the Register unless and until such payment shall have been made in full, together with all accrued interest thereon. No assignment shall be effective for purposes of this Agreement unless it has been recorded in the Register as provided in this Section 9.04.

(vi) By executing and delivering an Assignment and Assumption, the assigning Lender thereunder and the assignee thereunder shall be deemed to confirm to and agree with each other and the other parties hereto as follows: (i) such assigning Lender warrants that it is the legal and beneficial owner of the interest being assigned thereby free and clear of any adverse claim and that its Revolving Credit Commitment, and the outstanding balances of its Revolving Loans, in each case without giving effect to assignments thereof which have not become effective, are as set forth in such Assignment and Assumption,

(ii) except as set forth in (i) above, such assigning Lender makes no representation or warranty and assumes no responsibility with respect to any statements, warranties or representations made in or in connection with this Agreement, or the execution, legality, validity, enforceability, genuineness, sufficiency or value of this Agreement, any other Loan Document or any other instrument or document furnished pursuant hereto, or the financial condition of the Borrower or any Subsidiary or the performance or observance by the Borrower or any Subsidiary of any of its obligations under this Agreement, any other Loan Document or any other instrument or document furnished pursuant hereto; (iii) such assignee represents and warrants that it is an Eligible Assignee, legally authorized to enter into such Assignment and Assumption; (iv) such assignee confirms that it has received a copy of this Agreement, together with copies of the most recent financial statements referred to in Section 3.04(a) or delivered pursuant to Section 5.01 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; (v) such assignee will independently and without reliance upon the Agent, such assigning Lender or any other Lender 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; (vi) such assignee appoints and authorizes the Agent to take such action as agent on its behalf and to exercise such powers under this Agreement as are delegated to the Agent, by the terms hereof, together with such powers as are reasonably incidental thereto; and (vii) such assignee agrees that it will perform in accordance with their terms all the obligations which by the terms of this Agreement are required to be performed by it as a Lender.

(c) (i) Any Lender may sell participations to one or more commercial banks, savings banks or other financial institutions or, with the consent of the Borrower (so long as no Event of Default is outstanding and continuing), other entities (a "Participant") in all or a portion of such Lender's rights and obligations under this Agreement (including all or a portion of its Revolving Credit Commitment or the Revolving Loans owing to it); provided that (A) such Lender's obligations under this Agreement shall remain unchanged, (B) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations, (C) the Borrower, the Agent, and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement, (D) no such Participant shall be a "creditor" as defined in Regulation T or a "foreign branch of a broker-dealer" within the meaning of Regulation X, and (E) neither the Borrower nor any of its Affiliates shall be a Participant. Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver described in the first proviso to Section 9.02(b) that affects such Participant. Subject to paragraph (c)(ii) of this Section, the Borrower agrees that each Participant shall be entitled to the benefits of Sections 2.13, 2.14 and 2.15 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to

paragraph (b) of this Section. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 9.08 as though it were a Lender, provided such Participant agrees to be subject to Section 2.16(c) as though it were a Lender. Each Lender that sells a participation, acting solely for this purpose as an agent of the Borrower, shall maintain at one of its offices a register for the recordation of the names and addresses of each Participant and the principal amounts of, and stated interest on, each participant's interest in the Revolving Loans or other obligations under this Agreement (the "Participant Register"). The entries in the Participant Register shall be conclusive, absent manifest error, and such Lender may treat each Person whose name is recorded in the Participant Register pursuant to the terms hereof as the owner of such participation for all purposes of this Agreement, notwithstanding notice to the contrary.

(ii) A Participant shall not be entitled to receive any greater payment under Section 2.13 or 2.15 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Borrower's prior written consent. A Participant shall not be entitled to the benefits of Section 2.15 unless the Borrower is notified of the participation sold to such Participant and such Participant agrees, for the benefit of the Borrower, to comply with Section 2.15(f) as though it were a Lender.

(d) Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including without limitation any pledge or assignment to secure obligations to a Federal Reserve Bank, and this Section shall not apply to any such pledge or assignment of a security interest; provided that no such pledge or assignment of a security interest shall release a Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(e) If the consent of the Borrower to an assignment or to an Eligible Assignee is required hereunder, the Borrower shall be deemed to have given its consent fifteen (15) Business Days after the date notice thereof (which notice shall specify such fifteen-day notice period described herein) has been delivered by the assigning Lender (through the Agent) unless such consent is expressly refused by the Borrower prior to such fifteenth Business Day.

SECTION 9.05. Survival. All covenants, agreements, representations and warranties made by the Borrower in the Loan Documents and in the certificates or other instruments delivered in connection with or pursuant to this Agreement or any other Loan Document shall be considered to have been relied upon by the other parties hereto and shall survive the execution and delivery of the Loan Documents and shall continue in full force and effect as long as the principal of or any accrued interest on any Revolving Loan or any fee or any other amount payable under this Agreement is outstanding and unpaid and so long as the Revolving Credit Commitments have not expired or terminated. The provisions of Sections 2.13, 2.14, 2.15 and 9.03 and Article VIII shall survive and remain in full force and effect regardless of the consummation of the transactions contemplated hereby, the repayment of the Revolving Loans, the expiration or

termination of the Revolving Credit Commitments or the termination of this Agreement or any provision hereof.

SECTION 9.06. Counterparts; Integration; Effectiveness. 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 a single contract. This Agreement, the other Loan Documents and the Fee Letters and any separate letter agreements with respect to fees payable to the Agent constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 4.02, this Agreement shall become effective when it shall have been executed by the Agent and when the Agent shall have received counterparts hereof which, when taken together, bear the signatures of each of the other parties hereto, and thereafter shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Delivery of an executed counterpart of a signature page of this Agreement by facsimile or in 'PDF' format by electronic mail shall be effective as delivery of a manually executed counterpart of this Agreement.

SECTION 9.07. Severability. To the extent permitted by law, any provision of any Loan Document 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 thereof; and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction.

SECTION 9.08. Right of Setoff. If an Event of Default shall have occurred and be continuing, each Lender is hereby authorized at any time and from time to time, to the fullest extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other obligations at any time owing by such Lender to or for the credit or the account of the Borrower. The applicable Lender shall notify the Borrower and the Agent of such set-off or application, provided that any failure to give or any delay in giving such notice shall not affect the validity of any such set-off or application under this Section. The rights of each Lender under this Section are in addition to other rights and remedies (including other rights of setoff) which such Lender may have.

SECTION 9.09. Governing Law; Jurisdiction; Consent to Service of Process; Waiver of Jury Trial. (a) THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS (OTHER THAN AS EXPRESSLY SET FORTH IN ANY OTHER LOAN DOCUMENT) SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE STATE OF NEW YORK (INCLUDING SECTION 5-1401 OF THE GENERAL OBLIGATIONS LAW OF THE STATE OF NEW YORK), WITHOUT REGARD TO CONFLICTS OF LAWS PRINCIPLES THAT WOULD REQUIRE APPLICATION OF ANOTHER LAW.

(b) Each of the parties hereto hereby irrevocably and unconditionally submits, for itself and its property, to the exclusive 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.

(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.

(d) To the extent permitted by law, each party to this Agreement hereby irrevocably waives personal service of any and all process upon it and agrees that all such service of process may be made by express or overnight mail or courier, postage prepaid, directed to it at its address for notices as provided for in Section 9.01. Nothing in this Agreement or any other Loan Document will affect the right of any party to this Agreement to serve process in any other manner permitted by law.

(e) EACH OF THE PARTIES TO THIS AGREEMENT HEREBY AGREES TO WAIVE ITS RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS AGREEMENT OR ANY OF THE OTHER LOAN DOCUMENTS OR ANY DEALINGS BETWEEN THEM RELATING TO THE SUBJECT MATTER OF THIS LOAN TRANSACTION OR THE LENDER/BORROWER RELATIONSHIP THAT IS BEING ESTABLISHED. The scope of this waiver is intended to be all-encompassing of any and all disputes that may be filed in any court and that relate to the subject matter of this transaction, including contract claims, tort claims, breach of duty claims and all other common law and statutory claims. Each party hereto acknowledges that this waiver is a material inducement to enter into a business relationship, that each has already relied on this waiver in entering into this Agreement, and that each will continue to rely on this waiver in their related future dealings. Each party hereto further warrants and represents that it has reviewed this waiver with its legal counsel and that it knowingly and voluntarily waives its jury trial rights following consultation with legal counsel. THIS WAIVER IS IRREVOCABLE, MEANING THAT IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING (OTHER THAN BY A MUTUAL WRITTEN WAIVER SPECIFICALLY REFERRING TO THIS SECTION 9.09(e) AND

EXECUTED BY EACH OF THE PARTIES HERETO), AND THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS TO THIS AGREEMENT OR ANY OF THE OTHER LOAN DOCUMENTS OR TO ANY OTHER DOCUMENTS OR AGREEMENTS RELATING TO THE LOANS MADE HEREUNDER. In the event of litigation, this Agreement may be filed as a written consent to a trial by the court.

SECTION 9.10. Headings. Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and shall not affect the construction of, or be taken into consideration in interpreting, this Agreement.

SECTION 9.11. Confidentiality. The Agent and each Lender agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its and its Affiliates' directors, trustees, officers, employees and agents, including accountants, legal counsel and other advisors (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) to the extent requested by any regulatory, governmental or administrative authority, (c) to the extent required by law or by any subpoena or similar legal process, (d) to any other party to this Agreement, (e) in connection with the exercise of any remedies hereunder or any suit, action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement, (ii) any pledgee referred to in Section 9.04(d) or (iii) any actual or prospective counterparty (or its advisors) to any swap or derivative transaction relating to the Borrower and its obligations, (g) with the consent of the Borrower or (h) to the extent such Information (i) becomes publicly available other than as a result of a breach of this Section or (ii) becomes available to the Agent or any Lender on a nonconfidential basis from a source other than the Borrower. For the purposes of this Section, "Information" means all information received from the Borrower relating to the Borrower or its businesses, or the Transactions other than any such information that is available to the Agent or any Lender on a nonconfidential basis prior to disclosure by the Borrower. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

SECTION 9.12. Several Obligations; Nonreliance; Violation of Law. The respective obligations of the Lenders hereunder are several and not joint and the failure of any Lender to make any Revolving Loan or perform any of its obligations hereunder shall not relieve any other Lender from any of its obligations hereunder. Each Lender hereby represents that (a) it is not relying on or looking to any Margin Stock for the repayment of the Borrowings provided for herein and (b) it is not and will not become a "creditor" as defined in Regulation T or a "foreign branch of a broker-dealer" within

the meaning of Regulation X. Anything contained in this Agreement to the contrary notwithstanding, no Lender shall be obligated to extend credit to the Borrower in violation of any Requirement of Law.

SECTION 9.13. USA PATRIOT Act. Each Lender that is subject to the requirements of the USA PATRIOT Act hereby notifies the Borrower that pursuant to the requirements of the USA PATRIOT Act, it is required to obtain, verify and record information that identifies the Borrower, which information includes the name and address of the Borrower and other information that will allow such Lender to identify the Borrower in accordance with the USA Patriot Act.

SECTION 9.14. Interest Rate Limitation. Notwithstanding anything herein to the contrary, if at any time the interest rate applicable to any Revolving Loan, together with all fees, charges and other amounts which are treated as interest on such Revolving Loan under applicable law (collectively, the "Charges"), shall exceed the maximum lawful rate (the "Maximum Rate") which may be contracted for, charged, taken, received or reserved by the Lender holding such Revolving Loan or participation in accordance with applicable law, the rate of interest payable in respect of such Revolving Loan or participation hereunder, together with all Charges payable in respect thereof, shall be limited to the Maximum Rate and, to the extent lawful, the interest and Charges that would have been payable in respect of such Revolving Loan or participation but were not payable as a result of the operation of this Section shall be cumulated and the interest and Charges payable to such Lender in respect of other Revolving Loans or participations or periods shall be increased (but not above the Maximum Rate therefor) until such cumulated amount, together with interest thereon at the Federal Funds Effective Rate to the date of repayment, shall have been received by such Lender.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the day and year first above written.

SUNPOWER CORPORATION

by

/s/ Dennis V. Arriola

Name: Dennis V. Arriola
Title: Executive Vice President and
Chief Financial Officer

CRÉDIT AGRICOLE CORPORATE AND INVESTMENT BANK, individually and as Agent

by

/s/ Dianne M. Scott

Name: Dianne M. Scott
Title: Managing Director

by

/s/ Gary Herzog

Name: Gary Herzog
Title: Managing Director

Citicorp North America, Inc.,
as a Lender

by

/s/ David Mode

Name: David Mode
Title: Managing Director

HSBC Bank USA, National Association,
as a Lender

by

/s/ Christopher Samms

Name: Christopher Samms
Title: Senior Vice President, #9426

Lloyds TSB Bank plc,,
as a Lender

by

/s/ Karen Weich

Name: Karen Weich
Title: Vice Presdient
W011

by

/s/ Susan Hay

Name: Susan Hay
Title: Senior Vice President
H026

Royal Bank of Scotland plc,
as a Lender

By /s/ Andrew N. Taylor

Name: Andrew N. Taylor
Title: Vice President

Sovereign Bank,
as a Lender

by

/s/ Alister Moreno

Name: Alister Moreno
Title: Global Banker

SCHEDULE 1

COMMITMENT SCHEDULE

Lender	Revolving Credit Commitment
Crédit Agricole Corporate and Investment Bank	$ 75,000,000
HSBC Bank USA, National Association	$ 50,000,000
Lloyds TBS Bank plc	$ 50,000,000
The Royal Bank of Scotland plc	$ 50,000,000
Sovereign Bank	$ 40,000,000
Citicorp North America, Inc.	$ 10,000,000
Total	$ 275,000,000

SCHEDULE II

PERMITTED ENCUMBRANCES

1. Liens on approximately $500,000 of escrowed cash pursuant to that Agreement, dated April 27, 2009, by and between the Company and Addison Avenue Federal Credit Union, as amended on January 28, 2011, relating to residential solar loan guarantees.

2. Liens on equipment pursuant to that Financing Agreement for the Development or Rehabilitation of Property in Milpitas California for Specified Solar Panel Manufacturing Purposes, dated February 1, 2011, between The Redevelopment Agency of the City of Milpitas and the Company.

3. Liens on equipment pursuant to that Capital Equipment and Assistance Agreement, dated as of March 28, 2011, by and between The Redevelopment Agency of the City of San Jose, the City of San Jose and the Company.

4. 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;

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

6. Escrow Agreement, dated August 24, 2007, between the Company and Norsun AS, as amended on June 25, 2008 and June 27, 2008; Escrow Increase Letters dated October 27, 2009 and January 26, 2010.

7. Lien on approximately *** of escrowed cash pursuant to that Escrow Agreement for Security Deposits in Lieu of Retention by and between the *** and SunPower Corporation, Systems and dated March 24, 2011, in connection with that certain Design-Build Contract Photovoltaic Systems by and between the *** and SunPower Corporation, Systems and dated October 26, 2010.

8. Liens pursuant to the First Amended and Restated Purchase Agreement, dated November 1, 2010, between SunPower North America LLC and Technology Credit Corporation, as amended on January 25, 2011 and April 18, 2011.

9. Liens on property and equipment pursuant to the Mortgage Loan Agreement, dated May 6, 2010, by and among SunPower Philippines Manufacturing Ltd., SPML Land, Inc. and International Finance Corporation, as amended on November 2, 2010.

10. Liens on equipment pursuant to Mortgage, dated September 26, 2008, between the SunPower Philippines Manufacturing Ltd. and Norsun A.S.

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

SCHEDULE III

SUBSIDIARIES

Operating Subsidiaries	Jurisdiction of Incorporation	Shareholder	% Owned
SunPower Corporation, Systems (FKA PowerLight Corporation)	Delaware	Pluto Acquisitiion Company LLC	100%
SunPower Foundation	California	SunPower Corporation	N/A
SunPower North America, LLC (FKA SunPower North America, Inc.)	Delaware	SunPower Corporation	100%
Pluto Acquisition Company LLC	Delaware	SunPower Corporation	100%
Tilt Solar, LLC	California	SunPower Corporation, Systems	100%
SunPower Energy Systems Canada Corporation	Nova Scotia, Canada	SunPower Systems Sarl	100%
SunPower Corporation Mexico, S. de R.L. de C.V.	Mexico	SunPower Systems Sarl / SunPower Technology Ltd.	99% / 1%
Energy Ray Anonymi Energeiaki Etaireia (distinctive title Energy Ray Energeiaki)	Greece	SunPower Corporation Malta Holdings Ltd / SunPower Corporation UK Limited / SunPower Malta Limited / SunPower Systems Sarl	See footnote [1]
SPWR Energias Renováveis Unipessoal, Ltda.	Portugal	SunPower Systems Sarl	100%
SPWR Solar Energeiaki Hellas Single Member EPE (distinctive title: SPWR Solar Hellas Single Member EPE)	Greece	SunPower Systems Sarl	100%
SunPower Corporation (Switzerland) Sarl	Switzerland	SunPower Technology Ltd.	100%
SunPower Energy Systems Spain, S.L.	Spain	SunPower Systems Sarl	100%
SunPower France SAS	France	SunPower Systems Sarl	100%

[1] * Energy Ray Anonymi Energeiaki Etaireia ownership

- SunPower Corporation Malta Holdings Limited - 885 shares with nominal value of €60 each and with value above par €540 each (total value €600 each) in the company
- SunPower Corporation UK Ltd - 348 shares with nominal value of €60 each and with value above par €540 each (total value €600 each) in the company
- SunPower Malta Limited -999 shares with nominal value of €60 each and of 5,208 shares with nominal value of €60 and with value above par €540 each (total value €600 each) of the company
- SunPower Systems SARL - 1 share with nominal value of €60 and of 80 shares with nominal value of €60 each and with value above par €540 each (total value €600 each) of the company

Operating Subsidiaries	Jurisdiction of Incorporation	Shareholder	% Owned
Sunpower GmbH	Germany	SunPower Systems Sarl	100%
SunPower Italia S.r.l.	Italy	SunPower Systems Sarl	100%
SunPower Italy S.r.l.	Italy	SunPower Malta Limited	100%
SunPower Systems Sarl	Switzerland	SunPower Bermuda Holdings	100%
SunRay Italy S.r.l.	Italy	SunPower Malta Limited	100%
SunPower Corporation Malta Holdings Limited (formerly SunRay Malta Holdings Limited)	Malta	SunPower Bermuda Holdings / SunPower Systems Sarl	> 99% / < 1%
SunPower Management Services S.r.l. (FKA Perseo PV S.r.l.)	Italy	SunRay Italy S.r.l.	100%
SunPower Corporation UK Limited	UK	SunPower Malta Limited	100%
SunRay Project Management S.r.l.	Italy	SunPower Malta Limited	100%
SunPower Malta Limited (formerly SunRay Renewable Energy Limited)	Malta	SunPower Corporation Malta Holdings Ltd / SunPower Systems Sarl	> 99% / < 1%
SunPower Systems Belgium SPRL	Malta	SunPower Systems Sarl / SunPower Malta Limited	> 99% / < 1%
SunPower Corp Israel Ltd (formerly SunRay Israel Blue White Ltd)	Israel	SunPower Malta Limited	100%
SunPower Energy Systems (Pty) Ltd	South Africa	SunPower Malta Limited	100%
SunPower Energy Systems Korea	Korea	SunPower Systems Sarl	100%
SunPower Japan KK	Japan	SunPower Systems Sarl	100%
SunPower Solar Malaysia Sdn. Bhd.	Malaysia	SunPower Technology Ltd.	100%
SunPower Solar Singapore Pte. Ltd.	Singapore	SunPower Systems Sarl	100%
SunPower Solar India Private Limited	India	SunPower Systems Sarl / SunPower Malta Limited	> 99% / < 1%
SunPower Corporation Australia Pty. Ltd.	Australia	SunPower Systems Sarl	100%
SunPower Philippines Ltd. – Regional Operating Headquarters	Cayman Islands	SunPower Technology Ltd.	100%
SunPower Philippines Manufacturing Ltd.	Cayman Islands	SunPower Technology Ltd.	100%
SunPower Technology Ltd.	Cayman Islands	SunPower Bermuda Holdings	100%
SunPower Bermuda Holdings	Bermuda	SunPower Corporation / SunPower Corporation, Systems	90% / 10%

SUBSIDIARIES
(SunPower Corporation)

Special Purpose Vehicles	Jurisdiction of Incorporation	Shareholder	% Owned
SunPower Development Company	Delaware	SunPower Corporation	100%
Arizona Renewable Ventures, Inc.	Delaware	IDIT Inc.	100%
Arizona Solar Investments, Inc.	Delaware	IDIT Inc.	100%
High Plains Ranch I, LLC	Delaware	SunPower Corporation, Systems	100%
High Plains Ranch II, LLC	Delaware	SunPower Corporation, Systems	100%
High Plains Ranch III, LLC	Delaware	SunPower Corporation, Systems	100%
High Plains Ranch IV, LLC	Delaware	SunPower Corporation, Systems	100%
IDIT Inc.	Delaware	Solar Star XI, LLC	100%
Kalaeloa Solar Two, LLC	Delaware	SunPower Corporation, Systems	100%
Mack Meadow Solar Star, LLC	Delaware	SunPower Corporation, Systems	100%
Parrey, LLC	Delaware	SunPower Corporation, Systems	100%
Solar Star Arizona I, LLC	Delaware	Whippletree Solar, LLC	100%
Solar Star Arizona II, LLC	Delaware	SunPower Corporation, Systems	100%
Solar Star California I, LLC	Delaware	SunPower Corporation, Systems	100%
Solar Star California IV, LLC (FKA Solar Star JCP I, LLC)	Delaware	SunPower Corporation, Systems	100%
Solar Star California VII, LLC	Delaware	Whippletree Solar, LLC	100%
Solar Star California VIII, LLC	Delaware	SunPower Corporation, Systems	100%
Solar Star California XII, LLC	Delaware	Whippletree Solar, LLC	100%
Solar Star California XIII, LLC	Delaware	SunPower Corporation, Systems	100%
Solar Star California XV, LLC	Delaware	SunPower Corporation, Systems	100%
Solar Star California XVI, LLC	Delaware	SunPower Corporation, Systems	100%
Solar Star California XVII, LLC	Delaware	Whippletree Solar, LLC	100%
Solar Star California XVIII, LLC	Delaware	SunPower Corporation, Systems	100%
Solar Star California XIX, LLC	Delaware	SunPower Corporation, Systems	100%
Solar Star California XX, LLC	Delaware	SunPower Corporation, Systems	100%
Solar Star California XXI, LLC	Delaware	SunPower Corporation, Systems	100%

Special Purpose Vehicles	Jurisdiction of Incorporation	Shareholder	% Owned
Solar Star California XXII, LLC	Delaware	SunPower Corporation, Systems	100%
Solar Star California XXIV, LLC	Delaware	SunPower Corporation, Systems	100%
Solar Star California XXV, LLC	Delaware	SunPower Corporation, Systems	100%
Solar Star California XXVI, LLC	Delaware	SunPower Corporation, Systems	100%
Solar Star Colorado I, LLC	Delaware	SunPower Corporation, Systems	100%
Solar Star Colorado II, LLC	Delaware	SunPower Corporation, Systems	100%
Solar Star Hawaii I, LLC	Delaware	SunPower Corporation, Systems	100%
Solar Star Hawaii II, LLC	Delaware	SunPower Corporation, Systems	100%
Solar Star HI Air, LLC	Delaware	SunPower Corporation, Systems	100%
Solar Star Highland I, LLC	Delaware	SunPower Corporation, Systems	100%
Solar Star Koyo I, LLC	Delaware	SunPower Corporation, Systems	100%
Solar Star MWHI I, LLC	Delaware	SunPower Corporation, Systems	100%
Solar Star New Jersey III, LLC	Delaware	SunPower Corporation, Systems	100%
Solar Star New Jersey IV, LLC	Delaware	Whippletree Solar, LLC	100%
Solar Star Ohio I, LLC	Delaware	SunPower Corporation, Systems	100%
Solar Star Rancho CWD I, LLC	Delaware	SunPower Corporation, Systems	100%
Solar Texas I, LLC	Delaware	SunPower Corporation, Systems	100%
Solar Texas II, LLC	Delaware	SunPower Corporation, Systems	100%
Solar Texas III, LLC	Delaware	SunPower Corporation, Systems	100%
Solar Texas IV, LLC	Delaware	SunPower Corporation, Systems	100%
Solar Texas V, LLC	Delaware	SunPower Corporation, Systems	100%
Solar Texas VI, LLC	Delaware	SunPower Corporation, Systems	100%
Solar Texas VII, LLC	Delaware	SunPower Corporation, Systems	100%
Solar Texas VIII, LLC	Delaware	SunPower Corporation, Systems	100%
Solar Texas IX, LLC	Delaware	SunPower Corporation, Systems	100%

Special Purpose Vehicles	Jurisdiction of Incorporation	Shareholder	% Owned
Solar Star TJX I, LLC	Delaware	SunPower Corporation, Systems	100%
Solar Star XI, LLC (FKA Solar Star California XI, LLC)	Delaware	SunPower Corporation, Systems	100%
Solar Star YC, LLC	Delaware	Whippletree Solar, LLC	100%
SSSA, LLC	Delaware	SunPower Corporation, Systems	100%
SunPower Access I, LLC	Delaware	SunPower Corporation, Systems	100%
SunPower Commercial Finance I, LLC	Delaware	SunPower Corporation, Systems	100%
SunPower Residential I, LLC	Delaware	SunPower Corporation, Systems	100%
SunPower SolarProgram I, LLC	Delaware	SunPower Corporation, Systems	100%
Swingletree Operations, LLC	Delaware	SunPower Corporation	100%
Whippletree Solar, LLC	Delaware	SunPower Corporation	100%
Whirlwind Solar Star, LLC	Delaware	SunPower Corporation, Systems	100%
Aetolia Energy Site Anonymi Energeiaki Etaireia (distinctive title Aetolia Energeiaki Etaireia)	Greece	Aetolia Energy Site Malta Ltd / Successful Energy Solution Anonymi Energeiaki Etaireia	70% / 30%
Aetolia Energy Site Malta Limited	Malta	SunPower Malta Ltd / SunPower Corporation Malta Holdings Ltd	99% / 1%
AlexSun 1 Malta Limited	Malta	SunPower Malta Ltd / SunPower Corporation Malta Holdings Ltd	99% / 1%
AlexSun2 Malta Limited	Malta	SunPower Malta Ltd / SunPower Corporation Malta Holdings Ltd	99% / 1%
Almyros Energy Solution Anonymi Energeiaki Etaireia (distinctive title Almyros Energeiaki A.E.)	Greece	Almyros Energy Solution Malta Limited / Successful Energy Solution Anonymi Energeiaki Etaireia	70% / 30%
Almyros Energy Solution Malta Limited	Malta	SunPower Malta Ltd / SunPower Corporation Malta Holdings Ltd	99% / 1%
Altair Energia S.r.l.	Italy	SunPower Malta Ltd	100%
Antares PV S.r.l.	Italy	SunPower Malta Ltd	100%
Ardeches Solaire – Draga 1	France	SunPower France SAS	100%
Auriga Energia S.r.l.	Italy	SunPower Malta Ltd	100%
Bilancia PV S.r.l.	Italy	SunPower Malta Ltd	100%

Special Purpose Vehicles	Jurisdiction of Incorporation	Shareholder	% Owned
Calliope PV S.r.l.	Italy	SunPower Malta Ltd	100%
Casso Energia PV S.r.l.	Italy	SunPower Malta Ltd	100%
Castore Energia S.r.l.	Italy	SunPower Malta Ltd	100%
CeDiCe Rinnovabile Srl.	Italy	SunPower Malta Ltd	100%
Charente Maritime Solaire – St Leger 1 (dt Hemathia Successful A.E	France	SunPower France SAS	100%
Cikka Solar Srl	Italy	SunPower Malta Ltd	100%
Croce del Sud PV S.r.l.	Italy	SunPower Malta Ltd	100%
Delfino Energia Srl	Italy	SunPower Malta Ltd	100%
Emma Tra Energia Srl.	Italy	SunPower Malta Ltd	100%
Fenice PV Srl	Italy	SunPower Malta Ltd	100%
Floriana Energia S.r.l.	Italy	SunPower Malta Ltd	100%
Galatea Solar S.r.l.	Italy	SunPower Malta Ltd	100%
Gemini Sun S.r.l.	Italy	SunPower Malta Ltd	100%
Ghadira S.r.l.	Italy	SunPower Malta Ltd	100%
Hemathia Successful Anonymi Energeiaki Etaireia (distinctive title Hemathia Successful A.E.)	Greece	Hemathia Successful Malta Limited / Successful Energy Solution Anonymi Energeiaki Etaireia	70% / 30%
Hemethia Successful Limited	Malta	SunPower Malta Ltd / SunPower Corporation Malta Holdings Ltd	99% / 1%
Iliaka Parka Voreiou Ellados Anonymi Etaireia (distinctive title AlexSun2 S.A.)	Greece	AlexSun2 Malta Ltd	100%
Jackomelli Energia S.r.l.	Italy	SunPower Malta Ltd	100%
Kozani Energy Anonymi Energeiaki Etaireia (distinctive title Kozani Energy S.A.)	Greece	Kozani Energy Malta Limited	100%
Kozani Energy Malta Limited	Malta	SunPower Malta Ltd / SunPower Corporation Malta Holdings Ltd	99% / 1%
Leon Solar S.r.l.	Italy	SunPower Malta Ltd	100%
Lira PV Srl	Italy	SunPower Malta Ltd	100%
Marte PV S.r.l.	Italy	SunPower Malta Ltd	100%
Megara Rinnovabile S.r.l.	Italy	SunPower Malta Ltd	100%
Mercurio PV S.r.l.	Italy	SunPower Malta Ltd	100%
Nettuno PV S.r.l.	Italy	SunPower Malta Ltd	100%
Orione PV S.r.l.	Italy	SunPower Malta Ltd	100%

Special Purpose Vehicles	Jurisdiction of Incorporation	Shareholder	
Orsa Maggiore PV S.r.l. (sold 12/30/10)	Italy	SunPower Malta Ltd	100%
Orsa Minore PV S.r.l.	Italy	SunPower Malta Ltd	100%
Panormus S.r.l.	Italy	SunPower Malta Ltd	100%
Photovoltaic Park Malta Limited	Malta	SunPower Malta Ltd / SunPower Corporation Malta Holdings Ltd	99% / 1%
Photovoltaica Parka Voreiou Ellados Anonymi Etaireia (distinctive title AlexSun1 S.A.)	Greece	AlexSun1 Malta Ltd	100%
Photovotaica Parka Veroia Anonymi Etaireia (distinctive title Photovoltaica Parka Veroia S.A.)	Greece	Photovoltaic Park Malta Ltd	100%
Plutone PV Srl S.r.l.	Italy	SunPower Malta Ltd	100%
Porthos PV S.r.l.	Italy	SunPower Malta Ltd	100%
Ray of Success Anonymi Energeiaki Etaireia (distinctive title Ray of Success Energeiaki A.E.)	Greece	Ray of Success Malta Ltd / Successful Energy Solution Anonymi Energeiaki Etaireia	70% / 30%
Ray of Success Malta Limited	Malta	SunPower Malta Ltd / SunPower Corporation Malta Holdings Ltd	99% / 1%
Sagittario Energia S.r.l.	Italy	SunPower Malta Ltd	100%
Sirio PV S.r.l.	Italy	SunPower Malta Ltd	100%
SP Cordobesa Malta Limited	Malta	SunPower Malta Ltd / SP Quintana Malta Ltd	99% / 1 %
SP Quintana Malta Limited	Malta	SunPower Malta Ltd / SP Cordobesa Malta Ltd	99% / 1 %
Stromboli Solar S.r.l.	Italy	SunPower Malta Ltd	100%
Trinacria Energia Rinnovabile S.r.l.	Italy	SunPower Malta Ltd	100%
Vega PV S.r.l.	Italy	SunPower Malta Ltd	100%
Venere PV S.r.l.	Italy	SunPower Malta Ltd	100%
Zeronovantuno Energia S.r.l.	Italy	SunPower Malta Ltd	100%
Beit Hagedi Green Energies Ltd	Israel	SunPower Malta Ltd	100%
Brachya Green Energies Ltd	Israel	SunPower Malta Ltd	100%
Ein Yahav Green Energies Ltd	Israel	SunPower Malta Ltd	100%
Gilat Green Energies Ltd	Israel	SunPower Malta Ltd	100%
Hatzeva Green Energies Ltd	Israel	SunPower Malta Ltd	100%
Mivtachim Green Energies Ltd	Israel	SunPower Malta Ltd	100%
Nevatim Green Energies Ltd	Israel	SunPower Malta Ltd	100%

Special Purpose Vehicles	Jurisdiction of Incorporation	Shareholder	% Owned
Nevatim Renewable Energies Ltd	Israel	SunPower Malta Ltd	100%
Patish (East) Green Energies Ltd	Israel	SunPower Malta Ltd	100%
Patish (West) Green Energies Ltd	Israel	SunPower Malta Ltd	100%
Rotem SunPower Ltd.	Israel	SunPower Malta Ltd	100%
Sgula (West) Green Energies Ltd	Israel	SunPower Malta Ltd	100%
Sgula (East) Green Energies Ltd	Israel	SunPower Malta Ltd	100%
Sun Israel Renewable Energy (3) Ltd (d/b/a Zruha Green Energies Ltd)	Israel	SunPower Malta Ltd	100%
SunRay Israel Renewable Energy (1) Ltd (d/b/a Urim Green Energies Ltd)	Israel	SunPower Malta Ltd	100%
SunRay Israel Renewable Energy (2) Ltd (d/b/a Urim Renewable Energies Ltd)	Israel	SunPower Malta Ltd	100%
SunRay Israel Renewable Energy (4) Ltd (d/b/a Zruha Renewable Energies Ltd)	Israel	SunPower Malta Ltd	100%
SunRay Israel Renewable Energy (5) Ltd (d/b/a Beit Hagedi Renewable Energies Ltd)	Israel	SunPower Malta Ltd	100%
SunRay Israel Renewable Energy (6) Ltd (d/b/a Gilat Renewable Energies Ltd)	Israel	SunPower Malta Ltd	100%
Talmey Bilu Green Energies Ltd	Israel	SunPower Malta Ltd	100%
Talmey Eliyahu Green Energies Ltd	Israel	SunPower Malta Ltd	100%
Teashur Green Energies Ltd	Israel	SunPower Malta Ltd	100%
Virgo Energia Srl	Israel	SunPower Malta Ltd	100%
Uterne Power Plant Pty. Ltd.	Australia	SunPower Corporation Australia Pty. Ltd.	100%

EXHIBIT A

FORM OF ADMINISTRATIVE QUESTIONNAIRE

Borrower: SunPower Corporation

Agent Address: Credit Agricole CIB
1301 Avenue of the Americas
New York NY 10019
USA

Return Form to: Marisol Ortiz
Telephone: 212-261-3710
Facsimile: 212-459-3172
E-mail: **Marisol.Ortiz@ca-cib.com**

It is very important that **all** of the requested information be completed accurately and that this questionnaire be returned promptly. If your institution is sub-allocating its allocation, please fill out an administrative questionnaire for each legal entity.

Legal Name of Lender to appear in Documentation:

_____

Signature Block Information:

_____

Signing Credit Agreement o Yes o No
Coming in via Assignment o Yes o No

Type of Lender: _____
(Bank, Asset Manager, Broker/Dealer, CLO/CDO, Finance Company, Hedge Fund, Insurance, Mutual Fund, Pension Fund, Other Regulated Investment)

Lender Parent: _____

Domestic Address

_____
_____
_____

Eurodollar Address

_____
_____
_____

Contacts/Notification Methods: Borrowings, Paydowns, Interest, Fees, etc.

Syndicate-level information (which may contain material non-public information about the Borrower and its related parties or their respective securities) will be made available to the Credit Contact(s). The Credit Contacts identified must be able to receive such information in accordance with his/her institution's compliance procedures and applicable laws, including Federal and state securities laws.

	Primary Credit Contact	**Secondary Credit Contact**
Name:		
Company:		
Title:		
Address:		
Telephone:		
Facsimile:		
E-mail Address:		

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	Primary Operations Contact	Secondary Operations Contact
Name:		
Company:		
Title:		
Address:		
Telephone:		
Facsimile:		
E-mail Address:		

	Bid Contact	L/C Contact
Name:		
Company:		
Title:		
Address:		
Telephone:		
Facsimile:		
E-mail Address:		

Lender's Domestic Wire Instructions

Bank Name:	
ABA/Routing No.:	
Account Name:	
Account No.:	
FFC Account Name:	
FFC Account No.:	
Attention:	
Reference:	

Lender's Foreign Wire Instructions

Currency:	
Bank Name:	
Swift/Routing No.:	
Account Name:	
Account No.:	
FFC Account Name:	
FFC Account No.:	
Attention:	
Reference:	

Agent's Wire Instructions

Bank Name:	Credit Agricole CIB
ABA/Routing No.:	26008073
Account Name:	Loan Servicing Department
Account No.:	***
Attention:	**Agnes Castillo**
Reference:	[SunPower Corporation Revolving Credit Agreement][1]

[2] CA-CIB to confirm.

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

Agent's Operational Contacts (Loan Servicing – Principal, Interest, Fees etc.)
Agnes Castillo
Phone: 732-590-7799/7647
Fax: 917-849-5463 or 917-849-5456

Tax Documents

NON-U.S. LENDER INSTITUTIONS:

I. Corporations:
If your institution is incorporated outside of the United States for U.S. federal income tax purposes, and is the beneficial owner of the interest and other income it receives, you must complete one of the following three tax forms, as applicable to your institution: ***a.) Form W-8BEN*** (*Certificate of Foreign Status of Beneficial Owner*), ***b.) Form W-8ECI*** (*Income Effectively Connected to a U.S. Trade or Business*), or ***c.) Form W-8EXP*** (*Certificate of Foreign Government or Governmental Agency*).

A U.S. taxpayer identification number is required for any institution submitting Form W-8ECI. It is also required on Form W-8BEN for certain institutions claiming the benefits of a tax treaty with the U.S. Please refer to the instructions when completing the form applicable to your institution. In addition, please be advised that U.S. tax regulations do not permit the acceptance of faxed forms. **An original tax form must be submitted.**

II. Flow-Through Entities:
If your institution is organized outside the U.S., and is classified for U.S. federal income tax purposes as either a Partnership, Trust, Qualified or Non-Qualified Intermediary, or other non-U.S. flow-through entity, an original ***Form W-8IMY*** (*Certificate of Foreign Intermediary, Foreign Flow-Through Entity, or Certain U.S. Branches for United States Tax Withholding*) must be completed by the intermediary together with a withholding statement. Flow-through entities other than Qualified Intermediaries are required to include tax forms for each of the underlying beneficial owners.

Please refer to the instructions when completing this form. In addition, please be advised that U.S. tax regulations do not permit the acceptance of faxed forms. **Original tax form(s) must be submitted.**

U.S. LENDER INSTITUTIONS:

If your institution is incorporated or organized within the United States, you must complete and return ***Form W-9*** *(Request for Taxpayer Identification Number and Certification).* **Please be advised that we request that you submit an original Form W-9.**

Pursuant to the language contained in the tax section of the Credit Agreement, the applicable tax form for your institution must be completed and returned prior to the first payment of income. Failure to provide the proper tax form when requested may subject your institution to U.S. tax withholding.

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

EXHIBIT B

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 Revolving Credit Agreement identified below (as amended, supplemented, or otherwise modified from time to time, the "Credit Agreement"), 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 Credit 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 Lender under the Credit 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 Lender) against any Person, whether known or unknown, arising under or in connection with the Credit 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 Lender*]]
3.	Borrower:	SunPower Corporation
4.	Administrative Agent:	Crédit Agricole Corporate and Investment Bank, as the administrative agent under the Credit Agreement
5.	Credit Agreement:	The $275 million Revolving Credit Agreement dated as of September 27, 2011 by and among SunPower Corporation, the Lenders parties thereto from time to time and Crédit Agricole Corporate and Investment Bank, as Administrative Agent

6. Assigned Interest:

Facility Assigned	Aggregate Revolving Credit Commitment Amount for all Lenders	Amount of Revolving Credit Commitment Assigned	Percentage Assigned of Revolving Credit Commitment[3]
Revolving Credit Commitment	$_____	$_____	_____%

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:

[3] Set forth, to at least 9 decimals, as a percentage of the Revolving Credit Commitment of all Lenders thereunder.

Consented to and Accepted:
Crédit Agricole Corporate and Investment Bank,
as Administrative Agent

By _____
Name:
Title:

Consented to:
SunPower Corporation,
as Borrower

By _____
Name:
Title:

ANNEX 1 TO ASSIGNMENT AND ASSUMPTION

Revolving Credit Agreement dated as of [_____], 2011 by and among SunPower Corporation, the Lenders parties thereto from time to time and Crédit Agricole Corporate and Investment Bank, 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 Credit Agreement or any other Loan Document, (ii) the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Loan Documents, (iii) the financial condition of the Borrower, 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 Borrower, 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 Lender under the Credit Agreement, (ii) it satisfies the requirements, if any, specified in the Credit 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 Credit Agreement as a Lender thereunder and, to the extent of the Assigned Interest, shall have the obligations of a Lender thereunder, (iv) it has received a copy of the Credit Agreement, together with copies of the most recent financial statements delivered pursuant to Section 5.01 thereof 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 Lender, and (v) if it is a Lender 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 Credit 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 Lender, 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 Lender.

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 AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE

PARTIES HEREUNDER SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK (INCLUDING SECTION 5-1401 OF THE GENERAL OBLIGATIONS LAW OF THE STATE OF NEW YORK), WITHOUT REGARD TO CONFLICTS OF LAWS PRINCIPLES THAT WOULD REQUIRE APPLICATION OF ANOTHER LAW.

EXHIBIT C

FORM OF FINANCIAL OFFICER'S CERTIFICATE

THE UNDERSIGNED FINANCIAL OFFICER (TO HIS OR HER KNOWLEDGE AND IN HIS OR HER CAPACITY AS A FINANCIAL OFFICER OF SUNPOWER CORPORATION, A DELAWARE CORPORATION, AND NOT INDIVIDUALLY) HEREBY CERTIFIES ON BEHALF OF SUNPOWER CORPORATION AS OF THE DATE HEREOF THAT:

1. I am the duly elected [Title] of SunPower Corporation, a Delaware corporation (the "Borrower");

2. This financial officer's certificate (this "Certificate") is delivered pursuant to Section 5.01(c) of that certain Revolving Credit Agreement dated as of September 27, 2011, (the "Credit Agreement"), by and among the Borrower, the financial institutions listed as Lenders therein and Crédit Agricole Corporate and Investment Bank, as administrative agent. All capitalized terms used and not otherwise defined herein have the meanings given to them in the Credit Agreement.

3. I have no knowledge of the existence of any Event of Default at the end of the accounting period covered by the attached financial statements or as of the date of this Certificate [, except as set forth below].

[_____]

[Set forth on a separate attachment to this Certificate is a description of what action the Borrower has taken, is taking, or proposes to take with respect to each such Event of Default specified in the previous paragraph.]

4. Set forth on a separate attachment to this Certificate are calculations demonstrating compliance as of ____, 20__ with the requirements set forth in Section 5.02 of the Credit Agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, this Certificate has been executed as of _____.

By: _____
Name:
Title:

EXHIBIT D

FORM OF CLOSING DATE CERTIFICATE

SUNPOWER CORPORATION - OFFICER'S CERTIFICATE

I, Dennis Arriola, hereby certify that I am the duly elected, qualified and acting Executive Vice President and Chief Financial Officer of SunPower Corporation, a Delaware corporation (the "Corporation"), and solely in my capacity as an officer of the Corporation and not in my individual capacity, do hereby certify as follows:

1. Attached hereto as Exhibit A is a true, correct and complete copy of the Certificate of Incorporation of the Corporation, together with any and all amendments thereto, as in effect on the date hereof. Such Certificate of Incorporation has not been amended, modified, rescinded or changed in any respect since the date the resolutions referred to in paragraph 4 below were adopted, and is in full force and effect on and has not been amended or superseded as of the date hereof.

2. Attached hereto as Exhibit B are true, correct and complete copies of the Certificate of Good Standing of the Corporation, certified by the Secretary of State of the State of Delaware and the Certificate of Status of the Corporation, certified by the Secretary of State of the State of California.

3. Attached hereto as Exhibit C is a true, correct and complete copy of the By-Laws of the Corporation, together with any and all amendments thereto (the "By-Laws"), and such Bylaws have not been amended, modified, rescinded or changed in any respect since the date the resolutions referred to in paragraph 4 below were adopted, and are in full force and effect on and have not been amended or superseded as of the date hereof.

4. Attached hereto as Exhibit D are true, correct and complete copies of certain resolutions duly adopted by the Board of Directors of the Corporation in a special meeting on September 26, 2011, approving the terms of, and authorizing entry into the Loan Documents (as defined in the Credit Agreement, defined in paragraph 4). Such resolutions are the only resolutions of the Board of Directors of the Corporation related to the subject matter thereof and such resolutions have not been amended, modified or rescinded and remain in full force and effect.

5. The Revolving Credit Agreement, dated as of September 27, 2011 (the "Credit Agreement"), by and among the Corporation, the financial institutions listed as Lenders therein, and Crédit Agricole Corporate and Investment Bank, as administrative agent, as executed and delivered by the Corporation, is in substantially the form approved by a proper officer of the Corporation, as designated by the Board of Directors, in accordance with the resolutions approved by the Board of Directors with respect thereto and referred to in paragraph 4 above.

6. Attached hereto as Exhibit E is a true, correct and complete copy of an incumbency certificate, executed by the Assistant Secretary of the Corporation, certifying the signatures of the Executive Vice President/Chief Financial Officer and Vice President/Treasurer of the Corporation on and as of the date thereof.

7. The representations and warranties contained in Article III of the Credit Agreement are correct on and as of the date hereof.

OFFICER CERTIFICATE
(SunPower Corporation)

8. Since January 2, 2011, there has been no development or event which has resulted in, or could reasonably be expected to result in, a material adverse effect on the business, financial condition, operations or properties of the Borrower and its Subsidiaries, taken as a whole.

9. Each person who, as an officer of the Corporation, signed the Credit Agreement or any other document delivered in connection with the Credit Agreement or the transactions contemplated thereby, was duly elected or appointed, qualified and acting as such officer at the respective times of the signing and delivery thereof and was duly authorized to sign such document on behalf of the Corporation, and the signature of each such person appearing on each such document is the genuine signature of such officer.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, I have hereunto set my hand as of _____, 2011.

By: _____
Name: Dennis V. Arriola
Title: Executive Vice President and Chief Financial Officer,
SunPower Corporation

OFFICER CERTIFICATE
(SunPower Corporation)

EXHIBIT E

FORM OF BORROWING REQUEST

Pursuant to that certain Revolving Credit Agreement dated as of September 27, 2011, as amended, supplemented or otherwise modified to the date hereof (said Revolving Credit Agreement, as so amended, supplemented or otherwise modified, being the "Credit Agreement", the terms defined therein and not otherwise defined herein being used herein as therein defined), by and among SunPower Corporation, a Delaware corporation (the "Borrower"), the financial institutions listed as Lenders therein (the "Lenders"), and Crédit Agricole Corporate and Investment Bank, as Administrative Agent (the "Agent"), this represents Borrower's request to borrow as follows:

1. Date of borrowing: _____, 20__

2. Amount of borrowing: $_____

3. Lenders:

   [ ] a. The Revolving Lenders
   [ ] b. Other Revolving Lenders

4. Type of Loans:

   [ ] a. Revolving Loans
   [ ] b. Incremental Revolving Loans
   [ ] c. Other Revolving Loans

5. Interest rate option:

   [ ] a. ABR Loans
   [ ] b. LIBO Rate Loans with an initial Interest Period of _____ month(s)

The proceeds of such Loans are to be deposited in Borrower's account at [the Agent][see attached].
The undersigned officer (to the best of his or her knowledge and in his or her capacity as an officer, and not individually) and Borrower certify that:

The representations and warranties set forth in Article III of the Credit Agreement (other than Section 3.04) and in each other Loan Document is true and correct in all material respects on and as of the date hereof with the same effect as though made on and as of such date, except to the extent such representations and warranties expressly relate to an earlier date, in which case they shall be true and correct in all material respects on and as of such earlier date; provided that, in each case, such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof.

As of the date hereof, no Event of Default, or event or condition that would constitute an Event of Default described in Sections (a), (b), (f) or (g) of Article VII of the Credit Agreement but for the requirement that notice be given or time elapse or both, has occurred and is continuing or would result from such issuance, extension or increase, shall have occurred and be continuing.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, this Borrowing Request has been executed as of _____.

SUNPOWER CORPORATION

By: _____
Name:
Title:

EXHIBIT F

FORM OF PROMISSORY NOTE

$_____ _____, 20__
San Jose, California

FOR VALUE RECEIVED, SunPower Corporation, a Delaware corporation (the "Borrower"), hereby promises to pay to the order of [_____] (the "Lender") the principal sum of _____ ($____) or, if less, the then unpaid principal amount of all Revolving Loans (such term and each other capitalized term used herein without definition shall have the meanings ascribed thereto in the Credit Agreement referred to below) made by the Lender to the Borrower pursuant to the Credit Agreement, in Dollars and in immediately available funds, at the office of such Lender designated for payment (the "Payment Office"), on the dates and in the amounts specified in the Credit Agreement.

The Borrower also promises to pay interest in like currency and funds at the Payment Office on the unpaid principal amount of each Revolving Loan made by the Lender from the date of such Revolving Loan until paid at the rates and at the times provided in the Credit Agreement.

This Note is issued pursuant to and is entitled to the benefits of the Credit Agreement, dated as of September 27, 2011, among the Borrower, the lenders from time to time party thereto (including the Lender), and Crédit Agricole Corporate and Investment Bank, as the Administrative Agent (as the same may be amended, restated or otherwise modified from time to time, the "Credit Agreement"). As provided in the Credit Agreement, this Note is subject to mandatory repayment prior to the Revolving Credit Maturity Date, in whole or in part.

In case an Event of Default shall occur and be continuing, the principal of and accrued interest on this Note may be declared to be due and payable in the manner and with the effect provided in the Credit Agreement.

The Borrower hereby waives diligence, presentment, demand, protest and notice of every kind and, to the full extent permitted by law, the right to plead any statute of limitations as a defense to any demand hereunder, except as expressly set forth in the Credit Agreement. No failure to exercise, or delay in exercising, any rights hereunder on the part of the holder hereof shall operate as a waiver of any such rights.

THIS NOTE SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE STATE OF NEW YORK (INCLUDING SECTION 5-1401 OF THE GENERAL OBLIGATIONS LAW OF THE STATE OF NEW YORK), WITHOUT REGARD TO CONFLICTS OF LAWS PRINCIPLES THAT WOULD REQUIRE APPLICATION OF ANOTHER LAW.

PROMISSORY NOTE
(SunPower Corporation)

SUNPOWER CORPORATION

By: _____
Name:
Title:

_____
Name:
Title:

EXHIBIT G

FORM OF OPINION

September 27, 2011

To: The Lenders and the Agent under
the Credit Agreement (as defined below)

Re: SunPower Corporation Revolving Credit Agreement

Ladies/Gentlemen:

We have acted as special New York counsel to SunPower Corporation, a Delaware corporation (the "Company") in connection with the Revolving Credit Agreement, dated as of September 27, 2011 (the "Credit Agreement"), among the Company, Crédit Agricole Corporate and Investment Bank, as lender and as administrative agent (the "Agent"), and the financial institutions party thereto (collectively, the "Lenders").

This opinion letter is delivered to you at the request of the Company and pursuant to Section 4.02(b) of the Credit Agreement. Capitalized terms used herein and not otherwise defined herein have the meanings assigned to such terms in the 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 Credit Agreement;

(2) a copy of the Certificate of Incorporation of the Company certified by the Secretary of State of the State of Delaware on September 14, 2011 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;

(3) the Bylaws of the Company, certified to us by an officer of the Company as being complete and in full force and effect as of the date of this opinion;

(4) a copy of a certificate, dated September 27, 2011, of the Secretary of State of the State of Delaware as to the existence and good standing of the Company in the State of Delaware as of such date;

(5) a Certificate of Status – Foreign Corporation dated September 15, 2011, of the Secretary of State of the State of California as to the qualification to transact intrastate business of the Company in the State of California as of such date; and

the Officer's Certificate of the Company delivered to us in connection with this opinion letter, a copy of which is attached hereto as Exhibit A (the "Officer's Certificate").

Each of the good standing certificates described in items (4) and (5) above is referred to herein as a "Good Standing Certificate."

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 Credit Agreement and certificates and oral or written statements and other information of or from representatives of the Company and others and assume compliance on the part of the Company with its covenants and agreements contained therein. In connection with the opinions expressed in the first sentence of paragraph (a) below, 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) 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 Company 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 Credit Agreement.

Based upon the foregoing, and subject to the limitations, qualifications and assumptions set forth herein, we are of the opinion that:

(a) The Company is duly formed and existing in good standing under the laws of the State of Delaware. The Company has the corporate power and authority (i) to conduct its business substantially as described in the Officer's Certificate of the Company and (ii) to enter into and to incur and perform its obligations under the Credit Agreement.

(b) The execution and delivery to the Lender by the Company of the Credit Agreement and the performance by the Credit Agreement of its obligations thereunder, (i) have been authorized by all necessary corporate action by the Company, (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 the Company with, or approval or consent to the Company 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 the Company of its obligations under certain covenants contained in the Credit Agreement, (iii) do not contravene any provision of the Certificate of Incorporation or By-laws of the Company, and (iv) do not violate any present law, or present regulation of any governmental agency or authority, of the State of New York, the State of Delaware, or the United States of America applicable to the Company or its property.

(c) The Credit Agreement has been duly executed and delivered on behalf of the Company.

(d) The Credit Agreement constitutes a valid and binding obligation of the Company, enforceable against the Company in accordance with its terms.

(e) The borrowings by the Company under the Credit Agreement and the application of the proceeds thereof as provided in the Credit Agreement will not violate Regulation T, U or X of the Board of Governors of the Federal Reserve System.

(f) The Company is not required to register as an "investment company" (under, and as defined in, the Investment Company Act of 1940, as amended.

The opinions set forth above are subject to the following qualifications and limitations:

(A) Our opinions in paragraph (d) 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 provisions of the Credit Agreement 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 Company of the Credit Agreement as a whole and the Credit Agreement contains adequate provisions for enforcing payment of the obligations governed thereby and otherwise for the practical realization of the principal benefits provided by the Credit Agreement, 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 Credit Agreement:

(i) establishing standards for the performance of the obligations of good faith, diligence, reasonableness and care prescribed by applicable law;

(ii) 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;

(iii) 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;

(iv) 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 the Credit Agreement;

(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 the Credit Agreement; or

(xiii) 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 the Company under the Credit Agreement to the extent limited by 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 invalid under applicable law.

(E) For purposes of our opinions in paragraphs (a) and (b) above, we have assumed that the Company's obligations under the Credit Agreement 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 business.

(F) To the extent it may be relevant to the opinions expressed herein, we have assumed that (i) the parties to the Credit Agreement (other than the Company) 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, such parties, and (ii) that such documents constitute legal, valid and binding obligations of, the parties to the Credit Agreement (other than the Company).

(G) For purposes of the opinions set forth in paragraph (e) above, we have assumed that (i) the Lender has not and will not have the benefit of any agreement or arrangement (excluding the Credit Agreement) pursuant to which any extensions of credit to the Company are directly or indirectly secured by "margin stock" (as defined under the Margin Regulations), (ii) neither the Lender nor any of its affiliates has extended or will extend any other credit to the Comapny directly or indirectly secured by margin stock, and (iii) the Lender has not relied and will not rely upon any margin stock as collateral in extending or maintaining any extensions of credit pursuant to the Credit Agreement, as to which we express no opinion.

(H) 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 of the State of Delaware, in each case as currently in effect.

(I) 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.

(J) The opinions expressed herein are solely for the benefit of the addressees hereof and of any other person or entity becoming a Lender under the 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; provided that Lender may disclose this opinion letter to (i) any person to whom disclosure is required to be made by applicable law or court order or pursuant to the rules or regulations of any supervisory or regulatory body or in connection with any judicial proceedings; or (ii) the officers, employees, auditors and professional advisers of any addressee. At your request, we hereby consent to reliance hereon by any future assignee of your interest in the Credit Agreement pursuant to an assignment that is made and consented to in accordance with the express provisions of Section 9.04 of the Credit Agreement, on the condition and understanding that (x) this opinion letter speaks only as of the date hereof, (y) 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 (z) 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

EXHIBIT 10.10

For Bank Use Only. Insert Applicant Name:
SunPower Corporation

CONTINUING AGREEMENT FOR STANDBY LETTERS OF CREDIT AND DEMAND GUARANTEES

September 27, 2011
(*Date*)

Deutsche Bank AG New York Branch
and
Deutsche Bank Trust Company Americas
60 Wall Street
New York, New York 10005
Attention: Brent Haapanen

To induce each of you, in your sole discretion from time to time, to issue one or more irrevocable letters of credit or demand guarantees at the request of Applicant (as defined below), in substantially such form as Applicant shall request, Applicant unconditionally and irrevocably agrees with you, including as to each Credit (as defined below), as follows:

1. ***Defined Terms***. As used in this agreement (as amended, supplemented or otherwise modified from time to time, including the application for the Credit, this "**Agreement**"), the following terms have the respective meanings specified below, unless the context requires otherwise:

"**Adherence Agreement**" means an agreement substantially in the form of Exhibit A hereto, pursuant to which Applicant may designate any of its subsidiaries as a Subsidiary Applicant in accordance with Section 4(e).

"**Applicant**" means the party signing below, and in the case of a request for issuance of a demand guarantee under the URDG includes such party in its role as the Instructing Party.

"**Base Rate**" means, for any day (or, if such day is not a Business Day, the immediately preceding Business Day), a rate per annum equal to the greater of (a) the Overnight Federal Funds Rate for such day plus 1/2 of 1% or (b) the Prime Lending Rate for such day.

"**Beneficiary**" means, at any time, the beneficiary(ies) of the Credit, including any second or substitute beneficiary(ies) or transferee(s) under a transferable Credit and any successor of a beneficiary by operation of law.

"**Business Day**" means any day that is not a Saturday, Sunday or other day on which commercial banks are authorized or required to close in New York City or at such other place where Issuer is obligated to honor a presentation or otherwise act under the Credit or this Agreement.

"**Collateral**" has the meaning provided in Section 12.

"**counter-guarantee**" has the meaning assigned thereto under the URDG.

"**Credit**" means each letter of credit or demand guarantee referred to in the introductory paragraph hereof (including any bid bond, performance bond or similar undertaking issued or undertaken by Issuer), and includes any amendment or replacement thereof authorized by its terms or by consent of Applicant and, at Issuer's option, any pre-advice thereof.

"**demand guarantee**" has the meaning assigned thereto under the URDG, and unless the context requires otherwise includes a counter-guarantee.

"**Dollars**" or "**$**" mean, at any time, the lawful currency of the United States of America.

"**Event of Default**" has the meaning provided in Section 17.

"**Exchange Act**" means the United States Securities Exchange Act of 1934.

"**Fee Letter**" means the Fee Letter, dated as of the date hereof, between Issuer and Applicant (as amended, supplemented or otherwise modified from time to time).

"**Indemnified Party**" means Issuer and each officer, director, affiliate, employee and agent thereof.

"**Instructing Party**" has the meaning assigned to such term under the URDG.

"**ISP**" means the International Standby Practices 1998, International Chamber of Commerce Publication No. 590.

"**Issuer**" means Deutsche Bank AG New York Branch and Deutsche Bank Trust Company Americas, including each as "guarantor" or "counter-guarantor," as applicable, within the meaning of the URDG, but with respect to any particular Credit, means whichever one of them issued such Credit.

"**Issuer's Office**" means Issuer's address for notices under this Agreement.

"**Material Adverse Effect**" has the meaning provided in Section 15.

"**Notice of Termination**" means a notice substantially in the form of Exhibit B hereto, which Applicant may execute and deliver to Issuer in accordance with Section 4(e).

"**Obligations**" means all present and future obligations of Applicant under this Agreement or in respect of the Credit, whether absolute or contingent, joint, several or independent, including interest accruing at the rate provided in this Agreement on or after the commencement of any bankruptcy or insolvency proceeding, whether or not allowed or allowable.

"**Overnight Federal Funds Rate**" means, at any time, the rate per annum at which Issuer, in its sole discretion, can acquire Federal funds in the interbank overnight federal funds market including through brokers of recognized standing.

"**Person**" means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, government (including any subdivision, agency, court, central bank, or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government) or other entity.

"**Practices**" has the meaning provided in Section 26(b).

"**Prime Lending Rate**" means the rate of interest Issuer announces from time to time as Issuer's prime lending rate for unsecured commercial loans within the United States of America (but is not intended to be the lowest rate of interest Issuer charges in connection with extensions of credit to borrowers).

"**Security Agreement**" has the meaning provided in Section 12.

"**Subsidiary Account Party**" means any direct or indirect subsidiary of Applicant (a) listed on Schedule I hereto and approved as a Subsidiary Account Party hereunder by Issuer's signing Schedule I in its sole discretion or (b) that Applicant may from time to time list on a supplement to Schedule I with the written approval of Issuer in its sole discretion.

"**Subsidiary Applicant**" means (a) each direct or indirect subsidiary of Applicant that has executed and delivered this Agreement as a "Subsidiary Applicant" in the space provided below and (b) each other direct or indirect subsidiary of Applicant from time to time approved in writing by Issuer as a Subsidiary Applicant in accordance with Section 4(e), in each case other than any such subsidiary that has ceased to be a "Subsidiary Applicant" pursuant to Section 4(e).

"**Taxes**" means all present and future taxes, levies, imposts, deductions, charges, withholdings and related liabilities, excluding (a) taxes that are imposed on (or measured by) Issuer's 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 Issuer is organized or any political subdivision thereof, (b) any branch profits tax or any similar tax that is imposed by any jurisdiction described above, and (c) any withholding tax that is attributable to Issuer's failure to comply with applicable provisions of Sections 1471 through 1474 of the Internal Revenue Code of 1986, as amended.

"**UCC**" means the Uniform Commercial Code, as in effect from time to time in the applicable jurisdiction.

"**UCP**" means the Uniform Customs and Practice for Documentary Credits, 2007 Revision, International Chamber of Commerce Publication No. 600.

"**URDG**" means the Uniform Rules for Demand Guarantees, 2010 Revision, International Chamber of Commerce Publication No. 758.

2. ***Issuance; Reimbursement***. Unless you otherwise agree in writing, you shall have sole discretion whether to issue any Credit and to determine whether the issuer thereof shall be Deutsche Bank AG New York Branch or Deutsche Bank Trust Company Americas. Applicant will reimburse Issuer the amount of each payment Issuer makes under the Credit within five Business Days of the date Issuer notifies Applicant of such payment; provided that if the Credit provides for acceptance of a time draft or incurrence of a deferred payment obligation and if Issuer notifies Applicant of such acceptance or incurrence at least five Business Days in advance of its maturity, reimbursement shall be due sufficiently in advance of its maturity to enable Issuer to arrange for its cover in same day funds to reach the place where it is payable no later than the date of its maturity. Each reimbursement shall be without prejudice to Applicant's rights under Section 8(b).

3. ***Fees, Costs and Expenses***. Applicant will pay to Issuer (i) fees in respect of the Credit at such rates and times as Applicant and Issuer agree in writing (including, if applicable, issuance fees, maintenance fees, amendment fees, drawing fees, transfer fees, and assignment of proceeds fees), (ii) on demand, all reasonable costs and expenses (including reasonable and documented attorney's fees and disbursements) that Issuer incurs in connection with the preparation, execution and delivery of this Agreement, (iii) all reasonable costs and expenses in complying 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, (iv) any stamp tax, recording tax, or similar tax or fee, and (v) any adviser's, confirmer's, or other nominated person's fees and expenses with respect to the Credit that are chargeable to Applicant or Issuer (if the application for the Credit requested or authorized such advice, confirmation or other nomination, as applicable).

4. ***Payments; Currency; Interest; Computations; Designation of Subsidiary Applicants***.

(a) All amounts due from Applicant under this Agreement shall be paid to Issuer at Issuer's Office without defense, setoff, or counterclaim, in Dollars and in immediately available funds; provided that if the amount due is based upon Issuer's payment in a currency other than Dollars, Applicant will pay the equivalent of such amount in Dollars computed at Issuer's selling rate for cable transfers to the place where and in the currency in which Issuer paid, or, at Issuer's option, Applicant will pay in such other currency, place, and manner as Issuer reasonably specifies in writing. Applicant's obligation to make payments in any currency (the "**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 Issuer at Issuer's Office of the full amount of the Specified Currency payable under this Agreement. Applicant shall indemnify Issuer for any shortfall and Applicant's obligation to make payments in the Specified Currency shall be enforceable as an alternative or additional 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 Applicant fails to fully reimburse Issuer on the date of any payment under the Credit, then Applicant will pay interest to Issuer on such unreimbursed amount at a variable interest rate equal to (i) until the date reimbursement is due under Section 2, the Base Rate, and (ii) thereafter, the rate provided in the following sentence. Without limiting Applicant's obligation to make all payments hereunder when due, Applicant will pay to Issuer, on demand, interest on all overdue amounts hereunder from the due date through the payment date at a variable interest rate equal to the sum of 1% per annum plus the Base Rate from time to time. Any change in the interest rate resulting from a change in the Base Rate shall take effect on the date of such change in the Base Rate. If any payment shall be due on a day that is not a Business Day, such payment shall be made on the next Business Day and interest shall be paid for each additional day elapsed.

(c) All computations of interest under this Agreement shall be based on a 365-day or, if applicable, a 366-day year for the actual number of days elapsed. All computations of fees under this Agreement shall be based on a 360-day year for the actual number of days elapsed and based upon the available or face amount of the Credit at any time shall be calculated by reference to the greatest amount for which Issuer may be contingently liable under any circumstances under the Credit at such time or thereafter, giving effect to any scheduled increases in accordance with the terms of the Credit.

(d) Any application that Applicant may make for the issuance of a Credit may be made by any Subsidiary Applicant for the account of such Subsidiary Applicant, and thereafter such Subsidiary Applicant may also make any application for the extension of the term or increase in the amount of such Credit or any other amendment thereto or waiver of discrepancies thereunder. Applicant and the applicable Subsidiary Applicant shall be jointly and severally liable to Issuer for all the reimbursement, indemnification and other obligations, representations, warranties and other agreements of Applicant under this Agreement in respect of any Credit requested by such Subsidiary Applicant.

Applicant and the applicable Subsidiary Applicant represent and warrant that at the time of issuance of any Credit for the account of such Subsidiary Applicant (or of any increase or extension thereof), such Subsidiary Applicant is a direct or indirect majority-owned subsidiary of Applicant.

(e) Subject to Issuer's written consent in its sole discretion, Applicant from time to time may designate any direct or indirect majority-owned subsidiary of Applicant as a Subsidiary Applicant by (i) delivering to Issuer an Adherence Agreement executed by such proposed Subsidiary Applicant and countersigned by Applicant and Issuer, (ii) taking such further actions as Issuer may reasonably request, including executing and delivering other instruments, documents, and agreements corresponding to those obtained in respect of Applicant, all in form and substance reasonably satisfactory to Issuer, and (iii) providing Issuer with a reasonable opportunity to perform any due diligence concerning such proposed Subsidiary Applicant, including any new customer intake procedures imposed by applicable law or regulation or by internal policy of Issuer (such as OFAC and "know your customer" checks and obtaining evidence of corporate organization and existence and due authorization and incumbency of signatories). Upon such delivery and the taking of such further actions, such subsidiary shall for all purposes of this Agreement be a Subsidiary Applicant hereunder and a party to this Agreement, until Applicant shall have executed and delivered to Issuer a Notice of Termination 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 Credit issued at the request of such Subsidiary Applicant shall be outstanding; provided that such Notice of Termination shall be effective to terminate such Subsidiary Applicant's right to request the issuance of any new Credits hereunder or any increase in the amount of any other Credit.

5. ***Capital Adequacy; Additional Costs*****.** If Issuer determines that the introduction or effectiveness of, or any change in, any treaty, international agreement, law, rule or regulation or compliance with any directive, guideline or request from any central bank or other governmental or quasi-governmental authority (whether or not having the force of law), or any change in the interpretation of any of the foregoing, affects the amount of capital, insurance or reserves (including special deposits, deposit insurance or similar requirements) to be maintained by Issuer or any corporation controlling Issuer, or otherwise increases the costs of, or reduces the amount received or receivable by, Issuer or any corporation controlling Issuer, and Issuer determines that the amount of such capital, insurance or reserve or other increased cost or reduction, as the case may be, is increased or reduced by or based upon the existence of this Agreement or the Credit (excluding any increase or reduction to the extent that it is attributable to the requirement of any governmental authority or quasi-governmental authority which regulates Issuer or any corporation controlling Issuer which is imposed by reason of the quality of Issuer's assets or those of such corporation controlling Issuer and not generally imposed on all entities of the same kind regulated by the same authority), then Applicant shall pay to Issuer, within fifteen Business Days after demand from time to time, such additional amounts as Issuer may demand to compensate for the increase or reduction, as the case may be; provided that such demand shall include a statement of the basis for such demand and a calculation in reasonable detail of the amount demanded and Issuer computes all amounts due under this paragraph on a reasonable basis.

6. ***Taxes*****.** All payments to Issuer hereunder shall be made free and clear of and without deduction for any Taxes. If any Taxes shall be required to be deducted from any sum payable under this Agreement, then: (i) the sum payable under this Agreement shall be increased so that after making all required deductions Issuer receives an amount equal to the sum Issuer would have received had no such deductions been required; (ii) Applicant shall be responsible for payment of the amount to the relevant taxing authority; (iii) Applicant shall indemnify Issuer for any such Taxes imposed on or paid by Issuer and any liability (including penalties, interest and expenses) arising from its payment or in respect of such Taxes within thirty days from the date Issuer makes written demand therefor; and (iv) Applicant shall provide to Issuer within thirty days of any payment to a taxing authority the original or a certified copy of the receipt evidencing each Tax payment.

7. ***Indemnification*****.** Applicant will indemnify and hold harmless each Indemnified Party from and against any and all claims, liabilities, losses, damages, costs and expenses (including reasonable and documented attorney's fees and disbursements) that arise out of or in connection with: (i) the Credit, any demand for payment, other presentation or request under the Credit, or the transaction(s) supported by the Credit, (ii) any payment or other action taken or omitted to be taken in connection with the Credit or this Agreement, (iii) any act or omission, whether rightful or wrongful, of any present or future de jure or de facto government or governmental authority with respect to this Agreement or the Credit or any other cause beyond Issuer's control or (iv) any indemnity or other undertaking that Applicant requests or authorizes Issuer to issue to induce any other financial institution (including any branch or affiliate of Issuer) to issue its own letter of

credit, demand guarantee, or other undertaking in connection with any Credit, except in each case to the extent such liability, loss, damage, cost or expense resulted from such Indemnified Party's negligence or willful misconduct.

8. ***Obligations Absolute; Claims Against Issuer; Exculpations; Limitations of Liability.***

(a) Applicant's obligation to reimburse Issuer shall be absolute, unconditional and irrevocable and shall be paid strictly in accordance with the terms of this Agreement, irrespective of: (i) if any other Person shall at any time have guaranteed or otherwise agreed to be liable for any of the Obligations or granted any security therefor, any change in the time, manner or place of payment of or any other term of the obligations of such other Person, (ii) any exchange, change, waiver or release of any collateral for, or any other Person's guarantee of or other liability for, any of the Obligations, (iii) the existence of any claim, setoff, defense or other right that Applicant or any other Person may at any time have against any Beneficiary, any assignee of proceeds of the Credit, Issuer or any other Person, (iv) any presentation under the Credit being forged or fraudulent or any statement therein being untrue or inaccurate, or (v) any other circumstance that might, but for the provisions of this Section, constitute a legal or equitable discharge of or defense to any or all of the Obligations.

(b) The foregoing shall not excuse Issuer from liability to Applicant in any independent action or proceeding that is brought by Applicant against Issuer following reimbursement by Applicant to Issuer to the extent of any direct damages suffered by Applicant that were caused by Issuer's gross negligence or willful misconduct; provided that (i) Issuer shall be deemed to have acted with reasonable care if it acts in accordance with standard letter of credit practice or standard demand guarantee practice, as applicable, of commercial banks located in New York City; and (ii) Applicant's aggregate remedies against Issuer for wrongfully honoring a presentation or wrongfully retaining honored documents shall not exceed the aggregate amount paid by Applicant to Issuer with respect to the honored presentation, plus interest.

(c) Without limiting any other provision of this Agreement, Issuer: (i) may rely upon any oral, telephonic, facsimile, electronic, written or other communication reasonably believed to have been authorized by 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 the Credit, 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 Issuer may transmit Credit terms without translating them), (iii) may honor any presentation under the Credit that appears on its face to substantially comply with the terms and conditions of the Credit, (iv) may honor a demand for payment under a demand guarantee or counter-guarantee that is issued subject to the URDG even where (A) in the case of a demand guarantee other than a counter-guarantee, such demand for payment is not supported by a statement indicating in what respect Applicant is in breach of its obligations under any underlying agreement or transaction, unless the demand guarantee expressly requires presentation of such supporting statement and regardless of whether such demand guarantee expressly excludes any requirement for such a supporting statement or (B) in the case of a counter-guarantee, such demand is not supported by a statement by the party to whom such counter-guarantee was issued indicating that such party has received a complying demand under the demand guarantee or counter-guarantee issued by such party, unless the counter-guarantee expressly requires presentation of such supporting statement and regardless of whether the related counter-guarantee expressly excludes the requirement for such a supporting statement, (v) in the case of a demand for payment under a demand guarantee that is issued subject to the URDG, shall be deemed (A) to have timely paid if it pays within one Business Day after determining that such demand is complying or (B) to have timely refused to pay if it gives notice of rejection of such demand not later than the close of the fifth Business Day following the day of presentation of such demand, (vi) may replace a purportedly lost, stolen or destroyed original Credit, waive a requirement for its presentation, or provide a replacement copy to any Beneficiary, (vii) if no form of draft is attached as an exhibit to the Credit, may accept as a draft any written or electronic demand or request for payment under the Credit, and may disregard any requirement that such draft bear any particular reference to the Credit, (viii) unless the Credit specifies the means of payment, may make any payment under the Credit by any means it chooses, including by wire transfer of immediately available funds, (ix) may select any branch or affiliate of Issuer or any other bank to act as advising, transferring, confirming and/or nominated bank under the law and practice of the place where it is located (if the application for the Credit requested or authorized advice, transfer, confirmation and/or nomination, as applicable), (x) may amend the Credit to reflect any change of address or other contact information of any Beneficiary, (xi) shall not be obligated to examine, and may disregard for purposes of determining compliance of any presentation with the terms and conditions of the Credit, (A) any presented document not called for by the terms and conditions of the Credit and (B) that portion, if any, of any presented document called for by the terms and conditions of the Credit that contains data not called for by the terms and conditions of the Credit regardless of whether such data conflicts with data in the Credit or any other presented document, (xii) in the case of a demand guarantee that is issued subject to the URDG, shall be deemed to have timely informed the Instructing Party of any demand for payment thereunder and of any request, as an alternative, to extend the expiry of such demand guarantee if it so informs the Instructing Party within three Business Days following the Business Day upon which Issuer receives such demand or request, and (xiii) shall not be responsible for any other action or inaction

taken or suffered by Issuer under or in connection with the Credit, if required or permitted under any applicable domestic or foreign law or letter of credit or demand guarantee practice. None of the circumstances described in this Section 8(c) shall impair Issuer's rights and remedies against Applicant or place Issuer under any liability to Applicant.

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

(e) Issuer shall not be liable in contract, tort, or otherwise for any punitive, exemplary, consequential, indirect or special damages (including for any consequences of forgery or fraud by any Beneficiary or any other Person).

9. ***Applicant Responsibility, Etc.*** Applicant's ultimate responsibility for the final text of the Credit shall not be affected by any assistance Issuer may provide such as drafting or recommending text. Issuer may, without incurring any liability to Applicant or impairing its entitlement to payment under this Agreement, honor the Credit despite notice from Applicant of, and without any duty to inquire into, any purported defense to honor or any claim against any Beneficiary or any other Person.

10. ***Transfers.*** If the Credit is issued in transferable form, Issuer shall have no duty to determine the identity of anyone appearing in any transfer request, draft or other document as transferee, or the validity or correctness of any transfer made pursuant to documents that appear on their face to be substantially in accordance with the terms and conditions of the Credit.

11. ***Extensions and Modifications; Waivers of Discrepancies.*** This Agreement shall be binding upon Applicant with respect to any replacement, extension or modification of the Credit or waiver of discrepancies authorized by Applicant. Except as may be provided in the Credit or otherwise agreed to in writing by Issuer in its sole discretion, Issuer shall have no duty to (i) issue or refrain from issuing notice of (A) its election not to extend the Credit, (B) if the Credit by its terms permits it to do so, its election to terminate the Credit prior to its stated expiration date, or (C) if the Credit by its terms permits it to do so, its election not to reinstate the amount of any drawing under the Credit or (ii) otherwise amend or modify the Credit.

12. ***Collateral; Security Agreement.*** To secure all the Obligations, Applicant has granted to Issuer a security interest in certain property of Applicant (the "**Collateral**") pursuant to that Security Agreement (MMDA Investment Option) of even date herewith between Applicant and Issuer (as amended, supplemented or otherwise modified from time to time, the "**Security Agreement**").

13. [***Reserved***].

14. [***Reserved***].

15. ***Covenants of Applicant.*** Applicant will (i) comply with all applicable laws, rules and regulations, except where the failure to do so could not reasonably be expected to have a material adverse effect ("**Material Adverse Effect**") on (A) the business, financial condition, operations or properties of Applicant and its subsidiaries, taken as a whole, (B) Applicant's ability to perform its obligations, taken as a whole, under this Agreement, the Security Agreement, or the Fee Letter or (C) the validity or enforceability of this Agreement, the Security Agreement or the Fee Letter, (ii) unless Applicant timely files (without giving effect to any extension), regular annual and quarterly financial statements with the U.S. Securities and Exchange Commission, or any successor thereto (the “SEC”), pursuant to the Exchange Act, deliver financial statements and such other information concerning Applicant's financial condition, business and prospects as Issuer may reasonably request from time to time, (iii) permit Issuer to inspect (upon one Business Day's notice) Applicant's books and records during regular business hours, and (iv) within five Business Days after the actual knowledge of an officer of Applicant of such occurrence, notify Issuer in writing of the occurrence of an Event of Default, specifying the nature thereof and the action Applicant proposes to take with respect thereto.

16. ***Representations and Warranties; Subsidiary Account Parties.***

(a) Applicant represents and warrants as of the date of this Agreement and also as of the date of issuance of the Credit (or of any increase or extension thereof) that: (i) it is duly organized, validly existing and in good standing under the laws of its jurisdiction of organization with the power and authority to carry on its business; (ii) its execution, delivery and performance of this Agreement, the Security Agreement and the Fee Letter and the transactions

contemplated hereby and thereby, (A) are within its powers, (B) have been duly authorized, (C) do not contravene any charter provision, by-law, resolution of Applicant, (D) do not conflict with any contract or other undertaking binding on it or its properties, which, could reasonably be expected to have a Material Adverse Effect; (E) do not violate any law, rule or regulation, or any order, writ, judgment, decree, award or permit of any arbitration tribunal, court or other governmental authority applicable to it or any of its properties, which, could reasonably be expected to have a Material Adverse Effect; and (F) do not require any notice, filing or other action to or by any governmental authority (other than those that have been made or obtained and are in full force and effect); (iii) this Agreement is its legal, valid and binding obligation, enforceable against it in accordance with its terms; (iv) except as disclosed in Applicant's filings with the SEC from time to time, there is no pending or threatened action or investigation which could reasonably be expected to have a Material Adverse Effect; (v) it is not an investment company within the meaning of the Investment Company Act of 1940 or, directly or indirectly, controlled by or acting on behalf of any party which is such an investment company; (vi) immediately after giving effect to the issuance of the Credit (or any increase or extension thereof), no Event of Default has occurred and is continuing; and (vii) its execution, delivery and performance hereof constitute private rather than public or government acts and neither it nor any of its property has any immunity from jurisdiction of any court or from set-off or any legal process under the laws of the State of New York or the laws of its jurisdiction of organization.

(b) Without limiting any Obligations of Applicant hereunder, Applicant represents, warrants and agrees as to any Credit issued to support obligations of a Subsidiary Account Party that: (i) Applicant is duly authorized to act for and bind such Subsidiary Account Party with respect to such Credit and this Agreement; (ii) such Subsidiary Account Party shall be jointly and severally liable with Applicant for the reimbursement, indemnification and other obligations, representations, warranties and agreements of Applicant hereunder in respect of such Credit, but not for the reimbursement, indemnification or other obligations, representations, warranties or agreements of Applicant hereunder in respect of any Credit not issued to support obligations of such Subsidiary Account Party; (iii) such Subsidiary Account Party has consented to its being referred to as the "applicant", "account party", "client", "customer" or "instructing party" at whose request or on whose behalf or for whose account such Credit is issued; (iv) such Subsidiary Account Party has consented to its not having any rights under this Agreement (including any right to request that Issuer issue or amend such Credit or that Issuer dispose of any documents presented under such Credit (or any goods represented thereby) in any particular manner) and to Issuer's treating Applicant as the sole Person entitled to exercise such rights with respect to such Credit; (v) such Subsidiary Account Party is a direct or indirect majority-owned subsidiary of Applicant at the time of issuance of such Credit (or of any increase or extension thereof); (vi) such Subsidiary Account Party is bound by all the limitations of liability and exculpations in Issuer's favor contained herein and subject to all the rights and remedies in Issuer's favor referred to herein as if it were Applicant; and (vii) Issuer shall not be required to send any notice hereunder to such Subsidiary Account Party, but if Issuer in its sole discretion chooses to do so, Issuer may send such notice as provided herein care of Applicant and such notice shall be effective as if given to such Subsidiary Account Party.

17. ***Events of Default.*** Each of the following shall be an "**Event of Default**" hereunder: (i) other than as a result of administrative or technical error so long as such error is corrected within three Business Days of notification to Applicant of such error, Applicant's failure to pay any reimbursement Obligation in respect of any drawing under any Credit within five Business Days after the same becomes due, (ii) Applicant's failure to pay any other Obligation within ten Business Days after the date when due, (iii) Applicant's failure to perform or observe any term or covenant of this Agreement (not otherwise an Event of Default) for more than 30 days after Issuer notifies Applicant in writing of such failure, except where such default cannot be reasonably cured within 30 days but can be cured within 60 days, Applicant has (A) during such 30-day period commenced and is diligently proceeding to cure the same and (B) such default is cured within 60 days after the earlier of becoming aware of such failure and receipt of notice to Applicant from Issuer specifying such failure, (iv) Applicant's breach in any material respect of any representation or warranty made in this Agreement, the Security Agreement or the Fee Letter and such inaccuracy is not remedied within 30 days after receipt of notice to Applicant from Issuer specifying such inaccuracy, (v) (A) Applicant's failure to pay when due at final stated maturity beyond the applicable grace period any indebtedness for borrowed money (other than the Obligations) of Applicant to Issuer or another having an aggregate principal amount greater than $50,000,000 (or the equivalent in any foreign currency), or (B) the acceleration of the final stated maturity of any such indebtedness, (vi) Applicant's repudiation of, or assertion of the unenforceability of, this Agreement, the Security Agreement or the Fee Letter or other agreement or undertaking supporting this Agreement, or any court or other governmental authority shall issue any order, ruling or determination that this Agreement or such other agreement or undertaking is not in full force and effect, (vii) Applicant's dissolution or termination, (viii) institution by Applicant of any proceeding under any law relating to bankruptcy, insolvency or reorganization or relief of debtors or seeking or consenting to the appointment of a liquidator, conservator, custodian, receiver, rehabilitator, trustee or other similar official for Applicant or for any substantial part of its property, or consent by Applicant to the institution of, or failure to contest in a timely and appropriate manner, any proceeding

described in Section 15(viii), or filing by Applicant of an answer admitting the material allegations of a petition filed against it in any proceeding described in Section 15(ix), or Applicant shall take any action for the purpose of effecting any of the foregoing, (ix) institution against Applicant of any proceeding under any law relating to bankruptcy, insolvency or reorganization or relief of debtors or seeking the appointment of a liquidator, conservator, custodian, receiver, rehabilitator, trustee or other similar official for Applicant or for any substantial part of its property, and any such proceeding or case shall be unstayed and in effect for more than 90 days, or an order for relief shall be entered therein, (x) Applicant's making an assignment for the benefit of creditors, (xi) Applicant's insolvency or inability generally to pay its debts as they become due, or (xii) the failure by Applicant to pay one or more final judgments having an aggregate amount greater than $50,000,000 (or the equivalent in any foreign currency) against Applicant which remains unstayed and unsatisfied for more than 60 days.

18. ***Remedies*****.** If any Event of Default shall have occurred and be continuing, Issuer may take any one or more of the following actions: (i) declare the amount of the Credit and any other Obligations then outstanding or accrued due and payable by Applicant immediately (provided that if the Event of Default is described in Section 15(viii), (ix) or (x), then such amount shall become due and payable immediately and automatically), in which case Applicant shall pay such amount to Issuer to be applied to pay any matured Obligations and held as cash collateral in a non-interest bearing account for any contingent Obligations, (ii) require Applicant to (and Applicant agrees that it shall) use its best efforts to cause Issuer to be promptly released from all its obligations under the Credit, and (iii) exercise any and all other rights and remedies available under the Security Agreement or at law, in equity, or otherwise to secure, collect, enforce or satisfy the Obligations. At Issuer's request during the continuance of any Event of Default, Applicant will assemble any Collateral and make it available to Issuer at a place designated by Issuer that is reasonably convenient to Issuer and Applicant. In addition, during the continuance of any Event of Default, Issuer may, without notice except as specified below, (i) obtain, cancel and adjust and settle losses under any insurance on any Collateral and endorse and negotiate any drafts, documents or instruments constituting Collateral, in each case in its own name or in the name and as agent of Applicant, or (ii) sell any or all of the Collateral at public or private sale, at any of Issuer's offices or elsewhere, for cash, on credit or for future delivery (but without credit risk to Issuer). To the extent notice of sale of the Collateral shall be required by law, Applicant agrees that written notice at least five days prior to the date of public sale or prior to the date after which private sale is to be made constitutes reasonable notification. Applicant shall pay to Issuer on demand all costs and expenses (including reasonable attorney's fees and disbursements) in connection with the custody, preservation or sale of, or other realization upon, the Collateral. Issuer may hold the proceeds of the Collateral as additional collateral under this Agreement or apply the proceeds to the payment of any of the Obligations, at such times and in such order as Issuer may determine. Issuer shall pay any surplus to Applicant or to whomever may be lawfully entitled to receive the surplus, and Applicant shall be liable for any deficiency.

19. ***[Reserved.]***.

20. ***Waiver of Immunity*****.** Applicant acknowledges that this Agreement is, and the Credit will be, entered into for commercial purposes of Applicant. To the extent that Applicant 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, Applicant hereby irrevocably waives any such immunity and agrees not to assert any such right or claim in any such proceeding.

21. ***Notices; Multiple Applicants; Applicant Status; Interpretation; Severability; Multiple Roles*****.**

(a) All notices and other communications under this Agreement shall be sent, if to Applicant or a Subsidiary Applicant that is a party to this Agreement on the date hereof, to its address or fax number indicated on its signature page to this Agreement, if to any Subsidiary Applicant that after the date hereof becomes a party to this Agreement, at its address specified in the Adherence Agreement pursuant to which it became a Subsidiary Applicant, and, if to Issuer, to its address shown above, Attention: Letter of Credit Department, or by fax to (212) 797-0780, or as to any of the foregoing, to such other address or fax number as it may notify to the other parties hereto in writing. No such notice shall be effective until actually received by Issuer's Letter of Credit Department or by Applicant or Subsidiary Applicant, as applicable, unless the intended recipient fails to maintain, or fails to notify, the other parties of any relevant change of its name, address or number(s), in which case such notice shall be effective when sent in accordance with this Agreement. Notices and other communications hereunder, including a signed application for a Credit, may also be delivered or furnished by other methods of electronic communications such as email; provided that, unless otherwise agreed in writing by Applicant, Subsidiary Applicants, if any, and Issuer, the recipient thereof shall have the option in its sole discretion whether or not to treat it as received and effective under this Agreement.

(b) If this Agreement is signed by two or more Persons as "Applicants", (i) each shall be deemed an "Applicant" hereunder and be jointly and severally liable for all the Obligations, (ii) the release, waiver, instruction or consent of any Applicant shall be sufficient to bind each Applicant with respect to this Agreement, the Credit or any claims arising under or in connection with this Agreement or the Credit, (iii) any Event of Default, regardless of fault, shall be deemed an Event of Default as to all Applicants, (iv) delivery by Issuer of any document, notice or other communication to any Applicant shall be deemed delivery to each Applicant, and (v) the liability of any Applicant hereunder may from time to time, in whole or in part, be extended, modified, released or reduced by Issuer without affecting or releasing any liability of any other Applicant. Each Applicant agrees that its obligations hereunder are primary, waives all discharge defenses available to a secondary obligor, and forgoes negotiation of a separate guaranty and security agreement providing for secondary liability to Issuer.

(c) Issuer may treat each Person that signs this Agreement and each other Person authorized to act generally for Applicant or specifically in the matter as actually authorized to act for Applicant in amending this Agreement, in authorizing Issuer to issue or amend the Credit, waive any discrepancy, pay or otherwise act under the Credit, in receiving any notice (including service of process) in connection with this Agreement, and in agreeing to indemnify Issuer for any action or inaction taken or proposed. Any change in the identity of Persons authorized to act for Applicant shall be ineffective until notified in writing to Issuer.

(d) Each Person identified in this Agreement as an Applicant represents and warrants that (i) it acts for itself in requesting issuance of the Credit for its account, or it acts for a Subsidiary Account Party in requesting issuance of the Credit for such Subsidiary Account Party, and (ii) it may be identified in the Credit as an "applicant", "account party", "client", "customer" or "instructing party" at whose request and on whose behalf or for whose account the Credit is issued.

(e) In this Agreement: (i) headings are included only for convenience and are not interpretative; (ii) the term "including" means "including without limitation"; (iii) references to actions Issuer "may" take or omit to take mean "may in its sole discretion"; (iv) unless the context requires otherwise, references herein to Sections shall be construed to refer to Sections of this Agreement; and (v) references to any laws or rules include any amendments thereto or successor or replacement laws or rules.

(f) If any provision of this Agreement is held illegal or unenforceable, the validity of the remaining provisions shall not be affected.

(g) Applicant acknowledges and agrees that (i) Issuer and its affiliates offer a wide range of financial and related services, which may at any time include back-office processing services on behalf of financial institutions, letter of credit beneficiaries, and other customers; (ii) some of these customers may be Applicant's counter-parties or competitors; and (iii) Issuer and its affiliates may perform more than one role in relation to the Credit.

22. ***Successors and Assigns; Etc.*** This Agreement shall be binding upon Applicant and its successors and assigns, and shall inure to the benefit of and be enforceable by Issuer and its successors and assigns. Applicant agrees that delivery of a signed copy or signature page of this Agreement by any electronic means that reproduce an image of the signed signature page shall be as effective as delivery of a manually signed original of this Agreement. Applicant shall not transfer or otherwise assign any of its rights or obligations under this Agreement without Issuer's prior written consent. Issuer may transfer or otherwise assign its rights and obligations under this Agreement, in whole or in part, with the prior written consent of Applicant (which shall not be unreasonably withheld); provided that if an Event of Default has occurred and is continuing, the consent of Applicant shall not be required. Issuer may grant participations in its rights and obligations under this Agreement or the Credit, in whole or in part, with the consent of Applicant (which shall not be unreasonably withheld); provided that if an Event of Default has occurred and is continuing, the consent of Applicant shall not be required; provided, further, that (i) Issuer's obligations under this Agreement shall remain unchanged, (ii) Issuer shall remain solely responsible to Applicant for the performance of such obligations and (iii) Applicant shall continue to deal solely and directly with Issuer in connection with Issuer's rights and obligations under this Agreement. Applicant acknowledges that information pertaining to Applicant as it relates to this Agreement or the Credit may be disclosed to actual or prospective participants, transferees or assignees. This Agreement shall not be construed to confer any right or benefit upon any Person other than Issuer, the Indemnified Parties and Applicant and their respective successors and permitted assigns, and no such Person shall be deemed a third-party beneficiary hereof, except that Applicant's obligations under Section 5 may be enforced directly against Applicant by a participant; provided that such enforcement shall not increase the amount of the Obligations.

23. ***Modification; No Waiver*****.** None of the terms of this Agreement may be waived, terminated or amended orally, by course of dealing, or otherwise, except in a writing signed by the party against whose interest the term is waived, terminated or amended; provided that the signature of the undersigned Applicant shall also be binding upon each

of its affiliates that at any time is bound by any of the provisions of this Agreement. Forbearance, failure or delay by Issuer in the exercise of a right or remedy shall not constitute a waiver, nor shall any exercise or partial exercise of any right or remedy preclude any further exercise of that or any other right or remedy. Any waiver or consent by Issuer shall be effective only in the specific instance and for the specific purpose for which it is given.

24. ***Entire Agreement; Remedies Cumulative*.** This Agreement constitutes the entire agreement between the parties hereto concerning the subject matter hereof and supersedes all prior or simultaneous agreements, written or oral, with respect to the subject matter hereof. All rights and remedies of Issuer and all obligations of Applicant under or in connection with this Agreement and any other documents delivered in connection with this Agreement are cumulative and in addition to those provided or available at equity or under any applicable law.

25. ***Continuing Agreement; Termination*.** This is a continuing agreement and shall remain in full effect until the earlier of (a) receipt by each Issuer of written notice of termination from Applicant specifically referring to this Agreement or (b) delivery by each Issuer to Applicant of a written notice of termination specifically referring to this Agreement (which notice may be delivered without regard to whether any Event of Default exists). Termination shall not release Applicant from any liability for Obligations existing on the date of such receipt or delivery of the termination notice, as applicable, or resulting from or incidental to a Credit issued on or before such date or issued pursuant to any Issuer commitment existing on such date. Upon termination of this Agreement, (i) Applicant shall cease to request the issuance of any further Credit hereunder or any increase or extension of any outstanding Credit hereunder and (ii) Issuer shall have all the rights and remedies provided in Section 16. Provisions of this Agreement relating to Taxes, indemnities, payment of costs and expenses, exculpations and limitations on liability, waivers of immunity, jurisdiction, and waiver of trial by jury shall survive any termination of this Agreement, expiration of the Credit, and irrevocable and final payment of all the Obligations.

26. ***Governing Law; Practice; UCP; ISP; URDG*.**

(a) **This Agreement and the rights and obligations of the parties under or in connection with this Agreement shall be governed by and subject to the laws of the State of New York applicable to contracts made and to be performed in such State (including New York General Obligations Law Section 5-1401) and applicable federal laws of the United States of America. In the event that the Credit expressly chooses a state or country law other than the State of New York, Applicant shall be obligated to reimburse Issuer for payments made under the Credit if such payment is justified under New York law or such other law.**

(b) **Unless Applicant specifies otherwise in its application for the Credit, Issuer at its option may issue the Credit subject to the UCP, the ISP or the URDG, or such later supplement to or revision of any thereof as is in effect at the time of issuance of the Credit (collectively, the "Practices"). Issuer's rights and remedies under the Practices shall be in addition to, and not in limitation of, those expressly provided herein.**

(c) **To the extent permitted by applicable law, (i) this Agreement shall prevail in case of conflict with the Practices or the UCC and (ii) the Practices shall prevail in case of conflict between the Practices and the UCC.**

27. ***Jurisdiction; Service of Process; Enforcement*.**

(a) **Applicant consents and submits to the exclusive jurisdiction of any state or federal court sitting in New York County, in the State of New York, for itself and in respect of any of its property, in any action or proceeding arising under or in connection with this Agreement or the Credit. Applicant waives any objection to venue or any claim of forum non conveniens with respect to any action or proceeding in any court described in this paragraph.**

(b) **Applicant agrees that any service of process may be served upon it by Issuer by mail or hand delivery if sent to the address for notices to Applicant under this Agreement or to the Person designated on the signature page(s) of this Agreement as "Applicant's Authorized Agent," which Person Applicant now designates as its authorized agent for the service of process.**

(c) **Nothing in this Agreement shall affect Issuer's right to serve process in any other manner permitted by law or to commence legal proceedings or otherwise proceed against Applicant in any other jurisdiction. Applicant agrees that final judgment against it in any action or proceeding shall be enforceable in any other jurisdiction within or outside the United States of America by suit on the judgment, a certified copy of which shall be conclusive evidence of the judgment.**

[SIGNATURE PAGE FOLLOWS]

28. ***JURY TRIAL WAIVER*. EACH OF APPLICANT AND ISSUER WAIVES ANY RIGHT IT MAY HAVE TO A JURY TRIAL OF ANY CLAIM, COUNTERCLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS AGREEMENT, THE CREDIT, OR ANY DEALINGS WITH ONE ANOTHER RELATING TO THE SUBJECT MATTER OF THIS AGREEMENT.**

Very truly yours,

Applicant:

SunPower Corporation
(*Print Name of Applicant*)

By: /s/ Dennis Arriola
(*Signature of Authorized Signer*)

(*Print Name of Authorized Signer*)

(*Title of Authorized Signer*)

Address for notices, etc. to Applicant:

77 Rio Robles
San Jose, California 95134
Attention: Dennis Arriola
Telephone number: 408-240-5500
Fax number: 408-240-5404

Applicant's jurisdiction of organization, organization type & organizational number (*if applicable*):
Jurisdiction: Delaware
Organization Type: Corporation
Organizational Number: 3808702

Applicant's Social Security or Federal tax identification number (*if applicable*): 94-3008969

Applicant's Authorized Agent (for service of process per Section 27(b)):

Print Name: The Corporation Trust Company

Complete Address: Corporation Trust Center, 1209 Orange Street, Wilmington, DE 19801
(*which must be in the State of New York)*

Subsidiary Applicant:

SunPower Corporation, Systems
(*Print Name of Subsidiary Applicant*)

By: /s/ Dennis Arriola
(*Signature of Authorized Signer*)

_____
(*Print Name of Authorized Signer*)

_____
(*Title of Authorized Signer*)

Address for notices, etc. to Subsidiary Applicant:
77 Rio Robles
San Jose, California 95134
Attention: Dennis Arriolo
Telephone number: 408-240-5500
Fax number: 408-240-5404

ACCEPTED AND AGREED TO:

DEUTSCHE BANK AG
NEW YORK BRANCH

By: /s/ Alida Lado
Name: Alida Lado
Title: V.P.

By: /s/ Shirley James
Name: Shirley James
Title: VP

ACCEPTED AND AGREED TO:

DEUTSCHE BANK
TRUST COMPANY AMERICAS

By: /s/ Stephen Freeman
Name: Stephen Freeman
Title: Director

By: /s/ Tracy Mantone
Name: Tracy Mantone
Title: Vice President

SCHEDULE I to Continuing Agreement for Standby Letters of Credit and Demand Guarantees dated September 27, 2011 among SunPower Corporation, Deutsche Bank AG New York Branch, Deutsche Bank Trust Company Americas and the other parties thereto from time to time

SUBSIDIARY ACCOUNT PARTIES

Listed below are the initial Subsidiary Account Parties proposed by Applicant. Unless each Issuer accepts and agrees to such Subsidiary Account Parties by signing below in its sole discretion, the list below shall be deemed to indicate "None."

Exact Legal Name of Subsidiary Account Party	Jurisdiction and Type of Organization
None	None

Applicant may from time to time propose additional Subsidiary Account Parties on a supplement to this Schedule I, but they shall not become Subsidiary Account Parties without the written approval of each Issuer in its sole discretion.

Dated as of September 27, 2011.

SUNPOWER CORPORATION

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

ACCEPTED AND AGREED TO:

DEUTSCHE BANK AG
NEW YORK BRANCH

By: /s/ Alida Lado
Name: Alida Lado
Title: V.P.

By: /s/ Shirley James
Name: Shirley James
Title: VP

ACCEPTED AND AGREED TO:

DEUTSCHE BANK
TRUST COMPANY AMERICAS

By: /s/ Tracy Mantone
Name: Tracy Mantone
Title: Vice President

By: /s/ Stephen Freeman
Name: Stephen Freeman
Title: Director

EXHIBIT A to Continuing Agreement for Standby Letters of Credit and Demand Guarantees dated September 27, 2011 among SunPower Corporation, Deutsche Bank AG New York Branch, Deutsche Bank Trust Company Americas and the other parties thereto from time to time

ADHERENCE AGREEMENT FOR SUBSIDIARY APPLICANTS

Deutsche Bank AG New York Branch and
Deutsche Bank Trust Company Americas
60 Wall Street
New York, New York 10005-2858

_____
(insert date)

Re: Continuing Agreement for Standby Letters of Credit and Demand Guarantees dated September 27, 2011 among SunPower Corporation, Deutsche Bank AG New York Branch, Deutsche Bank Trust Company Americas and the other parties thereto from time to time, (as amended, supplemented or otherwise modified from time to time, the "**Agreement**")

Ladies and Gentlemen:

Capitalized terms used but not otherwise defined herein shall have the respective meanings assigned thereto in the Agreement.

We hereby agree to be a Subsidiary Applicant upon the terms and subject to the conditions set forth in the Agreement, including, without limitation, that pursuant to Section 4(d) of the Agreement we shall be jointly and severally liable with Applicant to Issuer for all the reimbursement, indemnification and other obligations, representations, warranties and other agreements of Applicant in respect of any Credit requested by us.

Except as expressly modified by this letter, all provisions of the Agreement remain in full force and effect. This letter shall be governed by the laws of the State of New York, without regard to principles of conflict of laws. This letter shall become effective as of the date hereof.

Address:

_____
_____
Attention: _____
Telephone:_____
Facsimile: _____

Very truly yours,

_____
(*Name of Subsidiary Applicant*)

By: _____
Name:
Title:

ACCEPTED AND AGREED:

_____
(Name of Applicant)

By: _____
Name:
Title:

DEUTSCHE BANK AG NEW YORK BRANCH

By: _____
Name:
Title:

By: _____
Name:
Title:

DEUTSCHE BANK TRUST COMPANY AMERICAS

By: _____
Name:
Title:

By: _____
Name:
Title:

EXHIBIT B to Continuing Agreement for Standby Letters of Credit and Demand Guarantees dated September 27, 2011 among SunPower Corporation, Deutsche Bank AG New York Branch, Deutsche Bank Trust Company Americas and the other parties thereto from time to time

NOTICE OF TERMINATION

Reference is made to the Continuing Agreement for Standby Letters of Credit and Demand Guarantees dated September 27, 2011 among SunPower Corporation, Deutsche Bank AG New York Branch, Deutsche Bank Trust Company Americas and the other parties thereto from time to time (as amended, supplemented or otherwise modified from time to time, the "**Continuing Agreement**"; capitalized terms used but not otherwise defined herein shall have the respective meanings assigned thereto in the Continuing Agreement).

Applicant hereby notifies Issuer that *(insert applicable Subsidiary Applicant's name)* _____ (the "**Terminating Subsidiary Applicant**") shall cease to be a "Subsidiary Applicant" under the Continuing Agreement.

Applicant acknowledges and agrees that notwithstanding the preceding sentence, this Notice of Termination will not become effective until such time as all Obligations of Terminating Subsidiary Applicant shall have been paid in full in cash and all Credits issued at the request of Terminating Subsidiary Applicant shall have expired without any pending drawing or terminated; provided that this Notice of Termination shall be effective as of the date hereof to terminate Terminating Subsidiary Applicant's right to request the issuance of any new Credits under the Continuing Agreement or any increase in the amount of any other Credit.

Dated as of: _____, 20__ _____

(*Name of Applicant*)

By: _____
Name:
Title:

Deutsche Bank

Letter of Credit or Demand Guarantee number: _____

APPLICATION FOR IRREVOCABLE STANDBY LETTER OF CREDIT OR DEMAND GUARANTEE
UNDER CONTINUING AGREEMENT FOR STANDBY LETTERS OF CREDIT AND DEMAND GUARANTEES

Applicant (*Full name and address*)**:**	**Issuing Bank:** Deutsche Bank AG New York Branch or Deutsche Bank Trust Company Americas 60 Wall Street New York, New York 10005
Date of Application:	**Expiry Date:** **Place of Expiry:**
☐ Issue by (air) mail ☐ with brief advice by teletransmission ☐ Issue by [illegible] ☐ Issue by [illegible] (specify) ☐ Pick-up **Name and Jurisdiction of Organization of any Subsidiary Account Party for this Credit** *(or specify "None")***:**	**Beneficiary** (*Full name and address*):
Confirmation of the Credit: ☐ not requested ☐ requested ☐ authorized ☐ requested by Beneficiary ☐ Credit to be issued with the terms and conditions set forth in the attached specimen	**Currency and Amount in Figures and Words** (*Please use ISO Currency Codes*):

Credit available against the document(s) detailed herein:
☐ Beneficiary's sight draft(s) drawn on Issuing Bank
☐ Original Credit and any and all amendments to the Credit
☐ Beneficiary's signed and dated statement, reading as follows:
☐ Other documents (*specify issuer(s) and data content*):

Credit to be issued subject to (*check one*):
☐ International Standby Practices (ISP98), International Chamber of Commerce Publication No. 590 (ISP98), or such later revision thereof in effect at the time of issuance.
☐ Uniform Rules for Demand Guarantees (URDG 758), International Chamber of Commerce Publication No. 758.

☐ See attached for additional instructions	☐ Charge account of the Credit is paying for all or a portion of the amount of the Credit

The undersigned requests you to issue your irrevocable letter of credit, demand guarantee or similar undertaking (herein called the "**Credit**"), substantially in accordance with these instructions (*marked (x) where appropriate*). The undersigned agrees to be bound in respect of the Credit by the terms and conditions of the Continuing Agreement for Standby Letters of Credit and Demand Guarantees dated September 27, 2011 as amended, supplemented or otherwise modified from time to time, made by the undersigned (and, if applicable, one or more other parties) to Deutsche Bank AG New York Branch and Deutsche Bank Trust Company Americas (which Agreement you may have received by fax transmission). The undersigned represents and warrants to you that (i) no Event of Default (as defined in such Agreement) 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 Credit and (ii) all representations and warranties contained in such 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 Credit.

Applicant's or Subsidiary Applicant's Name:

By: _____
Print Name:
Title:

THIS IS AN IMPORTANT LEGAL DOCUMENT. CONSULT WITH YOUR LEGAL COUNSEL.

Exhibit 10.11

CONFIDENTIAL TREATMENT REQUESTED

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

SECURITY AGREEMENT (MMDA INVESTMENT OPTION)

SECURITY AGREEMENT dated as of September 27, 2011(this "Agreement"), among SUNPOWER CORPORATION, a Delaware corporation ("Grantor"), DEUTSCHE BANK TRUST COMPANY AMERICAS ("DBTCA"), and DEUTSCHE BANK AG NEW YORK BRANCH ("DBAGNY", and together with DBTCA, the "Secured Parties", and in its capacity as depositary bank with respect to the Account referred to below (the "Depositary Bank")).

SECTION 1. DEFINED TERMS

1.1 Capitalized terms used but not defined herein shall have the meanings assigned thereto in the Continuing Agreement for Standby Letters of Credit and Demand Guarantees of even date herewith (as amended, supplemented or otherwise modified from time to time, the "Continuing Agreement") among Grantor, the Secured Parties and any other parties thereto from time to time. The following terms shall have the following meanings when used herein:

"Account Agreements": any and all agreements between the Depositary Bank and Grantor relating to the Account (as defined in Section 3).

"Lien": any mortgage, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or other), charge or other security interest or any preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever (including any conditional sale or other title retention agreement and any capital lease having substantially the same economic effect as any of the foregoing).

"New York UCC": the Uniform Commercial Code as in effect on the date hereof in the State of New York.

"Proceeds": all "proceeds" as such term is defined in Section 9-102(a)(64) of the New York UCC.

SECTION 2. GRANT OF SECURITY INTEREST

As security for the full payment of all Obligations, Grantor hereby grants to the Secured Parties a continuing and perfected security interest in all of Grantor's right, title and interest in, to and under 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, the "Collateral"): (a) the Account; (b) all funds, checks, and other assets deposited or held in or credited to the Account; (c) all interest and other property received, receivable or otherwise distributed or distributable in respect of, or in exchange for, any of the foregoing; (d) all certificates and instruments evidencing any of the foregoing; and (e) all Proceeds of any of the foregoing.

SECTION 3. ACCOUNT

3.1 Grantor has established with the Depositary Bank a non-personal Money Market Deposit Account entitled "Trade F/B/O SunPower Corporation", Account Number: *** (including any and all subaccounts thereof, segregated accounts thereunder and successor, replacement or substitute accounts therefor maintained by the Depositary Bank for Grantor and including any redesignation thereof, the "Account"), which shall be a blocked account of Grantor under the sole control of the Secured Parties, as to which Grantor shall have no right to draw checks or give other instructions or orders except as expressly permitted by this Agreement. Each of the Secured Parties, the Depositary Bank and Grantor hereby agree that (a) the Account is a "deposit account" within the meaning of Section 9-102(a)(29) of the New York UCC and (b) for purposes of Part 3 of Article 9 of the New York UCC, the State of New York shall be deemed to be the Depositary Bank's jurisdiction within the meaning of Section 9-304(b)(1) of the New York UCC. Interest and any other amounts earned on or received in respect of any assets held in or credited to the Account shall be periodically added to the principal amount of the Account, as applicable, and shall be held, credited, disbursed and applied in accordance with the provisions of this Agreement.

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

SECTION 4. ACCOUNT AGREEMENTS

On or prior to the date hereof, Grantor shall have executed the Depositary Bank's "Transaction Banking Services Agreement" (or another agreement satisfactory to the Depositary Bank relating to the terms and conditions applicable to the Account). By executing this Agreement, Grantor hereby agrees to the terms and conditions of the Depositary Bank's Money Market Deposit Account Agreement set forth in Annex A attached hereto. The terms and conditions of this Agreement shall govern and prevail in the event of any conflict with the terms and conditions set forth in such Annex A.

SECTION 5. REPRESENTATIONS AND WARRANTIES

Grantor hereby represents and warrants to the Secured Parties and the Depositary Bank that (a) Grantor has all requisite power and authority, and has taken all necessary action to execute and deliver this Agreement; (b) this Agreement constitutes Grantor's legal, valid and binding obligation, enforceable against it in accordance with its terms, except as such enforceability may be limited by (i) applicable bankruptcy, moratorium or other similar laws, now or hereafter in effect, relating to the enforcement of creditors' rights generally, and (ii) the application of general principles of equity; and (c) Grantor owns the Collateral free and clear of any and all Liens or claims of others, except for Permitted Liens (as defined in Section 6.1).

SECTION 6. COVENANTS

Grantor covenants and agrees with the Secured Parties and the Depositary Bank that, until all the Credits shall have terminated or expired without any pending drawing and the Obligations shall have been paid in full in cash:

6.1 Liens; Further Documentation. (a) Grantor shall not create or suffer to exist any Lien on the Collateral (other than (i) security interests granted to the Secured Parties, (ii) any security interest of the Depositary Bank in respect of the Account, (iii) Liens for taxes or other governmental charges which are not delinquent or which are being contested in good faith and for which a reserve shall have been established in accordance with generally accepted accounting principles in the United States as in effect from time to time and (iv) statutory and other Liens imposed by law created in the ordinary course of business for amounts not yet due or which are being contested in good faith by appropriate proceedings diligently conducted and with respect to which adequate bonds have been posted (the Liens described in clauses (i), (ii), (iii) and (iv) are collectively referred to herein as "Permitted Liens")); (b) at any time, upon the written request of the Secured Parties, and at the sole expense of Grantor, Grantor will promptly and duly execute and deliver, and have recorded, such further instruments and documents and take such further actions as the Secured Parties may reasonably request for the purpose of obtaining or preserving the full benefits of this Agreement and of the rights and powers herein granted; and (c) Grantor shall defend any security interest granted to the Secured Parties hereunder against the claims and demands of all Persons (other than the Secured Parties) whomsoever.

6.2 Collateral Maintenance Requirement. Notwithstanding anything to the contrary contained in any other Account Agreement, Grantor shall ensure that the aggregate market value of the Collateral held in the Account shall at all times be equal to or greater than an amount (such amount, the "Required Collateral Amount") equal to the product of (a) 100% times (b) the sum at such time of (i) the aggregate undrawn amount of all outstanding Credits (giving effect to any scheduled increases in the amount of each Credit in accordance with its terms and including any pending drawings made prior to expiration of the applicable Credit), plus (ii) the aggregate amount of all unreimbursed drawings under the Credits. If at any time the aggregate market value of the Collateral held in the Account shall exceed the Required Collateral Amount (such excess, "Excess Collateral") or if the security interest in the Collateral shall be released in accordance with Section 12.6 hereof, then, reasonably promptly after Grantor's written request therefor and after Grantor shall have provided to the Secured Parties any evidence thereof reasonably requested by the Secured Parties, the Secured Parties shall direct the Depositary Bank to transfer to Grantor such Excess Collateral or all of the remaining Collateral, as applicable, in accordance with the funds transfer service provisions set forth in the Account Agreements then in effect between Grantor and the Depositary Bank (or, in accordance with such other instructions as the Depositary Bank and Grantor may mutually agree in writing in the absence of any such provisions covering funds transfer services in such Account Agreements); provided, that the Secured Parties shall not be obligated to direct the Depositary Bank to make any such transfer more often than once

in any calendar quarter due to there being Excess Collateral solely as a result of interest and/or other amounts being credited to the Account

SECTION 7. REMEDIAL PROVISIONS

7.1 Certain Remedies. At any time, at the election of the Secured Parties, if an Event of Default shall have occurred and be continuing, (a) the Secured Parties may direct the Depositary Bank to transfer to them (as directed by the Secured Parties) all or any part of the funds then held in the Account and the Secured Parties may then apply all or any part of the Collateral in payment of the Obligations in the following order: first, to pay unpaid fees and expenses due and owing to such Secured Party; second, for application by such Secured Party towards payment of any matured amounts then due and owing and remaining unpaid in respect of the Obligations; and third, any balance remaining after the outstanding matured Obligations shall have been paid in full in cash and in excess of the Required Collateral Amount shall be paid over to Grantor or to whomsoever may be entitled thereto; and (b) the Secured Parties may exercise, in addition to all other rights and remedies granted to it in this Agreement and in any other instrument or agreement securing or relating to the Obligations, all rights and remedies of a secured party under the UCC or any other applicable law.

7.2 Secured Party's Appointment as Attorney-in-Fact, etc. Grantor hereby irrevocably constitutes and appoints each Secured Party and any officer or agent 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 Grantor and in the name of Grantor 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; provided that such Secured Party shall not exercise such rights except during the continuance of an Event of Default. Grantor hereby ratifies all that said attorneys shall lawfully do or cause to be done by virtue hereof. All powers, authorizations and agencies contained in this Agreement are coupled with an interest and are irrevocable until this Agreement is terminated and the security interests created hereby are released.

7.3 The Secured Parties' sole duty with respect to the custody, safekeeping and physical preservation of the Collateral in its possession, under Section 9-207 of the New York UCC or otherwise, shall be to deal with it in the same manner as such Secured Party deals with similar property for its own account. The powers conferred on each Secured Party hereunder are solely to protect such Secured Party's interests in the Collateral and shall not impose any duty upon either Secured Party to exercise any such powers. The Secured Parties 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 Grantor for any act or failure to act hereunder, except for its own gross negligence or willful misconduct as determined by a final and nonappealable decision of a court of competent jurisdiction.

SECTION 8. DEPOSITARY BANK ACKNOWLEDGMENT

By executing this Agreement, the Depositary Bank (a) is deemed to have received notice of the security interest created over the Collateral pursuant hereto and the terms set out herein; (b) accepts the instructions and authorization contained herein (including in Section 9 below) and undertakes to act in accordance with and to comply with the terms thereof; and (c) represents, warrants and undertakes to the Secured Parties that: (i) except for Permitted Liens, no Lien that it is aware of exists on, over or with respect to the Account or any other Collateral or any part thereof; and (ii) except for the claims and interest of the Secured Parties, as secured party, and of Grantor, as customer, in the Account, it has not, as the date hereof, received any notice that any third party has or will have any right or interest whatsoever in, or has made or will be making any claim or demand or take any action whatsoever against or in respect of, the Account or any other Collateral or any part thereof, and if, after the date hereof, it receives any such notice, it shall immediately give written notice thereof to the Secured Parties.

SECTION 9. INSTRUCTIONS

9.1 Instructions. Each of Grantor and the Secured Parties irrevocably and unconditionally instructs the Depositary Bank (notwithstanding any previous instructions to the contrary):

(a) to disclose to any Secured Party, without any reference to or further authority from the other Secured Party or Grantor and without any inquiry by the Depositary Bank as to the justification for such disclosure, such information relating to the Account or other Collateral as such Secured Party may, at any time and from time to time, request the Depositary Bank to disclose to it; and

(b) to comply with the terms of any written instructions (including any instructions as to the payment of the Collateral) in any way relating or purporting to relate to the Account or the other Collateral which the Depositary Bank may receive at any time and from time to time from the Secured Parties without any reference to or further authority from the Secured Parties or Grantor and without any inquiry by the Depositary Bank as to the justification therefor or the validity thereof; provided that the Secured Parties agrees with Grantor that it shall not give any such instructions to the Depositary Bank unless an Event of Default shall have occurred and be continuing.

9.2 Control. Without limiting any other means of perfecting the Secured Parties' security interest in any or all of the Collateral, (a) as to any Collateral now or hereafter held in or credited to the Account in the event the Account constitutes a securities account (as defined in Section 8-501(a) of the New York UCC) as to which the Depositary Bank is the securities intermediary (as defined in Section 8-102(a)(14) of the New York UCC), the Depositary Bank 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 Secured Parties without further consent by Grantor, and (b) as to any Collateral now or hereafter held in or credited to the Account in the event the Account constitutes a deposit account (as defined in Section 9-102(a)(29) of the New York UCC) maintained at the Depositary Bank, the Depositary Bank will comply with instructions originated by the Secured Parties directing disposition of the funds in such deposit account without further consent by Grantor.

9.3 No One Else Shall Have Control. The Depositary Bank represents that it has not agreed, and covenants that it will not agree, with any third party to comply with any orders or instructions concerning the Collateral except with the prior written consent of Grantor and the Secured Parties.

SECTION 10. SUBORDINATION

The Depositary Bank hereby subordinates any Lien or right of set-off or recoupment it may now or hereafter have on or in respect of the Account or any other Collateral to the Lien of the Secured Parties; provided that this subordination shall not apply to any Lien or right of set-off or recoupment securing obligations to the Depositary Bank arising out of the operation of the Account, including (a) all amounts due to the Depositary Bank in respect of its customary fees and expenses for the maintenance and operation of the Account, and (b) the face amount of any checks which have been credited to the Account but are subsequently returned unpaid because of uncollected or insufficient funds.

SECTION 11. CERTAIN RIGHTS OF DEPOSITARY BANK

11.1 Exculpations, Etc. Notwithstanding any provision contained herein to the contrary, neither the Depositary Bank nor any of its officers, directors, employees, affiliates or agents (collectively, the "Other Indemnified Parties") shall be liable for (x) any action taken or not taken by the Depositary Bank (or the Other Indemnified Parties) at the instruction of any of the Secured Parties, or (y) any action taken or not taken by the Depositary Bank (or the Other Indemnified Parties) under or in connection with this Agreement, except for the Depositary Bank's (or the Other Indemnified Party's) own gross negligence or willful misconduct. Without limiting the foregoing, and notwithstanding any provision to the contrary elsewhere, the Depositary Bank and the Other Indemnified Parties:

(a) 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 Depositary Bank; without limiting the foregoing, the Depositary Bank 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 Grantor and the Secured Parties, or to

determine whether or not the Secured Parties are entitled to give any orders or instructions with respect to the Collateral;

(b) may in any instance where the Depositary Bank 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 Secured Parties or advice from legal counsel (or other appropriate advisor), as the case may be; provided that the Depositary Bank gives prompt written notice to the Secured Parties of such concerns;

(c) 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;

(d) will not be responsible to the Secured Parties or any other Person for the due execution, legality, validity, enforceability, genuineness, effectiveness or sufficiency of this Agreement (provided, however, that the Depositary Bank represents and warrants that the Depositary Bank has the legal capacity and has been duly authorized to enter into this Agreement) or for any statement, warranty or representation made by any other party in connection with this Agreement;

(e) 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;

(f) shall not be required by any provision of this Agreement to expend or risk the Depositary Bank'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 Depositary Bank shall have been provided with security or indemnity, acceptable to the Depositary Bank, for the payment of the costs, expenses (including reasonable attorneys' fees) and liabilities which may be incurred therein or thereby; and

(g) shall not be responsible for the title, validity or genuineness of any Collateral in or delivered into the Account.

11.2 Expenses; Indemnity. Grantor agrees to pay or reimburse the Depositary Bank for all its reasonable costs and expenses incurred in enforcing or preserving any rights under this Agreement and any Account Agreement, including the reasonable and documented fees and disbursements of counsel. Grantor agrees to pay, and to save the Depositary Bank harmless from, any and all liabilities with respect to, or resulting from any delay in paying, any and all stamp, excise, sales or other taxes which may be payable or determined to be payable in connection with the Collateral or any of the transactions contemplated by this Agreement. Grantor agrees to pay, and to save the Depositary Bank and the Other Indemnified harmless from, any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever, including the fees and disbursements of counsel to the Depositary Bank (collectively, "Depositary Bank Losses"), with respect to the execution, delivery, enforcement, performance and administration of this Agreement, except to the extent such Depositary Bank Losses resulted from the negligence or willful misconduct of the Depositary Bank or the Other Indemnified Parties. The agreements in this Section shall survive repayment of the Obligations.

11.3 Legal Process. 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 Depositary Bank is authorized to comply with any such order in any manner as the Depositary Bank or its legal counsel reasonably deems appropriate and shall give the Secured Parties prompt written notice of such compliance. If the Depositary Bank complies with any process, order, writ, judgment or decree relating to the Collateral, then the Depositary Bank shall not be liable to the Secured Parties,

Grantor 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.

11.4 Force Majeure. The Depositary Bank 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 Depositary Bank 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.

SECTION 12. MISCELLANEOUS

12.1 Amendments in Writing. None of the terms of this Agreement may be waived, terminated or amended, except in a writing signed by the party against whose interest the term is waived, terminated or amended.

12.2 Notices. All notices to the parties hereunder shall be addressed (a) if to Grantor, to 77 Rios Robles, San Jose, California, 95134, Attention: Dennis Arriolo, (b) if to DBTCA, to 60 Wall Street, 22nd Floor, New York, New York, 10005, Attention: Trade Services, (c) if to DBAGNY, to 60 Wall Street, 22nd Floor, New York, New York, 10005, Attention: Trade Services, and (d) if to the Depositary Bank, to 60 Wall Street, 22nd Floor, New York, New York, 10005, Attention: Trade Services. Notices hereunder may also be delivered or furnished by other methods of electronic communications such as email; provided that, unless otherwise agreed in writing by the Secured Parties, the Depositary Bank and Grantor, the recipient thereof shall have the option in its sole discretion whether or not to treat it as received and effective under this Agreement. Each party may change its address for notices hereunder by giving notice in writing of the change to the other party.

12.3 No Waiver by Course of Conduct; Cumulative Remedies. Forbearance, failure or delay by any party hereto in the exercise of a right or remedy shall not constitute a waiver, nor shall any exercise or partial exercise of any right or remedy preclude any further exercise of that or any other right or remedy. Any waiver or consent by any party hereto shall be effective only in the specific instance and for the specific purpose for which it is given. All rights and remedies of the Secured Parties and the Depositary Bank and all obligations of Grantor under or connection with this Agreement and any other documents delivered in connection with this Agreement are cumulative and in addition to those provided or available at equity or under any applicable law.

12.4 Enforcement Expenses; Indemnification. Grantor agrees to pay or reimburse the Secured Parties for all its reasonable costs and expenses incurred in enforcing or preserving any rights under this Agreement and any Account Agreement, including the reasonable and documented fees and disbursements of counsel to the Secured Parties. Grantor agrees to pay, and to save the Secured Parties harmless from, any and all liabilities with respect to, or resulting from any delay in paying, any and all stamp, excise, sales or other taxes which may be payable or determined to be payable in connection with the Collateral or any of the transactions contemplated by this Agreement. Grantor agrees to pay, and to save the Secured Parties and its officers, directors, employees, affiliates and agents (each, an "Indemnitee") harmless from, any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever, including the fees and disbursements of counsel to the Secured Parties (collectively, "Losses"), with respect to the execution, delivery, enforcement, performance and administration of this Agreement, except to the extent such Losses resulted from the negligence or willful misconduct of such Indemnitee. The agreements in this Section shall survive repayment of the Obligations.

12.5 Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of each of the parties hereto and each of their respective successors and assigns; provided that Grantor may not assign, transfer or delegate any of its rights or obligations under this Agreement without the prior written consent of the Secured Parties.

12.6 Release. The security interest in the Collateral granted to the Secured Parties hereunder shall be released only upon satisfaction of all of the following conditions precedent: (a) each Credit shall have expired without any pending drawing or terminated (or, in the sole discretion of the Secured Parties, each Credit shall have

been cash collateralized in a manner satisfactory to the Secured Parties); and (b) all Obligations shall have been fully paid in cash.

12.7 Counterparts. This Agreement may be executed in any number of separate counterparts, all of which together shall be deemed to constitute one and the same instrument. Delivery of an executed counterpart of a signature page of this Agreement by any electronic means that reproduces an image of the actual executed signature page shall be effective as delivery of a manually executed counterpart of this Agreement.

12.8 Severability. If any provision of this Agreement is held illegal or unenforceable, the validity of the remaining provisions shall not be affected.

12.9 **Governing Law. This Agreement and the rights and obligations of the parties under or in connection with this Agreement shall be governed by and subject to the laws of the State of New York applicable to contracts made and to be performed in such State (including New York General Obligations Law Section 5-1401) and applicable federal laws of the United States of America.**

12.10 Submission To Jurisdiction; Waivers. Grantor hereby irrevocably and unconditionally: (a) consents and submits to the exclusive jurisdiction of any state or federal court sitting in New York County, in the State of New York, for itself and in respect of any of its property, in any action or proceeding arising under or in connection with this Agreement or any Account Agreement; (b) agrees not to bring any action or proceeding against the Secured Parties or the Depositary Bank that arises under or in connection with this Agreement or any Account Agreement in any court or other forum not described in clause (a) above; (c) waives any objection to venue or any claim of forum non conveniens with respect to any action or proceeding in any court described in clause (a) above; (d) agrees that any service of process may be served upon it by the Secured Parties or the Depositary Bank by mail or hand delivery if sent to the address for notices to Grantor under this Agreement; (e) agrees that nothing in this Agreement shall affect the Secured Parties or the Depositary Bank's right to serve process in any other manner permitted by law or to commence legal proceedings or otherwise proceed against Grantor in any other jurisdiction; and (f) agrees that final judgment against it in any action or proceeding shall be enforceable in any other jurisdiction within or outside the United States of America by suit on the judgment, a certified copy of which shall be conclusive evidence of the judgment.

12.11 Consequential Damages. Grantor hereby waives, to the maximum extent permitted by applicable law, any right it may have to claim or recover any punitive, exemplary, consequential, indirect or special damages arising under or in connection with this Agreement or any Account Agreement.

[SIGNATURE PAGE FOLLOWS]

CONFIDENTIAL TREATMENT REQUESTED

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

12.12 WAIVER OF JURY TRIAL. **EACH PARTY HERETO WAIVES ANY RIGHT IT MAY HAVE TO A JURY TRIAL OF ANY CLAIM, COUNTERCLAIM OR CAUSE OF ACTION ARISING OUT OF THIS AGREEMENT, ANY ACCOUNT AGREEMENT, OR ANY DEALINGS WITH ONE ANOTHER RELATING TO THE SUBJECT MATTER OF THIS AGREEMENT OR ANY ACCOUNT AGREEMENT.**

IN WITNESS WHEREOF, each of the undersigned has caused this Agreement to be duly executed and delivered as of the date first above written.

SUNPOWER CORPORATION

By: /s/ Dennis V. Arriola
Name:
Title:

DEUTSCHE BANK TRUST COMPANY AMERICAS

By: /s/ Stephen Freeman
Name: Stephen Freeman
Title: Director

By: /s/ Tracy Mantone
Name: Tracy Mantone
Title: Vice President

DEUTSCHE BANK AG NEW YORK BRANCH, individually, and in its capacity as Depositary Bank

By: /s/ Alia Lado
Name: Alida Lado
Title: V.P.

By: /s/ Shirley James
Name: Shirley James
Title: V.P.

Annex A to Security Agreement (MMDA Investment Option)

Bank's Money Market Deposit Account Agreement

60 Wall Street
New York, NY 10005

We are pleased to provide you with a Deutsche Bank AG New York Branch (the "Depositary Bank") non-personal Money Market Deposit Account ("MMDA"). A non-personal MMDA, as defined by Federal Reserve Regulation D, is classified as a savings account. This account has been designated to bear interest in accordance with the interest calculation formula set forth below. Interest will be credited on a monthly basis, on the first business day of the following month.

Interest = Collected Balances (end-of-day) x Interest Rate / 360 days

The amount of funds to be deposited in the account (the "Deposit Amount"), the time period during which such funds shall remain on deposit in the account (the "Deposit Term"), and the rate of interest applicable to the account (the "Interest Rate") shall be as separately agreed between you and the Depositary Bank, including through electronic communications via email. On days of extreme rate or balance volatility, the Depositary Bank may, in its sole discretion, adjust the Interest Rate.

The Depositary Bank is required by law to reserve the right to require seven days written notice of withdrawal prior to making any withdrawals or transfers from an MMDA. At this time, we do not require any such notice. Should that policy change, you will be notified. Additional deposits to your account may be made in any amount and at any time.

There is no limit on transfers from your account to another account you have with us when made by mail, messenger or in person. There is no limit on withdrawals (payments made directly to you) from your account when made by mail, messenger or in person. All other transfers of funds from your account are limited to a maximum of six transfers per calendar month, of which only three of these transfers may be made by check. Such other transfers include pre-authorized or automatic transfers. Federal regulations require that these transfer limitations be observed. Monthly statements and written notification of excessive transactions will be made available to you. If withdrawal limits are exceeded by you after notification, your account balance will be transferred to a transaction account (i.e. Demand Deposit Account – DDA), which is non-interest bearing.

The account is subject to the Depositary Bank's terms and conditions as well as the Depositary Bank's schedule of service charges as in effect from time-to-time. The account and this Money Market Deposit Agreement is governed by the laws of the State of New York without reference to the principles of conflict of laws.

* * *

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: November 10, 2011

/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: November 10, 2011

/S/ DENNIS V. ARRIOLA

Dennis V. Arriola
Executive Vice President and Chief Financial Officer
(Principal Financial 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 October 2, 2011 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: November 10, 2011

/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 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.