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

FORM 10-Q/A

(Amendment No. 1)

T **QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**
For the quarterly period ended June 28, 2015

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®

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 common stock as of July 24, 2015 was 136,404,821.

Explanatory Note

This Amendment No. 1 on Form 10-Q/A is being filed solely for the purpose of amending the Section 906 certification (included herein as Exhibit 32.1), which was originally included with our Quarterly Report on Form 10-Q for the fiscal quarter ended June 28, 2015, filed with the Securities and Exchange Commission on July 29, 2015 (the "Original Form 10-Q"). The certification included with the Original Form 10-Q contained a typographical error in the date that indicates the reporting period to which the certification applies. The corrected certification that includes the proper date is being filed with this Form 10-Q/A.

Items included in the Original Form 10-Q that are not amended by this Form 10-Q/A remain in effect as of the date of the Original Form 10-Q. This amendment does not reflect events occurring after the filing of the Original Form 10-Q, or modify or update those disclosures that may be affected by subsequent events, and no other changes are being made to any other disclosure contained in the Original Form 10-Q.

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PART I. FINANCIAL INFORMATION
ITEM 1. *FINANCIAL STATEMENTS*

SunPower Corporation
Consolidated Balance Sheets
(In thousands, except share data)
(unaudited)

	June 28, 2015	December 28, 2014
Assets		
Current assets:		
Cash and cash equivalents	$ 623,043	$ 956,175
Restricted cash and cash equivalents, current portion	26,033	18,541
Accounts receivable, net[1]	433,627	504,316
Costs and estimated earnings in excess of billings[1]	48,449	187,087
Inventories	310,432	208,573
Advances to suppliers, current portion	96,277	98,129
Project assets - plants and land, current portion	379,900	101,181
Prepaid expenses and other current assets[1]	254,352	328,845
Total current assets	2,172,113	2,402,847
Restricted cash and cash equivalents, net of current portion	45,436	24,520
Restricted long-term marketable securities	6,905	7,158
Property, plant and equipment, net	643,912	585,344
Solar power systems leased and to be leased, net	458,708	390,913
Project assets - plants and land, net of current portion	42,741	15,475
Advances to suppliers, net of current portion	288,285	311,528
Long-term financing receivables, net	261,076	269,587
Goodwill and other intangible assets, net	37,387	37,981
Other long-term assets[1]	391,960	300,229
Total assets	$ 4,348,523	$ 4,345,582
Liabilities and Equity		
Current liabilities:		
Accounts payable[1]	$ 427,412	$ 419,919
Accrued liabilities[1]	550,956	331,034
Billings in excess of costs and estimated earnings	92,770	83,440
Short-term debt	12,160	18,105
Convertible debt, current portion	—	245,325
Customer advances, current portion[1]	30,662	31,788
Total current liabilities	1,113,960	1,129,611
Long-term debt	225,338	214,181
Convertible debt, net of current portion[1]	693,938	692,955
Customer advances, net of current portion[1]	137,539	148,896
Other long-term liabilities[1]	535,438	555,344
Total liabilities	2,706,213	2,740,987
Commitments and contingencies (Note 9)		
Redeemable noncontrolling interests in subsidiaries	31,515	28,566
Equity:		
Preferred stock, $0.001 par value; 10,000,000 shares authorized; none issued and outstanding as of both June 28, 2015 and December 28, 2014	—	—
Common stock, $0.001 par value, 367,500,000 shares authorized; 144,783,659 shares issued, and 136,395,049 shares outstanding as of June 28, 2015; 367,500,000 shares authorized; 138,616,252 shares issued, and 131,466,777 shares outstanding as of December 28, 2014;	136	131
Additional paid-in capital	2,263,260	2,219,581
Accumulated deficit	(563,670)	(560,598)
Accumulated other comprehensive loss	(13,951)	(13,455)
Treasury stock, at cost; 8,388,610 shares of common stock as of June 28, 2015; 7,149,475 shares of common stock as of December 28, 2014	(151,811)	(111,485)

Total stockholders' equity	1,533,964	1,534,174
Noncontrolling interests in subsidiaries	76,831	41,855
Total equity	1,610,795	1,576,029
Total liabilities and equity	$ 4,348,523	$ 4,345,582

[1] The Company has related-party balances for transactions made with Total and its affiliates as well as unconsolidated entities in which the Company has a direct equity investment. These related-party balances are recorded within the "Accounts Receivable, net," "Costs and estimated earnings in excess of billings," "Prepaid expenses and other current assets," "Other long-term assets," "Accounts payable," "Accrued Liabilities," "Customer advances, current portion," "Convertible debt, net of current portion," and "Customer advances, net of current portion" financial statement line items in the Consolidated Balance Sheets (see Note 2, Note 3, Note 7, Note 10, Note 11, and Note 12).

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

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

	Three Months Ended		Six Months Ended	
	June 28, 2015	**June 29, 2014**	**June 28, 2015**	**June 29, 2014**
Revenue	$ 381,020	$ 507,871	$ 821,891	$ 1,200,293
Cost of revenue	310,139	413,726	660,192	943,159
Gross margin	70,881	94,145	161,699	257,134
Operating expenses:				
Research and development	20,560	16,581	41,728	33,327
Sales, general and administrative	81,520	71,499	158,734	145,427
Restructuring charges	1,749	(717)	5,330	(1,178)
Total operating expenses	103,829	87,363	205,792	177,576
Operating income (loss)	(32,948)	6,782	(44,093)	79,558
Other income (expense), net:				
Interest income	494	668	1,050	986
Interest expense	(8,517)	(16,310)	(24,198)	(35,902)
Other, net	14,982	(76)	12,362	1,293
Other income (expense), net	6,959	(15,718)	(10,786)	(33,623)
Income (loss) before income taxes and equity in earnings of unconsolidated investees	(25,989)	(8,936)	(54,879)	45,935
Benefit from (provision for) income taxes	659	8,168	(1,692)	(5,452)
Equity in earnings of unconsolidated investees	1,864	1,936	4,055	3,719
Net income (loss)	(23,466)	1,168	(52,516)	44,202
Net loss attributable to noncontrolling interests and redeemable noncontrolling interests	29,975	12,934	49,444	34,944
Net income (loss) attributable to stockholders	$ 6,509	$ 14,102	$ (3,072)	$ 79,146
Net income (loss) per share attributable to stockholders:				
Basic	$ 0.05	$ 0.11	$ (0.02)	$ 0.63
Diluted	$ 0.04	$ 0.09	$ (0.02)	$ 0.52
Weighted-average shares:				
Basic	134,376	129,747	133,205	125,972
Diluted	156,995	156,333	133,205	154,886

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

SunPower Corporation
Consolidated Statements of Comprehensive Income (Loss)
(In thousands)
(unaudited)

	Three Months Ended		Six Months Ended	
	June 28, 2015	June 29, 2014	June 28, 2015	June 29, 2014
Net income (loss)	$ (23,466)	$ 1,168	$ (52,516)	$ 44,202
Components of comprehensive income (loss):				
Translation adjustment	242	68	(1,761)	342
Net unrealized gain (loss) on derivatives (Note 12)	4,996	(28)	808	357
Income taxes	346	31	457	(79)
Net change in accumulated other comprehensive gain (loss)	5,584	71	(496)	620
Total comprehensive income (loss)	(17,882)	1,239	(53,012)	44,822
Comprehensive loss attributable to noncontrolling interests and redeemable noncontrolling interests	29,975	12,934	49,444	34,944
Comprehensive income (loss) attributable to stockholders	$ 12,093	$ 14,173	$ (3,568)	$ 79,766

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

SunPower Corporation
Consolidated Statements of Equity
(In thousands)
(unaudited)

	Redeemable Noncontrolling Interests	Common Stock Shares	Common Stock Value	Additional Paid-in Capital	Treasury Stock	Accumulated Other Comprehensive Income (Loss)	Retained Earnings (Accumulated Deficit)	Total Stockholders' Equity	Noncontrolling Interests	Total Equity
Balances at December 28, 2014	**$ 28,566**	**131,466**	**$ 131**	**$2,219,581**	**$ (111,485)**	**$ (13,455)**	**$ (560,598)**	**$ 1,534,174**	**$ 41,855**	**$1,576,029**
Net income (loss)	1,029	—	—	—	—	—	(3,072)	(3,072)	(50,473)	(53,545)
Other comprehensive income (loss)	—	—	—	—	—	(496)	—	(496)	—	(496)
Issuance of common stock upon exercise of options	—	24	—	177	—	—	—	177	—	177
Issuance of restricted stock to employees, net of cancellations	—	3,136	2	(2)	—	—	—	—	—	—
Settlement of the 4.5% Warrants	—	3,008	3	(577)	—	—	—	(574)	—	(574)
Stock-based compensation expense	—	—	—	29,389	—	—	—	29,389	—	29,389
Tax benefit from convertible debt interest deduction	—	—	—	7,965	—	—	—	7,965	—	7,965
Tax benefit from stock-based compensation	—	—	—	6,727	—	—	—	6,727	—	6,727
Contributions from noncontrolling interests	3,045	—	—	—	—	—	—	—	88,891	88,891
Distributions to noncontrolling interests	(1,125)	—	—	—	—	—	—	—	(3,442)	(3,442)
Purchases of treasury stock		(1,239)	—	—	(40,326)	—	—	(40,326)	—	(40,326)
Balances at June 28, 2015	**$ 31,515**	**136,395**	**$ 136**	**$2,263,260**	**$(151,811)**	**$ (13,951)**	**$ (563,670)**	**$ 1,533,964**	**$ 76,831**	**$1,610,795**

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

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

	Six Months Ended	
	June 28, 2015	**June 29, 2014**
Cash flows from operating activities:		
Net income (loss)	$ (52,516)	$ 44,202
Adjustments to reconcile net income (loss) to net cash used in operating activities:		
Depreciation and amortization	60,005	49,397
Stock-based compensation	27,586	28,215
Non-cash interest expense	5,251	10,492
Equity in earnings of unconsolidated investees	(4,055)	(3,719)
Excess tax benefit from stock-based compensation	(6,727)	—
Deferred income taxes and other tax liabilities	(5,812)	3,434
Gain on sale of residential lease portfolio to 8point3 Energy Partners LP	(27,915)	—
Other, net	1,377	2,214
Changes in operating assets and liabilities, net of effect of acquisitions:		
Accounts receivable	65,202	10,091
Costs and estimated earnings in excess of billings	138,638	(76)
Inventories	(130,726)	1,976
Project assets	(311,774)	(1,668)
Prepaid expenses and other assets	29,425	(59,364)
Long-term financing receivables, net	(69,258)	(54,846)
Advances to suppliers	25,094	(12,481)
Accounts payable and other accrued liabilities	(66,084)	(32,213)
Billings in excess of costs and estimated earnings	9,330	(59,580)
Customer advances	(12,482)	(7,645)
Net cash used in operating activities	(325,441)	(81,571)
Cash flows from investing activities:		
Increase in restricted cash and cash equivalents	(28,407)	(9,347)
Purchases of property, plant and equipment	(68,778)	(20,318)
Cash paid for solar power systems, leased and to be leased	(41,832)	(24,937)
Cash paid for solar power systems	(10,007)	—
Proceeds from sales or maturities of marketable securities	—	1,380
Proceeds from 8point3 Energy Partners LP attributable to real estate projects and residential lease portfolio	341,174	—
Purchases of marketable securities	—	(30)
Cash paid for acquisitions, net of cash acquired	—	(5,894)
Cash paid for investments in unconsolidated investees	(7,092)	(5,013)
Cash paid for intangibles	(526)	—
Net cash provided by (used in) investing activities	184,532	(64,159)
Cash flows from financing activities:		
Proceeds from issuance of convertible debt, net of issuance costs	—	395,275
Cash paid for repurchase of convertible debt	(324,273)	(42,102)
Proceeds from settlement of 4.75% Bond Hedge	—	68,842
Payments to settle 4.75% Warrants	—	(81,077)
Proceeds from settlement of 4.50% Bond Hedge	74,628	110
Payments to settle 4.50% Warrants	(574)	—
Proceeds from issuance of non-recourse debt financing, net of issuance costs	54,830	73,414
Repayment of non-recourse debt financing	(827)	—
Proceeds from issuance of project loans, net of issuance costs	190,491	—
Assumption of project loan by customer	—	(40,672)
Repayment of bank loans, project loans and other debt	(240,160)	(8,568)
Repayment of residential lease financing	(39,975)	(15,686)
Proceeds from sale-leaseback financing	17,219	16,685

Repayment of sale-leaseback financing	(2,237)	(779)
Proceeds from 8point3 Energy Partners LP attributable to operating leases and unguaranteed sales-type lease residual values	29,300	—
Contributions from noncontrolling interests and redeemable noncontrolling interests	91,936	52,778
Distributions to noncontrolling interests and redeemable noncontrolling interests	(4,567)	(1,636)
Proceeds from exercise of stock options	178	630
Excess tax benefit from stock-based compensation	6,727	—
Purchases of stock for tax withholding obligations on vested restricted stock	(40,326)	(52,804)
Net cash provided by (used in) financing activities	(187,630)	364,410
Effect of exchange rate changes on cash and cash equivalents	(4,593)	(333)
Net increase (decrease) in cash and cash equivalents	(333,132)	218,347
Cash and cash equivalents, beginning of period	956,175	762,511
Cash and cash equivalents, end of period	$ 623,043	$ 980,858
Non-cash transactions:		
Assignment of residential lease receivables to a third-party financial institution	$ 1,689	$ 4,256
Costs of solar power systems, leased and to be leased, sourced from existing inventory	$ 30,428	$ 13,903
Costs of solar power systems, leased and to be leased, funded by liabilities	$ 3,971	$ 1,867
Costs of solar power systems under sale-leaseback financing arrangements, sourced from project assets	$ 6,076	$ 15,269
Property, plant and equipment acquisitions funded by liabilities	$ 37,017	$ 9,326
Issuance of common stock upon conversion of convertible debt	$ —	$ 188,263
Sale of residential lease portfolio in exchange for non-controlling equity interests in the 8point3 Group	$ 68,273	$ —

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

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 energy products and solutions company that designs, manufactures and delivers high-performance solar systems worldwide, serving as a one-stop shop for residential, commercial and utility-scale power plant customers. SunPower Corporation is a majority owned subsidiary of Total Energies Nouvelles Activités USA ("Total"), a subsidiary of Total S.A. ("Total S.A.") (see Note 2).

In the first quarter of fiscal 2015, in connection with a realignment of its internal organizational structure, the Company changed its segment reporting from its Americas, EMEA and APAC Segments to three end-customer segments: (i) Residential Segment, (ii) Commercial Segment and (iii) Power Plant Segment. The Residential and Commercial Segments combined are referred to as Distributed Generation. Historically, the Americas Segment included both North and South America, the EMEA Segment included European countries as well as the Middle East and Africa, and the APAC Segment included all Asia-Pacific countries.

Under the new segmentation, the Company’s Residential Segment refers to sales of solar energy solutions to residential end customers through a variety of means, including cash sales and long-term leases directly to end customers, sales to resellers, including the Company's third-party global dealer network, and sales of the Company's operations and maintenance (“O&M”) services. The Company’s Commercial Segment refers to sales of solar energy solutions to commercial and public entity end customers through a variety of means, including direct sales of turn-key engineering, procurement and construction ("EPC") services, sales to the Company's third-party global dealer network, sales of energy under power purchase agreements ("PPAs"), and sales of the Company's O&M services. The Power Plant Segment refers to the Company's large-scale solar products and systems business, which includes power plant project development and project sales, EPC services for power plant construction, power plant O&M services and component sales for power plants developed by third parties, sometimes on a multi-year, firm commitment basis.

The Company’s President and Chief Executive Officer, as the chief operating decision maker (“CODM”), reviews the Company's business and manages resource allocations and measures performance of the Company’s activities among these three end-customer segments.

Reclassifications of prior period segment information have been made to conform to the current period presentation. This change does not affect the Company's previously reported Consolidated Financial Statements.

Basis of Presentation and Preparation

Principles of Consolidation

The consolidated financial statements are prepared in accordance with accounting principles generally accepted in the United States of America ("United States" or "U.S.") and include the accounts of the Company, all of its subsidiaries and special purpose entities, as appropriate under consolidation accounting guidelines. Intercompany transactions and balances have been eliminated in consolidation. The assets of the special purpose entities that the Company establishes in connection with certain project financing arrangements for customers are not designed to be available to service the general liabilities and obligations of the Company.

Reclassifications

Certain prior period balances, including prior period segment information, have been reclassified to conform to the current period presentation in the Company's consolidated financial statements and the accompanying notes. Such reclassifications had no effect on previously reported results of operations or accumulated deficit.

Fiscal Years

The Company has a 52-to-53-week fiscal year that ends on the Sunday closest to December 31. Accordingly, every fifth or sixth year will be a 53-week fiscal year. The current fiscal year, fiscal 2015, is a 53-week fiscal year and includes a 14-week fourth fiscal quarter, while fiscal year 2014 was a 52-week fiscal year. The second quarter of fiscal 2015 ended on June 28, 2015, while the second quarter of fiscal 2014 ended on June 29, 2014. The second quarters of fiscal 2015 and fiscal 2014 were both 13-week quarters.

Management Estimates

The preparation of the consolidated financial statements in conformity with U.S. generally accepted accounting principles ("U.S. GAAP") requires management to make estimates and assumptions that affect the amounts reported in the consolidated financial statements and accompanying notes. Significant estimates in these consolidated financial statements include percentage-of-completion for construction projects; allowances for doubtful accounts receivable and sales returns; inventory and project asset 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; the fair value and residual value of leased solar power systems; fair value of financial instruments; valuation of contingencies and certain accrued liabilities such as accrued warranty; and income taxes and tax valuation allowances. Actual results could materially differ from those estimates.

Recent Accounting Pronouncements

In July 2015, the Financial Accounting Standards Board ("FASB") issued an update to the standards to simplify the measurement of inventory. The updated standard more closely aligns the measurement of inventory with that of International Financial Reporting Standards (“IFRS”) and amends the measurement standard from lower of cost or market to lower of cost or net realizable value. The new guidance is effective for the Company no later than the first quarter of fiscal 2017 and requires a prospective approach to adoption. Early adoption is permitted. The Company is evaluating the potential impact of this standard on its consolidated financial statements and disclosures.

In April 2015, the FASB issued an update to the standards to provide a practical expedient for the measurement date of defined benefit obligation and plan assets for reporting entities with fiscal year-ends that do not coincide with a month-end. The updated standard allows such entities to measure defined benefit plan assets and obligations using the month-end that is closest to the entity's fiscal year-end and apply that practical expedient consistently from year to year and to all plans, if an entity has more than one plan. The new practical expedient guidance is effective for the Company no later than the first quarter of fiscal 2016 and requires a prospective approach to adoption. Early adoption is permitted. The Company is evaluating the potential impact of this standard on its consolidated financial statements and disclosures.

In April 2015, the FASB issued an update to the standards for the presentation of debt issuance costs to reduce complexity in accounting standards and to align with IFRS. The updated standard requires debt issuance costs to be presented in the balance sheet as a direct deduction from the carrying value of the associated debt liability. U.S. generally accepted accounting principles previously required debt issuance costs to be reflected as an asset on the Company's balance sheet. The new debt issuance cost guidance is effective for the Company no later than the first quarter of fiscal 2016 and requires a retrospective approach to adoption. The Company elected early adoption of the updated accounting standard, effective in the first quarter of fiscal 2015, resulting in a one-time reclassification of $11.6M of debt issuance costs from "Other long-term assets" to "Long-term debt" and "Convertible debt, net of current portion" in the Consolidated Balance Sheets as of December 28, 2014.

In February 2015, the FASB issued a new standard that modifies existing consolidation guidance for reporting organizations that are required to evaluate whether they should consolidate certain legal entities. The new consolidation guidance is effective for the Company in the first quarter of fiscal 2016 and requires either a retrospective or a modified retrospective approach to adoption. Early adoption is permitted. The Company is evaluating the available methods and the potential impact of this standard on its consolidated financial statements and disclosures.

In May 2014, the FASB issued a new revenue recognition standard based on the principle that revenue is recognized to depict the transfer of goods or services to customers in an amount that reflects the consideration to which the entity expects to be entitled in exchange for those goods and services. The new revenue recognition standard becomes effective for the Company in the first quarter of fiscal 2018 and is to be applied retrospectively using one of two prescribed methods. Early adoption is permitted. The Company is evaluating the available methods and the potential impact of this standard on its consolidated financial statements and disclosures.

Other than as described above, there has been no issued accounting guidance not yet adopted by the Company that it believes is material or potentially material to its consolidated financial statements.

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

In June 2011, Total completed a cash tender offer to acquire 60% of the Company's then outstanding shares of common stock at a price of $23.25 per share, for a total cost of approximately $1.4 billion. In December 2011, the Company entered into a Private Placement Agreement with Total, under which Total purchased, and the Company issued and sold, 18.6 million shares of the Company's common stock for a purchase price of $8.80 per share, thereby increasing Total's ownership to approximately 66% of the Company's outstanding common stock as of that date.

Credit Support Agreement

On April 28, 2011, the Company and Total S.A. entered into a Credit Support Agreement (the "Credit Support Agreement") under which Total S.A. agreed to enter into one or more guarantee agreements (each a "Guaranty") with banks providing letter of credit facilities to the Company. Total S.A. will guarantee the Company's obligation to reimburse the applicable issuing bank 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. Under the Credit Support Agreement, the Company may also request that Total S.A. provide a Guaranty in support of the Company's payment obligations with respect to a letter of credit facility. The Company is required to pay Total S.A. a guarantee fee for each letter of credit that is the subject of a Guaranty under the Credit Support Agreement and was outstanding for all or part of the preceding calendar quarter. The Credit Support Agreement was amended on June 7, 2011, it became effective on June 28, 2011 in connection with the completion of the Tender Offer (the "CSA Effective Date"), and it was further amended on each of December 12, 2011, and December 14, 2012.

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

The Company and Total have entered into an Affiliation Agreement that governs the relationship between Total and the Company (the "Affiliation Agreement"). Until the expiration of a standstill period specified in the Affiliation Agreement (the "Standstill Period"), and subject to certain exceptions, Total, Total S.A., any of their respective affiliates and certain other related parties (collectively 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.

The Affiliation Agreement also imposes certain restrictions with respect to the Company's and its 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.

Research & Collaboration Agreement

Total and the Company have entered into a Research & Collaboration Agreement (the "R&D Agreement") that establishes a framework under which the parties engage in long-term research and development collaboration ("R&D Collaboration"). The R&D Collaboration encompasses a number of different projects, with a focus on advancing the Company's technology position in the crystalline silicon domain, as well as ensuring the Company's industrial competitiveness. The R&D Agreement enables a joint committee to identify, plan and manage the R&D Collaboration.

Compensation and Funding Agreement

In February 2012, the Company entered into a Compensation and Funding Agreement (the "Compensation and Funding Agreement") with Total S.A. that established the parameters for the terms of liquidity injections that may be required to be provided by Total S.A. to the Company from time to time. During the term of the Compensation and Funding Agreement, the Company is required to pay Total S.A. a guarantee fee in an amount equal to 2.75% per annum of the average amount of the Company's indebtedness that is guaranteed by Total S.A. pursuant to any guaranty issued in accordance with the terms of the Compensation and Funding Agreement during such quarter. Any payment obligations of the Company to Total S.A. under the Compensation and Funding Agreement that are not paid when due accrue interest until paid in full at a rate equal to 6-month U.S. LIBOR as in effect from time to time plus 5.00% per annum.

Upfront Warrant

In February 2012, the Company issued a warrant (the "Upfront Warrant") to Total S.A. to purchase 9,531,677 shares of the Company's common stock with an exercise price of $7.8685, subject to adjustment for customary anti-dilution and other events. The Upfront Warrant, governed by the Private Placement Agreement and the Compensation and Funding Agreement, is exercisable at any time for seven years after its issuance, provided that, so long as at least $25.0 million in aggregate of the Company's convertible debt remains outstanding, such exercise will not cause "any person," including Total S.A., to, directly or indirectly, including through one or more wholly-owned subsidiaries, become the "beneficial owner" (as such terms are defined in Rule 13d-3 and Rule 13d-5 under the Securities and Exchange Act of 1934, as amended), of more than 74.99% of the voting power of the Company's common stock at such time, a circumstance which would trigger the repurchase or conversion of the Company's existing convertible debt.

0.75% Debentures Due 2018

In May 2013, the Company issued $300.0 million in principal amount of its 0.75% senior convertible debentures due 2018 (the "0.75% debentures due 2018"). $200.0 million in aggregate principal amount of the 0.75% debentures due 2018 were acquired by Total. The 0.75% debentures due 2018 are convertible into shares of the Company's common stock at any time based on an initial conversion price equal to $24.95 per share, which provides Total the right to acquire up to 8,017,420 shares of the Company's common stock. The applicable conversion rate may adjust in certain circumstances, including a fundamental change, as described in the indenture governing the 0.75% debentures due 2018 (see Note 11).

0.875% Debentures Due 2021

In June 2014, the Company issued $400.0 million in principal amount of its 0.875% senior convertible debentures due 2021 (the "0.875% debentures due 2021"). An aggregate principal amount of $250.0 million of the 0.875% debentures due 2021 were acquired by Total. The 0.875% debentures due 2021 are convertible into shares of the Company's common stock at any time based on an initial conversion price equal to $48.76 per share, which provides Total the right to acquire up to 5,126,775 shares of the Company's common stock. The applicable conversion rate may adjust in certain circumstances, including a fundamental change, as described in the indenture governing the 0.875% debentures due 2021 (see Note 11).

Joint Projects with Total and its Affiliates:

The Company enters into various engineering, procurement and construction ("EPC") and operations and maintenance ("O&M") agreements relating to solar projects, including EPC and O&M services agreements relating to projects owned or partially owned by Total and its affiliates. As of June 28, 2015, the Company had $0.6 million of "Costs and estimated earnings in excess of billings" and $1.4 million of "Accounts receivable, net" on its Consolidated Balance Sheets related to projects in which Total and its affiliates have a direct or indirect material interest.

Related-Party Transactions with Total and its Affiliates:

	Three Months Ended		Six Months Ended	
(In thousands)	**June 28, 2015**	**June 29, 2014**	**June 28, 2015**	**June 29, 2014**
Revenue:				
EPC, O&M, and components revenue under joint projects	$ 100	$ 32,612	$ 299	$ 35,501
Research and development expense:				
Offsetting contributions received under the R&D Agreement	$ (395)	$ (293)	$ (817)	$ (553)
Interest expense:				
Guarantee fees incurred under the Credit Support Agreement	$ 2,272	$ 2,601	$ 4,998	$ 5,346
Fees incurred under the Compensation and Funding Agreement	$ —	$ —	$ —	$ 1,200
Interest expense incurred on the 0.75% debentures due 2018	$ 125	$ 453	$ 500	$ 828
Interest expense incurred on the 0.875% debentures due 2021	$ 547	$ 115	$ 1,227	$ 115

Note 3. ***8POINT3 ENERGY PARTNERS LP***

In June 2015, 8point3 Energy Partners LP ("8point3 Energy Partners"), a joint YieldCo vehicle formed by the Company and First Solar, Inc. ("First Solar" and, together with the Company, the "Sponsors") to own, operate and acquire solar energy generation assets, completed an initial public offering (“IPO”) of Class A shares representing limited partner interests in 8point3 Energy Partners. The IPO was consummated on June 24, 2015 (the “IPO Closing Date”) whereupon the Class A shares were listed on the NASDAQ Global Select Market under the trading symbol “CAFD.”

Immediately after the IPO, the Company contributed a portfolio of 170 MW of its solar generation assets (the “SPWR Projects”) to 8point3 Operating Company, LLC ("OpCo"), 8point3 Energy Partners' primary operating subsidiary. In exchange for the SPWR Projects, the Company received cash proceeds of $371 million as well as equity interests in several 8point3 Energy Partners affiliated entities: primarily common and subordinated units representing a 40.7% stake in OpCo and a 50.0% economic and management stake in 8point3 Holding Company, LLC (“Holdings”), the parent company of the general partner of 8point3 Energy Partners and the owner of incentive distribution rights (“IDRs”) in OpCo. Holdings, OpCo, 8point3 Energy Partners and their respective subsidiaries are referred to herein as the “8point3 Group.” Additionally, pursuant to a Right of First Offer Agreement between the Company and OpCo, the 8point3 Group has rights of first offer on interests in an additional 513 MW of the Company’s solar energy projects that are currently contracted or are expected to be contracted before being sold by the Company (the “ROFO Projects”). In connection with the IPO, the Company also entered into operations and maintenance, asset management and management services agreements with the 8point3 Group. The services the Company provides under these agreements are priced consistently with market rates for such services and the agreements are terminable by the 8point3 Group for convenience.

The Company accounts for its investments in the 8point3 Group using the equity method, whereby the book value of the Company’s investments is recorded as a non-current asset and the Company’s portion of the 8point3 Group’s earnings is recorded in the Consolidated Statements of Operations under the caption "Equity in earnings (loss) of unconsolidated investees." Refer to Note 10 for further discussion of the Company’s equity method investments in the 8point3 Group.

The Company’s agreements with the 8point3 Group include substantive, non-standard guarantees of minimum cash flows in respect of each project among the SPWR Projects that had not yet reached its commercial operations date (“COD”) before the IPO Closing Date. The Company’s guarantees relating to each such project expire when the project reaches COD. The Company therefore determined that the risks and rewards of ownership in these projects are not transferred until COD and, accordingly, the Company continues to record the projects on its Consolidated Balance Sheet until that time. Projects that had not reached COD by June 28, 2015 totaled 131 MW of the SPWR Projects and the Company recorded $302 million of IPO proceeds attributable to those projects as a current liability within “Accrued liabilities” in the Consolidated Balance Sheets.

The projects discussed in the previous paragraph, which had not reached COD by June 28, 2015, are projects that include the sale or lease of real estate. Accordingly, each of these projects will be evaluated under relevant guidance for real

estate transactions after COD and the concomitant expiration of the Company's non-standard guarantees (and associated risks of ownership) in respect of the project. The Company determined that the subordination of certain of its OpCo units until such time that the 8point3 Group achieves certain cash distribution targets in respect of the OpCo common and subordinated units (the "subordination period") constituted a form of support to the operations of the SPWR Projects that also survived the sale of the projects. Accordingly, the Company will defer recognition of any profit on the sale of any such project until unconditional cash proceeds from the sale exceed the Company's total costs incurred in connection with the project. The Company has reflected the $302 million of IPO cash proceeds attributable to these assets as an investing cash inflow in the Consolidated Statement of Cash Flows.

The balance of the SPWR Projects was composed of a portfolio of residential leases (the "residential lease portfolio") which included both sales-type and operating leases. The Company evaluated the sale of the residential lease portfolio, excluding the portion related to operating leases and unguaranteed residual values accounted for under lease guidance in the following paragraph, under relevant accounting guidance for consolidations and determined that this portion of the residential lease portfolio met the definition of a business and that deconsolidation criteria were met. The Company received cash proceeds of $39 million and equity proceeds of $68 million attributable to the sale of this portion of the residential lease portfolio and recorded a resulting $28 million gain upon deconsolidation, reflected in "Other, net" in the Consolidated Statements of Operations. The equity proceeds were valued using the income approach which utilized a discounted cash flow model based on forecasted cash flows, indexed to 8point3 Energy Partners' IPO price of $21 per Class A share. The Company has reflected the $39 million of IPO cash proceeds attributable to this portion of the residential lease portfolio as an investing cash inflow in the Consolidated Statement of Cash Flows.

The Company evaluated the sale of the portion of the residential lease portfolio that was composed of operating leases and unguaranteed sales-type lease residual values under relevant guidance for leasing transactions and determined that the Company retained significant risks of ownership as defined in such guidance due, in part, to the subordination of certain of the Company's OpCo units during the subordination period. Accordingly, the Company accounted for the sale of the operating leases and the unguaranteed sales-type lease residual values as a borrowing and reflected the $29 million of IPO cash proceeds attributable to this portion of the residential lease portfolio as a financing cash inflow in the Consolidated Statement of Cash Flows and as liabilities recorded within "Accrued liabilities" and "Other long-term liabilities" in the Consolidated Balance Sheets.

Note 4. *GOODWILL AND OTHER INTANGIBLE ASSETS*

Goodwill

As of both June 28, 2015 and December 28, 2014, the Company had goodwill with a carrying amount of $21.2 million, $20.8 million of which was allocated to the Residential Segment and $0.4 million of which was allocated to the Power Plant Segment. No goodwill impairment was recorded during the three and six months ended June 28, 2015 or June 29, 2014.

Other Intangible Assets

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

(In thousands)	Gross	Accumulated Amortization	Net
As of June 28, 2015			
Patents and purchased technology	$ 13,675	$ (1,584)	$ 12,091
Purchased in-process research and development	3,700	—	3,700
Other	500	(125)	375
	$ 17,875	$ (1,709)	$ 16,166
As of December 28, 2014			
Patents and purchased technology	$ 13,675	$ (615)	$ 13,060
Purchased in-process research and development	3,700	—	3,700
	$ 17,375	$ (615)	$ 16,760

Amortization expense for intangible assets totaled $0.6 million and $1.1 million for the three and six months ended June 28, 2015, respectively. No amortization expense was incurred during the three and six months ended June 29, 2014.

As of June 28, 2015, the estimated future amortization expense related to intangible assets with finite useful lives is as follows:

(In thousands)	Amount
Fiscal Year	
2015 (remaining six months)	$ 1,269
2016	2,114
2017	1,989
2018	1,989
2019	1,989
Thereafter	3,116
	$ 12,466

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

	As of	
(In thousands)	**June 28, 2015**	**December 28, 2014**
Accounts receivable, net:		
Accounts receivable, gross[1,2]	$ 453,853	$ 523,613
Less: allowance for doubtful accounts	(18,432)	(18,152)
Less: allowance for sales returns	(1,794)	(1,145)
	$ 433,627	$ 504,316

[1] Includes short-term financing receivables associated with solar power systems leased of $9.4 million and $9.1 million as of June 28, 2015 and December 28, 2014, respectively (see Note 6).

[2] Includes short-term retainage of $243.8 million and $213.0 million as of June 28, 2015 and December 28, 2014, respectively. Retainage refers to the earned, but unbilled, portion of a construction and development project for which payment is deferred by the customer until certain contractual milestones are met.

	As of	
(In thousands)	**June 28, 2015**	**December 28, 2014**
Inventories:		
Raw materials	$ 85,512	$ 46,848
Work-in-process	116,364	67,903
Finished goods	108,556	93,822
	$ 310,432	$ 208,573

(In thousands)	As of June 28, 2015	As of December 28, 2014
Prepaid expenses and other current assets:		
Deferred project costs	$ 55,213	$ 64,784
Bond hedge derivative	—	51,951
VAT receivables, current portion	8,607	7,554
Deferred costs for solar power systems to be leased	29,852	22,537
Derivative financial instruments	1,907	7,018
Prepaid inventory	5,085	—
Other receivables	74,370	79,927
Other prepaid expenses	64,053	47,448
Other current assets	15,265	47,626
	$ 254,352	$ 328,845

(In thousands)	As of June 28, 2015	As of December 28, 2014
Project assets - plants and land:		
Project assets — plants	$ 410,581	$ 104,328
Project assets — land	12,060	12,328
	$ 422,641	$ 116,656
Project assets — plants and land, current portion	$ 379,900	$ 101,181
Project assets — plants and land, net of current portion	$ 42,741	$ 15,475

(In thousands)	As of June 28, 2015	As of December 28, 2014
Property, plant and equipment, net:		
Manufacturing equipment[3]	$ 565,813	$ 554,124
Land and buildings	26,138	26,138
Leasehold improvements	241,764	236,867
Solar power systems[4]	140,678	124,848
Computer equipment	94,486	88,257
Furniture and fixtures	9,892	9,436
Construction-in-process	137,359	75,570
	1,216,130	1,115,240
Less: accumulated depreciation	(572,218)	(529,896)
	$ 643,912	$ 585,344

[3] The Company's mortgage loan agreement with International Finance Corporation ("IFC") is collateralized by certain manufacturing equipment with a net book value of $100.1 million and $111.9 million as of June 28, 2015 and December 28, 2014, respectively.

[4] Includes $110.4 million and $94.4 million of solar power systems associated with sale-leaseback transactions under the financing method as of June 28, 2015 and December 28, 2014, respectively, which are depreciated using the straight-line method to their estimated residual values over the lease terms of up to 20 years (see Note 6).

(In thousands)	As of June 28, 2015	As of December 28, 2014
Property, plant and equipment, net by geography[5]:		
Philippines	$ 382,485	$ 335,643
United States	196,017	183,631
Mexico	39,511	40,251
Europe	23,258	24,748
Other	2,641	1,071
	$ 643,912	$ 585,344

[5] Property, plant and equipment, net by geography is based on the physical location of the assets.

(In thousands)	As of June 28, 2015	As of December 28, 2014
Other long-term assets:		
Equity method investments	$ 283,225	$ 210,898
Cost method investments	36,378	32,308
Derivative financial instruments	848	—
Other	71,509	57,023
	$ 391,960	$ 300,229

(In thousands)	As of June 28, 2015	As of December 28, 2014
Accrued liabilities:		
Bond hedge derivatives	$ —	$ 51,951
Employee compensation and employee benefits	41,923	47,667
Deferred revenue	22,835	33,412
Short-term residential lease financing	—	1,489
Interest payable	5,038	10,575
Short-term warranty reserves	12,184	13,278
Restructuring reserve	4,278	13,477
VAT payables	7,797	6,073
Derivative financial instruments	4,443	1,345
Inventory payable	5,084	—
Short-term residential lease financing with 8point3 Energy Partners	4,220	—
Proceeds from 8point3 Energy Partners IPO attributable to pre-COD projects	301,746	—
Other	141,408	151,767
	$ 550,956	$ 331,034

(In thousands)	As of June 28, 2015	As of December 28, 2014
Other long-term liabilities:		
Deferred revenue	$ 180,176	$ 176,804
Long-term warranty reserves	144,347	141,370
Long-term sale-leaseback financing	127,925	111,904
Long-term residential lease financing	—	27,122
Long-term residential lease financing with 8point3 Energy Partners	25,149	—
Unrecognized tax benefits	20,128	31,764
Long-term pension liability	11,571	9,980
Derivative financial instruments	470	3,712
Other	25,672	52,688
	$ 535,438	$ 555,344

(In thousands)	As of June 28, 2015	As of December 28, 2014
Accumulated other comprehensive loss:		
Cumulative translation adjustment	$ (10,473)	$ (8,712)
Net unrealized loss on derivatives	(635)	(1,443)
Net loss on long-term pension liability adjustment	(2,878)	(2,878)
Deferred taxes	35	(422)
	$ (13,951)	$ (13,455)

Note 6. ***LEASING***

Residential Lease Program

The Company offers a solar lease program, in partnership with third-party investors, which provides U.S. residential customers SunPower systems under 20-year lease agreements that include system maintenance and warranty coverage. Leases are classified as either operating or sales-type leases in accordance with the relevant accounting guidelines.

Operating Leases

The following table summarizes "Solar power systems leased and to be leased, net" under operating leases on the Company's Consolidated Balance Sheets as of June 28, 2015 and December 28, 2014:

(In thousands)	As of June 28, 2015	As of December 28, 2014
Solar power systems leased and to be leased, net[1,2]:		
Solar power systems leased	$ 470,532	$ 396,704
Solar power systems to be leased	23,994	21,202
	494,526	417,906
Less: accumulated depreciation	(35,818)	(26,993)
	$ 458,708	$ 390,913

[1] Solar power systems leased and to be leased, net are physically located exclusively in the United States.

[2] As of June 28, 2015 and December 28, 2014, the Company had pledged solar assets with an aggregate book value of zero and $140.1 million, respectively, to third-party investors as security for the Company's contractual obligations.

The following table presents the Company's minimum future rental receipts on operating leases placed in service as of June 28, 2015:

(In thousands)	Fiscal 2015 (remaining six months)	Fiscal 2016	Fiscal 2017	Fiscal 2018	Fiscal 2019	Thereafter	Total
Minimum future rentals on operating leases placed in service[1]	$ 9,252	17,068	17,112	17,162	17,213	248,240	$ 326,047

[1] Minimum future rentals on operating leases placed in service does not include contingent rentals that may be received from customers under agreements that include performance-based incentives.

Sales-Type Leases

As of June 28, 2015 and December 28, 2014, the Company's net investment in sales-type leases presented in "Accounts receivable, net" and "Long-term financing receivables, net" on the Company's Consolidated Balance Sheets was as follows:

	As of	
(In thousands)	June 28, 2015	December 28, 2014
Financing receivables:		
Minimum lease payments receivable[1]	$ 283,936	$ 319,244
Unguaranteed residual value	42,248	34,343
Unearned income	(55,719)	(74,859)
Net financing receivables	$ 270,465	$ 278,728
Current	$ 9,389	$ 9,141
Long-term	$ 261,076	$ 269,587

[1] Net of allowance for doubtful accounts.

As of June 28, 2015, future maturities of net financing receivables for sales-type leases are as follows:

(In thousands)	Fiscal 2015 (remaining six months)	Fiscal 2016	Fiscal 2017	Fiscal 2018	Fiscal 2019	Thereafter	Total
Scheduled maturities of minimum lease payments receivable[1]	$ 7,240	13,803	13,924	14,052	14,184	220,733	$ 283,936

[1] Minimum future rentals on sales-type leases placed in service does not include contingent rentals that may be received from customers under agreements that include performance-based incentives.

Third-Party Financing Arrangements

The Company has entered into multiple facilities under which solar power systems are financed by third-party investors. Under the terms of certain arrangements the investors make an upfront payment to the Company, which the Company recognizes as a non-recourse liability that will be reduced over the term of the arrangement as customer receivables and government incentives are received by the third-party investors. As the non-recourse liability is reduced over time, the Company makes a corresponding reduction in customer and government incentive receivables on its balance sheet. The Company uses this approach to account for both operating and sales-type leases with its residential lease customers in the consolidated financial statements. These arrangements were terminated during the six months ended June 28, 2015. As of June 28, 2015, and December 28, 2014, the remaining liability to third-party investors under these arrangements presented in "Accrued liabilities" and "Other long-term liabilities" on the Company's Consolidated Balance Sheets, was zero and $28.6 million, respectively (see Note 5).

The Company has entered into multiple financing facilities with third-party investors under which the investors invest in entities that hold SunPower solar power systems and leases with residential customers. The Company holds controlling interests in these less-than-wholly-owned entities and therefore fully consolidates these entities. The Company accounts for the

portion of net assets in the consolidated entities attributable to the investors as "Redeemable noncontrolling interests" and "Noncontrolling interests" in its consolidated financial statements. Noncontrolling interests in subsidiaries that are redeemable at the option of the noncontrolling interest holder are classified as "Redeemable noncontrolling interests in subsidiaries," between liabilities and equity on the Company's Consolidated Balance Sheets. During the three and six months ended June 28, 2015 the Company received $46.0 million and $91.9 million, respectively, in contributions from investors under the related facilities and attributed losses of $30.1 million and $49.7 million, respectively, to the third-party investors corresponding principally to certain assets, including tax credits, that were allocated to the investors during the periods. During the three and six months ended June 29, 2014, the Company received $22.2 million and $52.8 million, respectively, in contributions from investors under the related facilities and attributed losses of $12.9 million and $34.9 million, respectively, to the third-party investors corresponding principally to certain assets, including tax credits, that were allocated to the investors during the periods.

Sale-Leaseback Arrangements

The Company enters into sale-leaseback arrangements under which solar power systems are sold to third parties and subsequently leased back by the Company over minimum lease terms of up to 20 years. Separately, the Company enters into PPAs with end customers, who host the leased solar power systems and buy the electricity directly from the Company under PPAs with terms of up to 25 years. At the end of the lease term, the Company has the option to purchase the systems at fair value or may be required to remove the systems and return them to the third parties.

The Company has classified its sale-leaseback arrangements of solar power systems not involving integral equipment as operating leases. The deferred profit on the sale of these systems is recognized over the term of the lease. As of June 28, 2015, future minimum lease obligations associated with these systems was $92.5 million, which will be recognized over the minimum lease terms. Future minimum payments to be received from customers under PPAs associated with the solar power systems under sale-leaseback arrangements classified as operating leases will be recognized over the lease terms of up to 20 years and are contingent upon the amounts of energy produced by the solar power systems.

The Company enters into certain sale-leaseback arrangements under which the systems subject to the sale-leaseback arrangements have been determined to be integral equipment as defined under the accounting guidance for such transactions. The Company has continuing involvement with the solar power systems throughout the lease due to purchase option rights in the arrangements. As a result of such continuing involvement, the Company accounts for each of these transactions as a financing. Under the financing method, the proceeds received from the sale of the solar power systems are recorded by the Company as financing liabilities and presented within "Other long-term liabilities" in the Company's Consolidated Balance Sheets (see Note 5). The financing liabilities are subsequently reduced by the Company's payments to lease back the solar power systems, less interest expense calculated based on the Company's incremental borrowing rate adjusted to the rate required to prevent negative amortization. The solar power systems under the sale-leaseback arrangements remain on the Company's balance sheet and are classified within "Property, plant and equipment, net" (see Note 5). As of June 28, 2015, future minimum lease obligations for the sale-leaseback arrangements accounted for under the financing method were $110.4 million, which will be recognized over the lease terms of up to 20 years.

Note 7. ***FAIR VALUE MEASUREMENTS***

Fair value is estimated by applying the following hierarchy, which prioritizes the inputs used to measure fair value into three levels and bases the categorization within the hierarchy upon the lowest level of input that is available and significant to the fair value measurement (observable inputs are the preferred basis of valuation):

- Level 1 — Quoted prices in active markets for identical assets or liabilities.
- Level 2 — Measurements are inputs that are observable for assets or liabilities, either directly or indirectly, other than quoted prices included within Level 1.
- Level 3 — Prices or valuations that require management inputs that are both significant to the fair value measurement and unobservable.

Assets and Liabilities Measured at Fair Value on a Recurring Basis

The Company measures certain assets and liabilities at fair value on a recurring basis. There were no transfers between fair value measurement levels during any presented period. The Company did not have any assets or liabilities measured at fair value on a recurring basis requiring Level 3 inputs as of June 28, 2015 or December 28, 2014.

The following table summarizes the Company's assets and liabilities measured and recorded at fair value on a recurring basis as of June 28, 2015 and December 28, 2014:

	June 28, 2015			December 28, 2014		
(In thousands)	**Total**	**Level 1**	**Level 2**	**Total**	**Level 1**	**Level 2**
Assets						
Cash and cash equivalents[1]:						
Money market funds	$ 255,000	$ 255,000	$ —	$ 375,000	$ 375,000	$ —
Prepaid expenses and other current assets:						
Debt derivatives (Note 11)	—	—	—	51,951	—	51,951
Derivative financial instruments (Note 12)	1,907	—	1,907	7,018	—	7,018
Other long-term assets:						
Derivative financial instruments (Note 12)	848	—	848	—	—	—
Total assets	$ 257,755	$ 255,000	$ 2,755	$ 433,969	$ 375,000	$ 58,969
Liabilities						
Accrued liabilities:						
Debt derivatives (Note 11)	$ —	$ —	$ —	$ 51,951	$ —	$ 51,951
Derivative financial instruments (Note 12)	4,443	—	4,443	1,345	—	1,345
Other long-term liabilities:						
Derivative financial instruments (Note 12)	470	—	470	3,712	—	3,712
Total liabilities	$ 4,913	$ —	$ 4,913	$ 57,008	$ —	$ 57,008

[1] The Company's cash equivalents consist of money market fund instruments and commercial paper that are classified as available-for-sale and highly liquid investments with original maturities of 90 days or less. The Company's money market fund instruments are categorized within Level 1 of the fair value hierarchy because they are valued using quoted market prices for identical instruments in active markets.

Other financial instruments, including the Company's accounts receivable, accounts payable and accrued liabilities, are carried at cost, which generally approximates fair value due to the short-term nature of these instruments.

Debt Derivatives

The 4.50% Bond Hedge (as described in Note 11) and the embedded cash conversion option within the 4.50% debentures due 2015 (as described in Note 11), which both matured in the first quarter of 2015, were classified as derivative instruments that required mark-to-market treatment with changes in fair value reported in the Company's Consolidated Statements of Operations. The fair values of these derivative instruments as of December 28, 2014 were determined utilizing the following Level 1 and Level 2 inputs:

	As of[1]
	December 28, 2014
Stock price	$ 26.32
Exercise price	$ 22.53
Interest rate	0.19%
Stock volatility	61.7%
Credit risk adjustment	0.65%
Maturity date	February 18, 2015

[1] The valuation model utilizes these inputs to value the right but not the obligation to purchase one share of the Company's common stock at $22.53. The Company utilized a Black-Scholes valuation model to value the 4.50% Bond Hedge and embedded cash conversion option. The underlying input assumptions were determined as follows:

(i) Stock price. The closing price of the Company's common stock on the last trading day of the quarter.
(ii) Exercise price. The exercise price of the 4.50% Bond Hedge and the embedded cash conversion option.
(iii) Interest rate. The Treasury Strip rate associated with the life of the 4.50% Bond Hedge and the embedded cash conversion option.
(iv) Stock volatility. The volatility of the Company's common stock over the life of the 4.50% Bond Hedge and the embedded cash conversion option.
(v) Credit risk adjustment. Represents the weighted average of the credit default swap rate of the counterparties.

Assets and Liabilities Measured at Fair Value on a Non-Recurring Basis

The Company measures certain investments and non-financial assets (including project assets, property, plant and equipment, and other intangible assets) at fair value on a non-recurring basis in periods after initial measurement in circumstances when the fair value of such asset is impaired below its recorded cost.

Held-to-Maturity Debt Securities

The Company's debt securities, classified as held-to-maturity, are Philippine government bonds that the Company maintains as collateral for business transactions within the Philippines. These bonds have maturity dates of up to five years and are classified as "Restricted long-term marketable securities" on the Company's Consolidated Balance Sheets. As of June 28, 2015 and December 28, 2014, these bonds had a carrying value of $6.9 million and $7.2 million, respectively. 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 that would affect its ability and intent to hold such securities until the recorded amortized costs are recovered. No other-than-temporary impairment loss was incurred during any presented period. The held-to-maturity debt securities were categorized in Level 2 of the fair value hierarchy.

Equity and Cost Method Investments

The Company holds equity investments in non-consolidated entities that are accounted for under both the equity and cost method. The Company monitors these investments, which are included in "Other long-term assets" in its Consolidated Balance Sheets, for impairment and records reductions in the carrying values when necessary. Circumstances that indicate an other-than-temporary decline include Level 2 and Level 3 measurements such as the valuation ascribed to the issuing company in subsequent financing rounds, decreases in quoted market prices, and declines in the results of operations of the issuer.

As of June 28, 2015 and December 28, 2014, the Company had $283.2 million and $210.9 million, respectively, in investments accounted for under the equity method (see Note 10). As of June 28, 2015 and December 28, 2014, the Company had $36.4 million and $32.3 million, respectively, in investments accounted for under the cost method.

Related-Party Transactions with Investees:

	As of	
(In thousands)	**June 28, 2015**	**December 28, 2014**
Accounts receivable	$ 9,399	$ 22,425
Other long-term assets	$ 1,530	$ 1,623
Accounts payable	$ 42,301	$ 50,039
Accrued liabilities	$ 305,965	$ —
Customer advances	$ 1,673	$ 4,210
Other long-term liabilities	$ 25,149	$ —

	Three Months Ended		Six Months Ended	
(In thousands)	**June 28, 2015**	**June 29, 2014**	**June 28, 2015**	**June 29, 2014**
Payments made to investees for products/services	$ 108,853	$ 117,096	$ 228,030	$ 222,106
Revenue from sales to investees of products/services	$ 21,199	$ —	$ 26,802	$ —

Cost Method Investment in Tendril Networks, Inc. (“Tendril”)

In November 2014, the Company purchased $20.0 million of preferred stock for a minority stake in Tendril, accounted for under the cost method because the preferred stock was deemed not to be in-substance common stock. In connection with the investment, the Company acquired warrants to purchase up to approximately 14.3 million shares of Tendril common stock through November 23, 2024. The number of shares of Tendril common stock that may be purchased pursuant to the warrants is subject to the Company's and Tendril's achievement of certain financial and operational milestones and other conditions.

In connection with the initial investment in Tendril, the Company also entered into commercial agreements with Tendril under a Master Services Agreement and related Statements of Work. Under these commercial agreements, Tendril will use up to $13.0 million of the Company's initial investment to develop, jointly with the Company, certain solar software solution products.

Note 8. ***RESTRUCTURING***

November 2014 Restructuring Plan

On November 14, 2014, the Company announced a reorganization plan intended to realign resources consistent with the Company's global strategy and improve its overall operating efficiency and cost structure. In connection with this plan, which is expected to be completed by the end of fiscal 2015, SunPower expects approximately 95 to 115 employees to be affected, primarily in Europe, representing approximately 1% to 2% of the Company's global workforce. The Company expects to incur restructuring charges totaling approximately $17 million to $25 million, principally composed of severance benefits, lease and related termination costs, and other associated costs. The Company expects more than 90% of total charges to be cash charges. The actual timing and costs of the plan may differ from the Company’s current expectations and estimates due to a number of factors, including uncertainties related to required consultations with employee representatives as well as other local labor law requirements and mandatory processes in the relevant jurisdictions.

Legacy Restructuring Plans

During fiscal 2012 and 2011, the Company implemented approved restructuring plans, related to all segments, to align with changes in the global solar market which included the consolidation of the Company's Philippine manufacturing operations as well as actions to accelerate operating cost reduction and improve overall operating efficiency. These restructuring activities were substantially complete as of June 28, 2015, however, the Company expects to continue to incur costs as it finalizes previous estimates and actions in connection with these plans, primarily due to other costs, such as legal services.

The following table summarizes the restructuring charges recognized in the Company's Consolidated Statements of Operations:

(In thousands)	Six Months Ended June 28, 2015	Six Months Ended June 29, 2014	Cumulative To Date
November 2014 Plan:			
Non-cash impairment charges	$ 5	$ —	$ 724
Severance and benefits	3,310	—	15,490
Other costs[1]	2,338	—	2,551
	5,653	—	18,765
Legacy Restructuring Plans:			
Non-cash impairment charges	—	—	60,596
Severance and benefits	(132)	(1,265)	46,577
Lease and related termination costs	—	339	5,774
Other costs[1]	(191)	(252)	10,668
	(323)	(1,178)	123,615
Total restructuring charges	$ 5,330	$ (1,178)	$ 142,380

The following table summarizes the restructuring reserve activity during the six months ended June 28, 2015:

(In thousands)	December 28, 2014	Six Months Ended Charges (Benefits)	Payments	June 28, 2015
November 2014 Plan:				
Severance and benefits	$ 12,075	$ 3,310	$ (13,260)	$ 2,125
Other costs[1]	145	2,338	(368)	2,115
	12,220	5,648	(13,628)	4,240
Legacy Restructuring Plans:				
Severance and benefits	421	(132)	(281)	8
Lease and related termination costs	390	—	(390)	—
Other costs[1]	446	(191)	(225)	30
	1,257	(323)	(896)	38
Total restructuring liability	$ 13,477	$ 5,325	$ (14,524)	$ 4,278

[1] Other costs primarily represent associated legal services and costs of relocating employees.

Note 9. *COMMITMENTS AND CONTINGENCIES*

Facility and Equipment Lease Commitments

The Company leases certain facilities under non-cancellable operating leases from unaffiliated third parties. As of June 28, 2015, future minimum lease payments for facilities under operating leases were $50.8 million, to be paid over the remaining contractual terms of up to 10 years. The Company also leases certain buildings, machinery and equipment under non-cancellable capital leases. As of June 28, 2015, future minimum lease payments for assets under capital leases were $6.4 million, to be paid over the remaining contractual terms of up to 10 years.

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 before firm orders are placed. Consequently, not all 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 investees, for the procurement of polysilicon, ingots, wafers, and Solar Renewable Energy Credits, among others, 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.

Future purchase obligations under non-cancellable purchase orders and long-term supply agreements as of June 28, 2015 are as follows:

(In thousands)	Fiscal 2015 (remaining six months)	Fiscal 2016	Fiscal 2017	Fiscal 2018	Fiscal 2019	Thereafter	Total[1,2,3]
Future purchase obligations	$ 713,339	323,543	349,587	184,199	177,714	166,867	$ 1,915,249

[1] Total future purchase obligations as of June 28, 2015 include $130.1 million to related parties.

[2] Total future purchase obligations was composed of $238.7 million related to non-cancellable purchase orders and $1.7 billion related to long-term supply agreements.

[3]The Company did not fulfill all of the purchase commitments it was otherwise obligated to take by December 31, 2014, as specified in several related contracts with a supplier. As of June 28, 2015, the Company has recorded an offsetting asset, recorded within "Prepaid expenses and other current assets," and liability, recorded within "Accrued liabilities," totaling $5.1 million. This amount represents the unfulfilled amount as of that date as the Company expects to satisfy the obligation via purchases of inventory in fiscal 2015, within the applicable contractual cure period.

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 under-performance 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. The terms of the long-term supply agreements are reviewed by management and the Company assesses the need for any accruals for estimated losses on adverse purchase commitments, such as lower of cost or market value adjustments that will not be recovered by future sales prices, forfeiture of advanced deposits and liquidated damages, as necessary.

Advances to Suppliers

As noted above, the Company has entered into agreements with various vendors, some of which are structured as "take or pay" contracts, that specify future quantities and pricing of products to be supplied. 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. The Company did not make any additional advance payments under its long-term supply agreements during the first half of fiscal 2015. During the three and six months ended June 29, 2014, the Company made additional advance payments totaling $16.4 million and $32.9 million, respectively, in accordance with the terms of existing long-term supply agreements. As of June 28, 2015 and December 28, 2014, advances to suppliers totaled $384.6 million and $409.7 million, respectively, of which $96.3 million and $98.1 million, respectively, is classified as short-term in the Company's Consolidated Balance Sheets. Two suppliers accounted for 84% and 16% of total advances to suppliers as of June 28, 2015, and 82% and 17% as of December 28, 2014.

Advances from Customers

The Company has entered into other agreements with customers who have made advance payments for solar power products and systems. These advances will be applied as shipments of product occur or upon completion of certain project milestones. The estimated utilization of advances from customers as of June 28, 2015 is as follows:

(In thousands)	Fiscal 2015 (remaining six months)	Fiscal 2016	Fiscal 2017	Fiscal 2018	Fiscal 2019	Thereafter	Total
Estimated utilization of advances from customers	$ 11,357	30,662	27,039	27,039	28,842	43,263	$ 168,202

In fiscal 2010, the Company and its joint venture, AUO SunPower Sdn. Bhd. ("AUOSP"), entered into an agreement under which the Company resells to AUOSP polysilicon purchased from a third-party supplier. Advance payments provided by AUOSP related to such polysilicon are then made by the Company to the third-party supplier. These advance payments are applied as a credit against AUOSP's polysilicon purchases from the Company. Such polysilicon is used by AUOSP to manufacture solar cells that are sold to the Company on a "cost-plus" basis. As of June 28, 2015 and December 28, 2014, outstanding advance payments received from AUOSP totaled $158.1 million and $167.2 million, respectively, of which $20.5 million and $18.3 million, respectively, was classified as short-term in the Company's Consolidated Balance Sheets, based on projected product shipment dates.

Product Warranties

The following table summarizes accrued warranty activity for the three months ended June 28, 2015 and June 29, 2014, respectively:

	Three Months Ended		Six Months Ended	
(In thousands)	June 28, 2015	June 29, 2014	June 28, 2015	June 29, 2014
Balance at the beginning of the period	$ 154,098	$ 151,415	$ 154,648	$ 149,372
Accruals for warranties issued during the period	4,181	4,311	12,342	9,501
Settlements and adjustments during the period	(1,748)	(4,933)	(10,459)	(8,080)
Balance at the end of the period	$ 156,531	$ 150,793	$ 156,531	$ 150,793

Contingent Obligations

Project agreements entered into with the Company's Commercial and Power Plant customers often require the Company to undertake obligations including: (i) system output performance warranties; (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; and (iv) 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 for specified periods. Historically, the Company's systems have performed significantly above the performance warranty thresholds, and there have been no cases in which the Company has had to buy back a system.

Future Financing Commitments

The Company is required to provide certain funding under the joint venture agreement with AU Optronics Singapore Pte. Ltd. ("AUO") and other unconsolidated investees, subject to certain conditions (see Note 10). As of June 28, 2015, the Company has future financing obligations through fiscal 2015 totaling $179.8 million.

Liabilities Associated with Uncertain Tax Positions

Total liabilities associated with uncertain tax positions were $24.1 million and $31.8 million as of June 28, 2015 and December 28, 2014, respectively. As of June 28, 2015, approximately $4.0 million of transfer-pricing uncertain tax positions are included in "Accrued liabilities" in the Company's Consolidated Balance Sheets as they are reasonably possible to be paid within the next 12 months as a result of settlement, and $20.1 million of uncertain tax positions are included in "Other long-term liabilities" in the Company's Consolidated Balance Sheets as they are not expected to be paid within the next 12 months. As of December 28, 2014, total liabilities of $31.8 million associated with uncertain tax positions were included in "Other long-term liabilities" as they were not expected to be paid within the next 12 months. The reduction in liabilities associated with uncertain tax positions from December 28, 2014, was primarily due to tax settlements in certain foreign jurisdictions in the quarter ended June 28, 2015. 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, if any, would be made for its liabilities associated with uncertain tax positions in other long-term liabilities.

Indemnifications

The Company is a party to a variety of agreements under which it may be obligated to indemnify the counterparty 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 including indemnification to customers under §48(c) solar commercial investment tax credit ("ITC") and Treasury Grant payments under Section 1603 of the American Recovery and Reinvestment Act ("Cash Grant"). In each of these circumstances, payment by the Company is typically subject to the other party making a claim to the Company that is contemplated by and valid under the indemnification provisions of the particular contract, which provisions are typically contract-specific, as well as bringing the claim 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.

In certain limited circumstances the Company has provided indemnification to customers and investors under which the Company is contractually obligated to compensate these parties for losses they may suffer as a result of reductions in benefits received under ITC and Treasury Cash Grant programs. The Company applies for ITC and Cash Grant incentives based on guidance provided by the IRS and the Treasury Department, which include assumptions regarding the fair value of the qualified solar power systems, among others. Certain of the Company’s development agreements, sale-leaseback arrangements, and financing arrangements with investors of its residential lease program, incorporate assumptions regarding the future level of incentives to be received, which in some instances may be claimed directly by its customers and investors. Since the Company cannot determine future revisions to the U.S. Treasury guidelines governing system values or how the IRS will evaluate system values used in claiming ITCs, the Company is unable to reliably estimate the maximum potential future payments that it could have to make under the Company’s contractual investor obligation as of each reporting date.

Defined Benefit Pension Plans

The Company maintains defined benefit pension plans for the majority of its non-U.S. employees. Benefits under these plans are generally based on an employee’s years of service and compensation. Funding requirements are determined on an individual country and plan basis and are subject to local country practices and market circumstances. The funded status of the pension plans, which represents the difference between the benefit obligation and fair value of plan assets, is calculated on a plan-by-plan basis. The benefit obligation and related funded status are determined using assumptions as of the end of each fiscal year. The Company recognizes the overfunded or underfunded status of its pension plans as an asset or liability on its Consolidated Balance Sheets. As of June 28, 2015 and December 28, 2014, the underfunded status of the Company’s pension plans, presented in "Other long-term liabilities" on the Company’s Consolidated Balance Sheets, was $11.6 million and $10.0 million, respectively. The impact of transition assets and obligations and actuarial gains and losses are recorded in "Accumulated other comprehensive loss", and are generally amortized as a component of net periodic cost over the average remaining service period of participating employees.

Legal Matters

Tax Benefit Indemnification Litigation

On March 19, 2014, a lawsuit was filed by NRG Solar LLC (“NRG”) against SunPower Corporation, Systems, a wholly-owned subsidiary of the Company (“SunPower Systems”), in the Superior Court of Contra Costa County, California. The complaint asserts that, according to the indemnification provisions in the contract pertaining to SunPower Systems’ sale of a large California solar project to NRG, SunPower Systems owes NRG $75.0 million in connection with certain tax benefits associated with the project that were approved by the Treasury Department for an amount that was less than expected. The Company does not believe that the facts support NRG’s claim under the operative indemnification provisions and is vigorously contesting the claim. Additionally, SunPower Systems filed a cross-complaint against NRG seeking damages in excess of $7.5 million for breach of contract and related claims arising from NRG’s failure to fulfill its obligations under the contract, including its obligation to take “reasonable, available steps” to engage Treasury. The Company is currently unable to determine if the resolution of this matter will have a material effect on the Company's consolidated financial statements.

First Philec Arbitration

On January 28, 2015, an arbitral tribunal of the International Court of Arbitration of the International Chamber of Commerce issued a first partial award in the matter of an arbitration between First Philippine Electric Corporation ("FPEC") and First Philippine Solar Corporation ("FPSC") against SunPower Philippines Manufacturing, Ltd. ("SPML"), our wholly-owned subsidiary. FPSC is a joint venture of FPEC and SPML for the purpose of slicing silicon wafers from ingots. SPML has not purchased any wafers from FPSC since the third quarter of 2012.

The tribunal found SPML in breach of its obligations under its supply agreement with FPSC, and in breach of its joint venture agreement with FPEC. In its first partial award, the tribunal ordered that (i) SPML must purchase FPEC's interests in FPSC for an aggregate of $30.3 million and (ii) after completing the purchase of FPEC's controlling interest in FPSC, SPML must pay FPSC damages in the amount of $25.2 million. The arbitral tribunal issued its second partial award dated July 14, 2015, which ordered that (i) the price payable by SPML to FPEC for its interests in FPSC be reduced from $30.3 million to $23.2 million, (ii) FPEC's request for interest is refused, and (iii) the payment and transfer of shares between FPEC and SPML is to take place in accordance with the procedure agreed between the parties. The tribunal reserved for its final award the determination of the costs of the proceeding.

SPML has filed a challenge to the first partial award with the High Court in Hong Kong and also given notice of its intention to challenge the second partial award. SPML has also filed applications to the Court in the Philippines to: (i) prevent FPSC or FPEC from enforcing the awards pending the outcome of the challenge in Hong Kong; and (ii) seeking access to FPSC's books and records.

As of June 28, 2015, the Company recorded an accrual of $55.9 million related to this matter based on the Company's best estimate of probable loss.

AUO Arbitration

On April 17, 2015, SunPower Technology Ltd. ("SPTL"), a wholly-owned subsidiary of the Company, commenced an arbitration before the ICC International Court of Arbitration against AUO and AU Optronics Corporation, the ultimate parent company of AUO ("AUO Corp.," and together with AUO, the "AUO Group"), for breaches of the AUOSP Joint Venture Agreement and associated agreements executed in 2010 (the "JVA") as well as breaches of the License and Patent Technology Agreement executed in 2011 (the "LTA"). SPTL's claim alleges that, among other things, the AUO Group has sold solar modules containing cells manufactured at AUOSP in violation of provisions in the JVA and the LTA that set geographical restrictions on sales activities as well as provisions that restrict each party's use of the other's confidential information. On June 23, 2015, the AUO Group filed and served its formal Memorial of Claim and Counterclaims against SPTL and the Company (collectively, the "SunPower Group"). In its counterclaim, the AUO Group seeks $28.6 million in lost profits and $35.6 million in disgorgement from the SunPower Group, alleging improper use of the AUO Group's proprietary manufacturing expertise. The merits hearings are scheduled to begin in the first quarter of 2016. The Company is currently unable to determine whether the resolution of this matter will have a material effect on the Company's consolidated financial statements.

Other Litigation

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 10. *EQUITY METHOD INVESTMENTS*

As of June 28, 2015 and December 28, 2014, the Company's carrying value of its equity method investments totaled $283.2 million and $210.9 million, respectively, and is classified as "Other long-term assets" in its Consolidated Balance Sheets. The Company's share of its earnings (loss) from equity method investments is reflected as "Equity in earnings of unconsolidated investees" in its Consolidated Statements of Operations.

Equity Investment and Joint Venture with AUOSP

In fiscal 2010, the Company, AUO and AUO Corp. formed the joint venture AUOSP. The Company and AUO each own 50% of the joint venture AUOSP. AUOSP owns a solar cell manufacturing facility 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, the Company 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 the Company), 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 Company is committed to purchase 80% of AUOSP's total annual output allocated on a monthly basis to the Company. The Company and AUO have the right to reallocate supplies from time to time under a written agreement. In fiscal 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. The Company and AUO agreed to each contribute additional amounts through fiscal 2015 amounting to $169.0 million, or such lesser amount as the parties may mutually agree. In addition, if AUOSP, the Company or AUO requests additional equity financing to AUOSP, then the Company and AUO will each be required to make additional cash contributions of up to $50.0 million in the aggregate.

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. The Company accounts for its investment in AUOSP using the equity method as a result of the shared power arrangement. As of June 28, 2015, the Company's maximum exposure to loss as a result of its equity investment in AUOSP is limited to the carrying value of the investment. As of June 28, 2015 and December 28, 2014, the Company's investment in AUOSP had a carrying value of $196.7 million and $191.7 million, respectively.

Equity Investment in Huaxia CPV (Inner Mongolia) Power Co., Ltd. ("CCPV")

In December 2012, the Company entered into an agreement with Tianjin Zhonghuan Semiconductor Co. Ltd., Inner Mongolia Power Group Co. Ltd. and Hohhot Jinqiao City Development Company Co., Ltd. to form CCPV, a jointly owned entity to manufacture and deploy the Company's C7 Tracker concentrator technology in Inner Mongolia and other regions in China. CCPV is based in Hohhot, Inner Mongolia. The establishment of the entity was subject to approval of the Chinese government, which was received in the fourth quarter of fiscal 2013. In December 2013, the Company made a $16.4 million equity investment in CCPV, for a 25% equity ownership.

The Company has concluded that it is not the primary beneficiary of CCPV since, although the Company is obligated to absorb losses and has the right to receive benefits, the Company alone does not have the power to direct the activities of CCPV that most significantly impact its economic performance. The Company accounts for its investment in CCPV using the equity method since the Company is able to exercise significant influence over CCPV due to its board position.

Equity Investment in Diamond Energy Pty Ltd. ("Diamond Energy")

In October 2012, the Company made a $3.0 million equity investment in Diamond Energy, an alternative energy project developer and clean electricity retailer headquartered in Melbourne, Australia, in exchange for a 25% equity ownership.

The Company has concluded that it is not the primary beneficiary of Diamond Energy since, although the Company is obligated to absorb losses and has the right to receive benefits, the Company alone does not have the power to direct the activities of Diamond that most significantly impact its economic performance. The Company accounts for its investment in Diamond using the equity method since the Company is able to exercise significant influence over Diamond due to its board position.

Equity Investment in 8point3 Energy Partners

In June 2015, 8point3 Energy Partners, a joint YieldCo vehicle formed by the Sponsors to own, operate and acquire solar energy generation assets, consummated its IPO and its Class A shares are now listed on the NASDAQ Global Select Market under the trading symbol “CAFD.” Refer to the sections titled "Note 3. 8point3 Energy Partners LP" in the Notes to the

Consolidated Financial Statements in this Quarterly Report on Form 10-Q for further information regarding the Company's transactions with the 8point3 Group.

The Company has concluded that it is not the primary beneficiary of the 8point3 Group or any of its individual subsidiaries since, although the Sponsors 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 the 8point3 Group that most significantly impact its economic performance. In making this determination the Company considered, among other factors, the equal division between the Sponsors of management rights in the 8point3 Group and the corresponding equal influence over its significant decisions, the role and influence of the independent directors on the board of directors of the general partner of 8point3 Energy Partners, and how both Sponsors contribute to the activities that most significantly impact the 8point3 Group's economic performance. The Company accounts for its investment in the 8point3 Group using the equity method because the Company determined that, notwithstanding the division of management and ownership interests between the Sponsors, the Company exercises significant influence over the operations of the 8point3 Group.

Future quarterly distributions from OpCo are subject to certain forbearance and subordination periods. During the forbearance period, the Sponsors have agreed to forego any distributions declared on their common and subordinated units. The forbearance period will end when, on or after March 1, 2016, the board of directors of the general partner of 8point3 Energy Partners, with the concurrence of its conflicts committee, determines that OpCo will be able to earn and pay at least the minimum quarterly distribution on each of its outstanding common and subordinated units for such quarter and the successive quarter.

During the subordination period, holders of the subordinated units are not entitled to receive any distributions until the common units have received their minimum quarterly distribution plus any arrearages in the payment of minimum distributions from prior quarters. Approximately 70% of the Company's OpCo units are subject to subordination. The subordination period will end after OpCo has earned and paid minimum quarterly distributions for three years ending on or after August 31, 2018 and there are no outstanding arrearages on common units. Notwithstanding the foregoing, the subordination period could end after OpCo has earned and paid 150% of minimum quarterly distributions, plus the related distribution on the incentive distribution rights, for one year ending on or after August 31, 2016 and there are no outstanding arrearages on common units. At the end of the subordination period, all subordinated units will convert to common units on a one-for-one basis. The Company also, through its interests in Holdings, holds IDRs in OpCo, which represent rights to incremental distributions after certain distribution thresholds are met.

In June 2015, OpCo entered into a $525.0 million senior secured credit facility, consisting of a $300.0 million term loan facility, a $25.0 million delayed draw term loan facility, and a $200.0 million revolving credit facility (the "8point3 Credit Facility"). Proceeds from the term loan were used to make initial distributions to the Sponsors. The 8point3 Credit Facility is secured by a pledge of the Sponsors' equity interests in OpCo.

As of June 28, 2015 and December 28, 2014, the Company's investment in the 8point3 Group had a carrying value of $68.2 million and zero, respectively.

Note 11. ***DEBT AND CREDIT SOURCES***

The following table summarizes the Company's outstanding debt on its Consolidated Balance Sheets:

	June 28, 2015				December 28, 2014			
(In thousands)	**Face Value**	**Short-term**	**Long-term**	**Total**	**Face Value**	**Short-term**	**Long-term**	**Total**
Convertible debt:								
0.875% debentures due 2021	$ 400,000	$ —	$ 396,083	$ 396,083	$ 400,000	$ —	$ 395,475	$ 395,475
0.75% debentures due 2018	300,000	—	297,776	297,776	300,000	—	297,401	297,401
4.50% debentures due 2015	—		—	—	249,645	245,325	—	245,325
0.75% debentures due 2027	79	79	—	79	79	—	79	79
IFC mortgage loan	32,500	7,500	24,097	31,597	47,500	14,983	31,492	46,475
CEDA loan	30,000	—	27,537	27,537	30,000	—	27,379	27,379
Quinto Credit Facility	—	—	—	—	61,481	—	61,481	61,481
Other debt[1]	173,055	3,371	168,627	171,998	91,398	1,963	88,605	90,568
	$ 935,634	$ 10,950	$ 914,120	$ 925,070	$ 1,180,103	$ 262,271	$ 901,912	$ 1,164,183

[1] Other debt excludes payments related to capital leases, which are disclosed in Note 9.

As of June 28, 2015, the aggregate future contractual maturities of the Company's outstanding debt, at face value, was as follows:

(In thousands)	**Fiscal 2015 (remaining six months)**	**Fiscal 2016**	**Fiscal 2017**	**Fiscal 2018**	**Fiscal 2019**	**Thereafter**	**Total**
Aggregate future maturities of outstanding debt	$ 1,123	18,591	19,487	308,208	5,256	582,969	$ 935,634

Convertible Debt

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

	March 29, 2015			December 28, 2014		
(In thousands)	**Carrying Value**	**Face Value**	**Fair Value[1]**	**Carrying Value**	**Face Value**	**Fair Value[1]**
Convertible debt:						
0.875% debentures due 2021	$ 396,083	$ 400,000	$ 406,772	$ 395,475	$ 400,000	$ 358,000
0.75% debentures due 2018	297,776	300,000	413,955	297,401	300,000	366,750
4.50% debentures due 2015	—	—	—	245,325	249,645	294,581
0.75% debentures due 2027	79	79	76	79	79	80
	$ 693,938	$ 700,079	$ 820,803	$ 938,280	$ 949,724	$ 1,019,411

[1] The fair value of the convertible debt was determined using Level 2 inputs based on quarterly market prices as reported by an independent pricing source.

The Company's outstanding convertible debentures are senior, unsecured obligations of the Company, ranking equally with all existing and future senior unsecured indebtedness of the Company.

0.875% Debentures Due 2021

In June 2014, the Company issued $400.0 million in principal amount of its 0.875% debentures due 2021. Interest is payable semi-annually, beginning on December 1, 2014. Holders may exercise their right to convert the debentures at any time into shares of the Company's common stock at an initial conversion price approximately equal to $48.76 per share, subject to adjustment in certain circumstances. If not earlier repurchased or converted, the 0.875% debentures due 2021 mature on June 1, 2021.

0.75% Debentures Due 2018

In May 2013, the Company issued $300.0 million in principal amount of its 0.75% debentures due 2018. Interest is payable semi-annually, beginning on December 1, 2013. Holders may exercise their right to convert the debentures at any time into shares of the Company's common stock at an initial conversion price approximately equal to $24.95 per share, subject to adjustment in certain circumstances. If not earlier repurchased or converted, the 0.75% debentures due 2018 mature on June 1, 2018.

4.50% Debentures Due 2015

In 2010, the Company issued $250.0 million in principal amount of its 4.50% senior cash convertible debentures ("4.50% debentures due 2015"). Interest was payable semi-annually, beginning on September 15, 2010. The 4.50% debentures due 2015 were convertible only into cash, and not into shares of the Company's common stock (or any other securities) at a conversion price of $22.53 per share. The 4.50% debentures due 2015 matured on March 15, 2015. During March 2015, the Company paid holders an aggregate of $324.3 million in cash in connection with the settlement of the outstanding 4.50% debentures due 2015. No 4.50% debentures due 2015 remained outstanding after the maturity date.

The embedded cash conversion option was a derivative instrument (derivative liability) that was required to be separated from the 4.50% debentures due 2015. The fair value of the derivative liability is classified within "Other long-term liabilities" on the Company's Consolidated Balance Sheets. Changes in the fair value of the derivative liability were reported in the Company's Consolidated Statements of Operations until the 4.50% debentures due 2015 matured in March 2015.

During the three and six months ended June 28, 2015, the Company recognized a non-cash loss of zero and $52.0 million, recorded in "Other, net" in the Company's Consolidated Statements of Operations to recognize the change in fair value prior to expiration of the embedded conversion option. During the three and six months ended June 29, 2014, the Company recognized a non-cash loss of $82.1 million and $101.1 million, respectively, recorded in "Other, net" in the Company's Consolidated Statements of Operations related to the change in fair value of the embedded cash conversion option.

Call Spread Overlay with Respect to 4.50% Debentures

Concurrently with the issuance of the 4.50% debentures due 2015, 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% debentures due 2015 or their affiliates. The CSO2015 transactions represented a call spread overlay with respect to the 4.50% debentures due 2015, 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. The transactions effectively reduced the Company's potential payout over the principal amount on the 4.50% debentures due 2015 upon conversion of the 4.50% debentures due 2015.

Under the terms of the 4.50% Bond Hedge, the Company bought 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 common stock.

Each 4.50% Bond Hedge was a separate transaction, entered into by the Company with each counterparty, and was not part of the terms of the 4.50% debentures due 2015. The 4.50% Bond Hedge, which was indexed to the Company's common stock, was a derivative instrument that required mark-to-market accounting treatment due to the cash settlement features until the 4.50% Bond Hedge settled in March 2015. During March 2015, the Company exercised its rights under the 4.50% Bond Hedge, resulting in a payment to the Company of $74.6 million.

During the three and six months ended June 28, 2015, the Company recognized a non-cash gain of zero and $52.0 million, respectively, recorded in "Other, net" in the Company's Consolidated Statements of Operations to recognize the change in fair value before settlement of the 4.50% Bond Hedge. During the three and six months ended June 29, 2014, the Company recognized a non-cash gain of $82.1 million and $101.2 million, respectively, recorded in "Other, net" in the Company's Consolidated Statements of Operations related to the change in fair value of the 4.50% Bond Hedge.

In connection with the 4.50% Warrants, the Company entered into warrant confirmations (collectively, and as amended from time to time, the “2015 Warrant Confirms”) with Deutsche Bank AG, London Branch, Bank of America, N.A., Barclays Bank PLC and Credit Suisse International providing for the acquisition, subject to anti-dilution adjustments, of up to approximately 11.1 million shares of the Company's common stock via net share settlement. Each 4.50% Warrant transaction was a separate transaction, entered into by the Company with each counterparty, and was not part of the terms of the 4.50% debentures due 2015.

During the second quarter of fiscal 2015, the Company entered into separate partial unwind agreements with each of Deutsche Bank AG, London Branch; Bank of America, N.A.; Barclays Bank PLC; and Credit Suisse International in order to reduce the number of warrants issued pursuant to the 2015 Warrant Confirms. Pursuant to the terms of these partial unwind agreements, the Company issued an aggregate of approximately 3.0 million shares of common stock to settle all of the warrants under the 2015 Warrant Confirms. Accordingly, as of June 28, 2015, no 4.50% Warrants remained outstanding.

4.75% Debentures Due 2014

In May 2009, the Company issued $230.0 million in principal amount of its 4.75% senior convertible debentures ("4.75% debentures due 2014"). Interest on the 4.75% debentures due 2014 was payable semi-annually, beginning October 15, 2009. Holders of the 4.75% debentures due 2014 were able to exercise their right to convert the debentures at any time into shares of the Company's common stock at a conversion price equal to $26.40 per share, subject to adjustment upon certain events. In April 2014, the 4.75% debentures due 2014 matured. During April 2014, the Company issued approximately 7.1 million shares of common stock to holders that exercised conversion rights before maturity and paid holders an aggregate of $41.7 million in cash in connection with the settlement of the remaining 4.75% debentures. Accordingly, after the maturity date, no 4.75% debentures remained outstanding.

Call Spread Overlay with Respect to the 4.75% Debentures

Concurrently with the issuance of the 4.75% debentures due 2014, 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 due 2014 (together, 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 was reduced by the sales prices of the 4.75% Warrants. The components of the CSO2014 were not subject to mark-to-market accounting treatment since they could only be settled by issuance of the Company's common stock.

The 4.75% Bond Hedge allowed the Company to purchase up to 8.7 million shares of the Company's common stock, on a net share basis. Each 4.75% Bond Hedge and 4.75% Warrant was a separate transaction, entered into by the Company with each counterparty, and was not part of the terms of the 4.75% debentures due 2014. The exercise prices of the 4.75% Bond Hedge were $26.40 per share of the Company's common stock, subject to customary adjustment for anti-dilution and other events. In February 2014, the parties agreed to unwind the 4.75% Bond Hedge in full for a total cash settlement of $68.8 million, calculated by reference to the weighted price of the Company's common stock on the settlement day, received by the Company.

Under the 4.75% Warrants, the Company sold warrants to acquire up to 8.7 million shares of the Company's common stock at an exercise price of $26.40 per share of the Company's common stock, subject to adjustment for certain anti-dilution and other events. In February 2014, the parties agreed to unwind the 4.75% Warrants in full for a total cash settlement of $81.1 million, calculated by reference to the weighted price of the Company's common stock on the settlement date, paid by the Company.

Other Debt and Credit Sources

Mortgage Loan Agreement with IFC

In May 2010, the Company entered into a mortgage loan agreement with IFC. Under the loan agreement, the Company borrowed $75.0 million and is required to repay the amount borrowed starting two years after the date of borrowing, in 10 equal semi-annual installments. The Company is required to pay interest of LIBOR plus 3% per annum on outstanding borrowings; 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. The Company may prepay all or a part of the outstanding principal, subject to a 1% prepayment premium. The Company has pledged certain assets as collateral supporting its repayment obligations (see Note 5). As of both June 28, 2015 and December 28, 2014, the Company had restricted cash and cash equivalents of $9.2 million related to the IFC debt service reserve, which is the amount, as determined by IFC, equal to the aggregate principal and interest due on the next succeeding interest payment date.

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

In 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 Bonds mature on April 1, 2031, bear interest at a fixed rate of 8.50% through maturity, and include customary covenants and other restrictions on the Company.

Revolving Credit Facility with Credit Agricole

In July 2013, the Company entered into a revolving credit facility (the "revolving credit facility") with Credit Agricole, as administrative agent, and certain financial institutions, under which the Company may borrow up to $250.0 million. On August 26, 2014, the Company entered into an amendment to the revolving credit facility that, among other things, extends the maturity date of the facility from July 3, 2016 to August 26, 2019 (the "Maturity Date"). Amounts borrowed may be repaid and reborrowed until the Maturity Date. The Company may request increases to the available capacity of the revolving credit facility to an aggregate of $300.0 million, subject to the satisfaction of certain conditions. The revolving credit facility includes representations, covenants, and events of default customary for financing transactions of this type.

The revolving credit facility was entered into in conjunction with the delivery by Total S.A. of a guarantee of the Company's obligations under the related facility. On January 31, 2014, as contemplated by the facility, (i) the Company's obligations under the facility became secured by a pledge of certain accounts receivable and inventory; (ii) certain of the Company's subsidiaries entered into guarantees of the facility; and (iii) Total S.A.'s guarantee of the Company's obligations under the facility expired.

After January 31, 2014, the Company is required to pay interest on outstanding borrowings and fees of (a) with respect to any LIBOR rate loan, an amount ranging from 1.50% to 2.00% (depending on the Company's leverage ratio from time to time) plus the LIBOR 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 alternate base rate loan, an amount ranging from 0.50% to 1.00% (depending on the Company's leverage ratio from time to time) plus the greater of (1) the prime rate, (2) the Federal Funds rate plus 0.50%, and (3) the one-month LIBOR rate plus 1%; and (c) a commitment fee ranging from 0.25% to 0.35% (depending on the Company's leverage ratio from time to time) per annum on funds available for borrowing and not borrowed.

As of both June 28, 2015 and December 28, 2014, the Company had no outstanding borrowings under the revolving credit facility.

Project Financing

In order to facilitate the construction and sale of certain solar projects, the Company obtains non-recourse project loans from third-party financial institutions that are contemplated as part of the structure of the sales transaction. The customer, which is not a related party to either the financial institution or the Company, in certain circumstances is permitted to assume the loans at the time that the project entity is sold to the customer. During fiscal 2013, the Company entered into a project loan with a consortium of lenders to facilitate the development of a 10 MW utility and power plant project under construction in Israel. During the first quarter of fiscal 2014, the Company sold the Israeli project. The related loan, amounting to ILS 141.8 million (approximately $40.7 million based on the exchange rate at the time of sale), and accrued and unpaid interest was assumed by the customer. In instances where the debt is issued as a form of pre-established customer financing, subsequent debt assumption is reflected as a financing outflow and operating inflow for purposes of the statement of cash flows to reflect the substance of the assumption as a facilitation of customer financing from a third-party.

On October 17, 2014, the Company, through a wholly-owned subsidiary (the "Quinto Project Company"), entered into an approximately $377.0 million credit facility with Santander Bank, N.A., Mizuho Bank, Ltd. and Credit Agricole (the "Quinto Credit Facility") in connection with the planned construction of the approximately 135 MW Quinto Solar Energy Project, located in Merced County, California (the "Quinto Project").

On June 24, 2015, in connection with the closing of 8point3 Energy Partners' IPO and the concurrent transfer of the Quinto Project to an affiliate of 8point3 Energy Partners, the Quinto Project Company repaid the full amount outstanding under the Quinto Credit Facility and terminated the agreement early. Immediately before termination, there were outstanding borrowings of $224.3 million under the Quinto Credit Facility. The Quinto Project Company did not incur any material penalties for early repayment of the Quinto Credit Facility.

Other Debt

During fiscal 2015, the Company entered into a long-term non-recourse credit facility to finance a 52 MW utility and power plant in Colorado. The outstanding borrowings under this facility amounted to $27.6 million as of June 28, 2015.

During fiscal 2014 and 2015, the Company entered into three long-term non-recourse loans to finance solar power systems and leases under its residential lease program. In fiscal 2015, the Company drew down $54.8 million of proceeds, net of issuance costs, under the loan agreements. The loans have 17-year terms and as of June 28, 2015, the short-term and long-term balances of the loans were $2.8 million and $132.2 million, respectively.

During fiscal 2013, the Company entered into a long-term non-recourse loan agreement to finance a 5.4 MW utility and power plant operating in Arizona. The outstanding balance of the loan as of June 28, 2015 and December 28, 2014 was $8.5 million and $8.6 million, respectively.

Other debt is further composed of non-recourse project loans in EMEA, which are scheduled to mature through 2028.

August 2011 Letter of Credit Facility with Deutsche Bank

In August 2011, the Company entered into a letter of credit facility agreement with Deutsche Bank, 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 (see Note 2). 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 $878.0 million for the period from January 1, 2014 through December 31, 2014. Aggregate letter of credit amounts may be increased upon the agreement of the parties but, otherwise, may not exceed (i) $936.0 million for the period from January 1, 2015 through December 31, 2015, and (ii) $1.0 billion for the period from January 1, 2016 through June 28, 2016.

As of June 28, 2015 and December 28, 2014, letters of credit issued and outstanding under the August 2011 letter of credit facility with Deutsche Bank totaled $594.6 million and $654.7 million, respectively.

September 2011 Letter of Credit Facility with Deutsche Bank Trust

In September 2011, the Company entered into a letter of credit facility with Deutsche Bank Trust which provides for the issuance, upon request by the Company, of 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 June 28, 2015 and December 28, 2014, letters of credit issued and outstanding under the Deutsche Bank Trust facility amounted to $14.5 million and $1.6 million, respectively, which were fully collateralized with restricted cash on the Consolidated Balance Sheets.

Note 12. ***DERIVATIVE FINANCIAL INSTRUMENTS***

The following tables present information about the Company's hedge instruments measured at fair value on a recurring basis as of June 28, 2015 and December 28, 2014, all of which utilize Level 2 inputs under the fair value hierarchy:

(In thousands)	Balance Sheet Classification	June 28, 2015	December 28, 2014
Assets			
Derivatives designated as hedging instruments:			
Foreign currency option contracts	Prepaid expenses and other current assets	$ —	$ 2,240
Foreign currency forward exchange contracts	Prepaid expenses and other current assets	103	4
		$ 103	$ 2,244
Derivatives not designated as hedging instruments:			
Foreign currency forward exchange contracts	Prepaid expenses and other current assets	1,804	4,774
Interest rate contracts	Other long-term assets	$ 848	$ —
		$ 2,652	$ 4,774
Liabilities			
Derivatives designated as hedging instruments:			
Foreign currency forward exchange contracts	Accrued liabilities	925	—
Interest rate contracts	Other long-term liabilities	470	3,712
		$ 1,395	$ 3,712
Derivatives not designated as hedging instruments:			
Foreign currency forward exchange contracts	Accrued liabilities	3,518	1,345
Interest rate contracts	Other long-term liabilities	—	—
		$ 3,518	$ 1,345

	June 28, 2015					
				Gross Amounts Not Offset in the Consolidated Balance Sheets, but Have Rights to Offset		
(In thousands)	Gross Amounts Recognized	Gross Amounts Offset	Net Amounts Presented	Financial Instruments	Cash Collateral	Net Amounts
Derivative assets	$ 2,755	$ —	$ 2,755	$ 2,377	$ —	$ 378
Derivative liabilities	$ 4,913	$ —	$ 4,913	$ 2,377	$ —	$ 2,536

	December 28, 2014					
				Gross Amounts Not Offset in the Consolidated Balance Sheets, but Have Rights to Offset		
(In thousands)	Gross Amounts Recognized	Gross Amounts Offset	Net Amounts Presented	Financial Instruments	Cash Collateral	Net Amounts
Derivative assets	$ 7,018	$ —	$ 7,018	$ 1,345	$ —	$ 5,673
Derivative liabilities	$ 5,057	$ —	$ 5,057	$ 1,345	$ —	$ 3,712

The following table summarizes the pre-tax amount of unrealized gain or loss recognized in "Accumulated other comprehensive income" ("OCI") in "Stockholders' equity" in the Consolidated Balance Sheets:

	Three Months Ended		Six Months Ended	
(In thousands)	**June 28, 2015**	**June 29, 2014**	**June 28, 2015**	**June 29, 2014**
Derivatives designated as cash flow hedges:				
Loss in OCI at the beginning of the period	$ (5,631)	$ (420)	$ (1,443)	$ (805)
Unrealized gain (loss) recognized in OCI	7,343	(135)	4,635	(138)
Less: Loss (gain) reclassified from OCI to earnings	(2,347)	107	(3,827)	495
Net gain (loss) on derivatives	$ 4,996	$ (28)	$ 808	$ 357
Loss in OCI at the end of the period	$ (635)	$ (448)	$ (635)	$ (448)

The following table summarizes the amount of gain or loss recognized in "Other, net" in the Consolidated Statements of Operations in the three and six months ended June 28, 2015, and June 29, 2014:

	Three Months Ended		Six Months Ended	
(In thousands)	**June 28, 2015**	**June 29, 2014**	**June 28, 2015**	**June 29, 2014**
Derivatives designated as cash flow hedges:				
Gain (loss) recognized in "Other, net" on derivatives (ineffective portion and amount excluded from effectiveness testing)	$ (1,968)	$ 331	$ (5,223)	$ 811
Derivatives not designated as hedging instruments:				
Gain (loss) recognized in "Other, net"	$ (8,417)	$ (1,224)	$ (902)	$ 206

Foreign Currency Exchange Risk

Designated Derivatives Hedging Cash Flow Exposure

The Company's cash flow exposure primarily relates to anticipated third-party foreign currency revenues and expenses and interest rate fluctuations. To protect financial performance, the Company enters into foreign currency forward and option contracts designated as cash flow hedges to hedge certain forecasted revenue transactions denominated in currencies other than their functional currencies.

As of June 28, 2015, the Company had designated outstanding cash flow hedge option contracts and forward contracts with an aggregate notional value of zero and $40.4 million, respectively. As of December 28, 2014, the Company had designated outstanding cash flow hedge option contracts and forward contracts with an aggregate notional value of $26.6 million and $12.2 million, respectively. The Company designates either gross external or intercompany revenue up to its net economic exposure. These derivatives have a maturity of 12 months or less and consist of foreign currency option and forward contracts. The effective portion of these cash flow hedges is reclassified into revenue when third-party revenue is recognized in the Consolidated Statements of Operations.

Non-Designated Derivatives Hedging Transaction Exposure

Derivatives not designated as hedging instruments consist of forward and option 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. As of June 28, 2015, the Company held option contracts and forward contracts with an aggregate notional value of zero and $55.8 million, respectively, to hedge balance sheet exposure. The maturity dates of these contracts range from June 2015 to September 2015. The Company held option contracts and forward contracts with an aggregate notional value of zero and $122.5 million, respectively, as of December 28, 2014, to hedge balance sheet exposure.

Interest Rate Risk

The Company also enters into interest rate swap agreements to reduce the impact of changes in interest rates on its project specific non-recourse floating rate debt. As of June 28, 2015 and December 28, 2014, the Company had interest rate swap agreements designated as cash flow hedges with an aggregate notional value of $8.5 million and $247.0 million, respectively. These swap agreements allow the Company to effectively convert floating rate payments into fixed rate payments periodically over the life of the agreements. These derivatives have a maturity of more than 12 months. The effective portion of these cash flow hedges is reclassified into interest expense when the hedged transactions are recognized in the Consolidated Statements of Operations. The Company analyzes its interest rate swaps quarterly to determine if the hedge transaction remains effective or ineffective. The Company may discontinue hedge accounting for interest rate swaps prospectively if certain criteria are no longer met, the interest rate swap is terminated or exercised, or if the Company elects to remove the cash flow hedge designation. If hedge accounting is discontinued, and the forecasted hedged transaction is considered possible to occur, the previously recognized gain or loss on the interest rate swaps will remain in accumulated other comprehensive loss and will be reclassified into earnings during the same period the forecasted hedged transaction affects earnings or is otherwise deemed improbable to occur.

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 to these 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 Company continuously evaluates the credit standing of its counterparties.

Note 13. ***INCOME TAXES***

In the three and six months ended June 28, 2015, the Company's income tax benefit of $0.7 million and income tax provision of $1.7 million, respectively, on a loss before income taxes and equity in earnings of unconsolidated investees of $26.0 million and $54.9 million, respectively, was primarily due to projected tax expense, partially offset by discrete benefits pertaining to tax settlements in certain foreign jurisdictions in the three months ended June 28, 2015. In the three and six months ended June 29, 2014, the Company's income tax benefit of $8.2 million and income tax provision of $5.5 million, respectively, on a loss before income taxes and equity in earnings of unconsolidated investees of $8.9 million and an income before income taxes and equity in earnings of unconsolidated investees of $45.9 million, respectively, was primarily due to the change in the amount and mix of forecasted earnings.

Note 14. ***NET INCOME (LOSS) PER SHARE***

The Company calculates net income (loss) per share by dividing earnings allocated to common stockholders by the weighted average number of common shares outstanding for the period.

Diluted weighted average shares is computed using basic weighted average shares plus any potentially dilutive securities outstanding during the period using the treasury-stock-type method and the if-converted method, except when their effect is anti-dilutive. Potentially dilutive securities include stock options, restricted stock units, the Upfront Warrants held by Total, warrants associated with the CSO2015 and CSO2014, and the outstanding senior convertible debentures.

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

	Three Months Ended		Six Months Ended	
(In thousands, except per share amounts)	**June 28, 2015**	**June 29, 2014**	**June 28, 2015**	**June 29, 2014**
Basic net income (loss) per share:				
Numerator				
Net income (loss) attributable to stockholders	$ 6,509	$ 14,102	$ (3,072)	$ 79,146
Denominator				
Basic weighted-average common shares	134,376	129,747	133,205	125,972
Basic net income (loss) per share	$ 0.05	$ 0.11	$ (0.02)	$ 0.63
Diluted net income (loss) per share:				
Numerator				
Net income (loss) attributable to stockholders	6,509	14,102	(3,072)	79,146
Add: Interest expense incurred on the 0.75% debentures due 2018, net of tax	512	551	—	1,001
Add: Interest expense incurred on the 0.875% debentures due 2021, net of tax	—	—	—	181
Net income (loss) available to common stockholders	7,021	14,653	(3,072)	80,328
Denominator				
Basic weighted-average common shares	134,376	129,747	133,205	125,972
Effect of dilutive securities:				
Stock options	36	93	—	101
Restricted stock units	1,483	4,095	—	5,149
Upfront Warrants (held by Total)	7,201	7,278	—	7,253
Warrants (under the CSO2015)	1,873	3,094	—	3,004
Warrants (under the CSO2014)	—	—	—	524
0.75% debentures due 2018	12,026	12,026	—	12,026
0.875% debentures due 2021	—	—	—	857
Dilutive weighted-average common shares	156,995	156,333	133,205	154,886
Diluted net income (loss) per share	$ 0.04	$ 0.09	$ (0.02)	$ 0.52

The Upfront Warrants allow Total to acquire up to 9,531,677 shares of the Company's common stock at an exercise price of $7.8685. The warrants under the CSO2015 and CSO2014, when such warrants were still outstanding, entitled holders to acquire up to 11.1 million and 8.7 million shares, respectively, of the Company's common stock at an exercise price of $24.00 and $26.40, respectively. In February 2014, the CSO2014 was settled, leaving none of the related Warrants outstanding (see Note 11); and during the second quarter of fiscal 2015, the Company entered into unwind agreements pursuant to which the Company issued common stock to settle all of the outstanding warrants relating to the CSO2015 (see Note 11).

Holders of the Company's 0.875% debentures due 2021 and 0.75% debentures due 2018 may, and holders of the 4.75% debentures due 2014 before their maturity could, convert the debentures into shares of the Company's common stock, at the applicable conversion rate, at any time on or before maturity. These debentures are included in the calculation of diluted net income per share if they were outstanding during the period presented and if their inclusion is dilutive under the if-converted method. In April 2014, the 4.75% debentures due 2014 matured and were fully settled in both cash and shares of the Company's common stock (see Note 11).

Holders of the Company's 4.50% debentures due 2015 could, under certain circumstances at their option and before maturity, convert the debentures into cash, and not into shares of the Company's common stock (or any other securities).

Therefore, the 4.50% debentures due 2015 are excluded from the net income per share calculation. In March 2015, the 4.50% debentures due 2015 matured and were settled in cash (see Note 11).

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

	Three Months Ended		Six Months Ended	
(In thousands)	**June 28, 2015**	**June 29, 2014**	**June 28, 2015 [1]**	**June 29, 2014**
Stock options	149	139	185	149
Restricted stock units	293	293	1,776	379
Upfront Warrants (held by Total)	—	—	7,055	—
Warrants (under the CSO2015)	—	—	1,827	—
0.75% debentures due 2018	—	—	12.026	—
0.875% debentures due 2021	8,203	1,713	8,203	—
4.75% debentures due 2014	n/a	1,330	n/a	5,021

[1]As a result of the net loss per share for the six months ended June 28, 2015, the inclusion of all potentially dilutive stock options, restricted stock units, and common shares under noted warrants and convertible debt 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 such period.

Note 15. *STOCK-BASED COMPENSATION*

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

	Three Months Ended		Six Months Ended	
(In thousands)	**June 28, 2015**	**June 29, 2014**	**June 28, 2015**	**June 29, 2014**
Cost of Residential revenue	$ 1,212	$ 890	$ 2,134	$ 1,884
Cost of Commercial revenue	531	491	919	1,031
Cost of Power Plant revenue	1,517	1,969	2,773	3,991
Research and development	2,380	1,912	4,653	3,709
Sales, general and administrative	8,400	8,086	17,107	17,600
Total stock-based compensation expense	$ 14,040	$ 13,348	$ 27,586	$ 28,215

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

	Three Months Ended		Six Months Ended	
(In thousands)	**June 28, 2015**	**June 29, 2014**	**June 28, 2015**	**June 29, 2014**
Restricted stock units	14,885	13,472	29,389	28,348
Change in stock-based compensation capitalized in inventory	(845)	(124)	(1,803)	(133)
Total stock-based compensation expense	$ 14,040	$ 13,348	$ 27,586	$ 28,215

Note 16. *SEGMENT AND GEOGRAPHICAL INFORMATION*

In the first quarter of fiscal 2015, in connection with a realignment of its internal organizational structure, the Company changed its segment reporting from its Americas, EMEA and APAC Segments to three end-customer segments: (i) Residential Segment, (ii) Commercial Segment and (iii) Power Plant Segment (see Note 1). The Residential and Commercial Segments combined are referred to as Distributed Generation. Reclassifications of prior period segment information have been made to conform to the current period presentation. This change does not affect the Company's previously reported Consolidated Financial Statements.

The following tables present information by end-customer segment including revenue, gross margin, and depreciation and amortization, as well as revenue by geography, based on the destination of the shipments:

	Three Months Ended		Six Months Ended	
(In thousands)	**June 28, 2015**	**June 29, 2014**	**June 28, 2015**	**June 29, 2014**
Revenue				
Distributed Generation				
Residential	152,205	156,134	307,529	320,852
Commercial	62,984	85,087	112,047	161,591
Power Plant	165,831	266,650	402,315	717,850
Total revenue	381,020	507,871	821,891	1,200,293
Cost of revenue				
Distributed Generation				
Residential	116,979	125,002	239,751	257,689

Commercial	58,842	74,789	105,722	139,252
Power Plant	134,318	213,935	314,719	546,218
Total cost of revenue	310,139	413,726	660,192	943,159
Gross margin				
Distributed Generation				
Residential	35,226	31,132	67,778	63,163
Commercial	4,142	10,298	6,325	22,339
Power Plant	31,513	52,715	87,596	171,632
Total gross margin	$ 70,881	$ 94,145	$ 161,699	$ 257,134

	Three Months Ended		Six Months Ended	
Depreciation and amortization by segment (in thousands):	**June 28, 2015**	**June 29, 2014**	**June 28, 2015**	**June 29, 2014**
Distributed Generation				
Residential	$ 10,504	$ 7,128	$ 20,676	$ 13,163
Commercial	$ 6,287	$ 3,989	$ 9,694	$ 6,792
Power Plant	$ 14,651	$ 12,909	$ 29,635	$ 29,442

The following tables present information by significant customers and categories:

		Three Months Ended		Six Months Ended	
(As a percentage of total revenue)		**June 28, 2015**	**June 29, 2014**	**June 28, 2015**	**June 29, 2014**
Significant Customers:	**Business Segment**				
MidAmerican Energy Holdings Company	Power Plant	15%	31%	25%	37%

	Three Months Ended		Six Months Ended	
(As a percentage of total revenue)	**June 28, 2015**	**June 29, 2014**	**June 28, 2015**	**June 29, 2014**
Revenue by geography:				
United States	62%	59%	66%	64%
Japan	15%	19%	15%	15%
Rest of World	23%	22%	19%	21%
	100%	100%	100%	100%

A reconciliation of the Company's segment revenue and gross margin to its consolidated financial statements for the three months ended June 28, 2015, and June 29, 2014 is as follows:

	Three Months Ended June 28, 2015								
	Revenue			Gross margin					
Revenue and Gross margin by segment (in thousands, except percentages):	Residential	Commercial	Power Plant	Residential		Commercial		Power Plant	
As reviewed by CODM	$ 152,205	$ 62,984	$ 161,518	$ 35,410	23.3%	$ 4,016	6.4%	$ 26,717	16.5%
Utility and power plant projects	—	—	4,313	—		—		4,328	
FPSC arbitration ruling	—	—	—	1,969		1,294		3,837	
Stock-based compensation	—	—	—	(1,212)		(531)		(1,516)	
Other	—	—	—	(941)		(637)		(1,853)	
GAAP	$ 152,205	$ 62,984	$ 165,831	$ 35,226	23.1%	$ 4,142	6.6%	$ 31,513	19.0%

	Three Months Ended June 29, 2014								
	Revenue			Gross margin					
Revenue and Gross margin by segment (in thousands, except percentages):	Residential	Commercial	Power Plant	Residential		Commercial		Power Plant	
As reviewed by CODM	$ 156,134	$ 85,087	$ 379,845	$ 32,207	20.6%	$ 10,887	12.8%	$ 77,738	20.5%
Utility and power plant projects	—	—	(113,195)	—		—		(22,614)	
Stock-based compensation	—	—	—	(890)		(491)		(1,969)	
Other	—	—	—	(185)		(98)		(440)	
GAAP	$ 156,134	$ 85,087	$ 266,650	$ 31,132	19.9%	$ 10,298	12.1%	$ 52,715	19.8%

A reconciliation of the Company's segment revenue and gross margin to its consolidated financial statements for the six months ended June 28, 2015, and June 29, 2014 is as follows:

	Six Months Ended June 28, 2015								
	Revenue			Gross margin					
Revenue and Gross margin by segment (in thousands, except percentages):	Residential	Commercial	Power Plant	Residential		Commercial		Power Plant	
As reviewed by CODM	$ 307,529	$ 112,047	$ 387,732	$ 70,688	23.0%	$ 7,041	6.3%	$ 76,575	19.7%
Utility and power plant projects	—	—	14,583	—		—		15,579	
FPSC arbitration ruling	—	—	—	1,969		1,294		3,837	
Stock-based compensation	—	—	—	(2,134)		(919)		(2,772)	
Other	—	—	—	(2,745)		(1,091)		(5,623)	
GAAP	$ 307,529	$ 112,047	$ 402,315	$ 67,778	22.0%	$ 6,325	5.6%	$ 87,596	21.8%

	Six Months Ended June 29, 2014								
	Revenue			Gross margin					
Revenue and Gross margin by segment (in thousands, except percentages):	Residential	Commercial	Power Plant	Residential		Commercial		Power Plant	
As reviewed by CODM	$ 320,852	$ 161,591	$ 822,336	$ 65,420	20.4%	$ 23,562	14.6%	$ 182,487	22.2%
Utility and power plant projects	—	—	(104,486)	—		—		(6,006)	
Stock-based compensation	—	—	—	(1,884)		(1,031)		(3,991)	
Other	—	—	—	(373)		(192)		(858)	
GAAP	$ 320,852	$ 161,591	$ 717,850	$ 63,163	19.7%	$ 22,339	13.8%	$ 171,632	23.9%

Note 17. *SUBSEQUENT EVENTS*

Acquisition of Solar Power Plant Development Assets

On July 27, 2015, the Company acquired 1.5 GWs of U.S. solar power plant development assets from Australia-based Infigen Energy. With the acquisition, the Company assumed ownership of projects in varying stages of development across 11 states.

Included in the development portfolio are three projects totaling 55 MWac with power purchase agreements with Southern California Edison. All three are located in Kern County, California. The Company expects to start construction on these projects later this year with commercial operation anticipated in 2016. The Company expects to offer some of the acquired projects for sale to 8point3 Energy Partners.

ITEM 2: *MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS*

Cautionary Statement Regarding Forward-Looking Statements

You should read the following discussion of our financial condition and results of operations in conjunction with the consolidated financial statements and the notes thereto included elsewhere in this Quarterly Report on Form 10-Q and our Annual Report on Form 10-K for the fiscal year ended December 28, 2014 filed with the Securities and Exchange Commission pursuant to the Securities Exchange Act of 1934, as amended (the "Exchange Act").

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," "plan," "predict," "potential," "will," "would," "should," 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, development of new products and improvements to our existing products, our manufacturing capacity and manufacturing costs, the adequacy of our agreements with our suppliers, our ability to monetize utility projects, competitive positions, management's plans and objectives for future operations, our YieldCo strategy and the future performance of 8point3 Energy Partners LP, the sufficiency of our cash and our liquidity, our ability to obtain financing, our ability to comply with debt covenants or cure any defaults, trends in average selling prices, the success of our joint ventures and acquisitions, expected capital expenditures, warranty matters, outcomes of litigation, our exposure to foreign exchange, interest and credit risk, general business and economic conditions in our markets, industry trends, the impact of changes in government incentives, expected restructuring charges, and the likelihood of any impairment of project assets and long-lived assets. 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. Factors that could cause or contribute to such differences include, but are not limited to, those identified below, those discussed in the section titled "Risk Factors" included in this Quarterly Report on Form 10-Q and our Annual Report on Form 10-K for the fiscal year ended December 28, 2014, and our other filings with the Securities and Exchange Commission ("SEC"). 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.

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 end on the Sunday closest to the calendar month end.

Overview

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

Our products and services include Solar Power Components, Solar Power Systems, and Solutions and Services. Solar Power Components consist of solar panels, inverters, and balance of system components including mounting structures, charge

controllers, grid interconnection equipment, and other devices. Solar Power Systems include our residential systems, commercial roof and ground mounted systems, and utility and power plant systems including utility-scale solar power system construction and development. Our Solutions and Services include O&M services, a residential leasing program, and "Smart Energy" solutions. We see Smart Energy as a way to harness our world's energy potential by connecting the most powerful and reliable solar systems on the market with an increasingly vast array of actionable data that can help our customers make smarter decisions about their energy use. Our Smart Energy initiative is designed to add layers of intelligent control to homes, buildings and grids—all personalized through easy-to-use customer interfaces. For more information about our business, please refer to the section titled "Part I. Item 1. *Business*" in our Annual Report on Form 10-K for the fiscal year ended December 28, 2014.

8point3 Energy Partners LP

In June 2015, 8point3 Energy Partners LP ("8point3 Energy Partners"), a joint YieldCo vehicle formed by us and First Solar, Inc. ("First Solar" and, together with us, the "Sponsors") to own, operate and acquire solar energy generation assets, completed an initial public offering ("IPO") of Class A shares representing limited partner interests in 8point3 Energy Partners. The IPO was consummated on June 24, 2015 (the "IPO Closing Date") whereupon the Class A shares were listed on the NASDAQ Global Select Market under the trading symbol "CAFD."

Immediately after the IPO, we contributed a portfolio of 170 MW of our solar generation assets (the "SPWR Projects") to 8point3 Operating Company, LLC ("OpCo"), 8point3 Energy Partners' primary operating subsidiary. In exchange for the SPWR Projects, we received cash proceeds of $371 million as well as equity interests in several 8point3 Energy Partners affiliated entities: primarily common and subordinated units representing a 40.7% stake in OpCo and a 50% economic and management stake in 8point3 Holding Company, LLC ("Holdings"), the parent company of the general partner of 8point3 Energy Partners and the owner of incentive distribution rights ("IDRs") in OpCo. Holdings, OpCo, 8point3 Energy Partners and their respective subsidiaries are referred to herein as the "8point3 Group." Additionally, pursuant to a Right of First Offer Agreement between us and OpCo, the 8point3 Group has rights of first offer on interests in an additional 513 MW of our solar energy projects that are currently contracted or are expected to be contracted before being sold by us (the "ROFO Projects"). In connection with the IPO, we also entered into operations and maintenance, asset management and management services agreements with the 8point3 Group. The services we provide under these agreements are priced consistently with market rates for such services and the agreements are terminable by the 8point3 Group for convenience.

We account for our investments in the 8point3 Group using the equity method, whereby the book value of our investments is recorded as a non-current asset and our portion of the 8point3 Group's earnings is recorded in the Consolidated Statements of Operations under the caption "Equity in earnings (loss) of unconsolidated investees."

For more information about our accounting of the IPO and related transactions, please refer to the sections titled "Note 3. 8point3 Energy Partners LP" and "Note 10. Equity Method Investments" in the Notes to the Consolidated Financial Statements in this Quarterly Report on Form 10-Q.

Segments Overview

In the first quarter of fiscal 2015, in connection with a realignment of our internal organizational structure, we changed our segment reporting from our Americas, EMEA and APAC Segments to three end-customer segments: (i) Residential Segment, (ii) Commercial Segment and (iii) Power Plant Segment. The Residential and Commercial Segments combined are referred to as Distributed Generation. Historically, the Americas Segment included both North and South America, the EMEA Segment included European countries as well as the Middle East and Africa, and the APAC Segment included all Asia-Pacific countries.

Under the new segmentation, our Residential Segment refers to sales of solar energy solutions to residential end customers through a variety of means, including cash sales and long-term leases directly to end customers, sales to resellers, including our third-party global dealer network, and sales of our O&M services. Our Commercial Segment refers to sales of solar energy solutions to commercial and public entity end customers through a variety of means, including direct sales of turn-key EPC services, sales to our third-party global dealer network, sales of energy under PPAs, and sales of our O&M services. Our Power Plant Segment refers to our large-scale solar products and systems business, which includes power plant project development and project sales, EPC services for power plant construction, power plant O&M services and component sales for power plants developed by third-parties, sometimes on a multi-year, firm commitment basis.

Our President and Chief Executive Officer, as the CODM, reviews our business and manages resource allocations and measures performance of our activities among these three end-customer segments.

Unit of Power

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

Levelized Cost of Energy ("LCOE")

LCOE is an evaluation of the life-cycle energy cost and life-cycle energy production of an energy producing system. It allows alternative technologies to be compared when different scales of operation, investment or operating time periods exist. LCOE captures capital costs and ongoing system-related costs, along with the amount of electricity produced, and converts them into a common metric. Key drivers for LCOE reduction for photovoltaic products include panel efficiency, capacity factors, reliable system performance, and the life of the system.

Customer Cost of Energy™ ("CCOE™")

Our customers are focused on reducing their overall cost of energy by intelligently integrating solar and other distributed generation, energy efficiency, energy management, and energy storage systems with their existing utility-provided energy. CCOE™ is an evaluation of a customer's overall cost of energy, taking into account the cost impact of each individual generation source (including the utility), energy storage systems, and energy management systems. CCOE includes capital costs and ongoing operating costs, along with the amount of electricity produced, stored, saved, or re-sold, and converts all of these variables into a common metric. The CCOE metric allows a customer to compare different portfolios of generation sources, energy storage, and energy management in order to tailor energy supply and usage to the customer's unique lifestyle and financial goals.

Seasonal Trends

Our business is subject to industry-specific seasonal fluctuations including changes in weather patterns and economic incentives, among others. Sales have historically reflected these seasonal trends with the largest percentage of total revenues realized during the last two quarters of a fiscal year. The construction of solar power systems or installation of solar power components and related revenue may decline during cold winter months. In the United States, many customers make purchasing decisions towards the end of the year in order to take advantage of tax credits or for other budgetary reasons.

Fiscal Years

We have a 52-to-53-week fiscal year that ends on the Sunday closest to December 31. Accordingly, every fifth or sixth year will be a 53-week fiscal year. The current fiscal year, fiscal 2015, is a 53-week fiscal year and includes a 14-week fourth fiscal quarter, while fiscal year 2014 was a 52-week fiscal year. The second quarter of fiscal 2015 ended on June 28, 2015, while the second quarter of fiscal 2014 ended on June 29, 2014. The second quarters of fiscal 2015 and fiscal 2014 were both 13-week quarters.

Outlook

While remaining focused on our U.S. market, we plan to continue to expand our business in growing and sustainable markets, including Africa, Australia, China, Saudi Arabia, South America, and Turkey. Through our investment in Huaxia CPV (Inner Mongolia) Power Co., Ltd. with partners in China, we plan to manufacture and deploy our C7 Tracker systems in Inner Mongolia and other regions in China. We plan to expand our solar cell manufacturing capacity through the construction of a facility in the Philippines with a planned annual capacity of 350 MW once fully operational, which is expected to occur in fiscal 2016, with initial production expected towards the end of fiscal 2015.

We continue to improve our unique, differentiated solar cell and panel technology. Our new residential product line includes our SunPower X-Series Solar Panels with demonstrated average panel efficiencies exceeding 21.5%. We are focused on reducing the cost of our solar panels and systems and are working with our suppliers and partners along all steps of the value chain to reduce costs by improving manufacturing technologies and expanding economies of scale. We continue to emphasize improvement of our solar cell efficiency and LCOE and CCOE performance through enhancement of our existing products, development of new products and reduction of manufacturing cost and complexity in conjunction with our overall cost-control strategies. In fiscal 2014, we produced our first solar cells with over 25% efficiency in the lab and in fiscal 2015 we expect to reach production panel efficiencies of 23% using a simplified, lower cost manufacturing process.

We continue to see significant and increasing opportunities in technologies and capabilities adjacent to our core product offerings that can significantly reduce CCOE, including the integration of energy storage and energy management functionality into our systems, and have made investments to realize those opportunities, including our investment in Tendril Networks, our acquisition of SolarBridge Technologies, and our exclusive agreement with Sunverge Energy. In the fourth quarter of fiscal 2014, we licensed a data-driven Energy Services Management ("ESM") Platform from Tendril Networks, Inc. to power the development of new Smart Energy applications designed to deliver personalized energy services to our customers. In the first quarter of fiscal 2015, we entered into a strategic partnership with EnerNOC, a leading provider of energy intelligence software, to deploy EnerNOC's Software as a Service ("SaaS") solution to our commercial and power plant customers so they can make intelligent energy choices by addressing how they buy energy, how they use energy and when they use it. We have added advanced module-level control electronics to our portfolio of technology designed to enable longer series strings and significant balance of system components cost reductions in large arrays. We are developing next generation microinverters designed to eliminate the need to mount or assemble additional components on the roof or the side of a building and enable optimization and monitoring at the solar panel level to ensure maximum energy production by the solar system. We also expect to make combined solar and distributed energy storage solutions broadly commercially available to certain customers in the United States and Australia in fiscal 2015 through an exclusive agreement to offer Sunverge SIS energy solutions comprising batteries, power electronics, and multiple energy inputs controlled by software in the cloud.

In June 2015, 8point3 Energy Partners, our joint YieldCo vehicle formed to own, operate and acquire solar energy generation assets, completed its IPO. Through our investments in and involvement with the 8point3 Group, we anticipate that we will be able to reliably access a lower cost of capital, which will further enable the continued development of our project pipeline described below in our key U.S. market and in select, sustainable foreign markets. As part of this strategy, we plan to retain these development projects on our balance sheet for longer periods of time than in preceding periods in order to optimize the economic value we receive at the time of sale.

Projects Sold / Under Contract

The table below presents significant construction and development projects sold or under contract as of June 28, 2015:

Project	Location	Size (MW)	Third-Party Owner / Purchaser	Power Purchase Agreement(s)	Expected Substantial Completion of Project
Solar Star Projects	California, USA	748	MidAmerican Energy Holdings Company	Southern California Edison	2015
Quinto Solar Project	California, USA	135	8point3 Energy Partners	Southern California Edison	2015
Prieska Solar Project[1]	South Africa	86	Mulilo Prieska PV (RF) Proprietary Limited	Eskom Holdings Soc LTD	2016

[1] We have entered into an EPC agreement and a long-term fixed price O&M agreement with the owners of the Prieska Solar Project.

As of June 28, 2015, an aggregate of approximately $176 million of remaining revenue is expected to be recognized on projects reflected in the table above through the expected completion dates noted. Projects will be removed from the table above in the period in which substantially all of the revenue for such project has been recognized.

Projects with Executed Power Purchase Agreements - Not Sold / Not Under Contract

The table below presents significant construction and development projects with executed power purchase agreements, but not sold or under contract as of June 28, 2015:

Project	Location	Size (MW)	Power Purchase Agreement(s)	Expected Substantial Completion of Project
Henrietta Solar Project*	California, USA	128	PG&E	2016
Stanford Solar Generating Station*	California, USA	68	Stanford University	2016
Hooper Solar Project*	Colorado, USA	60	Public Service Company of Colorado	2016

*ROFO Project—pursuant to a Right of First Offer Agreement between SunPower and OpCo, the 8point3 Group has rights of first offer on interests in these projects. For additional information on 8point3 Energy Partners and related transactions, please refer to the section titled "Note 3. 8point3 Energy Partners LP" in the Notes to the Consolidated Financial Statements in this Quarterly report on Form 10-Q.

Our project pipeline extends beyond the projects represented in the tables above. Significant projects with development and milestone activities in progress will be excluded from the table above until an associated power purchase agreement has been executed.

Results of Operations

Revenue

	Three Months Ended			Six Months Ended		
(In thousands)	**June 28, 2015**	**June 29, 2014**	**% Change**	**June 28, 2015**	**June 29, 2014**	**% Change**
Distributed Generation						
Residential	152,205	156,134	(3)%	307,529	320,852	(4)%
Commercial	62,984	85,087	(26)%	112,047	161,591	(31)%
Power Plant	165,831	266,650	(38)%	402,315	717,850	(44)%
Total revenue	$ 381,020	$ 507,871	(25)%	$ 821,891	$ 1,200,293	(32)%

Total Revenue: Our total revenue decreased 25% and 32% during the three and six months ended June 28, 2015 as compared to the three and six months ended June 29, 2014, respectively, due to substantial completion of revenue recognition at the end of fiscal 2014 on certain large-scale solar power systems. A decline in sales of solar power systems and components to residential and commercial customers also contributed to the period-over-period decrease in total revenue. Additionally, during the second quarter of fiscal 2015, we deferred the recognition of any profit on the sale of projects involving real estate to 8point3 Energy Partners under the accounting treatment described in "Item 1. Financial Statements—Notes to Consolidated Financial Statements —Note 3. 8point3 Energy Partners LP." Furthermore, we do not expect to recognize any profit during the remainder of fiscal 2015 on sales to 8point3 Energy Partners of projects that involve real estate.

Concentrations: Sales for the Power Plant Segment as a percentage of total revenue recognized were approximately 44% and 49% during the three and six months ended June 28, 2015 as compared to 53% and 60% during the three and six months ended June 29, 2014, respectively. The decrease in the percentage of revenue for the Power Plant Segment was primarily driven by substantial completion of revenue recognition at the end of fiscal 2014 on certain large-scale solar power systems. Additionally, during the second quarter of fiscal 2015, we deferred the recognition of any profit on the sale of projects involving real estate to 8point3 Energy Partners under the accounting treatment described in "Item 1. Financial Statements—Notes to Consolidated Financial Statements—Note 3. 8point3 Energy Partners LP."

The table below represents our significant customers that accounted for greater than 10 percent of total revenue in each of the three and six months ended June 28, 2015 and June 29, 2014.

(As a percentage of total revenue)		Three Months Ended		Six Months Ended	
		June 28, 2015	June 29, 2014	June 28, 2015	June 29, 2014
Significant Customers:	**Business Segment**				
MidAmerican Energy Holdings Company	Power Plant	15%	31%	25%	37%

Residential Revenue: Residential revenue decreased 3% and 4% during the three and six months ended June 28, 2015 as compared to the three and six months ended June 29, 2014, respectively, primarily due to a decline in the sales of solar power components and systems to our residential customers, particularly in Japan, where the decline in the value of the Japanese Yen reduced demand for imported goods. The decrease in residential revenue was partially offset by an increase in residential component sales in North America due to stronger sales through our dealer network and an increase in the number of leases placed in service under our residential leasing program within the United States.

Commercial Revenue: Commercial revenue decreased 26% and 31% during the three and six months ended June 28, 2015 as compared to the three and six months ended June 29, 2014, respectively, primarily due to the completion of certain commercial solar power system projects and a decrease in commercial component sales across all geographies. Additionally, during the second quarter of fiscal 2015, we deferred the recognition of any profit on the sale to 8point3 Energy Partners of projects involving real estate under the accounting treatment described in "Item 1. Financial Statements—Notes to Consolidated Financial Statements—Note 3. 8point3 Energy Partners LP." Furthermore, we do not expect to recognize any Commercial profit during the remainder of fiscal 2015 on sales to 8point3 Energy Partners of projects that involve real estate.

Power Plant Revenue: Power Plant revenue decreased 38% and 44% during the three and six months ended June 28, 2015 as compared to the three and six months ended June 29, 2014, respectively, primarily due to substantial completion of revenue recognition at the end of fiscal 2014 on certain large-scale solar power systems located within the United States. Additionally, during the second quarter of fiscal 2015, we deferred the recognition of any profit on the sale of projects involving real estate to 8point3 Energy Partners under the accounting treatment described in "Item 1. Financial Statements—Notes to Consolidated Financial Statements—Note 3. 8point3 Energy Partners LP." Furthermore, we do not expect to recognize any power Plant Plant profit during the remainder of fiscal 2015 on sales to 8point3 Energy Partners of projects that involve real estate.

Cost of Revenue

(In thousands)	Three Months Ended			Six Months Ended		
	June 28, 2015	June 29, 2014	% Change	June 28, 2015	June 29, 2014	% Change
Distributed Generation						
Residential	116,979	125,002	(6)%	239,751	257,689	(7)%
Commercial	58,842	74,789	(21)%	105,722	139,252	(24)%
Power Plant	134,318	213,935	(37)%	314,719	546,218	(42)%
Total cost of revenue	$ 310,139	$ 413,726	(25)%	$ 660,192	$ 943,159	(30)%
Total cost of revenue as a percentage of revenue	81%	81%		80%	79%	
Total gross margin percentage	19%	19%		20%	21%	

Total Cost of Revenue: Our total cost of revenue decreased 25% and 30% during the three and six months ended June 28, 2015 as compared to the three and six months ended June 29, 2014, primarily as a result of the substantial completion at the end of fiscal 2014 of recognition of revenue and corresponding costs of certain large-scale solar power systems within the United States.

Gross Margin

(As a percentage of revenue)	Three Months Ended			Six Months Ended		
	June 28, 2015	June 29, 2014	Change	June 28, 2015	June 29, 2014	Change
Distributed Generation						
Residential	23%	20%	3%	22%	20%	2%
Commercial	7%	12%	(5)%	6%	14%	(8)%
Power Plant	19%	20%	(1)%	22%	24%	(2)%

Residential Gross Margin: Gross margin for our Residential Segment increased 3 percentage points and 2 percentage points during the three and six months ended June 28, 2015 as compared to the three and six months ended June 29, 2014, respectively, primarily as a result of increased volume of sales with favorable margins for residential leases, solar power systems and components in the United States, partially offset by lower margins on solar power components resulting from declines in average selling prices in Japan.

Commercial Gross Margin: Gross margin for our Commercial Segment decreased 5 percentage points and 8 percentage points during the three and six months ended June 28, 2015 as compared to the three and six months ended June 29, 2014, respectively, primarily as a result of higher than expected costs on and change in scope of certain commercial EPC projects in the United States. Additionally, during the second quarter of fiscal 2015, we deferred the recognition of any profit on the sale of projects involving real estate to 8point3 Energy Partners under the accounting treatment described in "Item 1. Financial Statements—Notes to Consolidated Financial Statements—Note 3. 8point3 Energy Partners LP." Furthermore, we do not expect to recognize any Commercial profit during the remainder of 2015 on sales to 8point3 Energy Partners of projects that involve real estate.

Power Plant Gross Margin: Gross margin for our Power Plant Segment decreased 1 percentage point and 2 percentage points during the three and six months ended June 28, 2015 as compared to the three and six months ended June 29, 2014, respectively, primarily as a result of the substantial completion of large-scale solar power systems with favorable margins at the end of fiscal 2014 within the United States. Additionally, during the second quarter of fiscal 2015, we deferred the recognition of any profit on the sale to 8point3 Energy Partners of projects involving real estate under the accounting treatment described in "Item 1. Financial Statements—Notes to Consolidated Financial Statements—Note 3. 8point3 Energy Partners LP." Furthermore, we do not expect to recognize any Power Plant profit during the remainder of 2015 on sales to 8point3 Energy Partners of projects that involve real estate.

Research and Development ("R&D")

(In thousands)	Three Months Ended			Six Months Ended		
	June 28, 2015	June 29, 2014	% Change	June 28, 2015	June 29, 2014	% Change
R&D	$ 20,560	$ 16,581	24%	$ 41,728	$ 33,327	25%
As a percentage of revenue	5%	3%		5%	3%	

R&D expense increased $4.0 million and $8.4 million in the three and six months ended June 28, 2015 as compared to the three and six months ended June 29, 2014, respectively, primarily due to an increase in labor costs as a result of additional headcount and salary related expenses, as well as an increase in other net expenses such as consulting and outside services supporting programs related to our next generation solar technology. These increases were partially offset by contributions under the R&D Agreement with Total.

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

	Three Months Ended			Six Months Ended		
(In thousands)	**June 28, 2015**	**June 29, 2014**	**% Change**	**June 28, 2015**	**June 29, 2014**	**% Change**
SG&A	$ 81,520	$ 71,499	14%	$ 158,734	$ 145,427	9%
As a percentage of revenue	21%	14%		19%	12%	

SG&A expense increased $10.0 million and $13.3 million in the three and six months ended June 28, 2015 as compared to the three and six months ended June 29, 2014, respectively, primarily due to costs related to the formation and IPO of 8point3 Energy Partners.

Restructuring Charges

	Three Months Ended			Six Months Ended		
(In thousands)	**June 28, 2015**	**June 29, 2014**	**% Change**	**June 28, 2015**	**June 29, 2014**	**% Change**
Restructuring charges	$ 1,749	$ (717)	n.m.	$ 5,330	$ (1,178)	n.m.
As a percentage of revenue	—%	— %		1%	— %	

Restructuring charges in the three and six months ended June 28, 2015 increased $2.5 million and $6.5 million as compared to the three and six months ended June 29, 2014, respectively, primarily related to severance charges associated with our November 2014 restructuring plan. Remaining restructuring charges are associated with legacy restructuring plans approved in fiscal 2012 and 2011.

See "Item 1. Financial Statements and Supplementary Data—Notes to Consolidated Financial Statements—Note 8. Restructuring" for further information regarding our restructuring plans.

Other Income (Expense), Net

	Three Months Ended			Six Months Ended		
(In thousands)	**June 28, 2015**	**June 29, 2014**	**% Change**	**June 28, 2015**	**June 29, 2014**	**% Change**
Interest income	$ 494	$ 668	(26)%	$ 1,050	$ 986	6 %
Interest expense	(8,517)	(16,310)	(48)%	(24,198)	(35,902)	(33)%
Other, net	14,982	(76)	n.m.	12,362	1,293	n.m.
Other income (expense), net	$ 6,959	$ (15,718)	144 %	$ (10,786)	$ (33,623)	68 %
As a percentage of revenue	2%	3%		1%	3%	

Other income (expense), net decreased $22.7 million and $22.8 million in the three and six months ended June 28, 2015 as compared to the three and six months ended June 29, 2014, respectively, primarily driven by the gain recognized on the sale of a residential lease portfolio to 8point3 Energy Partners during the second quarter of fiscal 2015, a decrease in interest expense due to the maturity of the 4.75% debentures due 2014, as well as favorable changes in the fair value of foreign currency derivatives and other net expenses.

Income Taxes

(In thousands)	Three Months Ended June 28, 2015	Three Months Ended June 29, 2014	Three Months Ended % Change	Six Months Ended June 28, 2015	Six Months Ended June 29, 2014	Six Months Ended % Change
Benefit from (provision for) income taxes	$ 659	$ 8,168	(92)%	$ (1,692)	$ (5,452)	69%
As a percentage of revenue	—%	2%		— %	— %	

In the three and six months ended June 28, 2015, our income tax benefit of $0.7 million and income tax provision of $1.7 million, respectively, on a loss before income taxes and equity in earnings of unconsolidated investees of $26.0 million and $54.9 million, respectively, was primarily due to projected tax expense, partially offset by discrete benefits pertaining to tax settlements in certain foreign jurisdictions in the three months ended June 28, 2015. In the three and six months ended June 29, 2014, our income tax benefit of $8.2 million and income tax provision of $5.5 million, respectively, on a loss before income taxes and equity in earnings of unconsolidated investees of $8.9 million and an income before income taxes and equity in earnings of unconsolidated investees of $45.9 million, respectively, was primarily due to the change in the amount and mix of forecasted earnings.

A material 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. U.S. income taxes and foreign withholding taxes have not been provided on the undistributed earnings of our non-U.S. subsidiaries as such earnings are intended to be indefinitely reinvested in operations outside the United States to the 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 U.S. and France 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 June 28, 2015, we believe there is insufficient evidence to realize additional deferred tax assets.

Equity in Earnings of Unconsolidated Investees

(In thousands)	Three Months Ended June 28, 2015	Three Months Ended June 29, 2014	Three Months Ended % Change	Six Months Ended June 28, 2015	Six Months Ended June 29, 2014	Six Months Ended % Change
Equity in earnings of unconsolidated investees	$ 1,864	$ 1,936	(4)%	$ 4,055	$ 3,719	9%
As a percentage of revenue	0.5%	0.4%		0.5%	0.3%	

Our equity in earnings of unconsolidated investees decreased $0.1 million and increased $0.3 million in the three and six months ended June 28, 2015 compared to the three and six months ended June 29, 2014, respectively, primarily due to activities at our AUOSP joint venture.

Net Income (loss)

(In thousands)	Three Months Ended June 28, 2015	Three Months Ended June 29, 2014	Three Months Ended % Change	Six Months Ended June 28, 2015	Six Months Ended June 29, 2014	Six Months Ended % Change
Net income (loss)	$ (23,466)	$ 1,168	n.m.	$ (52,516)	$ 44,202	n.m.

In the three months ended June 28, 2015 our net income (loss) decreased $24.6 million and changed from a net income to a net loss as compared to the three months ended June 29, 2014. The decrease in net income (loss) was primarily driven by: (i) a $23.3 million decrease in gross margin, primarily due to the substantial completion of revenue recognition on various large-scale solar power systems at the end of fiscal 2014, (ii) a $16.5 million increase in operating expenses due to increased headcount, activities related to the formation and IPO of 8point3 Energy Partners and charges related to the November 2014 restructuring plan, and (iii) a $7.5 million increase in income taxes primarily due to a change in the geographic mix of forecasted earnings and an increase in unbenefited deferred tax assets, partially offset by discrete benefits recorded pertaining

to tax settlements in certain foreign jurisdictions in the three months ended June 28, 2015. The decrease was partially offset by a $22.7 million decrease in Other expense, net driven by the gain recognized on the sale of a residential lease portfolio to 8point3 Energy Partners, a decrease in interest expense due to the maturity of the 4.75% debentures due 2014, and favorable changes in the fair value of foreign currency derivatives.

In the six months ended June 28, 2015 our net income (loss) decreased by $96.7 million and changed from a net income to a net loss as compared to six months ended June 29, 2014. The decrease in net income (loss) was primarily driven by (i) a $95.4 million decrease in gross margin, primarily due to the substantial completion of revenue recognition on various large-scale solar power systems at the end of fiscal 2014, and (ii) a $28.2 million increase in operating expenses due to increased headcount, activities related to the formation and IPO of 8point3 Energy Partners and charges related to the November 2014 restructuring plan. The decrease was partially offset by (i) a $22.8 million decrease in Other expense, net due to a decrease in interest expense due to the maturity of the 4.75% debentures due 2014, as well as favorable changes in the fair value of foreign currency derivatives and other net expenses and (ii) a $3.8 million decrease in income tax primarily due to a reduction in pre-tax earnings, and material discrete benefits recorded pertaining to tax settlements in certain foreign jurisdictions in the six months ended June 28, 2015, partially offset by increased tax expense due to a change in the geographic mix of forecasted earnings and an increase in unbenefited deferred tax assets.

Information about other significant variances in our results of operations is described above.

Net Loss Attributable to Noncontrolling Interests and Redeemable Noncontrolling Interests

	Three Months Ended			Six Months Ended		
(In thousands)	**June 28, 2015**	**June 29, 2014**	**% Change**	**June 28, 2015**	**June 29, 2014**	**% Change**
Net loss attributable to noncontrolling interests and redeemable noncontrolling interests	$ 29,975	$ 12,934	132%	$ 49,444	$ 34,944	41%

We have entered into facilities with third-party investors under which the parties invest in entities that hold SunPower solar power systems and leases with residential customers. We determined that we hold controlling interests in these less-than-wholly-owned entities and have fully consolidated these entities as a result. We apply the hypothetical liquidation value method in allocating recorded net income (loss) to each investor based on the change in the reporting period, of the amount of net assets of the entity to which each investor would be entitled to under the governing contractual arrangements in a liquidation scenario.

In the three months ended June 28, 2015 and June 29, 2014, we attributed $30.0 million and $12.9 million, respectively, of losses to the third-party investors primarily as a result of allocating certain assets, including tax credits and accelerated tax depreciation benefits, to the investors. The $17.0 million increase in loss attributable to these third-party investors is primarily the result of additional leases placed in service under existing and new facilities executed with third-party investors in the interim period.

In the six months ended June 28, 2015 and June 29, 2014, we attributed $49.4 million and $34.9 million, respectively, of net losses primarily to the third-party investors as a result of allocating certain assets, including tax credits and accelerated tax depreciation benefits, to the investors. The $14.5 million increase in net loss attributable to noncontrolling interests and redeemable noncontrolling interests is primarily due to additional leases placed in service under existing and new facilities executed with third-party investors in the interim period.

Liquidity and Capital Resources

Cash Flows

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

	Six Months Ended	
(In thousands)	**June 28, 2015**	**June 29, 2014**
Net cash used in operating activities	$ (325,441)	$ (81,571)
Net cash provided by (used in) investing activities	$ 184,532	$ (64,159)
Net cash provided by (used in) financing activities	$ (187,630)	$ 364,410

Operating Activities

Net cash used in operating activities in the six months ended June 28, 2015 was $325.4 million and was primarily the result of: (i) a net loss of $52.5 million; (ii) a $311.8 million increase in project assets primarily related to our Quinto Solar Energy Project; (iii) a $130.7 million increase in inventories driven by project assets for construction of solar power systems for Commercial and Power Plant projects in North America and purchases of polysilicon; (iv) a $69.3 million increase in long-term financing receivables related to our net investment in sales-type leases; (v) a $66.1 million decrease in accounts payable and other accrued liabilities; (vi) a $27.9 million gain on the sale of a residential lease portfolio to 8point3 Energy Partners; (vii) a $12.5 million decrease in customer advances; (viii) a $6.7 million in excess tax benefit from stock-based compensation; (ix) a $4.1 million increase in equity in earnings of unconsolidated investees; and (x) a $5.8 million net change in deferred income taxes and other liabilities. This was partially offset by: (i) a $138.6 million decrease in costs and estimated earnings in excess of billings driven by a decrease related to the Solar Star Projects; (ii) a $65.2 million decrease in accounts receivable; (iii) other net non-cash charges of $94.2 million related to depreciation, non-cash interest charges and stock-based compensation; (iv) a $29.4 million decrease in prepaid expenses and other assets driven by an increase in deferred costs related to the Solar Star Projects; (v) a $25.1 million decrease in advance payment made to suppliers; and (vi) a $9.3 million increase in billings in excess of costs and estimated earnings driven by an increase related to the Solar Star Projects.

Net cash used in operating activities in the six months ended June 29, 2014 was $81.6 million and was primarily the result of: (i) a $59.6 million decrease in billings in excess of costs and estimated earnings; (ii) a $59.4 million increase in prepaid and other current assets; (iii) a $54.8 million increase in long-term financing receivables; and (iv) a $42.0 million net increase in other liabilities, net of other assets. This was partially offset by: (i) $88.1 million in other net non-cash charges primarily related to depreciation, non-cash interest charges, and stock based compensation and (ii) net income of $44.2 million.

Investing Activities

Net cash provided by investing activities in the six months ended June 28, 2015 was $184.5 million, which included $341.2 million in proceeds from 8point3 Energy Partners. This was partially offset by (i) a $120.6 million related to capital expenditures primarily related to the expansion of our solar cell manufacturing capacity and costs associated with solar power systems, leased and to be leased; (ii) a $28.4 million increase in restricted cash; and (iii) $7.1 million paid for investments in unconsolidated investees.

Net cash used in investing activities in the six months ended June 29, 2014 was $64.2 million, which included: (i) $45.3 million related to costs associated with solar power systems leased and to be leased, as well as capital expenditures; (ii) a $9.3 million increase in restricted cash; (iii) $5.9 million paid for acquisitions; and (iv) $5.0 million paid for investments in unconsolidated investees. This was partially offset by $1.4 million in net proceeds from maturities of marketable securities.

Financing Activities

Net cash used in financing activities in the six months ended June 28, 2015 was $187.6 million, which included: (i) a $249.6 million net payment to settle the 4.50% debentures due 2015 and the 4.50% Bond Hedge (defined below); (ii) $240.2 million in repayments of bank loans, project loans and other debt, primarily in the Quinto Credit Facility; (iii) $40.3 million in purchases of stock for tax withholding obligations on vested restricted stock; and (iv) $40.0 million of repayments of residential lease financing. This was partially offset by: (i) $190.5 million in net proceeds from the issuance of project loans; (ii) $87.4 million of net contributions from noncontrolling interests and redeemable noncontrolling interests related to the residential lease program; (iii) $54.8 million in proceeds from the issuance of non-recourse debt financing, net of issuance costs; (iv) $29.3 million in proceeds from 8point3 Energy Partners; (v) $15.0 million in net proceeds from sale-leaseback financing; and (vi) $5.5 million in other net financing activities.

Net cash provided by financing activities in the six months ended June 29, 2014 was $364.4 million, which included: (i) $395.3 million in net proceeds from the issuance of our 0.875% convertible debentures due 2021; (ii) $73.4 million of proceeds from issuance of non-recourse debt financing to finance solar power systems and leases under our residential lease program; (iii) $52.8 million of contributions from noncontrolling interests and redeemable noncontrolling interests; and (iv) $16.7 million in net proceeds from sale-leaseback financing arrangements. This was partially offset by: (i) $52.8 million in purchases of stock for tax withholding obligations on vested restricted stock; (ii) $42.1 million cash paid to repurchase convertible debt; (iii) a $40.7 million assumption of a project loan by a customer; (iv) $16.5 million of repayments of residential lease and sale-leaseback financing; (v) a $12.2 million net payment to settle the 4.75% Bond Hedge and Warrant; (vi) $8.6 million in repayments of bank loans, project loans and other debt; and (vii) $1.6 million of distributions to noncontrolling interests and redeemable noncontrolling interests.

Debt and Credit Sources

Convertible Debentures

As of June 28, 2015, an aggregate principal amount of $400.0 million of the 0.875% debentures due 2021 remained issued and outstanding. The 0.875% debentures due 2021 were issued on June 11, 2014. Interest on the 0.875% debentures due 2021 is payable on June 1 and December 1 of each year. Holders are able to exercise their right to convert the debentures at any time into shares of our common stock at an initial conversion price approximately equal to $48.76 per share, subject to adjustment in certain circumstances. If not earlier repurchased or converted, the 0.875% debentures due 2021 mature on June 1, 2021. Holders may require us to repurchase all or a portion of their 0.875% debentures due 2021, upon a fundamental change, as described in the related indenture, at a cash repurchase price equal to 100% of the principal amount plus accrued and unpaid interest. If we undergo a non-stock change of control fundamental change, as described in the related indenture, the 0.875% debentures due 2021 will be subject to redemption at our option, in whole but not in part, for a period of 30 calendar days following a repurchase date relating to the non-stock change of control fundamental change, at a cash redemption price equal to 100% of the principal amount plus accrued and unpaid interest. Otherwise, the 0.875% debentures due 2021 are not redeemable at our option prior to the maturity date. In the event of certain events of default, Wells Fargo Bank, National Association ("Wells Fargo"), the trustee, or the holders of a specified amount of then-outstanding 0.875% debentures due 2021 will have the right to declare all amounts then outstanding due and payable.

As of June 28, 2015, an aggregate principal amount of $300.0 million of the 0.75% debentures due 2018 remained issued and outstanding. The 0.75% debentures due 2018 were issued on May 29, 2013. Interest on the 0.75% debentures due 2018 is payable on June 1 and December 1 of each year. Holders are able to exercise their right to convert the debentures at any time into shares of our common stock at an initial conversion price equal to $24.95 per share. The applicable conversion rate may be subject to adjustment in certain circumstances. If not earlier converted, the 0.75% debentures due 2018 mature on June 1, 2018. Holders may require us to repurchase all or a portion of their 0.75% debentures due 2018, upon a fundamental change, as described in the related indenture, at a cash repurchase price equal to 100% of the principal amount plus accrued and unpaid interest. If we undergo a non-stock change of control fundamental change, as described in the related indenture, the 0.75% debentures due 2018 will be subject to redemption at our option, in whole but not in part, for a period of 30 calendar days following a repurchase date relating to the non-stock change of control fundamental change, at a cash redemption price equal to 100% of the principal amount plus accrued and unpaid interest. Otherwise, the 0.75% debentures due 2018 are not redeemable at our option prior to the maturity date. In the event of certain events of default, Wells Fargo, the trustee, or the holders of a specified amount of then-outstanding 0.75% debentures due 2018 will have the right to declare all amounts then outstanding due and payable.

For more information, please see "Part I. Item 1A. Risk Factors-Risks Related to our Debt and Equity Securities-Conversion of our outstanding 0.75% debentures, 0.875% debentures, our warrants related to our outstanding 4.50% debentures, and future substantial issuances or dispositions of our common stock or other securities, could dilute ownership and earnings per share or cause the market price of our stock to decrease" in our Annual Report on Form 10-K for the fiscal year ended December 28, 2014.

Mortgage Loan Agreement with IFC

On May 6, 2010, we entered into a mortgage loan agreement with IFC. Under the loan agreement, we borrowed $75.0 million and are required to repay the amount borrowed starting two years after the date of borrowing, in 10 equal semiannual installments over the following 5 years. We are required to pay interest of LIBOR plus 3% per annum on outstanding borrowings; 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. We may prepay all or a part of the outstanding principal, subject to a 1% prepayment premium. We have pledged certain assets as collateral supporting repayment obligations.

As of June 28, 2015, we had $32.5 million outstanding under the mortgage loan agreement. Additionally, in accordance with the terms of the mortgage loan agreement, we are required to establish a debt service reserve account which shall contain the amount, as determined by IFC, equal to the aggregate principal and interest due on the next succeeding interest payment date after such date. As of June 28, 2015, we had restricted cash and cash equivalents of $9.2 million related to the IFC debt service reserve.

Loan Agreement with California Enterprise Development Authority ("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 bear interest at a fixed-rate of 8.50% per annum.

As of June 28, 2015, the $30.0 million aggregate principal amount of the Bonds was classified as "Long-term debt" in our Consolidated Balance Sheets.

Revolving Credit Facility with Credit Agricole

On July 3, 2013, we entered into a revolving credit agreement with Credit Agricole, as administrative agent, and certain financial institutions ("the revolving credit facility"), under which we may borrow up to $250.0 million. On August 26, 2014, we entered into an amendment to the revolving credit facility that extends, among other things, the maturity date of the facility from July 3, 2016 to August 26, 2019 (the "Maturity Date"). Amounts borrowed may be repaid and reborrowed until the Maturity Date. The revolving credit facility allows us to request increases to the available capacity of the revolving credit facility to an aggregate of $300.0 million, subject to the satisfaction of certain conditions. The revolving credit facility includes representations, covenants, and events of default customary for financing transactions of this type. The revolving credit facility was entered into in conjunction with the delivery by Total S.A. of a guarantee of our obligations under the facility. On January 31, 2014, (i) our obligations under the revolving credit facility became secured by a pledge of certain accounts receivable and inventory, (ii) certain of our subsidiaries entered into guaranties of the revolving credit facility, and (iii) Total S.A.'s guarantee of our obligations under the revolving credit facility expired (collectively, the "Restructuring").

We are required to pay interest on outstanding borrowings under the facility and fees of (a) with respect to any LIBOR rate loan, an amount ranging from 1.50% to 2.00% (depending on our leverage ratio from time to time) plus the LIBOR 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 alternate base rate loan, an amount ranging from 0.50% to 1.00% (depending on our leverage ratio from time to time) plus the greater of (1) the prime rate, (2) the Federal Funds rate plus 0.50%, and (3) the one-month LIBOR rate plus 1%; and (c) a commitment fee ranging from 0.25% to 0.35% (depending on our leverage ratio from time to time) per annum on funds available for borrowing and not borrowed.

As of June 28, 2015, we had no outstanding borrowings under the revolving credit facility.

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 between us and Total S.A. 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 $878.0 million for the period from January 1, 2014 through December 31, 2014. Aggregate letter of credit amounts may be increased upon the agreement of the parties but, otherwise, may not exceed (i) $936.0 million for the period from January 1, 2015 through December 31, 2015, and (ii) $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 of the letters of credit may have an expiration date of between two and three years from the date of issuance.

As of June 28, 2015, letters of credit issued under the August 2011 letter of credit facility with Deutsche Bank totaled $594.6 million.

September 2011 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, of 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 June 28, 2015 letters of credit issued under the Deutsche Bank Trust facility amounted to $14.5 million, which were fully collateralized with restricted cash as classified on the Consolidated Balance Sheets.

Project Debt

On October 17, 2014, we, through a wholly-owned subsidiary (the "Project Company"), entered into an approximately $377.0 million credit facility with Santander Bank, N.A., Mizuho Bank, Ltd. and Credit Agricole (the "Quinto Credit Facility") in connection with the planned construction of the approximately 135 MW Quinto Solar Energy Project, located in Merced County, California (the "Quinto Project").

On June 24, 2015, in connection with the closing of 8point3 Energy Partners' IPO and the concurrent transfer of the Quinto Project to an affiliate of 8point3 Energy Partners, the Quinto Project Company repaid the full amount outstanding under the Quinto Credit Facility and terminated the agreement early. Immediately before termination, there were outstanding borrowings of $224.3 million under the Quinto Credit Facility. The Quinto Project Company did not incur any material penalties for early repayment of the Quinto Credit Facility.

Liquidity

As of June 28, 2015, we had unrestricted cash and cash equivalents of $623.0 million as compared to $956.2 million as of December 28, 2014. Our cash balances are held in numerous locations throughout the world and as of June 28, 2015, we had approximately $161.3 million held outside of the United States. This offshore cash is used to fund operations of our business in the Europe and Asia Pacific regions as well as non-U.S. manufacturing operations, which require local payment for product materials and other expenses. The amounts held outside of the United States represent the earnings of our foreign subsidiaries which, 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. or foreign withholding tax and that have been indefinitely reinvested outside the U.S. could result in additional United States federal income tax or foreign withholding tax payments in future years.

On July 5, 2010, we formed AUP SunPower Sdn. Bhd. ("AUOSP"), our joint venture with AU Optronics Singapore Pte. Ltd. ("AUO"). Under the terms of the joint venture agreement, we and AUO each own 50% of AUOSP. We are each obligated to provide additional funding to AUOSP in the future. Under the joint venture agreement, each shareholder agreed to contribute additional amounts to the joint venture through 2015 amounting to $169.0 million, or such lesser amount as the parties may mutually agree (see the Contractual Obligations table below). In addition, if AUOSP, or either shareholder requests additional equity financing to AUOSP, then the shareholders will each be required to make additional cash contributions of up to $50.0 million in the aggregate. See also "Part I. Item 1A. Risk Factors—Risks Related to Our Operations—If we experience interruptions in the operation of our solar cell production lines, or we are not successful in operating our joint venture AUOSP,

our revenue and results of operations may be materially and adversely affected" in our Annual Report on Form 10-K for the fiscal year ended December 28, 2014.

We expect total capital expenditures related to purchases of property, plant and equipment in the range of $250 million to $300 million in fiscal 2015 in order to increase our manufacturing capacity, improve our current and next generation solar cell manufacturing technology, 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, which are returned to us upon satisfaction of contractual requirements. If there is a contractual dispute with the customer, the customer may withhold the security or make a draw under such security, which could have an adverse impact on our liquidity. Obtaining letters of credit may require adequate collateral. All letters of credit issued under our August 2011 Deutsche Bank facility are guaranteed by Total S.A. pursuant to the Credit Support Agreement. Our September 2011 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 June 28, 2015, letters of credit issued under the Deutsche Bank Trust facility amounted to $14.5 million which were fully collateralized with restricted cash on the Consolidated Balance Sheets.

In fiscal 2011, we launched our residential lease program with dealers in the United States, in partnership with a third-party financial institution, which allows customers to obtain SunPower systems under lease agreements up to 20 years, subject to financing availability. We have entered into facilities with financial institutions that will provide financing to support additional residential solar lease projects. Under the terms of certain programs we receive upfront payments for periods under which the third-party financial institution has agreed to assume collection risk for certain residential leases. Changes in the amount or timing of upfront payments received from the financial institutions may have an impact on our cash position within the next twelve months. The normal collection of monthly rent payments for leases placed in service is not expected to have a material impact on our cash position within the next twelve months. We have entered into multiple facilities with third-party investors under which both parties will invest in entities that hold SunPower solar power systems and leases with residential customers. We determined that we hold a controlling interest in these less-than-wholly-owned entities and have fully consolidated these entities as a result (see "Item 8. Financial Statements and Supplementary Data—Notes to Consolidated Financial Statements—Note 6. Leasing"). As of June 28, 2015, we received $292.6 million in contributions from investors under the related facility agreements. Additionally, during fiscal 2014 and 2015, we entered into three long-term non-recourse loans to finance solar power systems and leases under our residential lease program. In fiscal 2015, we drew down $54.8 million of proceeds, net of issuance costs, under the loan agreements. The loans have 17-year terms and as of June 28, 2015, the short-term and long-term balances of the loans were $2.8 million and $132.2 million, respectively. We are actively arranging additional third-party financing for our residential lease program; however, the credit markets are unpredictable, and if they become challenging, we may be unable to arrange additional financing partners for our residential lease program in future periods, which could have a negative impact on our sales. In the unlikely event that we enter into a material number of additional leases without promptly obtaining corresponding third-party financing, our cash and working capital could be negatively affected.

We believe that our current cash, cash equivalents and cash expected to be generated from operations 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. We are able to supplement this short-term liquidity, if necessary, with broad access to capital markets and credit facilities, including non-recourse debt, made available by various domestic and foreign financial institutions. For example, we have $250 million available to us under our revolving credit facility with Credit Agricole. However, there can be no assurance that our liquidity will be adequate over time. A significant portion of our revenue is generated from a limited number of customers and large projects and our inability to execute these projects, or to collect from these customers or for these projects, would have a significant negative impact on our business. 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 "Risks Related to Our Sales Channels—A limited number of customers and large projects are expected to continue to comprise a significant portion of our revenues and any decrease in revenues from those customers or projects, payment of liquidated damages, or an increase in related expenses, could have a material adverse effect on our business, results of operations and financial condition," and "Risks Related to Our Liquidity—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 due to the general economic environment and the continued market pressure driving down the average selling prices of our solar power products, among other factors" in "Part I. Item 1A. *Risk Factors*" in our Annual Report on Form 10-K for the fiscal year ended December 28, 2014.

As of June 28, 2015, we have $250.0 million available to us under our revolving credit facility with Credit Agricole and may request increases to the available capacity of the revolving credit facility to an aggregate of $300.0 million, subject to the satisfaction of certain conditions. Proceeds from our revolving credit facility with Credit Agricole may be used for general corporate purposes. However, there are no assurances that we will have sufficient available cash to repay our indebtedness or we will be able to refinance such indebtedness on similar terms to the expiring indebtedness. If our capital resources are insufficient to satisfy our liquidity requirements, we may seek to sell additional equity securities or debt securities or obtain other debt financing. The current economic environment, however, could 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 potential for further dilution upon the exercise of warrants or the conversion of convertible debt) 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 loan agreements and debentures. In addition, 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 table summarizes our contractual obligations as of June 28, 2015:

		Payments Due by Fiscal Period			
(In thousands)	**Total**	**2015 (remaining six months)**	**2016-2017**	**2018-2019**	**Beyond 2019**
Convertible debt, including interest[1]	$ 727,356	$ 2,954	$ 11,500	$ 307,944	$ 404,958
IFC mortgage loan, including interest[2]	35,355	833	31,977	2,545	—
CEDA loan, including interest[3]	70,163	1,275	5,100	5,100	58,688
Other debt, including interest[4]	273,498	5,868	27,214	28,635	211,781
Future financing commitments[5]	179,817	179,817	—	—	—
Operating lease commitments[6]	143,280	10,804	29,498	26,477	76,501
Sale-leaseback financing[7]	110,405	6,453	16,031	15,241	72,680
Capital lease commitments[8]	6,367	754	2,135	1,515	1,963
Non-cancellable purchase orders[9]	238,689	238,689	—	—	—
Purchase commitments under agreements[10]	1,676,560	474,650	673,130	361,913	166,867
Liabilities associated with uncertain tax positions	4,000	4,000	—	—	—
Total	$ 3,465,490	$ 926,097	$ 796,585	$ 749,370	$ 993,438

[1] Convertible debt, including interest, relates to the aggregate of $700.1 million in outstanding principal amount of our senior convertible debentures as of June 28, 2015. For the purpose of the table above, we assume that all holders of the outstanding debentures will hold the debentures through the date of maturity, 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 $32.5 million borrowed as of June 28, 2015. Under the loan agreement, we are required to repay the amount borrowed, starting 2 years after the date of borrowing, in 10 equal semiannual installments over the following 5 years. We are required to pay interest of LIBOR plus 3% per annum on outstanding borrowings; 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.

[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 and bear interest at a fixed rate of 8.50% through maturity.

[4] Other debt, including interest, primarily relates to non-recourse finance projects and solar power systems and leases under our residential lease program as described in "Item 1. Financial Statements—Notes to Consolidated Financial Statements—Note 9. Commitments and Contingencies."

[5] We and AUO agreed in the joint venture agreement to contribute additional amounts to AUOSP through 2014 amounting to $169.0 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 $2.9 million, subject to certain conditions.

[6] Operating lease commitments primarily relate to certain solar power systems leased from unaffiliated third parties over minimum lease terms of up to 20 years and various facility lease agreements.

[7] Sale-leaseback financing relates to future minimum lease obligations for solar power systems under sale-leaseback arrangements which were determined to include integral equipment and accounted for under the financing method.

[8] Capital lease commitments primarily relate to certain buildings, manufacturing and equipment under capital leases in Europe for terms of up to 12 years.

[9] Non-cancellable purchase orders relate to purchases of raw materials for inventory and manufacturing equipment from a variety of vendors.

[10] Purchase commitments under agreements relate to arrangements entered into with several suppliers, including joint ventures, for polysilicon, ingots, wafers, and Solar Renewable Energy Credits, among others. 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. We did not fulfill all of the purchase commitments we were otherwise obligated to take by December 31, 2014, as specified in several related contracts with a supplier. As of June 28, 2015, we have recorded an offsetting asset, recorded within "Prepaid expenses and other current assets," and liability, recorded within "Accrued liabilities," totaling $5.1 million. This amount represents the unfulfilled amount as of that date as we expect to satisfy the obligation via purchases of inventory in fiscal 2015, within the cure period specified in the contracts.

Liabilities Associated with Uncertain Tax Positions

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. Therefore, long-term liabilities associated with uncertain tax positions of $20.1 million included in "Other long-term liabilities" in the Company's Consolidated Balance Sheets as of June 28, 2015 have been excluded from the table above. Short-term liabilities associated with transfer-pricing uncertain tax positions of $4.0 million included in "Accrued liabilities" in our Consolidated Balance Sheets as of June 28, 2015 have been included in the table above as they are reasonably possible to be paid within the next 12 months as a result of settlement.

Off-Balance-Sheet Arrangements

As of June 28, 2015, 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 10% and 9% of our total revenue in the three and six months ended June 28, 2015, respectively, and 13% and 16% of our total revenue in the three and six months ended June 29, 2014, respectively. A 10% change in the Euro exchange rate would have impacted our revenue by approximately $3.7 million and $7.2 million in the three and six months ended June 28, 2015, respectively, and $6.5 million and $19.1 million in the three and six months ended June 29, 2014, respectively.

In the past, we have experienced an adverse impact on our revenue, gross margin and profitability as a result of foreign currency fluctuations. When foreign currencies appreciate against the U.S. dollar, inventories and expenses denominated in foreign currencies become more expensive. Strengthening of the 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 (loss) 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 currency contracts that are designed to address our exposure to changes in the foreign exchange rate between the U.S. dollar and other currencies. As of June 28, 2015, we had outstanding hedge option currency contracts and forward currency contracts with aggregate notional values of zero and $40.4 million, respectively. As of December 28, 2014, we held option and forward contracts totaling $26.6 million and $134.7 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 a reclassification of ineffective gains or losses into earnings. Such a reclassification 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, notes receivable, advances to suppliers, foreign currency option contracts, foreign currency forward contracts, bond hedge and warrant transactions. We are exposed to credit losses in the event of nonperformance by the counterparties to our financial and derivative instruments. Our investment policy requires cash and cash equivalents, restricted cash and cash equivalents, and investments to be placed with high-quality financial institutions and limits the amount of credit risk from any one issuer. We additionally perform ongoing credit evaluations of our customers’ financial condition whenever deemed necessary and generally do not require collateral.

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 June 28, 2015 and December 28, 2014, advances to suppliers totaled $384.6 million and $409.7 million, respectively. Two suppliers accounted for 84% and 16% of total advances to suppliers as of June 28, 2015, and 82% and 17% as of December 28, 2014.

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 15 months or less. We regularly evaluate the credit standing of our counterparty financial institutions.

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. As of June 28, 2015, the outstanding principal balance of our variable interest borrowings was $32.5 million. We do not believe that an immediate 10% increase in interest rates would have a material effect on our financial statements. In addition, lower interest rates would have an adverse impact on our interest income. Our investment portfolio primarily consists of $255.0 million in money market funds as of June 28, 2015 which 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 Companies

Our investments held in joint ventures and other companies expose us to equity price risk. As of June 28, 2015 and December 28, 2014, investments of $283.2 million and $210.9 million, respectively, are accounted for using the equity method, and $36.4 million and $32.3 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. See also "Risks Related to Our Operations—We have significant international activities and customers, and plan to continue these efforts, which subject us to additional business risks, including logistical complexity and political instability" and "Acquisitions of other companies or investments in joint ventures with other companies could materially and adversely affect our financial condition and results of operations, and dilute our stockholders' equity" in "Part I. Item 1A. *Risk Factors*" in our Annual Report on Form 10-K for the fiscal year ended December 28, 2014 and “Part II - Item 1A. Risk Factors - We may not realize the expected benefits of our YieldCo strategy.” in this Quarterly Report on Form 10-Q.

Interest Rate Risk and Market Price Risk Involving Convertible Debt

The fair market value of our outstanding 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 common stock increases and decrease as the market price of our common stock falls. The interest and market value changes affect the fair market value of the debentures, but do not impact our financial position, cash flows or results of operations due to the fixed nature of the debt obligations. The aggregate estimated fair value of our outstanding convertible debentures was $820.8 million as of June 28, 2015. The aggregate estimated fair value of our outstanding convertible debentures was $1,019.4 million as of December 28, 2014. Estimated fair values are 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 $902.9 million and $1,121.4 million as of June 28, 2015 and December 28, 2014, respectively, and a 10% decrease in the quoted market prices would decrease the estimated fair value of our then-outstanding debentures to $738.7 million and $917.5 million as of June 28, 2015 and December 28, 2014, 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 June 28, 2015 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 most recent fiscal quarter that materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

PART II

ITEM 1. *LEGAL PROCEEDINGS*

The disclosure under "Note 9. Commitments and Contingencies—Legal Matters" in "Notes to Condensed Consolidated Financial Statements" contained in this Quarterly Report on Form 10-Q is incorporated herein by reference.

ITEM 1A. *RISK FACTORS*

There have been no material changes to the risk factors we previously disclosed in our Annual Report on Form 10-K for the fiscal year ended December 28, 2014, except for the risk factors described and included below.

Because 8point3 Energy Partners has completed the IPO of its Class A shares, we updated the risk factor entitled "*Risks Related to Our Sales Channels-We may be unable to successfully form the previously announced YieldCo vehicle; the proposed initial public offering of the YieldCo vehicle may not occur on favorable terms or at all; and even if the proposed initial public offering is completed, we may not achieve the expected benefits*" and replaced it with a risk factor entitled "*We may fail to realize the expected benefits of our YieldCo strategy.*" that is set forth below.

Additionally, we have updated the risk factor entitled "*Risks Related to Our Operations-Acquisitions of other companies or investments in joint ventures with other companies could materially and adversely affect our financial condition and results of operations, and dilute our stockholders' equity*" to reflect the consummation of the 8point3 Energy Partners IPO on June 24, 2015.

We may fail to realize the expected benefits of our YieldCo strategy.

In June, 2015, 8point3 Energy Partners, a joint YieldCo vehicle formed by us and First Solar, Inc. to own, operate and acquire solar energy generation assets, launched an initial public offering of Class A shares representing its limited partner interests. The IPO was consummated on June 24, 2015, whereupon the Class A shares were listed on the NASDAQ Global Select Market under the trading symbol "CAFD."

Immediately after the IPO, we contributed a portfolio of 170 MW of our solar generation assets (the “SPWR Contributed Assets”) to 8point3 Operating Company, LLC ("OpCo"), 8point3 Energy Partners' primary operating subsidiary. In exchange for the SPWR Contributed Assets, we received cash proceeds of $371 million as well as equity interests in several 8point3 Energy Partners affiliated entities: primarily common and subordinated units representing a 40.7% stake in OpCo and a 50.0% economic and management stake in 8point3 Holding Company, LLC (“Holdings”), the parent company of the general partner of 8point3 Energy Partners and the owner of incentive distribution rights (“IDRs”) in OpCo. We refer to Holdings, OpCo, 8point3 Energy Partners and their respective subsidiaries as the “8point3 Group.”

We may be unable to fully realize our expected strategic and financial benefits from the 8point3 Group on a timely basis or at all. The operations of the 8point3 Group are not consolidated with ours. Instead, we account for our investments in the 8point3 Group using the equity method, whereby the book value of our investments is recorded as a non-current asset and our portion of their earnings is recorded in the Consolidated Statements of Operations under the caption "Equity in earnings (loss) of unconsolidated investees." For more information about our accounting treatment of the 8point3 Group, please refer to Notes 3 and 10 to the Consolidated Financial Statements.

There is no assurance that we will realize a return on our equity investments in the 8point3 Group. The ability of the 8point3 Group to make cash distributions will depend primarily upon its cash flow, which is not solely a function of 8point3 Energy Partners’ profitability. There is no assurance that we will receive any such cash distributions. Accordingly, we may never recover the value of the SPWR Contributed Assets, and we may realize less of a return on such contribution than if we had retained or operated these assets.

We believe that the viability of our YieldCo strategy will depend, among other things, upon our ability to continue to develop revenue-generating solar assets and to productively manage our relationship with First Solar, which are subject to the project-level, joint venture relationship, business and industry risks described in our Annual Report on Form 10-K for the fiscal year ended December 28, 2014 under the caption “Risk Factors,” our other filings with the SEC, and the additional risk factors disclosed below. If we are unable to realize the strategic and financial benefits that we expect to derive from our YieldCo strategy and 8point3 Energy Partners in particular, our business, financial condition and results of operations could be materially adversely affected.

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

To expand our business and maintain our competitive position, we have acquired a number of other companies and entered into several joint ventures over the past several years. For example, in July 2010, we formed AUOSP as a joint venture with AUO. In January 2012, we acquired Tenesol, and in November 2013, we acquired Greenbotics, Inc. In November 2014, we acquired SolarBridge Technologies, a developer of integrated microinverter technologies for the solar industry. In June 2015, our joint venture with First Solar, 8point3 Energy Partners, completed the IPO of its Class A shares. In the future we may acquire additional companies, project pipelines, products or technologies or enter into joint ventures or other strategic initiatives.

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

- insufficient experience with technologies and markets in which the acquired business or joint venture is involved, which may be necessary to successfully operate and/or integrate the business or the joint venture;
- problems integrating the acquired operations, personnel, IT infrastructure, technologies or products with the existing business and products;
- diversion of management time and attention from the core business to the acquired business or joint venture;
- potential failure to retain or hire key technical, management, sales and other personnel of the acquired business or joint venture;
- difficulties in retaining or building relationships with suppliers and customers of the acquired business or joint venture, particularly where such customers or suppliers compete with us;

- potential failure of the due diligence processes to identify significant issues with product quality and development or legal and financial liabilities, among other things;
- potential inability to obtain, or obtain in a timely manner, approvals from governmental authorities or work councils, which could delay or prevent acquisitions, delay our ability to achieve synergies, or our successful operation of acquired companies or joint ventures;
- potential necessity to re-apply for permits of acquired projects;
- problems managing joint ventures with our partners, meeting capital requirements for expansion, potential litigation with joint venture partners and reliance upon joint ventures which we do not control; for example, our ability to effectively manage our joint venture with AUO and our ability to effectively manage 8point3 Energy Partners with First Solar;
- differences in philosophy, strategy or goals with our joint venture partners;
- subsequent impairment of the acquired assets, including intangible assets;
- assumption of liabilities including, but not limited to, lawsuits, tax examinations, warranty issues, and liabilities associated with compliance with laws (for example, the FCPA); and
- the success of our joint venture 8point3 Energy Partners is subject to additional risks described under the risk factor "—We may not realize the expected benefits of our YieldCo strategy."

Additionally, we may decide that it is in our best interests to enter into acquisitions or joint ventures that are dilutive to earnings per share or that negatively impact margins as a whole. In an effort to reduce our cost of goods sold, we have and may continue to enter into acquisitions or joint ventures involving suppliers or manufacturing partners, which would expose us to additional supply chain risks. Acquisitions or joint ventures could also require investment of significant financial resources and require us to obtain additional equity financing, which may dilute our stockholders' equity, or require us to incur additional indebtedness. Such equity or debt 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.

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

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

Recent Sales of Unregistered Securities

As previously reported in our Current Reports on Form 8-K filed on April 9, 2015 and June 17, 2015, we entered into separate partial unwind agreements (the "Partial Unwind Agreements") with each of Credit Suisse International, Barclays Bank PLC, Bank of America, N.A. and Deutsche Bank AG, London Branch (collectively, the "Counterparties"), respectively, in order to reduce the number of warrants outstanding pursuant to those certain separate warrant transactions (the "4.50% Warrants") that we entered into on March 25, 2010 and April 5, 2010 with each of the Counterparties providing for the acquisition, subject to anti-dilution adjustments, of up to approximately 11.1 million shares of our common stock via net share settlement. We entered into the 4.50% Warrants in connection with the issuance of our 4.50% Senior Cash Convertible Debentures due 2015, which matured in accordance with their terms on March 15, 2015. Pursuant to the terms of the Partial Unwind Agreements, we issued an aggregate of approximately 3.0 million shares of our common stock to settle all of the 4.50% Warrants. As of June 28, 2015, no 4.50% Warrants remained outstanding. The issuances of common stock pursuant to the Partial Unwind Agreements were made in reliance on Section 3(a)(9) of the Securities Act of 1933, as amended.

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 Exchange Act, of shares of our common stock during each of the indicated periods.

Period	Total Number of Shares Purchased[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
March 30, 2015 through April 26, 2015	8,239	$ 33.26	—	—
April 27, 2015 through May 24, 2015	34,986	$ 32.30	—	—
May 25, 2015 through June 28, 2015	6,843	$ 32.78	—	—
	50,068	$ 32.52	—	—

[1] The shares purchased represent shares surrendered to satisfy tax withholding obligations in connection with the vesting of restricted stock issued to employees.

ITEM 6: ***EXHIBITS***

See the Exhibit Index following the signature page to this Quarterly Report on Form 10-Q for a list of exhibits filed or furnished with this report, which Exhibit Index is incorporated herein by reference.

SIGNATURES

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

SUNPOWER CORPORATION

Date: October 28, 2015

By: /s/ CHARLES D. BOYNTON

Charles D. Boynton
Executive Vice President and
Chief Financial Officer

Index to Exhibits

Exhibit Number	Description
10.1	SunPower Corporation 2015 Omnibus Incentive Plan (incorporated by reference to Exhibit 10.1 to the Registrant's Registration Statement on Form S-8 (File No. 333-205207), filed with the Securities and Exchange Commission on June 25, 2015).
10.2*†	Amended and Restated Limited Liability Company Agreement of 8point3 Holding Company, LLC, dated as of June 24, 2015, by and between SunPower YC Holdings, LLC and First Solar 8point3 Holdings, LLC.
10.3*	Amended and Restated Limited Liability Company Agreement of 8point3 Operating Company, LLC, dated as of June 24, 2015, by and between 8point3 Energy Partners LP, SunPower YC Holdings, LLC, First Solar 8point3 Holdings, LLC, Maryland Solar Holdings, Inc. and 8point3 Holdings, LLC.
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 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.
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 an asterisk (*) are filed herewith.

Portions of exhibits marked with an extended cross (†) have been omitted pursuant to a request for confidential treatment filed with the Securities and Exchange Commission.

Exhibits marked with two asterisks (**) are furnished and not filed herewith.

Exhibit 10.2

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

EXECUTION VERSION

AMENDED AND RESTATED
LIMITED LIABILITY COMPANY AGREEMENT

OF

8POINT3 HOLDING COMPANY, LLC
A Delaware Limited Liability Company

Dated as of

June 24, 2015

TABLE OF CONTENTS

AMENDED AND RESTATED

LIMITED LIABILITY COMPANY AGREEMENT

OF

8POINT3 HOLDING COMPANY, LLC

A Delaware Limited Liability Company

This **AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT OF 8POINT3 HOLDING COMPANY, LLC** dated as of June 24, 2015, is adopted, executed and agreed to, for good and valuable consideration, by SunPower YC Holdings, LLC, a Delaware limited liability company, and First Solar 8point3 Holdings, LLC, a Delaware limited liability company. In consideration of the covenants, conditions and agreements contained herein, the Parties hereto hereby agree as follows:

ARTICLE I
DEFINITIONS

Section 1.1 *Definitions.*

As used in this Agreement, the following terms have the respective meanings set forth below or set forth in the Sections referred to below:

"AAA" means the American Arbitration Association and any successor organization.

"Acceptable Project" means a Project, or an interest in a Project, that:

(a) is photovoltaic,

(b) is located in Australia, Canada, Chile, France, Germany, Japan, Mexico, South Africa, the United Kingdom or the United States,

(c) is (i) with respect to Utility Scale Projects, contracted at a fixed price (which may be subject to escalation or time-of-delivery factors) for at least 80% of the projected output of such Project with a minimum of ten years remaining on the term of such contract at the time of sale or contribution of such Project to the Operating Company and with counterparties that have Investment Grade Credit Ratings, (ii) with respect to C&I Projects, contracted at a fixed price (which may be subject to escalation or time-of-delivery factors) for at least 80% of the projected output or the projected modeled revenue of such Project with a minimum of ten years remaining on the term of such contract at the time of sale or contribution of such Project to the Operating Company and with counterparties that (A) have Investment Grade Credit Ratings, or (B) so long as at least 70% of the C&I Projects sold or contributed to the Operating Company by the offering Sponsor have Investment Grade Credit Ratings at such time, meet the Minimum Commercial Requirements, or (iii) with respect to Residential Projects, composed of Residential Systems each of which is contracted with a homeowner at a fixed price

(which may be subject to escalation or time-of-delivery factors) for at least 80% of the projected output or the projected modeled revenue of such Residential System with a minimum of ten years remaining on the term of such contract at the time of sale or contribution of the Residential Project to the Operating Company; *provided*, however, that the average FICO Score of the homeowners party to such contracts shall be at least 700, no more than 20% of such homeowners shall have FICO Scores less than 680 and no more than 0.5% of such homeowners shall have FICO Scores less than 650 (the FICO Score of each homeowner being measured at the time such contract was executed),

(d) is at or past its Commercial Operation Date, unless such Project is a Tax Beneficial Project, in which case the Project may be contributed no more than three months prior to the Tax Beneficial Date, and

(e) to the extent such Project has operating and maintenance agreements or asset management agreements entered into directly or indirectly with a Sponsor or an Affiliate of a Sponsor, such operating and maintenance agreements or asset management agreements are directly or indirectly terminable for convenience or otherwise without penalty or premium.

Notwithstanding the foregoing, (i) each of the El Pelicano Project, the La Huella Project and Luz Del Norte Project shall each be deemed to be an Acceptable Project as long as each Project is contracted for a minimum of 65% of its output and otherwise meets the requirements of an Acceptable Project (other than, for the avoidance of doubt, the requirement that 80% of projected output be contracted) and (ii) a Project that is a Utility Project Site on which a Utility Scale Project owned (or to be acquired together with such Utility Project Site), directly or indirectly, by the Operating Company, is situated (and such Utility Scale Project qualifies as an Acceptable Project or is otherwise approved by a Majority Interest) shall be an Acceptable Project.

"Accounting Member" means that Member whose Affiliate provides accounting services to the Company pursuant to a Management Services Agreement.

"Adjusted Capital Account Deficit" means, with respect to any Economic Member, the deficit balance, if any, in such Economic Member's Capital Account as of the end of the relevant tax year, after giving effect to the following adjustments:

(a) Credit to such Capital Account any amounts which such Economic Member is obligated to restore pursuant to any provision of this Agreement or pursuant to Treasury Regulation Section 1.704-1(b)(2)(ii)(c) or is deemed to be obligated to restore pursuant to the penultimate sentences of Treasury Regulation Sections 1.704-2(g)(1) and 1.704-2(i)(5); and

(b) Debit to such Capital Account the items described in Treasury Regulation Sections 1.704-1(b)(2)(ii)(d)(4), 1.704-1(b)(2)(ii)(d)(5), and 1.704-1(b)(2)(ii)(d)(6).

The foregoing definition of Adjusted Capital Account Deficit is intended to comply with the provisions of Treasury Regulation Section 1.704-1(b)(2)(ii)(d) and shall be interpreted consistently therewith.

"Adjustment Amount" means, with respect to any Member, the sum of (i) to the extent the Distribution Adjustment Amount for such Fiscal Year is negative, 50% of such Distribution Adjustment Amount plus (ii) a negative amount equal to any Shortfall owed by such Member from the prior Fiscal Year plus (iii) a positive amount equal to any Shortfall owed to such Member.

"Adjustment Percentage" means, with respect to any Member, the percentage calculated by dividing (i) the aggregate of (x) all Distributed Cash generated during the Adjustment Period by the Projects that were contributed or sold to the Operating Company by such Member and its Affiliates plus (y) 50% of the Distributed Cash generated during the Adjustment Period by the Projects acquired by the Operating Company from any Person other than a Member or its Affiliates by (ii) the Aggregate Distributed Cash generated during the Adjustment Period.

"Adjustment Period" means, as of any date, the period beginning on the Closing Date and ending on the last day of the most recent Quarter ending on or prior to such date.

"Affected Member" has the meaning set forth in Section 6.3(a).

"Affected Project" has the meaning set forth in Section 6.3(a).

"Affiliate" means, with respect to any Person, any other Person that directly or indirectly through one or more intermediaries controls, is controlled by or is under common control with, the Person in question. As used herein, the term "control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting securities, by contract or otherwise. Notwithstanding anything in the foregoing to the contrary, SP Member and its Affiliates (other than the Company, the YieldCo General Partner or any Group Member), on the one hand, and FS Member and its Affiliates (other than the Company, the YieldCo General Partner or any Group Member), on the other hand, will not be deemed to be Affiliates of one another hereunder unless there is a basis for such Affiliation independent of their respective Affiliation with any Group Member, the YieldCo General Partner or any Affiliate of any Group Member or the YieldCo General Partner.

"Aggregate Distributed Cash" means the cumulative amount of Distributed Cash for all Projects owned directly or indirectly by the Operating Company in a given period.

"Agreement" means this Amended and Restated Limited Liability Company Agreement of 8point3 Holding Company, LLC, as it may be amended, modified, supplemented or restated from time to time.

"Allocation Year" means (a) the Company's taxable year for United States federal income tax purposes, or (b) any portion of the period described in clause (a) for which the Company is required to allocate Profits, Losses, and other items of Company income, gain, loss or deduction for United States federal income tax purposes.

"Annual Calculations" has the meaning set forth in Section 3.2(b).

"Annual Minimum Offer" has the meaning set forth in Section 6.2.

"Annual Offer Schedule" has the meaning set forth in Section 6.2.

"Appraiser" has the meaning set forth in Section 8.5(c)(ix).

"Auction Buyer" has the meaning set forth in Section 8.5(c)(iii).

"Auction Initiator" has the meaning set forth in Section 8.5(c)(v).

"Auction Period" has the meaning set forth in Section 8.5(c)(v).

"Auction Price" has the meaning set forth in Section 8.5(c)(v).

"Auction Price Allocation Opinion" has the meaning set forth in Section 8.5(c)(ix).

"Available Cash" means, with respect to any Quarter ending prior to the Liquidation Date:

(a) the sum of:

(i) all cash and cash equivalents of the Company on hand at the end of such Quarter; and

(ii) all cash and cash equivalents of the Company actually received by the date of determination of Available Cash with respect to such Quarter by the Company from distributions by the Operating Company made with respect to such Quarter subsequent to the end of such Quarter, less;

(b) the amount of any cash reserves established by a Majority Interest to:

(i) provide for the proper conduct of the business of the Company subsequent to such Quarter; and

(ii) comply with applicable law or any loan agreement, security agreement, mortgage, debt instrument or other agreement or obligation to which the Company is a party or by which it is bound or its assets are subject;

provided, that disbursements made by the Company or cash reserves established, increased or reduced after the end of such Quarter, but on or before the date of determination of Available Cash with respect to such Quarter, shall be deemed to have been made, established, increased or reduced, for purposes of determining Available Cash, within such Quarter if a Majority Interest so determines.

Notwithstanding the foregoing, "Available Cash" with respect to the Quarter in which the Liquidation Date occurs and any subsequent Quarter shall equal zero.

"Binding Agreement" has the meaning set forth in Section 8.5(c)(v).

"Board Member Option" has the meaning set forth in Section 9.1(d)(iii).

"Board of Directors" means the Board of Directors of the YieldCo General Partner.

"Business Day" means Monday through Friday of each week, except that a legal holiday recognized as such by the government of the United States of America or the State of New York shall not be regarded as a Business Day.

"Buyout Option" means a purchase option provided to a counterparty in a power purchase agreement or lease for a Project or Group Member Agreement.

"C&I Project" means any ground-mounted or roof-top distributed solar generation system or systems designed and installed for commercial or industrial applications, which is either leased by, or subject to one or more power purchase agreements with, one or more commercial businesses, industrial companies, academic institutions, government entities, hospitals, non-profits, public entities or other entities that are neither electric utilities nor residential customers who purchase solar power directly from a generation company or a solar power plant.

"Capital Account" means the capital account determined and maintained for each Economic Member in accordance with Section 5.4, Section 7.2 and Section 7.3.

"Capital Contribution" means (a) any cash, cash equivalents or the fair market value of Contributed Property that a Member contributes to the Company or that is contributed or deemed contributed to the Company on behalf of a Member, net of any Liabilities either assumed by the Company upon such contribution or to which such property or other consideration is subject when contributed or (b) current distributions that a Member is entitled to receive but otherwise waives.

"Certificate of Formation" means the Certificate of Formation of the Company filed with the Secretary of State of the State of Delaware as referenced in Section 2.6, as such Certificate of Formation may be amended, supplemented or restated from time to time.

"Class A Share" has the meaning set forth in the Partnership Agreement.

"Class B Share" has the meaning set forth in the Partnership Agreement.

"Closing Date" means the date on which the transactions contemplated by the Master Formation Agreement are consummated.

"Code" means the Internal Revenue Code of 1986, as amended and in effect from time to time. Any reference herein to a specific section or sections of the Code shall be deemed to include a reference to any corresponding provision of any successor law.

"Commercial Operation Date" means, with respect to a Project, the date on which such Project has (or in the case of (i) a Residential Project, the first date all of the Residential Systems within such Residential Project, or (ii) a C&I Project, the first date all of the solar generation systems within such C&I Project, in each case have) achieved substantial completion or similar milestone (including, for example, block or phase completion for each block or phase of such Project) under each construction contract for the construction of such Project or Residential System and has achieved commercial operation or similar milestone under each interconnection

agreement and each power purchase agreement, lease or hedging agreement pursuant to which such Project delivers or transmits Electricity from such Project or Residential System.

"Commission" means the United States Securities and Exchange Commission.

"Common Unit" has the meaning set forth in the Operating Company Limited Liability Company Agreement.

"Company" means 8point3 Holding Company, LLC, a Delaware limited liability company.

"Company Minimum Gain" means the amount of "partnership minimum gain" determined in accordance with the principles of Treasury Regulation Sections 1.704-2(b)(2) and 1.704-2(d).

"Confidential Information" means all documents, materials, data or other information with respect to the Parties, their Affiliates, the Company, the YieldCo General Partner, any Group Member or any Joint Venture which are not generally known to the public; *provided* that Confidential Information shall not include information that becomes available to a Receiving Party on a non-confidential basis.

"Conflicts Committee" has the meaning set forth in the Partnership Agreement.

"Contributed Companies" means the Project Companies contributed or sold to the Operating Company by FS Member or its Affiliates or SP Member or its Affiliates, respectively.

"Contributed Property" means each property or other asset, in such form as may be permitted by the Delaware Act, but excluding cash, contributed to the Company.

"Deadlock" has the meaning set forth in Section 8.5(a).

"Deadlock Notice" has the meaning set forth in Section 8.5(a).

"Deadlock Response" has the meaning set forth in Section 8.5(a).

"Deficit Economic Member" has the meaning set forth in Section 7.1(c)(i).

"Delaware Act" means the Delaware Limited Liability Company Act, 6 Del C. Section 18-101, et seq., as amended, supplemented or restated from time to time, and any successor to such statute.

"Depreciation" means, for each Allocation Year, an amount equal to the depreciation, amortization, or other cost recovery deduction allowable with respect to an asset for such Allocation Year, except that if the Gross Asset Value of an asset differs from its adjusted basis for federal income tax purposes at the beginning of such Allocation Year, Depreciation shall be an amount that bears the same ratio to such beginning Gross Asset Value as the federal income tax depreciation, amortization, or other cost recovery deduction for such Allocation Year bears to such beginning adjusted tax basis; *provided, however*, that if the federal income tax depreciation,

amortization, or other cost recovery deduction for such Allocation Year is zero, Depreciation shall be determined with reference to such beginning Gross Asset Value using any reasonable method selected by a Majority Interest.

"Director" or "Directors" means a member or members of the Board of Directors.

"Dispute Accountant" has the meaning set forth in Section 3.2(c)(ii).

"Disclosing Party" has the meaning set forth in Section 14.6.

"Disputing Member" has the meaning set forth in Section 3.2(c)(i).

"Distributed Cash" means, with respect to any Project Company whose interests are owned directly or indirectly by the Operating Company, the aggregate amount of (i) cash distributed to the Operating Company from such Project Company during a given period, (ii) cash received by the Operating Company in respect of a Project owned by such Project Company pursuant to Section 2.2(b) of the Omnibus Agreement, and (iii) cash received by the Operating Company in respect of such Project Company or a Project owned thereby pursuant to Sections 3.1 and 3.2 of the Omnibus Agreement; *provided* that in calculating such Project Company's Distributed Cash, (A) any expenses incurred by the Operating Company, the YieldCo General Partner, the Partnership or any of their Affiliates directly on behalf of such Project Company during such period, and not reimbursed by the Project Company during such period, shall be deducted from the amount of cash actually distributed by such Project Company and (B) any cash received by the Operating Company in respect of such Project Company or a Project owned thereby pursuant to Sections 3.1 and 3.2 of the Omnibus Agreement shall be counted as Distributed Cash only to the extent that a corresponding expense has been or will be deducted from the amount of cash actually distributed by the applicable Project Company. Notwithstanding the foregoing, Extraordinary Proceeds distributed to the Operating Company shall not be treated as Distributed Cash unless agreed by a Majority Interest.

"Distributed Cash Calculation" has the meaning set forth in Section 3.2(b).

"Distribution Adjustment Amount" means, with respect to any Member, the amount calculated at the end of each Fiscal Year by subtracting (i) the Modeled Distributed Cash projected to be generated during the Adjustment Period by the Projects that were contributed or sold to the Operating Company by such Member and its Affiliates from (ii) the aggregate of all Distributed Cash generated during the Adjustment Period by the Projects that were contributed or sold to the Operating Company by such Member and its Affiliates; *provided* that if the Distribution Adjustment Amount for any Fiscal Year is less than 1% of the Modeled Distributed Cash for such Fiscal Year, the Distribution Adjustment Amount for such Fiscal Year shall equal zero.

"EBITDA" means earnings before interest, tax, depreciation and amortization, each as determined in accordance with U.S. GAAP.

"Economic Member" has the meaning set forth in Section 3.1(a).

"Economic Units" has the meaning set forth in Section 3.1(a).

"El Pelicano Project" means the 100 Megawatt (AC) solar power project located in Chile to be developed and built by an Affiliate of SP Member.

"Electricity" means electric energy, measured in kWh.

"Encumbrances" means pledges, restrictions on transfer, proxies and voting or other agreements, liens, claims, charges, mortgages, security interests or other legal or equitable encumbrances, limitations or restrictions of any nature whatsoever.

"Equity Interests" means all shares, participations, capital stock, partnership or limited liability company interests, units, participations or similar equity interests issued by any Person, however designated.

"Event of Eminent Domain" means any compulsory transfer or taking or transfer under threat of compulsory transfer or taking of any material property or asset owned by the Operating Company or any Project Company, by any governmental authority.

"Event of Loss" means an event which causes any material property or asset owned by the Operating Company or any Project Company to be damaged, destroyed or rendered unfit for normal use, other than an Event of Eminent Domain.

"Exchange Act" means the Securities Exchange Act of 1934, as amended, supplemented or restated from time to time, and any successor to such statute.

"Extraordinary Event" means, with regard to any Project, any cause or event which results in the reduction of the remaining Forecasted Distributed Cash from such Project, including the following causes and events:

(a) any sale (including due to the exercise of a Buyout Option) or incurrence of Indebtedness;

(b) acts of God, strikes, lockouts, or other industrial disputes or disturbances, acts of the public enemy, wars, blockades, insurrections, civil disturbances and riots, epidemics, landslides, lightning, earthquakes, fires, tornadoes, hurricanes, storms, floods and washouts;

(c) arrests, orders, requests, directives, restraints and requirements of governments and government agencies and people, either federal or state, civil and military;

(d) any application of government conservation or curtailment rules and regulations;

(e) any property or other tax increase;

(f) explosions, sabotage, breakage, malfunction, degradation, accidents, casualty or condemnation to or underperformance for any reason of equipment, machinery, transmission systems, plants or facilities;

(g) loss or nonperformance of contractual rights or permits; and

(h) compliance with any court order, or any law, statute, ordinance, regulation or order promulgated by a governmental authority having or asserting jurisdiction.

"Extraordinary Proceeds" means:

(a) the aggregate cash proceeds received by the Operating Company or any Project Company in respect of any sale of an interest in a Project or Joint Venture;

(b) any cash proceeds received by the Operating Company or any Project Company with respect to the incurrence or issuance of any Indebtedness by the Operating Company or such Project Company; and

(c) the cash proceeds (other than proceeds from business interruption insurance) received by the Operating Company or any Project Company from any complete or partial Event of Loss or Event of Eminent Domain.

"Fair Value" means the fair market value of a subject asset at the time of determination.

"FERC" means the Federal Energy Regulatory Commission.

"FICO Score" means a credit score created by Fair Isaac Corporation.

"Final Calculation" has the meaning set forth in Section 3.2(d).

"Fiscal Year" has the meaning set forth in Section 12.2.

"Forecasted Distributed Cash" means, with respect to any Project, the average Distributed Cash projected to be generated by such Project per year for the ensuing 10 year period.

"Forecasted Project Value" means, with respect to any Project, the net present value of all Distributed Cash projected to be generated by such Project through its remaining useful life including any residual value of the Project, which amount shall be determined based on the Valuation Criteria (as defined in the Master Formation Agreement).

"FS Contributed Company" means any Project Company contributed or sold to the Operating Company by FS Member or its Affiliates.

"FS Director" has the meaning set forth in Section 9.1(a)(ii).

"FS Member" means First Solar 8point3 Holdings, LLC, a Delaware limited liability company.

"FS Parent" means First Solar, Inc., a Delaware corporation.

"FS Project Model" means the financial model for the FS Contributed Companies which is included in the Master Project Model.

"Gaining Management Member" has the meaning set forth in Section 9.1(d)(iii).

"Gross Asset Value" means, with respect to any asset, the asset's adjusted basis for federal income tax purposes, except as follows:

(a) The initial Gross Asset Value of any asset contributed by an Economic Member to the Company shall be the gross fair market value of the asset;

(b) The Gross Asset Values of all Company assets shall be adjusted to equal their respective gross fair market values, in a manner that is consistent with Section 7701(g) of the Code, as of the following times: (i) the acquisition of additional Economic Units by any new or existing Economic Member in exchange for more than a de minimis Capital Contribution or for the provision of services; (ii) the distribution by the Company to an Economic Member of more than a de minimis amount of property other than money as consideration for Economic Units; and (iii) the liquidation of the Company within the meaning of Treasury Regulation Section 1.704-1(b)(2)(ii)(g);

(c) The Gross Asset Value of any Company asset distributed to any Economic Member shall be the gross fair market value of such asset on the date of distribution; and

(d) The Gross Asset Values of any Company assets shall be increased (or decreased) to reflect any adjustments to the adjusted basis of such assets pursuant to Section 734(b) of the Code or Section 743(b) of the Code, but only to the extent that such adjustments are taken into account in determining Capital Accounts pursuant to Treasury Regulation Section 1.704-1(b)(2)(iv)(m) and the definition of Capital Account hereof.

If the Gross Asset Value of an asset has been determined or adjusted pursuant to the foregoing subparagraphs (a), (b) or (d), such Gross Asset Value shall thereafter be adjusted by the Depreciation taken into account with respect to such asset for purposes of computing Profits and Losses.

"Group Member" means a member of the Partnership Group.

"Group Member Agreement" means the partnership agreement of any Group Member or Joint Venture, including the Partnership Agreement, that is a limited or general partnership, the limited liability company agreement of any Group Member or Joint Venture that is a limited liability company, the certificate of incorporation and bylaws or similar organizational documents of any Group Member or Joint Venture that is a corporation, the joint venture agreement or similar governing document of any Group Member or Joint Venture that is a joint venture and the governing or organizational or similar documents of any other Group Member that is a Person other than a limited or general partnership, limited liability company, corporation or joint venture, as such may be amended, supplemented or restated from time to time.

"Indebtedness" means, with respect to any Person, (a) all obligations of such Person for borrowed money, (b) all obligations of such Person evidenced by bonds, debentures, notes, loan agreements or similar instruments, or other debt securities or warrants or other rights to acquire any debt securities of such Person, (c) all capitalized lease or leveraged lease obligations of such Person or obligations of such Person to pay the deferred and unpaid purchase price of property

and equipment, (d) all "keep well" and other obligations or undertakings of such Person to maintain or cause to be maintained the financial position or covenants of others or to purchase the obligations or property of others, (e) all obligations of such Person to pay the deferred purchase price of assets or services, (f) all indebtedness of a second Person secured by any lien on any property owned by such Person, whether or not such indebtedness has been assumed, (g) all indebtedness created or arising under any conditional sale or other title retention agreement with respect to property acquired by such Person (even though the rights and remedies of the seller or lender under such agreement may be limited to repossession or sale of such property), (h) all direct or contingent obligations of such Person arising under letters of credit (including standby and commercial), bankers' acceptances, bank guaranties, surety bonds and similar instruments and/or (i) all indebtedness of others guaranteed directly or indirectly by such Person; *provided* that the definition of "Indebtedness" shall not include trade payables arising in the ordinary course of business so long as such trade payables are payable within 90 days of the date the respective goods are delivered or the respective services are rendered and are not overdue.

"Indemnitee" means (a) any Member, (b) any Person who is or was a manager, managing member, general partner, director, officer, fiduciary or trustee of the Company or any Member, (c) any Person who is or was serving at the request of a Member as a manager, managing member, general partner, director, officer, fiduciary or trustee of another Person owing a fiduciary duty to the Company or any Group Member or any Joint Venture; *provided* that a Person shall not be an Indemnitee by reason of providing, on a fee-for-services basis, trustee, fiduciary or custodial services, (d) any Person who controls a Member, (e) any Person who is or was providing services at the request of the Company pursuant to a Management Services Agreement and (f) any Person a Majority Interest designates as an "Indemnitee" for purposes of this Agreement.

"Independent Director" means a natural person who meets the independence, qualification and experience requirements of the NASDAQ Stock Market LLC or any other national securities exchange upon which the limited partner or other Equity Interests of the Partnership are listed or are to be listed and the independence, qualification and experience requirements of Section 10A-(3) of the Exchange Act (or any successor law) and the rules and regulations of the Commission and any other applicable law.

"Investment Grade Credit Rating" means, with respect to any Person, having a rating equal to or higher than Baa3 (or the equivalent) by Moody's or BBB- (or the equivalent) by S&P.

"Joint Venture" means a joint venture that is not a Subsidiary and through which a Group Member conducts its business and operations and in which such Group Member owns an equity interest.

"La Huella Project" means the 60 to 88 Megawatt (AC) solar power project located in Chile to be developed and built by an Affiliate of SP Member.

"Liability" means any liability or obligation of any nature, whether accrued, contingent or otherwise.

"Liquidation Date" means the date of dissolution of the Company pursuant to Section 13.1.

"Liquidation Percentage" means, with respect to any Economic Member, the percentage arrived at by dividing (i) the aggregate of (x) all Forecasted Project Values for the Projects contributed or sold to the Operating Company by such Economic Member and its Affiliates plus (y) 50% of the Forecasted Project Values for the Projects acquired by the Operating Company from any Person other than an Economic Member or its Affiliates by (ii) the Forecasted Project Values for all Projects. At all times, the Liquidation Percentage of all Economic Members shall aggregate to 100%.

"Liquidator" means one or more Persons selected by the Members to perform the functions described in Section 13.2 as liquidating trustee of the Company within the meaning of the Delaware Act.

"Losing Management Member" has the meaning set forth in Section 9.1(d)(i).

"Luz Del Norte Project" means the approximately 141 Megawatt (AC) solar power project located near Copiapó, Chile to being built by an Affiliate of FS Member.

"Majority Interest" means Management Members holding greater than 50% of the outstanding Management Units.

"Majority Management Member" means a Majority Option Management Member that has exercised the Management Unit Transfer in accordance with Section 3.3.

"Majority Option Management Member" has the meaning set forth in Section 3.3(a).

"Management Member" has the meaning set forth in Section 3.1(a).

"Management Unit Transfer" has the meaning set forth in Section 3.3(a).

"Management Units" has the meaning set forth in Section 3.1(a).

"Management Services Agreement" means either (a) the Management Services Agreement, dated as of June 24, 2015, among First Solar 8point3 Management Services, LLC, the Company, the YieldCo General Partner, the Partnership and the Operating Company, or (b) the Management Services Agreement, dated as of June 24, 2015, among SunPower Capital Services, LLC, the Company, the YieldCo General Partner, the Partnership and the Operating Company.

"Master Formation Agreement" means that certain Master Formation Agreement dated as of March 10, 2015 among SP Parent and FS Parent, as it may be further amended, supplemented or restated from time to time.

"Master Project Model" means the FS Project Model and the SP Project Model, combined in one Microsoft Excel document, as transmitted by email from Goldman, Sachs & Co. to First Solar, Inc., on behalf of the FS Member, and SunPower Corporation, on behalf of the

SP Member, on June 19, 2015 at 7:46 p.m. (New York time), as the same may be adjusted from time to time following payment to the Operating Company of all Capacity Buydown Damages (as defined in the Omnibus Agreement) required to be paid in respect of a Project pursuant to Section 2.2(c) of the Omnibus Agreement, to reflect the Actual Project Capacity (as defined in the Omnibus Agreement) of such Project; *provided* that, in the case of each Project, such adjustments shall be limited to (i) changing the underlying assumption for Project capacity in the FS Project Model or SP Project Model, as applicable, to reflect the Actual Project Capacity (as defined in the Omnibus Agreement) and (ii) updating the values in the "Export/Import tab" worksheet in the Master Project Model named for such Project to reflect the output of the FS Project Model or SP Project Model (as applicable) following the change described in clause (i).

"Member" means any Person executing this Agreement as of the Closing Date as a member of the Company or hereafter admitted to the Company as a member as provided in this Agreement, but such term does not include any Person who has ceased to be a member of the Company. A Member may be an Economic Member, a Management Member or both an Economic Member and a Management Member.

"Member Nonrecourse Debt" has the meaning of "partner nonrecourse debt" set forth in Treasury Regulation Section 1.704-2(b)(4).

"Member Nonrecourse Debt Minimum Gain" has the meaning of "partner nonrecourse debt minimum gain" set forth in Treasury Regulation Section 1.704-2(i)(2).

"Member Nonrecourse Deductions" means any and all items of loss, deduction or expenditure (including any expenditure described in Section 705(a)(2)(B) of the Code) that, in accordance with the principles of Treasury Regulation Section 1.704-2(i), are attributable to a Member Nonrecourse Debt.

"Membership Interest" means the ownership interest of a Member in the Company, which may be evidenced by an Economic Unit, Management Unit or other Equity Interest or a combination thereof or interest therein, and includes any and all benefits to which such Member is entitled as provided in this Agreement, together with all obligations of such Member to comply with the terms and provisions of this Agreement.

"Minimum Commercial Requirements" means (a) with respect to for-profit counterparties, a Person that has been in business for a minimum of five years with current annual revenue of at least $5 million per 1 MW of capacity of the applicable C&I Project, a maximum EBITDA to debt service ratio of 1.2x and a maximum debt to equity ratio of 4x and, (b) with respect to not-for-profit counterparties, a Person that has been operating for a minimum of five years and has, in its audited financial statements or unaudited financial statements prepared by an independent accounting firm covering the current fiscal year-to-date and the previous two complete fiscal years, recorded ratios of change in net unrestricted assets before interest, depreciation and amortization to debt service and change in net total assets before interest, depreciation, and amortization to debt service of at least 1.2x during each complete or year-to-date fiscal period.

"Minority Option Management Member" has the meaning set forth in Section 3.3(a).

"Minority Management Member" means a Minority Option Management Member after exercise of the Management Unit Transfer in accordance with Section 3.3.

"Modeled Distributed Cash" means (i) with respect to any Project located in the United States that is held directly or indirectly by the Operating Company, the amount set forth, by Fiscal Year, under the heading "Pre-Tax Cash Available for Distribution" on the Master Project Model or, with respect to any such Project acquired, directly or indirectly, by the Operating Company after the Effective Date, on the project model related to such Project approved by the Conflicts Committee, as applicable, and (ii) with respect to any Project located outside the United States that is acquired directly or indirectly by the Operating Company, the amount set forth, by Fiscal Year, under the heading "Cash Available for Distribution" on the project model related to such Project approved by the Conflicts Committee; *provided*, *however*, that the "Modeled Distributed Cash" for any Project contributed to the Operating Company pursuant to Section 6.3(a) shall be deemed to equal zero.

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

"MU Exercise Period" has the meaning set forth in Section 3.3(a).

"MW" means megawatts.

"Net Adjustment Amount" has the meaning set forth in Section 7.1(c)(ii).

"Net Surplus Economic Member" has the meaning set forth in Section 7.1(c)(ii).

"Net Transferred Distribution Shortfall" has the meaning set forth in Section 7.1(c)(ii).

"Non-Offering Member" has the meaning set forth in Section 6.3(b)(i).

"Nonrecourse Deductions" means any and all items of loss, deduction or expenditure (including any expenditure described in Section 705(a)(2)(B) of the Code) that, in accordance with the principles of Treasury Regulation Section 1.704-2(b), are attributable to a Nonrecourse Liability.

"Nonrecourse Liability" has the meaning set forth in Treasury Regulation Section 1.752-1(a)(2).

"Offered OpCo Units" has the meaning set forth in Section 4.3(c)(i).

"Offering OpCo Member" has the meaning set forth in Section 4.3(c)(i).

"Offering OpCo Member Notice" has the meaning set forth in Section 4.3(c)(ii).

"Omnibus Agreement" means that certain Omnibus Agreement dated the date hereof among SP Parent, FS Parent and the Operating Company, as it may be amended, supplemented or restated from time to time.

"OpCo Derivative Membership Interests" means "Derivative Membership Interests" as defined in the Operating Company Limited Liability Company Agreement.

"OpCo Managing Member" means 8point3 Energy Partners LP, a Delaware limited partnership, and its successors and permitted assigns that are admitted to the Operating Company as the managing member of the Operating Company, in its capacity as the managing member of the Operating Company. The OpCo Managing Member is the sole managing member of the Operating Company and the holder of the OpCo Managing Member Interest. For the avoidance of doubt, such Person shall be the OpCo Managing Member solely with respect to the OpCo Managing Member Interest and shall be an OpCo Non-Managing Member with respect to any OpCo Non-Managing Member Interests of such Person.

"OpCo Managing Member Interest" means a "Managing Member Interest" as defined in the Operating Company Limited Liability Company Agreement.

"OpCo Member" means an OpCo Managing Member or OpCo Non-Managing Member, as the context may require.

"OpCo Member ROFR Exercise Notice" has the meaning set forth in Section 4.3(c)(v)(A).

"OpCo Membership Interest" means the OpCo Managing Member Interest and any class or series of equity interest in the Operating Company, which shall include any OpCo Non-Managing Member Interests but shall exclude any OpCo Derivative Membership Interests.

"OpCo Non-Managing Member" means a "Non-Managing Member" as defined in the Operating Company Limited Liability Company Agreement.

"OpCo Non-Managing Member Interest" means a "Non-Managing Member Interest" as defined in the Operating Company Limited Liability Company Agreement.

"OpCo ROFO Agreements" means the certain Right of First Offer Agreements dated the date hereof between (a) SP Parent and the Operating Company and (b) FS Parent and the Operating Company, respectively, as they may be amended, supplemented or restated from time to time.

"OpCo ROFR Rightholder" means, in the case of a proposed transfer of Common Units and OpCo Subordinated Units and related Class B Shares, the Sponsor other than the Offering OpCo Member.

"OpCo ROFR Rightholder Option Period" has the meaning set forth in Section 4.3(c)(v)(A).

"OpCo Subordinated Unit" means a "Subordinated Unit" as defined in the Operating Company Limited Liability Company Agreement.

"Operating Company" means 8point3 Operating Company, LLC, a Delaware limited liability company.

"Operating Company Limited Liability Company Agreement" means the Amended and Restated Limited Liability Company Agreement of 8point3 Operating Company, LLC, to be dated as of June 24, 2015, as it may be further amended, supplemented or restated from time to time.

"Opinion of Counsel" means a written opinion of counsel (who may be regular counsel to, or the General Counsel or other inside counsel of, the Company or any of its Affiliates) acceptable to a Majority Interest.

"Option Exercise Period" has the meaning set forth in Section 9.1(d)(iii).

"Option Member" has the meaning set forth in Section 6.3(b)(i).

"Ownership Percentage" means, at the date of any determination, with respect to an Economic Member, the percentage obtained by dividing (a) the number of Economic Units owned by such Economic Member by (b) the total number of outstanding Economic Units owned by all Economic Members.

"Parent" means FS Parent or SP Parent, as applicable.

"Partnership" means 8point3 Energy Partners LP, a Delaware limited partnership.

"Partnership Agreement" means the Amended and Restated Agreement of Limited Partnership of 8point3 Energy Partners LP, to be dated as of June 24, 2015, as it may be further amended, supplemented or restated from time to time.

"Partnership Group" means, collectively, the Partnership and the Operating Company and each of their Subsidiaries.

"Party" or "Parties" means FS Member and SP Member, and any Person who shall be admitted to the Company as a Member effective immediately prior to the Transfer of a Membership Interest.

"Party Representatives" has the meaning set forth in Section 14.6.

"Permitted OpCo Transfer" means:

(a) with respect to the SP Parent, a transfer by such OpCo Member of an OpCo Membership Interest to a wholly owned Subsidiary of the SP Parent; and

(b) with respect to the FS Parent, a transfer by such OpCo Member of an OpCo Membership Interest to a wholly owned Subsidiary of the FS Parent

provided that, in the case of (a) or (b) above, (i) with respect to Permitted OpCo Transfers by the SP Parent, the Subsidiary transferee remains a wholly owned Subsidiary of the SP Parent (or any successor Person), at all times following such transfer and (ii) with respect to Permitted OpCo Transfers by the FS Parent, the Subsidiary transferee remains a wholly owned Subsidiary of the FS Parent (or any successor Person), at all times following such transfer, it being

acknowledged that any transfer resulting in the Subsidiary transferee no longer being wholly owned shall be deemed a transfer that is subject to the restrictions set forth in Article IV.

"Permitted Transfer" means:

(a) with respect to SP Member, a Transfer by such Member of a Membership Interest or a Transfer of a direct or indirect interest in such Member to a wholly owned Subsidiary of SP Parent;

(b) with respect to FS Member, a Transfer by such Member of a Membership Interest or a Transfer of a direct or indirect interest in such Member to a wholly owned Subsidiary of FS Parent; and

(c) with respect to either Party, a Transfer by such Member of a Membership Interest or a Transfer of a direct or indirect interest in such Member upon (i) the other Member's failure to offer, in good faith, Acceptable Projects for three consecutive Fiscal Years which are sufficient to meet such Member's (A) obligations under the Annual Offer Schedules in effect for such Fiscal Years or (B) in the absence of an Annual Offer Schedule for any such Fiscal Year, Annual Minimum Offer for such Fiscal Year, (ii) the other Member, its Parent or any Subsidiary of such Parent which owns an interest, directly or indirectly, in such other Member becoming unable, admitting in writing its inability or failing generally to pay its debts as they become due, (iii) the commencement of an involuntary proceeding or the filing of an involuntary petition seeking (A) the liquidation, reorganization or other relief in respect of the other Member, its Parent or any Subsidiary of such Parent which owns an interest, directly or indirectly, in such other Member or its debts, or of a substantial part of its assets, under any federal, state or foreign bankruptcy, insolvency, receivership or similar law now or hereafter in effect or (B) the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for the other Member, its Parent or any Subsidiary of such Parent which owns an interest, directly or indirectly, in such other Member or for a substantial part of its assets, and, in any such case, such proceeding or petition shall continue undismissed for 60 days or an order or decree approving or ordering any of the foregoing shall be entered, or (iv) the other Member, its Parent or any Subsidiary of such Parent which owns an interest, directly or indirectly, in such other Member (A) voluntarily commencing any proceeding or filing any petition seeking liquidation, reorganization or other relief under any federal, state or foreign bankruptcy, insolvency, receivership or similar law now or hereafter in effect, (B) applying for or consenting to the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for such Member, its Parent or any Subsidiary of such Parent which owns an interest, directly or indirectly, in such Member or any guarantor or for a substantial part of its assets, (C) filing an answer admitting the material allegations of a petition filed against it in any such proceeding, (D) making a general assignment for the benefit of creditors or (E) taking any action for the purpose of effecting any of the foregoing.

"Person" means an individual or a corporation, firm, limited liability company, partnership, joint venture, trust, estate, unincorporated organization, association, government agency or political subdivision thereof or other entity.

"Pledge" has the meaning set forth in Section 4.1(a).

"Profits" and "Losses" means, for each tax year or other period, an amount equal to the Company's taxable income or loss for such year or period, determined in accordance with Section 703(a) of the Code (for this purpose, all items of income, gain, loss, or deduction required to be stated separately pursuant to Section 703(a)(1) of the Code shall be included in taxable income or loss), with the following adjustments:

(a) Any income of the Company that is exempt from federal income tax and not otherwise taken into account in computing Profits or Losses pursuant to this definition shall be added to such taxable income or loss;

(b) Any expenditures of the Company described in Section 705(a)(2)(B) of the Code, and not otherwise taken into account in computing Profits or Losses pursuant to this definition shall be subtracted from such taxable income or loss;

(c) In the event the Gross Asset Value of any Company asset is adjusted pursuant to subparagraph (b), (c) or (d) of the definition of Gross Asset Value hereof, the amount of such adjustment shall be taken into account as gain or loss from the disposition of such asset for purposes of computing Profits or Losses;

(d) Gain or loss resulting from any disposition of property (other than money) with respect to which gain or loss is recognized for federal income tax purposes shall be computed by reference to the Gross Asset Value of the property disposed of notwithstanding that the adjusted tax basis of such property differs from its Gross Asset Value;

(e) In lieu of the depreciation, amortization and other cost recovery deductions taken into account in computing such taxable income or loss, there shall be taken into account Depreciation for such tax year or other period, computed in accordance with the definition of Depreciation hereof; and

(f) Notwithstanding any other provision of this definition of "Profits" and "Losses," any items which are specially allocated pursuant to Section 7.3 shall not be taken into account in computing Profits or Losses.

"Project" means a Utility Scale Project, C&I Project, Residential Project, Utility Project Site or any other asset or project that a Majority Interest designates as a "Project."

"Project Company" means a corporation, limited liability company, partnership, joint venture, trust or other entity which is a Subsidiary or Joint Venture of the Operating Company and the direct or indirect owner of a Project.

"Quarter" means, unless the context requires otherwise, a fiscal quarter of the Company or, with respect to the fiscal quarter of the Company that includes the Closing Date, the portion of such fiscal quarter after the Closing Date.

"Receiving Party" has the meaning set forth in Section 14.6.

"Regain Board Member Option" has the meaning set forth in Section 9.1(e)(iii).

"Regain Option Exercise Period" has the meaning set forth in Section 9.1(e)(iii).

"Representative" has the meaning set forth in Section 8.8(a).

"Required Allocations" has the meaning set forth in Section 7.3(i).

"Residential Project" means a portfolio of Residential Systems owned directly or indirectly by a Contributed Company.

"Residential System" means a ground-mounted or roof-top distributed solar generation system designed and installed for residential applications, which is leased by, or subject to a power purchase agreement with, the owner of a residence for the purpose of generating Electricity for that residence.

"Retained Chief Executive Officer" has the meaning set forth in Section 9.2(a)(i)(B).

"Retained Chief Financial Officer" has the meaning set forth in Section 9.2(a)(ii)(B).

"Retaining Management Member" has the meaning set forth in Section 9.2(a)(i)(B).

"ROFO Acceptance Notice" has the meaning set forth in Section 4.2(b).

"ROFO Non-Selling Member" has the meaning set forth in Section 4.2(a).

"ROFO Notice" has the meaning set forth in Section 4.2(a).

"ROFO Parties" has the meaning set forth in Section 4.2(a).

"ROFO Price" has the meaning set forth in Section 4.2(a).

"ROFO Seller" has the meaning set forth in Section 4.2(a).

"ROFO Units" has the meaning set forth in Section 4.2(a).

"ROFO Units Purchase Agreement" has the meaning set forth in Section 4.2(a).

"S&P" means Standard & Poor's Ratings Group, or any successor thereto.

"Securities Act" means the Securities Act of 1933, as amended, supplemented or restated from time to time, and any successor to such statute.

"Service Provider" means the Service Provider under and as defined in the applicable Management Services Agreement.

"Shortfall" has the meaning set forth in Section 7.1(c)(ii).

"Shotgun Election" has the meaning set forth in Section 8.5(c)(iii).

"Shotgun Initiator" has the meaning set forth in Section 8.5(c)(i).

"Shotgun Notice" has the meaning set forth in Section 8.5(c)(i).

"Shotgun Price" has the meaning set forth in Section 8.5(c)(ii).

"Shotgun Recipient" has the meaning set forth in Section 8.5(c)(i).

"SP Contributed Company" means any Project Company contributed or sold to the Operating Company by SP Member or its Affiliates.

"SP Director" has the meaning set forth in Section 9.1(a)(i).

"SP Member" means SunPower YC Holdings, LLC, a Delaware limited liability company.

"SP Parent" means SunPower Corporation, a Delaware corporation.

"SP Project Model" means the financial model for the SP Contributed Companies which is included in the Master Project Model.

"Sponsor" or "Sponsors" means SP Parent and FS Parent, individually or collectively, as applicable.

"Sponsor Director" has the meaning set forth in Section 9.1(a)(ii).

"Subsidiary" means, with respect to any Person, (a) a corporation of which more than 50% of the voting power of shares entitled (without regard to the occurrence of any contingency) to vote in the election of directors or other governing body of such corporation is owned, directly or indirectly, at the date of determination, by such Person, by one or more Subsidiaries of such Person or a combination thereof, (b) a partnership (whether general or limited) in which such Person or a Subsidiary of such Person is, at the date of determination, a general or limited partner of such partnership, but only if such Person, one or more Subsidiaries of such Person, or a combination thereof, controls such partnership on the date hereof, or (c) any other Person (other than a corporation or a partnership) in which such Person, directly or by one or more Subsidiaries of such Person, or a combination thereof, directly or indirectly, at the date of determination, has the power to elect or direct the election of a majority of the directors or other governing body of such Person.

"Surplus Economic Member" has the meaning set forth in Section 7.1(c)(i).

"Target Distributed Cash Increase" means the targeted increase in Aggregate Distributed Cash for a Fiscal Year over the previous year.

"Target Distributed Cash Increase Range" means the range of Target Distributed Cash Increase for a Fiscal Year. The Target Distributed Cash Increase Range for each Fiscal Year shall be as set forth on the current Target Distributed Cash Increase Schedule unless modified pursuant to Section 6.2.

"Target Distributed Cash Increase Schedule" means a schedule approved by a Majority Interest which sets forth the Target Distributed Cash Increase Range for a period of ten Fiscal Years. The initial Target Distributed Cash Increase Schedule for Fiscal Years 2016 through 2025 is set forth on Exhibit D.

"Tax Beneficial Date" means, with respect to any Project, (i) in general, the last date upon which such Project may be transferred to the Operating Company without materially reducing the amount, or affecting the availability, of a material solar energy tax benefit to the Project or its direct or indirect owners on account of their interests in the Project, including (A) if such Project is eligible for the active solar energy system new construction exclusion from assessment for California property tax purposes, the day immediately preceding the date on which new construction is deemed completed with respect to the Project (or (I) in the case of a Residential Project, the first Residential System to be deemed complete within such Residential Project or (II) in the case of a C&I Project, the first solar generation system to be deemed complete within such C&I Project), within the meaning of California Revenue and Tax Code Section 75.12 and regulations adopted thereunder, and (B) if such Project is eligible for the energy credit determined under Section 48 of the Code, the day immediately preceding the date upon which the Project (or in the case of a Residential Project, the first Residential System within such Residential Project) is placed in service within the meaning of Section 48 of the Code, and (ii) if such Project is eligible for more than one material solar energy tax benefit, the date determined by calculating a tentative Tax Beneficial Date for each such material solar energy tax benefit with respect to such Project and selecting the earliest such date.

"Tax Beneficial Project" means a Project with a Tax Beneficial Date.

"Tax Matters Member" has the meaning set forth in Section 11.3(a).

"Tax Member" means that Member whose Affiliate provides tax services to the Company pursuant to a Management Services Agreement.

"Transfer" has the meaning set forth in Section 4.1(a).

"Transferee" means a Person who has received Units by means of a Transfer.

"Transferred Distribution" has the meaning set forth in Section 7.1(c)(i).

"Transferred Distribution Shortfall" has the meaning set forth in Section 7.1(c)(i).

"Treasury Regulations" means the regulations (including temporary regulations) promulgated by the United States Department of the Treasury pursuant to and in respect of

provisions of the Code. All references herein to sections of the Treasury Regulations shall include any corresponding provision or provisions of succeeding, similar or substitute, temporary or final Treasury Regulations.

"Units" has the meaning set forth in Section 3.1(a).

"U.S. GAAP" means United States generally accepted accounting principles, as amended from time to time.

"Utility Project Site" means the real property on which a Utility Scale Project is situated, *provided* that such real property and the Utility Scale Project are separately owned.

"Utility Scale Project" means any wholesale solar energy production facility that is neither a C&I Project nor a Residential Project, including the rights to the site on which the facility is located, the other assets, tangible and intangible, that compose such facility and the transmission and interconnection facilities connecting the Project to an electric utility or other wholesale power offtaker.

"YieldCo General Partner" means 8point3 General Partner, LLC, a Delaware limited liability company.

"YieldCo General Partner LLC Agreement" means the Amended and Restated Limited Liability Company Agreement of 8point3 General Partner, LLC, to be dated as of June 24, 2015, as it may be further amended, supplemented or restated from time to time.

Section 1.2 *Construction.*

(a) Unless the context requires otherwise: (i) any pronoun used in this Agreement shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns, pronouns and verbs shall include the plural and vice versa; (ii) references to Articles and Sections refer to Articles and Sections of this Agreement; (iii) the terms "include," "includes," "including" or words of like import shall be deemed to be followed by the words "without limitation"; and (iv) the terms "hereof," "herein" or "hereunder" refer to this Agreement as a whole and not to any particular provision of this Agreement. The table of contents and headings contained in this Agreement are for reference purposes only, and shall not affect in any way the meaning or interpretation of this Agreement. If any date on which any action is required to be taken hereunder by any of the Parties hereto is not a Business Day, such action shall be required to be taken on the next succeeding day that is a Business Day.

(b) The Parties hereto have participated jointly in the negotiation and drafting of this Agreement. No provision of this Agreement will be interpreted in favor of, or against, any of the Parties to this Agreement by reason of the extent to which any such Party or its counsel participated in the drafting thereof or by reason of the extent to which any such provision is inconsistent with any prior draft of this Agreement, and no rule of strict construction will be applied against any Party hereto. This Agreement will not be interpreted or construed to require any Person to take any action, or fail to take any action, if to do so would violate any applicable law.

ARTICLE II
ORGANIZATION

Section 2.1 *Formation*. FS Member and SP Member have formed the Company as a limited liability company pursuant to the provisions of the Delaware Act and thereupon, each Member acquired 50% of all right, title and interest in the Company. The Members hereby amend and restate the original Limited Liability Company Agreement of 8point3 Holding Company, LLC in its entirety. This amendment and restatement shall become effective on the date of this Agreement. Except as expressly provided to the contrary in this Agreement, the rights, duties, liabilities and obligations of the Members and the administration, dissolution and termination of the Company shall be governed by the Delaware Act. All Membership Interests shall constitute personal property of the record owner thereof for all purposes.

Section 2.2 *Name*. The name of the Company shall be "8point3 Holding Company, LLC." Subject to applicable law, the Company's business may be conducted under any other name or names as determined by a Majority Interest. The words "limited liability company," "LLC" or similar words or letters shall be included in the Company's name where necessary for the purpose of complying with the laws of any jurisdiction that so requires. A Majority Interest may change the name of the Company at any time and from time to time and shall notify the Members of such change in the next regular communication to the Members.

Section 2.3 *Registered Office; Registered Agent; Principal Office; Other Offices*. Unless and until changed by a Majority Interest, the registered office of the Company in the State of Delaware shall be located at 1209 Orange Street, Wilmington, New Castle County, Delaware 19801, and the registered agent for service of process on the Company in the State of Delaware at such registered office shall be The Corporation Trust Company. The principal office of the Company shall be located at such place as a Majority Interest may from time to time designate, which need not be in the State of Delaware, and the Company shall maintain records there. The Company may maintain offices at such other place or places within or outside the State of Delaware as a Majority Interest determines to be necessary or appropriate.

Section 2.4 *Purpose and Business*. The purpose and nature of the business to be conducted by the Company shall be to (a) engage directly in, or enter into or form, hold and dispose of any corporation, partnership, joint venture, limited liability company or other arrangement to engage indirectly in, any business activity that is approved by a Majority Interest and that lawfully may be conducted by a limited liability company organized pursuant to the Delaware Act and, in connection therewith, to exercise all of the rights and powers conferred upon the Company pursuant to the agreements relating to such business activity, and (b) do anything necessary or appropriate to the foregoing, including the making of capital contributions or loans to a Group Member or a Joint Venture. To the fullest extent permitted by law, no Member has any duty or obligation to the Company or any Member to propose or approve the conduct by the Company of any business and may decline to do so in its sole and absolute discretion free of any duty or obligation whatsoever.

Section 2.5 *Powers*. The Company shall be empowered to do any and all acts and things necessary, appropriate, proper, advisable, incidental to or convenient for the furtherance

and accomplishment of the purposes and business described in Section 2.4 and for the protection and benefit of the Company.

Section 2.6 *Term*. The term of the Company commenced upon the filing of the Certificate of Formation in accordance with the Delaware Act and shall continue in existence until the dissolution of the Company in accordance with the provisions of Article XIII. The existence of the Company as a separate legal entity shall continue until the cancellation of the Certificate of Formation as provided in the Delaware Act.

Section 2.7 *Title to Company Assets*. Title to the assets of the Company, whether real, personal or mixed and whether tangible or intangible, shall be deemed to be owned by the Company as an entity, and no Member, individually or collectively, shall have any ownership interest in such assets of the Company or any portion thereof.

ARTICLE III
MEMBERSHIP INTERESTS; UNITS

Section 3.1 *Membership Interests; Additional Members.*

(a) The Members own Membership Interests in the Company that shall be represented by Economic Units ("Economic Units") and Management Units ("Management Units"). Economic Units and Management Units are sometimes referred to collectively herein as "Units." Holders of Economic Units and Management Units shall be referred to as "Economic Members" and "Management Members," respectively. The Units shall be uncertificated, unless a Majority Interest determines to have the Company issue certificates for the Units. In exchange for each Economic Member's Capital Contribution to the Company referred to in Section 5.1, the Company shall issue to each Economic Member the number of Economic Units set forth opposite such Economic Member's name on Exhibit A. In addition, the Company shall issue to each Management Member the number of Management Units set forth opposite such Management Member's name on Exhibit B.

(b) Economic Units shall represent an Economic Member's interest in items of income, gain, loss and deduction of the Company and a right to receive distributions of the Company's assets in accordance with the provisions of this Agreement. Economic Members shall have no voting or designation rights with respect to their Economic Units.

(c) Management Units shall represent a Management Member's right to vote on Company matters in accordance with the provisions of the Agreement and, subject to Section 4.1(e) and Section 9.1, designate Directors. Management Members shall have no interest in items of income, gain, loss or deduction of the Company or any right to receive distributions of the Company's assets in accordance with the provisions of this Agreement with respect to their Management Units.

(d) For the avoidance of doubt, the undersigned intend for the holders of Management Units to be considered managers and not members or partners for federal income tax purposes with respect to such Management Units. Therefore, if one hundred percent (100%) of the Economic Units are held by one tax owner, the Company will be

treated, as of such time, as a disregarded entity for federal income tax purposes pursuant to Treasury Regulation Section 301.7701-3.

(e) The Company may issue additional Membership Interests and options, rights, warrants and appreciation rights relating to the Membership Interests for any Company purpose at any time and from time to time to such Persons for such consideration and on such terms and conditions as determined by a Majority Interest or, if required by Article VIII, the unanimous vote of the Management Members.

(f) Each additional Membership Interest authorized to be issued by the Company pursuant to Section 3.1(e) may be issued in one or more classes, or one or more series of any such classes, with such designations, preferences, rights, powers and duties (which may be senior to existing classes and series of Membership Interests), as shall be fixed by a Majority Interest (or, if required by Article VIII, the unanimous vote of the Management Members), including (i) the right to share in Company profits and losses or items thereof; (ii) the right to share in Company distributions; (iii) the rights upon dissolution and liquidation of the Company; (iv) whether, and the terms and conditions upon which, the Company may or shall be required to redeem the Membership Interest; (v) whether such Membership Interest is issued with the privilege of conversion or exchange and, if so, the terms and conditions of such conversion or exchange; (vi) the terms and conditions upon which each Membership Interest will be issued, evidenced by certificates and assigned or transferred; (vii) the method for determining the Ownership Percentage as to such Membership Interest; and (viii) the right, if any, of each such Membership Interest to vote on Company matters, including matters relating to the relative rights, preferences and privileges of such Membership Interest.

(g) Subject to Article VIII, a Majority Interest shall take all actions that it determines to be necessary or appropriate in connection with (i) each issuance of Membership Interests and options, rights, warrants and appreciation rights relating to Membership Interests pursuant to this Section 3.1, (ii) reflecting the admission of such additional Members in the books and records of the Company as the record holder of such Membership Interest and (iii) all additional issuances of Membership Interests and options, rights, warrants and appreciation rights relating to Membership Interests pursuant to this Section 3.1, in each case including amending this Agreement and Exhibit A and Exhibit B hereof as necessary to reflect any such issuance. Subject to Article VIII, a Majority Interest shall determine the relative rights, powers and duties of the holders of the Units or other Membership Interests being so issued. A Majority Interest shall do all things necessary to comply with the Delaware Act and is authorized and directed to do all things that it determines to be necessary or appropriate in connection with any future issuance of Membership Interests pursuant to the terms of this Agreement, including compliance with any statute, rule, regulation or guideline of any federal, state or other governmental agency.

Section 3.2 *Adjustment to Economic Units.*

(a) From the Closing Date until November 30, 2019, the number of Economic Units held by each Economic Member shall be fixed at the number set forth opposite

each Economic Member's name on Exhibit A. Thereafter, the number of Economic Units held by each Economic Member will adjust annually according to the terms of this Section 3.2. Notwithstanding anything to the contrary set forth herein, the number of Economic Units shall at all times equal 1,000.

(b) No later than January 31 of each Fiscal Year commencing after November 30, 2019, the Members will cause the Accounting Member pursuant to its Management Services Agreement to deliver to the non-Accounting Member a calculation of the amount of Aggregate Distributed Cash for the current Adjustment Period (the "Distributed Cash Calculation") and the calculation of each Economic Member's Adjustment Percentage and Distribution Adjustment Amount for the current Fiscal Year based upon the Distributed Cash Calculation (collectively, the "Annual Calculations").

(c) (i) Following receipt of the Annual Calculations, the non-Accounting Member will be afforded a period of 30 days to review the Annual Calculations, during which period the non-Accounting Member and its advisors shall have the right to inspect the work papers generated by the Accounting Member in preparation of the Annual Calculations and shall have reasonable access, during normal business hours, to the relevant personnel of the YieldCo General Partner and the Partnership Group and to information, books and records of the YieldCo General Partner, the Partnership Group and, to the extent permitted by the applicable Group Member Agreement, any Joint Venture. At or before the end of such 30-day review period, the non-Accounting Member will either (A) accept the Annual Calculations in their entirety, in which case, the Accounting Member's calculations shall be final, conclusive and binding on such non-Accounting Member, or (B) deliver to the Accounting Member written notice and a written explanation of those items in the Annual Calculations which the non-Accounting Member (the "Disputing Member") disputes and the proposed modification of such calculations, in which case only the items identified shall be deemed to be in dispute and the other items shall be deemed to be accepted with the effect set forth in (A) above. If a Member fails to accept or dispute the Annual Calculations before the end of the 30-day review period set forth above, such Annual Calculations shall be deemed to be final, conclusive and binding on such non-Accounting Member. Within a further period of ten days from the end of the aforementioned review period, the Members will attempt to resolve in good faith any disputed items.

(ii) Failing such resolution, either Member may refer the unresolved disputed items for final binding resolution to a nationally recognized firm of certified public accountants agreeable to both Members and having no significant preexisting relationship with either Member (the "Dispute Accountants"). In their review, the Dispute Accountants shall consider only those items or amounts in the Annual Calculations as to which the Disputing Member has disagreed and shall be instructed that they may not resolve any items in dispute such that the Disputing Member's Adjustment Percentage or Distribution Adjustment Amount, as applicable, is greater than the greatest amount proposed by the Disputing Member or less than the least amount proposed by the Accounting Member. The Dispute Accountants shall deliver to the Members, within 30 days of reference of the matter to the Dispute Accountants, a report setting forth its calculations. The

decision of such Dispute Accountants will be final, conclusive and binding on the Members. The cost of the Dispute Accountants' review and report of any good faith dispute shall be paid entirely by the Company. The cost of the Dispute Accountants' review and report of any dispute not made in good faith shall be paid entirely by the Disputing Member.

(iii) If the Members fail to mutually agree on the Dispute Accountants, the Members shall thereafter promptly cause the AAA to appoint the Dispute Accountants, and in making its determination with respect to such appointment, the AAA shall take into account, and attempt to avoid appointing an accounting firm with, any significant preexisting relationship with any Member or their respective Affiliates. The fees and expenses of the AAA and the Dispute Accountants shall be apportioned in the same manner as described in Section 3.2(c)(ii).

(d) Upon the final, conclusive and binding determination of the Distributed Cash Calculation and the calculations of the Adjustment Percentages for each Member (collectively, the "Final Calculation") for such Fiscal Year, the number of Economic Units held by each Economic Member will adjust for such Fiscal Year so that each Economic Member's Ownership Percentage equals its Adjustment Percentage and the Company shall amend Exhibit A to reflect such adjustment.

Section 3.3 *Adjustment to Management Units.*

(a) After the Final Calculation for a Fiscal Year, in the event that a Management Member holds, and has held for at least the prior two consecutive Fiscal Years, at least 70% of the Economic Units, then such Management Member (the "Majority Option Management Member") shall have the option, to be exercised prior to the earlier of 30 days after any Final Calculation and the end of the fiscal quarter of the Majority Option Management Member in which the Final Calculation is made (the "MU Exercise Period"), to require the other Management Member (the "Minority Option Management Member") to Transfer to it, at no cost, a percentage of the aggregate outstanding Management Units owned by the Minority Option Management Member so that after giving effect to such Transfer the percentage of Management Units held by the Minority Option Management Member equals the percentage of Economic Units then held by the Minority Option Management Member (the "Management Unit Transfer"). To exercise the right to the Management Unit Transfer, the Majority Option Management Member shall deliver to the Company and the Minority Option Management Member written notice of its election to exercise such right before the expiration of the MU Exercise Period. Upon the Company's receipt of such notice, the Majority Option Management Member shall succeed to all rights, title and interest in and to such Management Units and the Company shall amend Exhibit B to reflect such Transfer. Notwithstanding the foregoing, in the event that a Management Member waives for a given Fiscal Year its right to exercise the right to the Management Unit Transfer, or fails to exercise the right to the Management Unit Transfer during the MU Exercise Period, such waiver shall only apply to such Fiscal Year and shall not prevent a Management

Member that subsequently qualifies as a Majority Option Management Member from exercising the right to the Management Unit Transfer in any subsequent Fiscal Year.

(b) Upon the completion of the Management Unit Transfer in accordance with Section 3.3(a), no Minority Management Member shall have the right, upon subsequently regaining a certain Economic Unit Ownership Percentage or becoming the Majority Option Management Member, to exercise the right to the Management Unit Transfer or otherwise reacquire the Management Units it Transferred pursuant to Section 3.3(a).

Section 3.4 *Limitation of Liability*. To the fullest extent permitted by the Delaware Act, the debts, obligations and liabilities of the Company, whether arising in contract, tort or otherwise, shall be solely the debts, obligations and liabilities of the Company, and no Member shall be obligated personally for any of such debts, obligations or liabilities of the Company solely by reason of being a Member.

Section 3.5 *Withdrawal of Members*. No Member shall have any right to withdraw from the Company; *provided*, *however*, that when a Transferee becomes registered on the books and records of the Company as the Member with respect to the Membership Interest so Transferred, the Transferring Member shall cease to be a Member with respect to the Membership Interest so Transferred.

Section 3.6 *Record Holders*. The Company shall be entitled to recognize the Person in whose name any Membership Interest is registered on the books and records of the Company as the Member with respect to any Membership Interest and, accordingly, shall not be bound to recognize any equitable or other claim to, or interest in, such Membership Interest on the part of any other Person, regardless of whether the Company shall have actual or other notice thereof, except as otherwise provided by law or any applicable rule, regulation or guideline of any governmental agency.

Section 3.7 *No Appraisal Rights*. No Member shall be entitled to any valuation, appraisal or similar rights with respect to such Member's Units, whether individually or as part of any class or group of Members, in the event of a merger, consolidation, sale of the Company or other transaction involving the Company or its securities unless such rights are expressly provided by the agreement of merger, agreement of consolidation or other document effectuating such transaction.

ARTICLE IV
TRANSFERS

Section 4.1 *Membership Interests Generally.*

(a) The term "Transfer," means any direct or indirect sale, assignment, gift, exchange or any other disposition by law or otherwise of such Membership Interest, excluding any direct or indirect pledge, grant of a security interest, encumbrance, hypothecation or mortgage of a Membership Interest (each, a "Pledge") but including any Transfer upon foreclosure of any Pledge; *provided*, *however*, that any direct or indirect Transfer of ownership interests in SP Parent or FS Parent or, except with respect to

Section 4.1(h), any consolidation, merger or direct or indirect sale, assignment, gift, exchange or any other disposition by law or otherwise of all or substantially all of the assets of SP Parent or FS Parent shall not be a Transfer for purposes of this Section 4.1 and Section 4.2.

(b) No Member shall Transfer, Pledge or permit an indirect Transfer or Pledge by its direct or indirect owners of its Membership Interest, in whole or in part, except for (i) a Permitted Transfer, (ii) Transfers or Pledges in accordance with the applicable provisions of this Article IV or (iii) Transfers or Pledges by a Majority Management Member or by its direct or indirect owners.

(c) Except for a Permitted Transfer or a Transfer by a Majority Management Member or a direct or indirect Transfer in a Majority Management Member, no Member may Transfer or permit the indirect Transfer by its direct or indirect owners of less than all of the Membership Interests held by such Member and its Affiliates.

(d) No direct or indirect Transfer or Pledge of any Membership Interests shall be made if such Transfer or Pledge would (i) not be in compliance with all applicable laws and regulations in all respects, including the then-applicable federal or state securities laws or rules and regulations of the Commission, any state securities commission or any other governmental authority with jurisdiction over such Transfer or Pledge, (ii) terminate the existence or qualification of the Company under the laws of the jurisdiction of its formation, (iii) cause the Company to be treated as an association taxable as a corporation or otherwise to be taxed as an entity for federal income tax purposes (to the extent not already so treated or taxed), unless the Member making such Transfer or Pledge is the Majority Management Member and unanimous approval is not required pursuant to Section 8.4(b), (iv) constitute a breach or violation of, or a prohibited change of control or event of default under, any credit agreement, loan agreement, indenture, mortgage, deed of trust or other similar instrument or document governing Indebtedness of the Company, the YieldCo General Partner, any Group Member or any Joint Venture, unless a consent is received waiving such breach, violation, change of control or default, (v) cause the Company or any Group Member to be in violation in any material respect of or default under the Certificate of Formation, this Agreement, any governmental approval to which any Group Member is subject or any other agreement or instrument to which it is a party or by which it or its property is bound or subject, (vi) subject the Company to registration under the Investment Company Act of 1940 or require that the Company register as an investment advisor under the Investment Advisors Act of 1940, (vii) be consummated without obtaining any required approval of any public authority or regulatory body, the failure of which could reasonably be expected to have a material adverse effect on the Company, the YieldCo General Partner or any Group Member, or (viii) to the extent applicable, impair the ability of a Project Company to sell electricity at market-based rates regulated by FERC. Any direct or indirect Transfer, Pledge or purported Transfer or Pledge of a Membership Interest not made in accordance with this Article IV shall be, to the fullest extent permitted by law, null and void, and the Company shall have no obligation to recognize any such Transfer, Pledge or purported Transfer or Pledge.

(e) Notwithstanding any other provision of this Agreement, a Management Member's right to designate Directors, as provided in Section 9.1, shall not be Transferred (including in a Permitted Transfer) except as part of a Transfer permitted under the terms of this Agreement to one Transferee of all of the Member's Units.

(f) No Member shall Transfer its Membership Interest (including a Permitted Transfer) unless and until the following have occurred: (i) the proposed Transferee shall have agreed in writing to be bound by the terms of this Agreement and provided to the Company its name, address, taxpayer identification number and any other information reasonably necessary to permit the Company to file all required federal and state tax returns or reasonably requested by a Majority Interest, (ii) the Member proposing to make such Transfer shall have delivered to the Company an Opinion of Counsel (reasonably acceptable to the Company as to form, substance and identity of counsel) that no registration under the Securities Act is required in connection with such Transfer (unless the requirement of an opinion is waived by a Majority Interest) and (iii) the Company shall have been furnished with the documents effecting such Transfer executed and acknowledged by both the Transferring Member and Transferee, together with a written agreement of the Transferee (if not already a Member at the time of such Transfer) to become a party to and be bound by the provisions of this Agreement as a Member, which shall be in form and substance reasonably satisfactory to the Company.

(g) By acceptance of the Transfer of any Membership Interest in accordance with this Article IV, the Transferee of a Membership Interest shall be admitted as a Member with respect to the Membership Interests so Transferred to such Transferee when any such Transfer or admission is reflected in the books and records of the Company.

(h) Each Member making a Transfer or Pledge or which is the subject of a direct or indirect Transfer or Pledge by its direct or indirect owners shall be obligated to pay all expenses incurred in connection with such Transfer or Pledge, and the Company shall not have any obligation with respect thereto. Each Member making a Transfer or Pledge or which is the subject of a direct or indirect Transfer or Pledge by its direct or indirect owners shall pay, or reimburse the Company for, all reasonable costs and expenses incurred by the Company in connection with such Transfer or Pledge and the admission of the Transferee as a Member, if applicable, including the legal fees incurred in connection with the legal opinions referred to in Section 4.1(f).

Section 4.2 *Membership Interest Right of First Offer.*

(a) Except for a Permitted Transfer or a Transfer by a Majority Management Member or by its direct or indirect owners, no Member shall Transfer or permit an indirect Transfer by its direct or indirect owners of its Membership Interest except in compliance with the provisions of this Section 4.2. If such Member (the "ROFO Seller") or any of its direct or indirect owners wishes to solicit proposals from third parties to acquire the ROFO Seller's Units or the direct or indirect interests in such ROFO Seller, the ROFO Seller shall first provide a notice (the "ROFO Notice") to the other Member (the "ROFO Non-Selling Member" and, together with the ROFO Seller, the "ROFO

Parties"), with a copy to the Company, containing a request for the ROFO Non-Selling Member to provide an agreement (the "ROFO Units Purchase Agreement") specifying the purchase price (the "ROFO Price") and other terms and conditions on which the ROFO Non-Selling Member is willing to purchase all but not less than all of the ROFO Seller's Units (the "ROFO Units").

(b) The ROFO Non-Selling Member may deliver the ROFO Units Purchase Agreement up to 30 days after receiving the ROFO Notice. If the ROFO Non-Selling Member submits a ROFO Units Purchase Agreement within the time period specified herein, the ROFO Seller shall have 15 days from the date the ROFO Seller received the ROFO Units Purchase Agreement to accept the ROFO Units Purchase Agreement by notice to the ROFO Non-Selling Member and the Company (the "ROFO Acceptance Notice"). Promptly after the delivery of the ROFO Acceptance Notice, the ROFO Parties shall execute the ROFO Units Purchase Agreement and deliver a copy to the Company. If the ROFO Seller does not deliver a ROFO Acceptance Notice within such 15 day period, the ROFO Parties shall, for a period of 60 days from the date the ROFO Seller received the ROFO Units Purchase Agreement (or such shorter period as they agree), negotiate in good faith the terms of the ROFO Units Purchase Agreement. Upon agreement by the ROFO Parties, the ROFO Parties shall execute the ROFO Units Purchase Agreement and deliver a copy to the Company. If the ROFO Non-Selling Member fails to deliver the ROFO Units Purchase Agreement within the time period set forth above, the ROFO Seller may, during the next 120 days, Transfer the ROFO Units to a third party Transferee or permit the indirect Transfer of the ROFO Units by the direct or indirect owners of the ROFO Seller (i) subject to the applicable terms and restrictions of this Agreement, including this Article IV and (ii) subject to the ROFO Non-Selling Member's approval of the Transferee or the transferee of such indirect interest, such approval not to be unreasonably withheld.

(c) If a ROFO Units Purchase Agreement is executed, the ROFO Seller shall sell and the ROFO Non-Selling Member must purchase the ROFO Units in the manner, and subject to the terms and conditions, described in such ROFO Units Purchase Agreement. If the Members do not execute a ROFO Units Purchase Agreement within 60 days from the date the ROFO Seller received the ROFO Units Purchase Agreement, the ROFO Seller may, during the next 120 days, Transfer the ROFO Units to a third party Transferee or permit the indirect Transfer of the ROFO Units by the direct or indirect owners of the ROFO Seller (i) at a purchase price not less than 105% of the ROFO Price and upon terms no more favorable, taken as a whole, to the proposed Transferee or transferee of such indirect interest than those specified in the ROFO Units Purchase Agreement, (ii) subject to the applicable terms and restrictions of this Agreement, including this Article IV and (iii) subject to the ROFO Non-Selling Member's approval of the Transferee or the transferee of such indirect interest, such approval not to be unreasonably withheld.

(d) Sales of the ROFO Units to the ROFO Non-Selling Member pursuant to this Section 4.2 shall be made at the offices of the Company within 60 days of the execution of the ROFO Units Purchase Agreement or on such other date as the Members may agree. Such sales shall be effected by the ROFO Seller's delivery of the ROFO

Units, free and clear of all Encumbrances (other than restrictions imposed by the governing documents of the Company and securities laws), to the ROFO Non-Selling Member, against payment to the ROFO Seller of the ROFO Price by the ROFO Non-Selling Member and on the terms and conditions specified in the ROFO Units Purchase Agreement.

Section 4.3 *OpCo Transfer Generally.*

(a) The term "transfer," when used in this Section 4.3 shall mean a transaction by which the holder of an OpCo Membership Interest assigns all or any part of such OpCo Membership Interest to another Person who is or becomes an OpCo Member as a result thereof, and includes a sale, assignment, gift, exchange or any other disposition by law or otherwise (but not the pledge, grant of security interest, encumbrance, hypothecation or mortgage), including any transfer upon foreclosure or other exercise of remedies of any pledge, security interest, encumbrance, hypothecation or mortgage.

(b) Except as provided in Section 4.3(c), nothing contained in this Agreement shall be construed to prevent or limit a disposition by any stockholder, member, partner or other owner of the OpCo Managing Member or any OpCo Non-Managing Member of any or all of such Person's shares of stock, membership interests, partnership interests or other ownership interests in the OpCo Managing Member or such OpCo Non-Managing Member and the term "transfer" in this Section 4.3 shall not include any such disposition.

(c) Right of First Refusal.

(i) Notwithstanding anything to the contrary set forth in this Agreement, except with respect to Permitted OpCo Transfers, if a Sponsor (the "Offering OpCo Member") receives a bona fide offer that the Offering OpCo Member has decided to accept to transfer all or any portion of its Common Units and OpCo Subordinated Units and the number of Class B Shares equal thereto (collectively, the "Offered OpCo Units"), the OpCo ROFR Rightholder will have a right of first refusal to acquire the Offered OpCo Units in accordance with the following provisions of this Section 4.3(c).

(ii) The Offering OpCo Member will, within five Business Days of receipt of any transfer offer that the Offering OpCo Member has decided to accept, give written notice (the "Offering OpCo Member Notice") to the Company and the OpCo ROFR Rightholder stating that it has received a bona fide offer for a transfer of the Offered OpCo Units and specifying:

(A) the number of Offered OpCo Units proposed to be transferred by the Offering OpCo Member;

(B) the proposed date, time and location of the closing of the transfer, which will not be less than 60 days from the date of the Offering OpCo Member Notice;

(C) the purchase price per Offered OpCo Unit (which will be payable solely in cash) and the other material terms and conditions of the transfer; and

(D) the name of the Person who has offered to purchase such Offered OpCo Units.

(iii) The Offering OpCo Member Notice will constitute the Offering OpCo Member's offer to transfer the Offered OpCo Units to the OpCo ROFR Rightholder, which offer will be irrevocable until the end of the OpCo ROFR Rightholder Option Period described in Section 4.3(c)(v)(A).

(iv) By delivering the Offering OpCo Member Notice, the Offering OpCo Member will be deemed, without the necessity of further action, to represent and warrant to the OpCo ROFR Rightholder that:

(A) the Offering OpCo Member has full right, title and interest in and to the Offered OpCo Units;

(B) the Offering OpCo Member has all the necessary power and authority and has taken all necessary action to transfer such Offered OpCo Units as contemplated by this Section 4.3(c); and

(C) the Offered OpCo Units are free and clear of any and all liens other than those arising as a result of or under the terms of this Agreement.

(v) Exercise of the Right of First Refusal.

(A) The OpCo ROFR Rightholder will have the right to elect irrevocably to purchase all and not less than all of the Offered OpCo Units for a period of 15 Business Days following the receipt of the applicable Offering OpCo Member Notice (such period, the "OpCo ROFR Rightholder Option Period"), by delivering a written notice to the Offering OpCo Member (an "OpCo Member ROFR Exercise Notice") specifying its desire to purchase all of the Offered OpCo Units, on the terms and for the purchase price set forth in the Offering OpCo Member Notice. Any OpCo Member ROFR Exercise Notice will be binding upon delivery and irrevocable by the OpCo ROFR Rightholder.

(B) The failure of the OpCo ROFR Rightholder to deliver an OpCo Member ROFR Exercise Notice by the end of the OpCo ROFR Rightholder Option Period, will constitute both a waiver of its rights of first refusal under this Section 4.3(c) with respect to the transfer of Offered OpCo Units and an election to purchase none of the Offered OpCo Units, but will not affect its respective rights with respect to any future transfers.

(vi) In the event that the OpCo ROFR Rightholder has exercised its right to purchase all and not less than all of the Offered OpCo Units, then the Offering OpCo Member will sell such Offered OpCo Units to the OpCo ROFR Rightholder, and the OpCo ROFR Rightholder will purchase such Offered OpCo Units, on the terms set forth in the Offering OpCo Member Notice within 60 days following the expiration of the OpCo ROFR Rightholder Option Period (which period may be extended for a reasonable time not to exceed 90 days to the extent reasonably necessary to obtain required approvals or consents from any governmental authority). Each OpCo Member will take all actions as may be reasonably necessary to consummate the sale contemplated by this Section 4.3(c)(vi), including, without limitation, entering into agreements and delivering certificates and instruments and consents as may be deemed necessary or appropriate. At the closing of any sale and purchase pursuant to this Section 4.3(c)(vi), the Offering OpCo Member will deliver to the OpCo ROFR Rightholder certificates (if any) representing the Offered OpCo Units to be sold, free and clear of any Encumbrances (other than those contained in this Agreement and the Operating Agreement), accompanied by evidence of transfer and all necessary transfer taxes paid and stamps affixed, if necessary, against receipt of the purchase price therefor from the OpCo ROFR Rightholder by certified or official bank check or by wire transfer of immediately available funds.

(vii) In the event that the OpCo ROFR Rightholder does not elect to purchase all of the Offered OpCo Units, then, provided the Offering OpCo Member has also complied with the provisions of this Section 4.3(c), to the extent applicable, the Offering OpCo Member may transfer all of such Offered OpCo Units, at a price per Offered OpCo Unit not less than the amount specified in the Offering OpCo Member Notice and on other terms and conditions which are not materially more favorable in the aggregate to the proposed purchaser than those specified in the Offering OpCo Member Notice, but only to the extent that such transfer occurs within 90 days after expiration of the OpCo ROFR Rightholder Option Period. Any Offered OpCo Units not transferred within such 90-day period will be subject to the provisions of this Section 4.3(c) upon subsequent transfer.

(d) Notwithstanding anything to the contrary set forth in this Agreement, neither Sponsor may, without the prior written consent of the other Sponsor, transfer (which, for purposes of this Section 4.3(d), includes any indirect transfer of such OpCo Membership Interest) or exchange all or any portion of its Common Units and OpCo Subordinated Units or any related Class B Shares if, as a result of such transfer or exchange, such Sponsor will own, on a fully diluted basis, less than 17% of the "Percentage Interest" (as defined in the Partnership Agreement) of the OpCo Managing Member; provided, that this Section 4.3(d) shall not apply to a transfer or exchange of Common Units, OpCo Subordinated Units or any related Class B Shares (i) which occurs after the fifth anniversary of the date hereof if such Sponsor also transfers all, but not less than all, of its ownership interest in the Company in such transaction or (ii) if such Sponsor also makes a Permitted Transfer of all, but not less than all, of its ownership interest in the Company in such transaction.

ARTICLE V
CAPITAL CONTRIBUTIONS

Section 5.1 *Initial Capital Contributions*. Prior to the date hereof, capital contributions totaling $1,000 were made to the Company and 1,000 Economic Units were issued in consideration therefor as set forth in Exhibit A. As of the date hereof, the Economic Members agree that the respective Capital Contributions of the Economic Members and Economic Units of the Economic Members are as set forth on Exhibit A.

Section 5.2 *Additional Contributions*. No Member shall be obligated to make any additional Capital Contributions to the Company; *provided*, *however*, that each Member shall pay or cause to be paid 50% of any amount owed by the Company to any Service Provider under any Management Service Agreement.

Section 5.3 *Return of Contributions*. Except as expressly provided herein, no Economic Member is entitled to the return of any part of its Capital Contributions or to be paid interest in respect of either its Capital Account or its Capital Contributions. An unreturned Capital Contribution is not a liability of the Company or of any Economic Member. An Economic Member is not required to contribute or to lend any cash or property to the Company to enable the Company to return any Economic Member's Capital Contributions.

Section 5.4 *Capital Accounts*. A separate capital account ("Capital Account") shall be established, determined and maintained for each Economic Member in accordance with the substantial economic effect test set forth in Treasury Regulation § 1.704-l(b)(2), which provides, in part, that a Capital Account shall be:

(a) increased by (i) the amount of money contributed by the Economic Member to the Company; (ii) the fair market value of any property contributed by the Economic Member to the Company (net of liabilities secured by such contributed property); and (iii) allocations to the Economic Member of the Company income and gain (or items thereof), including income and gain exempt from tax; and

(b) decreased by (i) the amount of money distributed to the Economic Member by the Company; (ii) the fair market value of any property distributed to the Economic Member by the Company (net of liabilities secured by such distributed property); (iii) allocations to the Economic Member of expenditures of the Company not deductible in computing its taxable income and not properly capitalized for federal income tax purposes; and (iv) allocations to the Economic Member of Company loss and deduction (or items thereof).

In the case of a termination of an Economic Unit or an additional Capital Contribution by an existing or newly admitted Economic Member, the Capital Accounts of the Economic Members shall be adjusted as of the date of such termination or the date of the Capital Contribution, as the case may be.

ARTICLE VI
PROJECT OFFERS TO THE OPERATING COMPANY

Section 6.1 *General*. Each Member and its Affiliates shall have the right to offer to sell Projects to the Operating Company in accordance with this Article VI; *provided*, *however*, that no Member shall be obligated to make any offers or sales to the Operating Company. Notwithstanding anything to the contrary set forth herein, each Project offered by a Member or its Affiliates to the Operating Company must, absent approval of a Majority Interest, qualify as an Acceptable Project.

Section 6.2 *Offer Schedule*. At least three months prior to the beginning of each Fiscal Year, a Majority Interest shall determine (i) whether the Target Distributed Cash Increase Range for the upcoming Fiscal Year should be altered from the amount provided on the Target Distributed Cash Increase Schedule and (ii) a schedule of expected Project offers by each Member to meet the Target Distributed Cash Increase Range for such Fiscal Year (each, an "Annual Offer Schedule"). The Annual Offer Schedule shall control each Member's right to offer Projects to the Operating Company and shall set forth, at a minimum, the maximum amount of Target Distributed Cash Increase that each Member shall be permitted to offer to the Operating Company, the Projects that each Member contemplates offering to achieve such Target Distributed Cash Increase, any restrictions on the timing of such offers and agreements of the Management Members with respect to the Annual Offer Schedule. The Annual Offer Schedule may set forth alternative Projects proposed to be offered by a Member to the Operating Company. Subject to Section 6.3, in the absence of an Annual Offer Schedule, each Fiscal Year, each Member will have the right to offer to the Operating Company, at a minimum, Projects with Forecasted Distributed Cash of 50% of the bottom of the Target Distributed Cash Increase Range for such Fiscal Year set forth on the Target Cash Distribution Increase Schedule (each, an "Annual Minimum Offer"). Subject to the Annual Offer Schedule, Section 6.3 or approval of a Majority Interest, no Member or its Affiliates may offer Projects to the Operating Company with Forecasted Distributed Cash which exceeds 50% of the uppermost point of the Target Distributed Cash Increase Range for such Fiscal Year set forth on the Target Cash Distribution Increase Schedule. The Members acknowledge that the OpCo ROFO Agreements do not impose an obligation on the parties thereto to sell any Project to the Operating Company but instead require the parties thereto to allow the Operating Company to make a first offer to purchase the Projects specified therein as provided therein.

Section 6.3 *Increased Offer Rights.*

(a) Extraordinary Events. (i) Subject to Section 6.3(a)(ii), in the event that a Project (the "Affected Project") contributed or sold to the Operating Company by a Member (the "Affected Member") experiences an Extraordinary Event, whether or not it results in the receipt of Extraordinary Proceeds by the applicable Project Company, (A) the Annual Offer Schedule for the following year shall provide for the offer of one or more additional Projects by the Affected Member or (B) in the absence of Annual Offer Schedules for such year, the Annual Minimum Offer of the Affected Member for such year will be increased to allow for the offer of one or more additional Projects by the Affected Member, in each case that in the aggregate have Forecasted Distributed Cash that, together with the remaining Forecasted Distributed Cash of the Affected Project, if

any, is not greater than 105% of the Forecasted Distributed Cash of the Affected Project immediately prior to the Extraordinary Event.

(ii) If the Operating Company or applicable Project Company receives Extraordinary Proceeds, the Affected Member shall have the right to cause the repair of the Affected Project with the Extraordinary Proceeds or offer to the Operating Company additional Projects pursuant to Section 6.3(a)(i) with a purchase price less than or equal to the amount of such Extraordinary Proceeds. If the Affected Project is not so repaired and the Affected Member and the Operating Company are unable to consummate such sale, the Members shall cause the Operating Company or applicable Project Company, as the case may be, to use such proceeds to acquire Common Units or, if a Majority Interest determines, the Members shall cause the Operating Company to distribute such proceeds. If the Operating Company or the applicable Project Company does not receive proceeds from an Extraordinary Event or the proceeds of the Extraordinary Event are insufficient to acquire additional Projects to replace the Distributed Cash lost in the Extraordinary Event or repair the Affected Project, the Affected Member may contribute additional Projects to the Operating Company without charge to the Operating Company or applicable Project Company or, at the election of the Affected Member, the Members shall cause the applicable Project Company to allow the Affected Member to repair the Affected Project without charge to any Group Member or the Project Company.

(b) Failure to Offer. (i) In the event that a Member (the "Non-Offering Member") (1) notifies the other Member (the "Option Member") that it will not make an offer as set forth the Annual Offer Schedule or an offer for an alternative Project of equivalent or less Forecasted Distributed Cash, or (2) fails to offer a Project within six months of the date set forth in the Annual Offer Schedule for such offer and fails during such period to make an offer for an alternative Project of equivalent or less Forecasted Distributed Cash, the Option Member shall have the right to offer additional Projects within three months of such notification or failure (but not prior to the beginning of Fiscal Year to which such Annual Offer Schedule applies) which have Forecasted Distributed Cash that is not greater than 105% of the Forecasted Distributed Cash that is not being satisfied by the Non-Offering Member.

(ii) If there is no Annual Offer Schedule for a Fiscal Year and a Non-Offering Member (1) notifies the Option Member that it will not offer Projects projected to meet its Annual Minimum Offer for such Fiscal Year or (2) fails to offer Projects before the end of a Fiscal Year that in the aggregate meet its Annual Minimum Offer for such Fiscal Year, the Option Member shall have the right to offer additional Projects within three months of such notification or, if no notification, during the first quarter of the next Fiscal Year which, when the Forecasted Distributed Cash of such Projects are aggregated with the Forecasted Distributed Cash of the other Projects contributed to the Operating Company during the year in which the Non-Offering Member failed to offer Projects, are sufficient to meet the Target Distributed Cash Increase Range for the year in which the Non-Offering Member failed to offer Projects.

(iii) Upon occurrence of a failure of the Non-Offering Member described in Section 6.3(b)(i) or (ii) and the corresponding contribution or sale of additional Projects by the Option Member, the Management Members shall modify the Annual Offer Schedule for the next Fiscal Year to (A) provide that the Non-Offering Member may offer Projects in addition to those permitted under Section 6.2 which produce the amount of additional Forecasted Distributed Cash that the Option Member contributed or sold in the prior year pursuant to Section 6.3(b)(i) or (ii) and (B) correspondingly reduce the amount of Forecasted Distributed Cash the Option Member may offer. If there is no Annual Offer Schedule for the next Fiscal Year, the Non-Offering Member shall have the opportunity to offer a larger percentage of the Projects required to meet the Annual Minimum Offer of both Members, so that the aggregate Forecasted Distributed Cash produced by the Projects contributed by (A) the Non-Offering Member is increased above that permitted under Section 6.2 to produce the amount of additional Forecasted Distributed Cash that the Option Member contributed or sold in the prior year pursuant to Section 6.3(b)(i) or (ii) and (B) the Option Member is correspondingly reduced. If the Non-Offering Member cannot offer the additional Projects in such subsequent year, it will lose the right to cure such failed offer.

Section 6.4 *Conflicts Committee Approval*. The terms and conditions of the agreement pursuant to which the Operating Company would acquire a Project from a Member must be approved by the Conflicts Committee prior to consummation of such acquisition.

Section 6.5 *Future Target Distributed Cash Increase Schedule*. At least three months prior to the beginning of each Fiscal Year, a Majority Interest shall determine the Target Distributed Cash Increase Schedule for the subsequent 10 Fiscal Years. To the extent a Majority Interest cannot agree on such modified Target Distributed Cash Increase Schedule, the existing Target Distributed Cash Increase Schedule shall remain in effect pending such determination, *provided* that the Target Distributed Cash Increase for the 10th Fiscal Year of the schedule shall remain the same as the preceding Fiscal Year.

Section 6.6 *Delivery of Final Project Model*. Any Member that sells or contributes a Project to the Operating Company pursuant to this Article VI shall deliver the final project model for such Project to the Company for consideration 30 days prior to the acquisition of such Project by the Operating Company.

ARTICLE VII
DISTRIBUTIONS AND ALLOCATIONS

Section 7.1 *Distributions.*

(a) Except as otherwise provided in Section 13.3 or as otherwise set forth herein, within 50 days following the end of each Quarter commencing with the Quarter ending on August 31, 2015, an amount equal to 100% of Available Cash with respect to such Quarter shall be distributed in accordance with this Article VII to all Economic Members simultaneously, pro rata in accordance with each Economic Member's

Ownership Percentage; *provided* that no distributions for any Fiscal Year beginning after November 30, 2019 will be made until after the Final Calculation for such Fiscal Year. Notwithstanding the foregoing, in the event that any Adjustment Percentages of the Members are in dispute in accordance with Section 3.2 at the time that a distribution is due, the Company shall distribute to each Economic Member only the amount of such distribution that is not being contested and the Company shall not distribute the remainder of such distribution until the Adjustment Percentages are determined to be final, binding and conclusive in accordance with Section 3.2.

(b) Each distribution in respect of an Economic Unit shall be paid by the Company only to the holder of record of such Economic Unit as of the record date set for such distribution. Such payment shall constitute full payment and satisfaction of the Company's liability in respect of such payment, regardless of any claim of any Person who may have an interest in such payment by reason of an assignment or otherwise.

(c) Annual Adjustment to Distributions.

(i) In the event that there is a negative Adjustment Amount with respect to one Economic Member (a "Deficit Economic Member") and the Adjustment Amount with respect to the other Economic Member is greater than or equal to zero (a "Surplus Economic Member"), all distributions due on the Deficit Economic Member's Economic Units (the "Transferred Distribution") shall be paid to the Surplus Economic Member, until such time as the Surplus Economic Member has received Transferred Distributions for such Fiscal Year equal to the Adjustment Amount. Thereafter, any remaining Available Cash shall be distributed in accordance with Section 7.1(a). In the event the Transferred Distributions paid in a Fiscal Year are insufficient to satisfy the Adjustment Amount, the difference between the Adjustment Amount and the Transferred Distributions (the "Transferred Distribution Shortfall") shall accrue for the next Fiscal Year.

(ii) In the event that both Economic Members are Deficit Economic Members, the Adjustment Amounts for both Members shall be netted (the "Net Adjustment Amount") and a Transferred Distribution shall be made from the Deficit Economic Member with the larger Adjustment Amount to the Deficit Economic Member with the smaller Adjustment Amount (the "Net Surplus Economic Member") until such time as the Net Surplus Economic Member has received Transferred Distributions in such Fiscal Year equal to the Net Adjustment Amount. Thereafter, any remaining Available Cash shall be distributed in accordance with Section 7.1(a). In the event the Transferred Distributions received in such Fiscal Year are insufficient satisfy the Net Adjustment Amount, the difference between the Net Adjustment Amount and the Transferred Distribution (the "Net Transferred Distribution Shortfall" and, together with the Transferred Distribution Shortfall, the "Shortfall") shall accrue for the next Fiscal Year.

(iii) In the event that both Economic Members are Surplus Economic Members, no adjustment to the distributions of Available Cash shall be made pursuant to this Section 7.1(c) and Available Cash shall be distributed in accordance with Section 7.1(a).

Section 7.2 *Allocations*. After giving effect to the allocations set forth in Section 7.3, the Company shall allocate Profits and Losses for any Allocation Year among the Economic Members in the manner that causes the balance of the Capital Account of each Economic Member to be equal to the amount which would have been distributed to such Economic Member pursuant to Section 7.1 if all of the assets of the Company had been sold on the last day of the Allocation Year for their Gross Asset Values (except that any Company asset that is sold in such Allocation Year shall be treated as if sold for an amount of cash equal to the sum of (x) the amount of any net cash proceeds actually received by the Company in connection with such disposition and (y) the Gross Asset Values of any property actually received by the Company in connection with such disposition).

Section 7.3 *Special Allocations.*

(a) If there is a net decrease in Company Minimum Gain during any Allocation Year, each Economic Member shall be allocated items of Company income and gain for such Allocation Year (and, if necessary, subsequent Allocation Years) in the manner and amounts provided in Treasury Regulation Sections 1.704-2(f)(6), 1.704-2(g)(2) and 1.704-2(j)(2)(i), or any successor provision. This Section 7.3(a) is intended to comply with the Company Minimum Gain chargeback requirement in Treasury Regulation Section 1.704-2(f) and shall be interpreted consistently therewith.

(b) Except as provided in Treasury Regulation Section 1.704-2(i)(4), if there is a net decrease in Member Nonrecourse Debt Minimum Gain during any Allocation Year, any Economic Member with a share of Member Nonrecourse Debt Minimum Gain at the beginning of such Allocation Year shall be allocated items of Company income and gain for such Allocation Year (and, if necessary, subsequent Allocation Years) in the manner and amounts provided in Treasury Regulation Sections 1.704-2(i)(4) and 1.704-2(j)(2)(ii), or any successor provisions. This Section 7.3(b) is intended to comply with the chargeback of items of income and gain requirement in Treasury Regulation Section 1.704-2(i)(4) and shall be interpreted consistently therewith.

(c) In the event any Economic Member unexpectedly receives any adjustments, allocations or distributions described in Treasury Regulation Sections 1.704-1(b)(2)(ii)(d)(4), 1.704-1(b)(2)(ii)(d)(5), or 1.704-1(b)(2)(ii)(d)(6), items of Company gross income and gain shall be specially allocated to such Economic Member in an amount and manner sufficient to eliminate, to the extent required by the Treasury Regulations promulgated under Section 704(b) of the Code, the Adjusted Capital Account Deficit, if any, created by such adjustments, allocations or distributions as quickly as possible; *provided*, that an allocation pursuant to this Section 7.3(c) shall be made only if and to the extent that such Economic Member would have an Adjusted Capital Account Deficit as adjusted after all other allocations provided for in Section 7.2

and this Section 7.3 have been tentatively made as if this Section 7.3(c) and Section 7.3(d) were not in this Agreement.

(d) In the event any Economic Member has a deficit balance in its Capital Account at the end of any Allocation Year in excess of the sum of (A) the amount such Economic Member is required to restore pursuant to the provisions of this Agreement and (B) the amount such Economic Member is deemed obligated to restore pursuant to Treasury Regulation Sections 1.704-2(g) and 1.704-2(i)(5), such Economic Member shall be specially allocated items of Company gross income and gain in the amount of such excess as quickly as possible; *provided*, that an allocation pursuant to this Section 7.3(d) shall be made only if and to the extent that such Economic Member would have a deficit balance in its Capital Account as adjusted after all other allocations provided for in this Article VII have been tentatively made as if Section 7.3(c) and this Section 7.3(d) were not in this Agreement.

(e) Nonrecourse Deductions for any Allocation Year shall be allocated to the Economic Members pro rata in accordance with each Economic Member's Ownership Percentage.

(f) Member Nonrecourse Deductions for any Allocation Year shall be allocated 100% to the Economic Member that bears the economic risk of loss with respect to the Member Nonrecourse Debt to which such Member Nonrecourse Deductions are attributable in accordance with Treasury Regulation Section 1.704-2(i). If more than one Economic Member bears the economic risk of loss with respect to a Member Nonrecourse Debt, such Economic Member Nonrecourse Deductions attributable thereto shall be allocated between or among such Economic Members in accordance with the ratios in which they share such economic risk of loss.

(g) For purposes of Treasury Regulation Section 1.752-3(a)(3), the Economic Members agree that Nonrecourse Liabilities of the Company shall be allocated to the Economic Members pro rata in accordance with each Economic Member's Ownership Percentage.

(h) To the extent an adjustment to the adjusted tax basis of any Company asset pursuant to Section 734(b) or 743(b) of the Code is required, pursuant to Treasury Regulation Section 1.704-1(b)(2)(iv)(m), to be taken into account in determining Capital Accounts, the amount of such adjustment to the Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis), and such item of gain or loss shall be specially allocated to the Economic Members in a manner consistent with the manner in which their Capital Accounts are required to be adjusted pursuant to such Section of the Treasury Regulations.

(i) Notwithstanding any other provision of this Section 7.3, the allocations set forth in Sections 7.3(a), (b), (c), (d), (e), (f) and (h) (the "Required Allocations") shall be taken into account so that, to the extent possible, the net amount of items of gross income, gain, loss and deduction allocated to each Economic Member pursuant to Section

and Section 7.3, together, shall be equal to the net amount of such items that would have been allocated to each such Economic Member under Section 7.2 and Section 7.3 had the Required Allocations and this Section 7.3(j) not otherwise been provided in this Agreement. The Company may take into account future Required Allocations that, although not yet made, are likely to offset other Required Allocations previously made.

(j) Items of income, gain, loss and deduction realized in any taxable year that includes a dissolution event shall be allocated in a manner that will cause, to the extent possible, the ratio of each Economic Member's Capital Account to the sum of all Economic Members' Capital Accounts to be equal to such Economic Member's Ownership Percentage. Upon a dissolution event, if any property is distributed in kind, any unrealized income, gain, loss, and deduction inherent in property that has not been reflected in the Capital Accounts previously shall be allocated among the Economic Members as if there were a taxable disposition of that property for the fair market value of that property on the date of distribution.

(k) The allocations in Section 7.2, this Section 7.3 and Section 7.5, and the provisions of this Agreement relating to the maintenance of Capital Accounts, are included to ensure compliance with requirements of the federal income tax law (and any applicable state income tax laws). Such provisions are intended to comply with Treasury Regulation Sections 1.704-1 and 1.704-2 and shall be interpreted and applied in a manner consistent with such Treasury Regulations and any amendment or successor provision thereto. The Management Members shall cause appropriate modifications to be made if unanticipated events might otherwise cause this Agreement not to comply with such Treasury Regulations, so long as such modifications do not cause a material change in the relative economic benefit of the Economic Members under this Agreement.

Section 7.4 *Section 704(c)*. In accordance with Section 704(c) of the Code and the Treasury Regulations thereunder, income, gain, loss, and deduction with respect to any property contributed to the capital of the Company shall, solely for tax purposes, be allocated among the Economic Members to take account of any variation between the adjusted basis of such property to the Company for federal income tax purposes and its initial Gross Asset Value (computed in accordance with the definition of same under this Agreement). In the event the Gross Asset Value of any Company asset is adjusted pursuant to subparagraph (b) of the definition of Gross Asset Value hereof, subsequent allocations of income, gain, loss, and deduction with respect to such asset shall take account of any variation between the adjusted basis of such asset for federal income tax purposes and its Gross Asset Value in the same manner as under Section 704(c) of the Code and the Treasury Regulations thereunder. Any elections or other decisions relating to such allocations shall be made by a Majority Interest in any manner that reasonably reflects the purpose and intention of this Agreement. Allocations pursuant to this Section 7.4 are solely for purposes of federal, state, and local taxes and shall not affect, or in any way be taken into account in computing, any Economic Member's Capital Account or share of Profits, Losses, other items, or distributions pursuant to any provision of this Agreement.

Section 7.5 *Varying Interests*. All items of income, gain, loss, deduction or credit shall be allocated, and all distributions shall be made, to the Persons shown on the records of the Company to have been Economic Members as of the last calendar day of the period for which

the allocation or distribution is to be made. Notwithstanding the foregoing, if during any taxable year there is a change in any Economic Member's Ownership Percentage, the Economic Members agree that their allocable shares of such items for the taxable year shall be determined on any method determined by a Majority Interest to be permissible under Code Section 706 and the related Treasury Regulations to take account of the Economic Members' varying Ownership Percentages.

Section 7.6 *Withheld Taxes*. All amounts withheld pursuant to the Code or any provision of any state, local or non-U.S. tax law with respect to any payment, distribution or allocation to the Company or the Economic Members shall be treated as amounts distributed to the Economic Members pursuant to this Article VII for all purposes of this Agreement. The Company is authorized to withhold from distributions, or with respect to allocations, to the Economic Members and to pay over to any federal, state, local or non-U.S. government any amounts required to be so withheld pursuant to the Code or any provision of any other federal, state, local or non-U.S. law and shall allocate such amounts to those Economic Members with respect to which such amounts were withheld.

Section 7.7 *Limitations on Distributions*. Notwithstanding any provision to the contrary contained in this Agreement, the Company shall not make a distribution to any Member on account of its interest in the Company if such distribution would violate Section 18-607 of the Delaware Act or other applicable law. All distributions required to be made under this Agreement shall be made subject to Sections 18-607 and 18-804 of the Delaware Act.

ARTICLE VIII
MANAGEMENT MEMBERS

Section 8.1 *Management by Management Members.*

(a) The Management Members, by a Majority Interest, shall conduct, direct and manage all activities of the Company. Except as otherwise expressly provided in this Agreement, but without limitation on the ability of each Member to delegate its rights and powers to other Persons, all management powers over the business and affairs of the Company shall be exclusively vested in the Management Members and no other Member shall have any management power over the business and affairs of the Company.

(b) No Economic Member, in its capacity as such, shall participate in the operation, management or control of the Company's business, transact any business in the Company's name or have the power to sign documents for or otherwise bind the Company.

Section 8.2 *Meetings.* Subject to the provisions of this Agreement, including Section 8.1, any actions to be taken hereunder shall be taken in the manner provided in this Article VIII. Meetings of the Management Members shall be called by any Management Member. Such Management Member may designate any place as the place of meeting for any meeting of the Management Members.

Section 8.3 *Notice of Meeting*. Written notice of meetings of the Management Members shall be given to all Management Members at least ten days prior to the meeting. All

notices and other communications to be given to Management Members shall be given in accordance with Section 14.4. Neither the business to be transacted at, nor the purpose of, any meeting of the Management Members need be specified in the notice of such meeting. A meeting may be held at any time without notice if all the Management Members are present or if those not present waive notice of the meeting either before or after such meeting. Attendance of a Management Member at a meeting shall constitute a waiver of notice of such meeting, except where a Management Member attends the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

Section 8.4 *Quorum; Voting Requirement.*

(a) The presence, in person or by proxy or participating in accordance with Section 8.6, of a Majority Interest shall constitute a quorum for the transaction of business by the Management Members. Unless otherwise provided in Section 8.4(b) or by the Delaware Act, the affirmative vote of a Majority Interest present at a meeting at which a quorum is present shall constitute a valid decision of the Management Members.

(b) At all times when there is a Minority Management Member, without first receiving the unanimous vote of the Management Members, the Company shall not, and shall cause the YieldCo General Partner, the Group Members and, to the extent it has rights to do so under the applicable Group Member Agreements, the Joint Ventures not to, and shall not authorize or permit any officer or agent of the Company on behalf of the Company or of the YieldCo General Partner, any Group Member or, to the extent it has rights to do so under the applicable Group Member Agreement, any Joint Venture to, effect any of the following actions:

(i) alter, repeal, amend or adopt any provision of its certificate of limited partnership, certificate of formation or certificate of incorporation or any agreement of limited partnership, limited liability company agreement or bylaws or any similar organizational or governing document if any such alteration, repeal, amendment or adoption would have an adverse effect on the rights or preferences of the Minority Management Member;

(ii) merge, consolidate or convert with or into any other Person (other than a wholly owned Subsidiary of the Partnership into another wholly owned Subsidiary of the Partnership) if any such merger consolidation or conversion would have a disproportionate adverse effect on the Minority Management Member;

(iii) voluntarily liquidate, wind-up or dissolve the Company, the YieldCo General Partner or the Partnership if any such liquidation, wind-up or dissolution would have a disproportionate adverse effect on the Minority Management Member; or

(iv) change the classification of the Company or any Group Member or any Joint Venture for United States federal income tax purposes or take any action that would otherwise change the tax status of the Company or any Group

Member or any Joint Venture if any such change would have an adverse effect on the Minority Management Member.

(c) Without first receiving the prior written consent of the affected Management Member, the Company shall not, and shall cause the YieldCo General Partner, the Group Members and, to the extent it has rights to do so under the applicable Group Member Agreements, the Joint Ventures not to, and shall not authorize or permit any officer or agent of the Company on behalf of the Company or of the YieldCo General Partner, any Group Member or, to the extent it has rights to do so under the applicable Group Member Agreement, any Joint Venture to, enter into or approve any transaction containing any restriction on direct or indirect Transfers of ownership interests in the Company, the Partnership or the Operating Company by such Management Member or its Affiliates or any consolidations, mergers or direct or indirect sales, assignments, gifts, exchanges or any other dispositions by law or otherwise of all or substantially all of the assets of its Affiliated Sponsor.

Section 8.5 *Management Member Deadlock.*

(a) In the event that a Management Member is unable to obtain the requisite vote under Section 8.4 for the approval of any matter (such event, a "Deadlock"), either Management Member may give the other Management Member notice (a "Deadlock Notice") that such matter has not been so approved. Within five days after receipt of the Deadlock Notice, the receiving Management Member shall submit to the other Management Member a written response (a "Deadlock Response"). The Deadlock Notice and the Deadlock Response shall each include (i) a statement setting forth the position of the Management Member giving the Deadlock Notice or Deadlock Response, as applicable, and a summary of arguments supporting such position and (ii) the name and title of a senior representative of such Management Member who has authority to settle the Deadlock. Within five days of the delivery of the Deadlock Response, the senior representatives of both Management Members named in the Deadlock Notice and Deadlock Response shall meet or communicate by telephone at a mutually acceptable time and place, and thereafter as often as they reasonably deem necessary, and shall negotiate to the resolve the Deadlock.

(b) If such Deadlock has not been resolved, for any reason, within 30 days following delivery of the Deadlock Response, then each Management Member agrees to have the Chief Executive Officer of the Sponsor to which it is Affiliated meet or communicate by telephone with the Chief Executive Officer of the Sponsor to which the other Management Member is Affiliated at a mutually acceptable time and place, and thereafter as often as they reasonably deem necessary, and shall negotiate to resolve the Deadlock.

(c) (i) If such Deadlock has not been resolved, for any reason, within 90 days following delivery of the Deadlock Response, then either Management Member (the "Shotgun Initiator") may deliver to the other Management Member (the "Shotgun Recipient") a notice of its intention to purchase all, but not less than all, of the

Membership Interests and OpCo Subordinated Units owned by the Shotgun Recipient (the "Shotgun Notice").

(ii) To be effective, the Shotgun Notice must: (A) be signed by the Shotgun Initiator; (B) contain an irrevocable offer to purchase all, but not less than all, of the Membership Interests and OpCo Subordinated Units owned by the Shotgun Recipient for a cash price (the "Shotgun Price"); (C) contain a valuation by a nationally recognized investment banking firm attesting that the Shotgun Price represents the Fair Value of the applicable Membership Interests and OpCo Subordinated Units; and (D) constitute a valid, legally binding and enforceable offer for the sale and purchase of such Membership Interests and OpCo Subordinated Units containing no representations or warranties other than with respect to ownership of title to the Membership Interests and OpCo Subordinated Units free and clear of all Encumbrances (other than restrictions imposed by the governing documents of the Company and the Operating Company and securities laws). Upon the delivery of a Shotgun Notice, no additional Shotgun Notices may be delivered by either Member.

(iii) Within 30 days of the Shotgun Recipient receiving the Shotgun Notice, the Shotgun Recipient shall irrevocably elect one of the following options, by delivering to the Shotgun Initiator a written election notice (such notice, a "Shotgun Election"): (A) accept the Shotgun Initiator's offer to purchase the Shotgun Recipient's Membership Interests and OpCo Subordinated Units, (B) propose a counteroffer to purchase the Shotgun Initiator's Membership Interests and OpCo Subordinated Units at a price it reasonably considers equal to the Fair Value of such Membership Interests and OpCo Subordinated Units, which election shall meet the requirements of an effective Shotgun Notice under Section 8.5(c)(ii) above, or (C) the Shotgun Recipient may irrevocably elect to have a nationally recognized investment banking firm conduct an auction process pursuant to Section 8.5(c)(v) to solicit offers from Persons, including the Sponsors and their Affiliates (each such Person, an "Auction Buyer"), with the objective of obtaining the highest price for the purchase for cash of all, but not less than all, of the outstanding Membership Interests in the Company and OpCo Subordinated Units of the Shotgun Initiator and the Shotgun Recipient, such purchase to occur on terms no less favorable than the non-price terms set forth in the Shotgun Notice. If the Shotgun Recipient does not irrevocably elect any of the foregoing options within the time allotted, then the Shotgun Recipient shall be deemed to have irrevocably elected to accept the offer for the Shotgun Initiator to purchase all of the Shotgun Recipient's Membership Interests and OpCo Subordinated Units.

(iv) In the event that the Shotgun Recipient proposes a counteroffer pursuant to Section 8.5(c)(iii)(B), the Shotgun Initiator shall, within 30 days of receiving the Shotgun Election, irrevocably elect to (A) accept the Shotgun Recipient's counteroffer set forth in the Shotgun Election, or (B) have a nationally recognized investment banking firm conduct an auction process pursuant to Section 8.5(c)(v) to solicit offers from Auction Buyers with the objective of

obtaining the highest price for the purchase for cash of all, but not less than all, of the outstanding Membership Interests and OpCo Subordinated Units of the Shotgun Initiator and the Shotgun Recipient, such purchase to occur on terms no less favorable than the non-price terms set forth in the Shotgun Election. If the Shotgun Initiator does not irrevocably elect any of the foregoing options within the time allotted, then the Shotgun Initiator shall be deemed to have irrevocably elected to accept the counteroffer for the Shotgun Recipient to purchase all of the Shotgun Initiator's Membership Interests and OpCo Subordinated Units.

(v) In the event of the initiation of an auction process as provided above, the Management Member that has elected to initiate the auction process (the "Auction Initiator") shall be entitled, within 180 days after the later of the date of the Shotgun Notice or Shotgun Election that resulted in the auction process (or any longer period to which the non-Auction Initiator consents in writing) (such period, the "Auction Period"), to execute and deliver a binding, definitive purchase and sale agreement with an Auction Buyer, pursuant to which such Auction Buyer shall purchase all, but not less than all, of the outstanding Membership Interests and OpCo Subordinated Units of the Shotgun Initiator and Shotgun Recipient for a price in cash (such price, the "Auction Price") (such agreement, the "Binding Agreement").

(vi) In the event that a Binding Agreement is executed and delivered by the Auction Initiator within the Auction Period and the rights and obligations of the Members are the same therein in all material respects, then the non-Auction Initiator shall be obligated to execute and deliver a counterpart to such Binding Agreement. Upon such execution and delivery by the non-Auction Initiator, the Shotgun Initiator and the Shotgun Recipient shall be obligated to sell all, but not less than all, of their outstanding Membership Interests and their OpCo Subordinated Units to the Auction Buyer pursuant to such Binding Agreement at the Auction Price and upon the same terms and subject to the same conditions.

(vii) In the event that the Shotgun Recipient initiates an auction process under Section 8.5(c)(iii) above, but a Binding Agreement is not delivered within the Auction Period, then the Shotgun Initiator may elect to purchase all, but not less than all, of the Membership Interests and OpCo Subordinated Units owned by the Shotgun Recipient at the price and on the terms initially offered in the Shotgun Notice with a five percent (5%) discount and an additional deduction equal to the amount of the costs of the auction process borne by the Company or the Shotgun Initiator.

(viii) In the event that the Shotgun Initiator initiates an auction process under Section 8.5(c)(iv) above, but a Binding Agreement is not delivered within the Auction Period, then the Shotgun Recipient may elect to purchase all, but not less than all, of the Membership Interests and OpCo Subordinated Units owned by the Shotgun Initiator at the price and on the terms initially offered in the Shotgun Election with a five percent (5%) discount and an additional deduction equal to

the amount of the costs of the auction process borne by the Company or the Shotgun Recipient.

(ix) In the event that an auction process is conducted and a Binding Agreement is executed and delivered and such transaction is consummated, the Auction Price shall be allocated between the Management Members in accordance with the relative Fair Values of their Membership Interests and OpCo Subordinated Units. Within 15 days of the date of consummation of the auction process, each Management Member shall deliver in writing to the other Management Member its proposed allocation of the Auction Price, with an opinion from an impartial senior employee or partner at a nationally recognized investment banking firm attesting to the Fair Value of the Membership Interests and OpCo Subordinated Units of each Member and that such allocation represents the fair allocation of the Auction Price based on the Fair Value of such Membership Interests and OpCo Subordinated Units (each an "Auction Price Allocation Opinion"). If either Management Member fails to timely deliver an Auction Price Allocation Opinion, then the allocation of the Auction Price set forth in the other Management Member's Auction Price Allocation Opinion shall be the final allocation of the Auction Price between the parties. The Management Members shall attempt to amicably determine the allocation of the Auction Price after delivery of the second Auction Price Allocation Opinion. In the event that, for any reason, the Management Members cannot agree in writing on the allocation of the Auction Price within 15 days of the date of the delivery of the second Auction Price Allocation Opinion, then the allocation of the Auction Price shall be submitted for a final and binding determination by an impartial senior employee or partner at a nationally recognized investment banking firm jointly appointed by the Management Members, which shall not be an investment banking firm that has otherwise given an opinion or attestation in this Section 8.5(c) (the "Appraiser"). In the event the Appraiser is not, for any reason, jointly appointed by the Managing Members within 30 days of the date of delivery of the second Auction Price Allocation Opinion, the Appraiser shall be appointed by the AAA on the written request of any party. The Appraiser shall be provided with the two Auction Price Allocation Opinions, and, using the information contained therein and such other materials as it may reasonably request from either Management Member, determine the Fair Value of the Membership Interests and OpCo Subordinated Units of each Member and the fair allocation of the Auction Price based on the Fair Value of such Membership Interests and OpCo Subordinated Units. The final allocation of the Auction Price shall thereafter be the average of (A) the allocation set forth by the Appraiser, and (B) the allocation set forth in an Auction Price Allocation Opinion which is closest to the allocation set forth by the Appraiser; *provided*, that in the event the allocation set forth by the Appraiser is in the mid-point between the allocations set forth by both Auction Price Allocation Opinions, the allocation shall be as set forth by the Appraiser. For the avoidance of doubt, the Appraiser shall act as an expert, and not as an arbitrator; and this submission to the determination of the Appraiser, and the determination of the Appraiser, shall not be governed by and construed by the Federal Arbitration Act or any state arbitration statute or law.

(x) Sales of the Membership Interests and OpCo Subordinated Units pursuant to this Section 8.5(c) shall be made at the offices of the Company within 60 days of the acceptance of any offer under Section 8.5(c)(iii) or Section 8.5(c)(iv) above, or if later the execution of a Binding Agreement, or on such other date as the Members may agree. Such sales shall be effected by the applicable Member's delivery of the Membership Interests and OpCo Subordinated Units, free and clear of all Encumbrances (other than restrictions imposed by the governing documents of the Company and the Operating Company and securities laws), to the other Member, against payment to the selling Member(s) of the Shotgun Price, as applicable, and on the terms and conditions specified in the Shotgun Election or Binding Agreement, as applicable.

(d) Notwithstanding anything herein to the contrary, until a Deadlock is resolved, each Management Member agrees to continue to perform its obligations under this Agreement and to cause its directors, officers, Affiliates and agents to continue to perform their obligations under this Agreement.

Section 8.6 *Conference Telephone Meetings*. Management Members may participate in a meeting by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and such participation in a meeting shall constitute presence in person at such meeting.

Section 8.7 *Action by Consent of Members*. Any action that may be taken at a meeting of the Management Members may be taken without a meeting if an approval in writing setting forth such action is signed by Management Members holding a Majority Interest.

Section 8.8 *Representatives.*

(a) Each Management Member shall appoint one representative (a "Representative"), which may be a Director of the YieldCo General Partner, who shall be deemed to have the authority to act on behalf of such Management Member to take any and all actions and make any and all decisions required under this Agreement, including with respect to making any determination with respect to those matters requiring unanimous approval of the Management Member set forth in Section 8.4(b). The initial Representative of each Management Member is set forth on Exhibit F.

(b) Any Management Member may change its Representative by providing written notice of a new Representative to the Company and the other Management Member, such change to be effective upon receipt of such notice pursuant to Section 14.4. Any action or omission of a Representative will be deemed to be effective hereunder, and may be relied on by the Company or the other Management Member, until such notice of a replacement Representative is so received.

Section 8.9 *Affiliate Contracts.*

(a) All contracts or other arrangements between the Company, the YieldCo General Partner, any Group Member or any Joint Venture on the one hand and any Affiliate of any Member on the other hand that is entered into on or after the date of this

Agreement, except to the extent otherwise expressly approved by the Board of Directors or a committee thereof, shall (i) be in writing, (ii) contain market-based terms, and (iii) be administered on an arm's length basis.

(b) No later than 30 days following the end of each Quarter, each of SP Member and FS Member shall cause SP Parent and FS Parent, respectively, to deliver to the other Member a certificate from an authorized officer certifying that, with respect to all contracts or other arrangements between the Company, the YieldCo General Partner or any Group Member (but not any Joint Venture) on the one hand and any Affiliate of any Member on the other hand, there is no material breach or default on the part of SP Parent or FS Parent, respectively, or any Affiliate thereof under any such contract or other arrangement; *provided*, that in the event there is such a breach or default, the certificate shall identify such breach or default, set out any losses or costs incurred or other consequences resulting from such breach or default and set forth a plan to remedy such breach or default, recover such losses or costs and rectify any consequences of such breach or default as soon as practicable.

Section 8.10 *Notices*. The Company and the Management Members shall promptly provide or cause to be provided to each Management Member copies of all official notices and reasonably pertinent business correspondence sent by or on behalf of, or addressed to, the Company, the YieldCo General Partner, the Partnership, the Operating Company or any Management Member on behalf of any of the foregoing, in each case to the extent any such official notice or correspondence is not addressed to any such Management Member.

ARTICLE IX
MANAGEMENT OF THE YIELDCO GENERAL PARTNER

Section 9.1 *Right to Appoint Members of the Board of Directors.*

(a) Subject to this Section 9.1, the Management Members shall designate the Directors as follows:

(i) SP Member shall be entitled to designate two natural persons to serve on the Board of Directors (any such Director designated by SP Member, an "SP Director"). The initial SP Directors as of the Closing Date are set forth on Exhibit C.

(ii) FS Member shall be entitled to designate two natural persons to serve on the Board of Directors (any such Director designated by FS Member, an "FS Director" and collectively with the SP Directors, the "Sponsor Directors"). The initial FS Directors as of the Closing Date are set forth on Exhibit C.

(iii) A Majority Interest shall designate any other Directors, including three Independent Directors, to serve on the Board of Directors. The initial Independent Director(s) as of the Closing Date are set forth on Exhibit C. Unless otherwise agreed by a Majority Interest, each Independent Director shall hold office for a two-year term, or until the earlier removal, death or resignation of

such Independent Director. For the avoidance of doubt, Independent Directors shall not be precluded from serving consecutive terms.

(b) The Chief Executive Officer of the YieldCo General Partner shall be the Chairman of the Board of Directors.

(c) If any Management Member elects to transfer its right to designate its Directors in accordance with the terms of this Agreement (including the requirements set forth in Section 4.1(e)), then (1) each Director designated by such Management Member shall be automatically removed from all positions such individual holds with the Company without any further action as of the close of business on the date of such transfer, (2) each vacancy in the Board of Directors created by such removal shall be filled by the Transferee of such transfer, (3) such Management Member shall no longer be permitted to designate any Directors pursuant to this Agreement and (4), subject to Section 9.1(d) and Section 9.1(e), the Transferee of such transfer shall become entitled to designate Directors under this Agreement as of the close of business on the date of transfer.

(d) (i) In the event the Adjustment Percentage of a Management Member is below 40% in each of the three previous Fiscal Years or if, in each of such three Fiscal Years, the Distributed Cash generated by the Projects contributed by a Management Member or its Affiliates during such Fiscal Year is less than 40% of the Distributed Cash generated by all Projects contributed by the Management Members or their Affiliates during such Fiscal Year, such Management Member (the "Losing Management Member") shall lose the right to appoint one Director.

(ii) In the event the Adjustment Percentage of a Losing Management Member is below 30% in each of the three previous Fiscal Years or if, in each of such three Fiscal Years, the Distributed Cash generated by the Projects contributed by such Losing Management Member or its Affiliates during such Fiscal Year is less than 30% of the Distributed Cash generated by all Projects contributed by the Management Members or their Affiliates during such Fiscal Year, the Losing Management Member shall lose the right to appoint both Directors.

(iii) Upon the Losing Management Member's loss of the right to appoint one or more Directors pursuant to Section 9.1(d)(i) or Section 9.1(d)(ii), the other Management Member (the "Gaining Management Member") shall have the right to, within the earlier of 30 days of the applicable Final Calculation under Section 3.2(d) or the end of the fiscal quarter of the Gaining Management Member in which such loss occurs (the "Option Exercise Period"), elect to remove a Director, or two Directors, as applicable, appointed by the Losing Management Member and appoint a new Director, or two Directors, as applicable (in each case, a "Board Member Option"); *provided* that in the event that the Losing Management Member has only lost the right to appoint one Director under Section 9.1(d)(i), the Losing Management Member shall have the right to choose which Director is removed upon the exercise of the Board Member Option

by the Gaining Management Member. To exercise a Board Member Option, the Gaining Management Member shall deliver to the Company and the Losing Management Member written notice of its election to exercise the Board Member Option before the expiration of the Option Exercise Period. Upon the Company's receipt of such notice, the Company shall cause, and the Management Members agree to take all actions required to cause, the Director(s) appointed by the Losing Management Member to be removed and the Director(s) being appointed by the Gaining Management Member to be appointed. Notwithstanding the foregoing, in the event that a Gaining Management Member waives its right to exercise a Board Member Option upon the Losing Management Member's loss, or fails to exercise the Board Member Option during the Option Exercise Period, such waiver shall only apply to the current Fiscal Year and shall not prevent a Gaining Management Member that qualifies as a Gaining Management Member at the beginning of any subsequent Fiscal Year from exercising the Board Member Option in any subsequent Fiscal Year.

(e) (i) In the event a Losing Management Member has lost the right to appoint both Directors in accordance with Section 9.1(d)(ii), the right to appoint one Director shall be regained when (x) such Losing Management Member's Adjustment Percentage for the previous Fiscal Year is at least 30% and (y) in any of the three previous Fiscal Years, the Distributed Cash generated by the Projects contributed by such Losing Management Member or its Affiliates during such Fiscal Year is at least 30% of the Distributed Cash generated by all Projects contributed by the Management Members or their Affiliates during such Fiscal Year.

(ii) In the event a Losing Management Member has lost the right to appoint one or both Directors in accordance with Section 9.1(d)(i) or (ii), the right to appoint two Directors shall be regained when (A) such Losing Management Member's Adjustment Percentage for the previous Fiscal Year is at least 40% and (B) in any of the three previous Fiscal Years, the Distributed Cash generated by the Projects contributed by such Losing Management Member or its Affiliates during such Fiscal Year is at least 40% of the Distributed Cash generated by all Projects contributed by the Management Members or their Affiliates during such Fiscal Year.

(iii) Upon the Losing Management Member regaining the right to appoint one or more Directors pursuant to Section 9.1(e)(i) or Section 9.1(e)(ii), the Losing Management Member shall have the right to, within the earlier of 30 days of the applicable Final Calculation under Section 3.2(d) or the end of the fiscal quarter of the Losing Management Member in which such regain occurs (the "Regain Option Exercise Period"), elect to remove a Director appointed by the Gaining Management Member and appoint a new Director (in each case, a "Regain Board Member Option"); *provided* that the Gaining Management Member shall have the right to choose which Director(s) is removed upon the exercise of the Regain Board Member Option by the Losing Management Member. To exercise a Regain Board Member Option, the Losing Management Member shall deliver to the Company and the Gaining Management Member

written notice of its election to exercise the Regain Board Member Option before the expiration of the Regain Option Exercise Period. Upon the Company's receipt of such notice, the Company shall cause, and the Management Members agree to take all actions required to cause, the Director(s) appointed by the Gaining Management Member to be removed and the Director(s) being appointed by the Losing Management Member to be appointed. Notwithstanding the foregoing, in the event that a Losing Management Member waives its right to exercise a Regain Board Member Option upon the Losing Management Member's regain, or fails to exercise the Regain Board Member Option during the Regain Option Exercise Period, such waiver shall only apply to the current Fiscal Year and shall not prevent such Losing Management Member, if it still qualifies, from exercising the Regain Board Member Option at the beginning of any subsequent Fiscal Year.

(f) For purposes of Section 9.1(d) and Section 9.1(e), all determinations of Adjustment Percentages and Distributed Cash shall be made in accordance with Section 3.2. Any changes in rights effected pursuant to Sections 9.1(d) and (e), shall be effective upon the final, conclusive determination of the last required Adjustment Percentage or Distributed Cash Calculation.

(g) Unless a committee is required to only have Independent Directors in accordance with the rules and regulations of the Commission and the NASDAQ Stock Market LLC or any national securities exchange on which the Class A Shares are listed from time to time or a Majority Interest otherwise determines, any committee of the Board Directors of YieldCo General Partner shall comprise at least two Sponsor Directors, at least one of which shall be an FS Director and one of which shall be an SP Director, *provided* that the Company has designated at least one of each of such Sponsor Directors.

Section 9.2 *Right to Appoint Officers of the YieldCo General Partner.*

(a) Subject to Section 9.2(d), the Management Members shall use reasonable best efforts to cause the Board of Directors to designate the Chief Executive Officer, Chief Financial Officer, Chief Accounting Officer, Vice Presidents of Operations and General Counsel/Secretary of the YieldCo General Partner as follows:

(i) Chief Executive Officer. (A) SP Member shall select the initial Chief Executive Officer of the YieldCo General Partner for approval by the Board of Directors. The Management Member that did not select the initial Chief Executive Officer shall select the successor to the initial Chief Executive Officer for approval by the Board of Directors. Subject to Section 9.2(a)(i)(B), the rights to select the Chief Executive Officer as described above shall alternate between SP Member and FS Member (or any other party to whom any such Management Member transfers its rights to designate Directors). The term of the initial Chief Executive Officer shall end on the second anniversary of the Closing Date. Each successor Chief Executive Officer shall serve for a two-year term.

(B) In the event that a Management Member (the "Retaining Management Member") elects to retain the Chief Executive Officer previously selected by the other Management Member (the "Retained Chief Executive Officer") instead of exercising its right to select a new Chief Executive Officer for approval by the Board of Directors, then the Retaining Management Member shall retain the right to select a new Chief Executive Officer for approval by the Board of Directors until such time as it exercises the right to select a new Chief Executive Officer for approval by the Board of Directors.

(ii) Chief Financial Officer. (A) FS Member shall select the initial Chief Financial Officer of the YieldCo General Partner for approval by the Board of Directors. The Management Member that did not select the initial Chief Financial Officer will select the successor to the initial Chief Financial Officer for approval by the Board of Directors. Subject to Section 9.2(a)(ii)(B), the rights to select the Chief Financial Officer as described above shall alternate between SP Member and FS Member (or any other party to whom any such Management Member transfers its rights to designate Directors). The term of the initial Chief Financial Officer shall end on the second anniversary of the Closing Date. Each successor Chief Financial Officer shall serve for a two-year term.

(B) In the event that a Retaining Management Member elects to retain the Chief Executive Officer in accordance with Section 9.2(a)(i)(B), the Retaining Management Member shall have the right to retain the current Chief Financial Officer (a "Retained Chief Financial Officer") or select a new Chief Financial Officer for approval by the Board of Directors until such time as it exercises the right to select a new Chief Executive Officer for approval by the Board of Directors.

(iii) Chief Accounting Officer. A Majority Interest shall select the Chief Accounting Officer of the YieldCo General Partner for approval by the Board of Directors. The Chief Accounting Officer shall hold office until such person's successor shall have been duly elected and shall have qualified or until such person's death or until he shall resign or be removed.

(iv) Vice Presidents of Operations. Unless a Majority Interest otherwise determines, each Management Member shall select one Vice President of Operations for approval by the Board of Directors. Each Vice President of Operations shall hold office until such person's successor shall have been duly elected and shall have qualified or until such person's death or until he shall resign or be removed.

(v) General Counsel/Secretary. The Chief Financial Officer shall select the General Counsel/Secretary of the YieldCo General Partner for approval by the Board of Directors. The General Counsel/Secretary shall hold office until

such person's successor shall have been duly elected and shall have qualified or until such person's death or until he shall resign or be removed.

(b) Removal. (i) The Management Member that appointed the Chief Executive Officer, Chief Financial Officer or Vice President of Operations or, in the case of a Retained Chief Executive Officer or Retained Chief Financial Officer, retained him or her, may, at any time, with or without cause, request that the Board of Directors remove such officer and replace such officer with a person nominated by such Management Member. In such event, the Management Member who is requesting removal of an officer it appointed shall promptly notify the Board of Directors and the other Management Members of the request for removal and the name of the replacement officer, as applicable, to complete such officer's current term. The Management Members shall use reasonable best efforts to cause the Board of Directors to take all actions required to consummate such removal and replacement. In addition to the foregoing, the Chief Executive Officer, Chief Financial Officer or Vice President of Operations may be removed, with or without cause, at any time by the Board of Directors in accordance with the YieldCo General Partner LLC Agreement and upon such removal, the Management Member that appointed such officer or, in the case of a Retained Chief Executive Officer or Retained Chief Financial Officer, retained him or her shall have the right to select a replacement officer, as applicable, for approval by the Board of Directors to complete such officer's current term.

(ii) A Majority Interest may, at any time, with or without cause, request that the Board of Directors remove the Chief Accounting Officer and replace such Chief Accounting Officer with a person nominated by a Majority Interest. In such event, a Majority Interest shall promptly notify the Board of Directors of the request for removal and the name of the replacement officer, as applicable, to complete such officer's current term. The Management Members shall use reasonable best efforts to cause the Board of Directors to take all actions required to consummate such removal and replacement. In addition to the foregoing, the Chief Accounting Officer may be removed, with or without cause, at any time by the Board of Directors in accordance with the YieldCo General Partner LLC Agreement and upon such removal, a Majority Interest shall have the right to select a new Chief Accounting Officer for approval by the Board of Directors.

(iii) The Chief Financial Officer may, at any time, with or without cause, request that the Board of Directors remove the General Counsel/Secretary and replace such General Counsel/Secretary with a person nominated by the Chief Financial Officer. In such event, the Chief Financial Officer shall promptly notify the Board of Directors of the request for removal and the name of the replacement officer, as applicable, to complete such officer's current term. The Management Members shall use reasonable best efforts to cause the Board of Directors to take all actions required to consummate such removal and replacement. In addition to the foregoing, the General Counsel/Secretary may be removed, with or without cause, at any time by the Board of Directors in accordance with the YieldCo General Partner LLC Agreement and upon such removal, the Chief Financial

Officer shall have the right to select a new General Counsel/Secretary for approval by the Board of Directors.

(c) Subject to Section 9.2(d), in no event shall the Chief Executive Officer and Chief Financial Officer be selected by the same Management Member, without the prior consent of the other Management Member.

(d) In the event that a Management Member has lost the right to select one or both Director(s) in accordance with Section 9.1(d), such Management Member shall lose its right to select the Chief Executive Officer or Chief Financial Officer, as applicable, and the other Management Member shall gain the right to select both the Chief Executive Officer and the Chief Financial Officer until such Management Member has regained its right to select both Directors in accordance with Section 9.1(e)(ii).

(e) Unless a Majority Interest determines otherwise, no Person designated by FS Member as an officer of the YieldCo General Partner shall make decisions or sign contractual commitments or approve any payments related to any SP Contributed Company without approval of a Person designated by SP Member as an officer of the YieldCo General Partner, and no Person designated by SP Member as an officer of the YieldCo General Partner shall make decisions or sign contractual commitments or approve any payments related to any FS Contributed Company without approval of a Person designated by FS Member as an officer of the YieldCo General Partner.

Section 9.3 *Right to Appoint Officers and Directors of Contributed Companies.*

(a) Unless a Majority Interest determines otherwise, the Vice Presidents of Operations of the YieldCo General Partner shall elect the officers and directors of the Contributed Companies and have the right to remove and replace such officers and directors.

(b) Unless a Majority Interest determines otherwise, the Chief Executive Officer shall elect (and remove and replace) the officers and directors of any Project Company that are not selected for election pursuant to Section 9.3(a).

(c) Except to the extent any decision, contractual commitment or payment approval has been approved by a Majority Interest or the Board of Directors, no Person employed by FS Member who is an officer of the YieldCo General Partner shall make decisions or sign contractual commitments or approve any payments related to any SP Contributed Company without approval of a Person employed by SP Member who is an officer of the YieldCo General Partner, and no Person employed by SP Member who is an officer of the YieldCo General Partner shall make decisions or sign contractual commitments or approve any payments related to any FS Contributed Company without approval of a Person employed by FS Member who is an officer of the YieldCo General Partner.

ARTICLE X
DUTIES; EXCULPATION AND INDEMNIFICATION

Section 10.1 *Duties.*

(a) Whenever a Member makes a determination or takes or declines to take any other action, or any of its Affiliates causes it to do so, in its capacity as a Member, whether under this Agreement or any other agreement contemplated hereby or otherwise, then such Member or its Affiliates causing it to do so shall be entitled, to the fullest extent permitted by law, to make such determination or to take or decline to take such other action free of any duty or obligation whatsoever to the Company or any Member, and the Member, or such Affiliates causing it to do so, shall not, to the fullest extent permitted by law, be required to act pursuant to any standard imposed by this Agreement, any other agreement contemplated hereby or under the Delaware Act or any other law, rule or regulation or at equity, it being the intent of all Members that such Member or any such Affiliate, in its capacity as a Member, shall have the right to make such determination, in its sole discretion, solely on the basis of its own interests.

(b) Subject to, and as limited by the provisions of this Agreement, the Members, in the performance of their duties as such, shall not, to the fullest extent permitted by the Delaware Act and other applicable law, owe any duties (including fiduciary duties) as a Member or manager of the Company to the Company, any Member of the Company or any other Person, notwithstanding anything to the contrary existing at law, in equity or otherwise. In furtherance of the foregoing to the fullest extent permitted by the Delaware Act, a Representative, in performing his duties and obligations under this Agreement, shall (i) owe no duty (including fiduciary duties) or obligation whatsoever to the Company or any Member (other than the Management Member designating such Representative) or any other Person, and (ii) be entitled to act or omit to act at the direction of the Management Member that designated such Representative, in such Management Member's sole discretion, considering only such factors, including the separate interests of the Management Member, as such Representative or Member chooses to consider, and any action of a Representative or failure to act, taken or omitted in good faith reliance on the foregoing provisions shall not constitute a breach of any duty on the part of such Representative or Member to the Company or any other Representative or Member of the Company.

(c) The provisions of this Agreement, to the extent that they restrict, eliminate or otherwise modify the duties and liabilities of a Member or its Representative otherwise existing at law, in equity or by operation of the preceding sentences, are agreed by the Company and the Members to replace such duties and liabilities of such Member or its Representative. The Members (in their own names and in the name and on behalf of the Company), acknowledge, affirm and agree that (i) none of the Members would be willing to make an investment in the Company or enter into this Agreement, and no Representative would be willing to serve, in the absence of this Section 10.1, and (ii) they have reviewed and understand the provisions of Sections 18-1101(b) and (c) of the Delaware Act.

Section 10.2 *Indemnification.*

(a) To the fullest extent permitted by law but subject to the limitations expressly provided in this Agreement, all Indemnitees shall be indemnified and held harmless by the Company from and against any and all losses, claims, damages, liabilities, joint or several, expenses (including legal fees and expenses), judgments, fines, penalties, interest, settlements or other amounts arising from any and all threatened, pending or completed claims, demands, actions, suits or proceedings, whether civil, criminal, administrative or investigative, and whether formal or informal and including appeals, in which any Indemnitee may be involved, or is threatened to be involved, as a party or otherwise, by reason of its status as an Indemnitee acting (or omitting or refraining to act) in such capacity; *provided*, that the Indemnitee shall not be indemnified and held harmless pursuant to this Agreement to the extent that there has been a final and non-appealable judgment entered by a court of competent jurisdiction determining that, in respect of the matter for which the Indemnitee is seeking indemnification pursuant to this Agreement, the Indemnitee engaged in fraud, willful misconduct or, in the case of a criminal matter, acted with knowledge that the Indemnitee's conduct was unlawful; *provided*, *further*, no indemnification pursuant to this Section 10.2 shall be available to any Indemnitee (other than a Group Member or Joint Venture) with respect to any such Indemnitee's obligations pursuant to the Master Formation Agreement (other than obligations incurred by such Member on behalf of the Company). Any indemnification pursuant to this Section 10.2 shall be made only out of the assets of the Company, it being agreed that the Members shall not be personally liable for such indemnification and shall have no obligation to contribute or loan any monies or property to the Company to enable it to effectuate such indemnification.

(b) To the fullest extent permitted by law, expenses (including reasonable legal fees and expenses) incurred by an Indemnitee who is entitled to indemnification pursuant to this Section 10.2 in appearing at, participating in or defending any claim, demand, action, suit or proceeding shall, from time to time, be advanced by the Company prior to a final and non-appealable judgment entered by a court of competent jurisdiction determining that, in respect of the matter for which the Indemnitee is seeking indemnification pursuant to this Section 10.2, the Indemnitee is not entitled to be indemnified upon written request by such Indemnitee and receipt by the Company of an undertaking by or on behalf of the Indemnitee to repay such amount if it shall be ultimately determined that the Indemnitee is not entitled to be indemnified as authorized by this Section 10.2.

(c) The indemnification provided by this Section 10.2 shall be in addition to any other rights to which an Indemnitee may be entitled under this Agreement, any other agreement, pursuant to any vote of a Majority Interest, as a matter of law, in equity or otherwise, both as to actions in the Indemnitee's capacity as an Indemnitee and as to actions in any other capacity, and shall continue as to an Indemnitee who has ceased to serve in such capacity and shall inure to the benefit of the heirs, successors, assigns and administrators of the Indemnitee.

(d) The Company may purchase and maintain insurance (or reimburse the Management Members or their Affiliates for the cost of), on behalf of the Company, its Affiliates, the Indemnitees and such other Persons as the Company shall determine, against any liability that may be asserted against, or expense that may be incurred by, such Person in connection with the Company's or any of its Affiliates' activities or such Person's activities on behalf of the Company or any of its Affiliates, regardless of whether the Company would have the power to indemnify such Person against such liability under the provisions of this Agreement.

(e) For purposes of this Section 10.2: (i) the Company shall be deemed to have requested an Indemnitee to serve as fiduciary of an employee benefit plan whenever the performance by it of its duties to the Company also imposes duties on, or otherwise involves services by, it to the plan or participants or beneficiaries of the plan; (ii) excise taxes assessed on an Indemnitee with respect to an employee benefit plan pursuant to applicable law shall constitute "fines" within the meaning of Section 10.2(a); and (iii) action taken or omitted by it with respect to any employee benefit plan in the performance of its duties for a purpose reasonably believed by it to be in the best interest of the participants and beneficiaries of the plan shall be deemed to be for a purpose that is in the best interests of the Company.

(f) In no event may an Indemnitee subject the Members to personal liability by reason of the indemnification provisions set forth in this Agreement.

(g) An Indemnitee shall not be denied indemnification in whole or in part under this Section 10.2 because the Indemnitee had an interest in the transaction with respect to which the indemnification applies if the transaction was otherwise permitted by the terms of this Agreement.

(h) The provisions of this Section 10.2 are for the benefit of the Indemnitees and their heirs, successors, assigns, executors and administrators and shall not be deemed to create any rights for the benefit of any other Persons.

(i) No amendment, modification or repeal of this Section 10.2 or any provision hereof shall in any manner terminate, reduce or impair the right of any past, present or future Indemnitee to be indemnified by the Company, nor the obligations of the Company to indemnify any such Indemnitee under and in accordance with the provisions of this Section 10.2 as in effect immediately prior to such amendment, modification or repeal with respect to claims arising from or relating to matters occurring, in whole or in part, prior to such amendment, modification or repeal, regardless of when such claims may arise or be asserted.

(j) TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, AND SUBJECT TO SECTION 10.2(a), THE PROVISIONS OF THE INDEMNIFICATION PROVIDED IN THIS SECTION 10.2 ARE INTENDED BY THE MEMBERS TO APPLY EVEN IF SUCH PROVISIONS HAVE THE EFFECT OF EXCULPATING THE INDEMNITEE FROM LEGAL RESPONSIBILITY FOR THE

CONSEQUENCES OF SUCH PERSON'S NEGLIGENCE, FAULT OR OTHER CONDUCT.

Section 10.3 *Liability of Indemnitees.*

(a) Notwithstanding anything to the contrary set forth in this Agreement, any Group Member Agreement, under the Delaware Act or any other law, rule or regulation or at equity, to the fullest extent allowed by law, no Indemnitee or any of its employees or Persons acting on its behalf shall be liable for monetary damages to the Company, the Members or any other Persons, for losses sustained or liabilities incurred, of any kind or character, as a result of any act or omission of an Indemnitee or any of its employees or Persons acting on its behalf unless and to the extent there has been a final and non-appealable judgment entered by a court of competent jurisdiction determining that, in respect of the matter in question, the Indemnitee or any of its employees or Persons acting on its behalf engaged in fraud, willful misconduct or, in the case of a criminal matter, acted with knowledge that the Indemnitee's conduct was unlawful.

(b) Any amendment, modification or repeal of this Section 10.3 or any provision hereof shall be prospective only and shall not in any way affect the limitations on the liability of the Indemnitees under this Section 10.3 as in effect immediately prior to such amendment, modification or repeal with respect to claims arising from or relating to matters occurring, in whole or in part, prior to such amendment, modification or repeal, regardless of when such claims may arise or be asserted.

Section 10.4 *Corporate Opportunities*. Except as otherwise provided in the Omnibus Agreement or any other agreement or contract to which the Company or any Group Member is a party, (i) each Member and its respective Affiliates shall have the right to engage in businesses of every type and description and other activities for profit and to engage in and possess an interest in other business ventures of any and every type or description, whether in businesses engaged in or anticipated to be engaged in by the Company, the YieldCo General Partner, any Group Member or any Joint Venture, independently or with others, including business interests and activities in direct competition with the business and activities of the Company, the YieldCo General Partner, any Group Member or any Joint Venture, and none of the same shall constitute a breach of this Agreement or any duty otherwise existing at law, in equity or otherwise, to the Company or any Group Member or any Member, and (ii) neither of the Company, any Member or any other Person shall have, and each of them hereby waive, any rights or expectation by virtue of this Agreement, the Partnership Agreement, any Group Member Agreement, or the business relationship established hereby in any business ventures of any Member and its respective Affiliates.

ARTICLE XI
TAXES

Section 11.1 *Tax Returns*. The Tax Member shall prepare and timely file or cause to be prepared and filed (on behalf of the Company) all federal, state, local and foreign tax returns required to be filed by the Company. Each Member shall furnish to the Company all pertinent information in its possession relating to the Company's operations that is necessary to enable the

Company's tax returns to be timely prepared and filed. The Company shall bear the costs of the preparation and filing of its returns.

Section 11.2 *Tax Elections.*

(a) The Company shall make the following elections on the appropriate tax returns:

(i) to adopt as the Company's taxable year the calendar year, or such other taxable year as the Company may from time to time be required to use under Section 706 of the Code and the regulations thereunder;

(ii) to adopt the accrual method of accounting;

(iii) if a distribution of the Company's property as described in Section 734 of the Code occurs or upon a Transfer of an Economic Unit as described in Section 743 of the Code occurs, on request by notice from any Member, to elect, pursuant to Section 754 of the Code, to adjust the basis of the Company's properties; and

(iv) any other election a Majority Interest may deem appropriate.

(b) Neither the Company nor any Member shall make an election for the Company to be excluded from the application of the provisions of subchapter K of chapter 1 of subtitle A of the Code or any similar provisions of applicable state law and no provision of this Agreement shall be construed to sanction or approve such an election.

Section 11.3 *Tax Matters Member.*

(a) FS Member shall act as the "tax matters partner" of the Company pursuant to Section 6231(a)(7) of the Code (the "Tax Matters Member"). The Tax Matters Member shall take such action as may be necessary to cause to the extent possible each Member to become a "notice partner" within the meaning of Section 6223 of the Code. The Tax Matters Member shall inform each Member of all significant matters that may come to its attention in its capacity as Tax Matters Member by giving notice thereof on or before the 15th Business Day after becoming aware thereof and, within that time, shall forward to each Member copies of all significant written communications it may receive in that capacity.

(b) Any reasonable cost or expense incurred by the Tax Matters Member in connection with its duties, including the preparation for or pursuance of administrative or judicial proceedings, shall be paid by the Company.

(c) The Tax Matters Member shall not enter into any extension of the period of limitations for making assessments on behalf of any Member without first obtaining the consent of such Member. The Tax Matters Member shall not bind any Member to a settlement agreement without obtaining the consent of such Member. Any Member that

enters into a settlement agreement with respect to any Company item (as described in Section 6231(a)(3) of the Code in respect of the term "partnership item") shall notify the other Members of such settlement agreement and its terms within 90 days from the date of the settlement.

(d) No Member shall file a request pursuant to Section 6227 of the Code for an administrative adjustment of Company items for any taxable year without first notifying the other Members. If a Majority Interest consents to the requested adjustment, the Tax Matters Member shall file the request for the administrative adjustment on behalf of the Members. If such consent is not obtained within 30 days from such notice, or within the period required to timely file the request for administrative adjustment, if shorter, any Member may file a request for administrative adjustment on its own behalf. Any Member intending to file a petition under Sections 6226, 6228 or other Section of the Code with respect to any item involving the Company shall notify the other Members of such intention and the nature of the contemplated proceeding. In the case where the Tax Matters Member is intending to file such petition on behalf of the Company, such notice shall be given to each other Member 90 days prior to filing and the Tax Matters Member shall obtain the consent of the other Members to the forum in which such petition will be filed prior to filing, which consent shall not be unreasonably withheld or delayed.

(e) If any Member intends to file a notice of inconsistent treatment under Section 6222(b) of the Code, such Member shall give reasonable notice under the circumstances to the other Members of such intent and the manner in which the Member's intended treatment of an item is (or may be) inconsistent with the treatment of that item by the other Members.

ARTICLE XII
BOOKS, RECORDS, REPORTS, BANK ACCOUNTS, AND BUDGETS

Section 12.1 *Records and Accounting*. The Accounting Member shall keep or cause to be kept at the principal office of the Company appropriate books and records with respect to the Company's business, including the register and all other books and records necessary to provide to the Members any information required to be provided pursuant to this Agreement. Any books and records maintained by or on behalf of the Company in the regular course of its business, including the register, books of account and records of Company proceedings, may be kept on, or be in the form of, computer disks, hard drives, punch cards, magnetic tape, photographs, micrographics or any other information storage device; *provided*, that the books and records so maintained are convertible into clearly legible written form within a reasonable period of time. The books of the Company shall be maintained, for financial reporting purposes, on an accrual basis in accordance with U.S. GAAP.

Section 12.2 *Fiscal Year.* The fiscal year of the Company (the "Fiscal Year") shall be the period from December 1 of each year through November 30 of the following year (unless otherwise required by law) unless a different period is specified by a Majority Interest.

Section 12.3 *Reports*. With respect to each tax year, the Tax Member shall prepare, or cause to be prepared, and deliver, or cause to be delivered, to each Member such federal, state and local income tax returns and such other accounting, tax information and schedules (including any information necessary for unrelated business taxable income calculations by any Member) as shall be necessary for the preparation by each Member on or before July 15 following the end of each tax year of its income tax return with respect to such year, *provided*, *however*, that the Tax Member, as applicable, shall also cause the Company to prepare and deliver, or cause to be prepared and delivered, at any time, such other information with respect to taxes as is reasonably requested by a Member at the cost of such Member.

Section 12.4 *Bank Accounts.* Funds of the Company shall be deposited in such banks or other depositories as shall be designated from time to time by a Majority Interest. All withdrawals from any such depository shall be made only as authorized by a Majority Interest and shall be made only by check, wire transfer, debit memorandum or other written instruction.

ARTICLE XIII
DISSOLUTION AND LIQUIDATION

Section 13.1 *Dissolution. The Company shall not be dissolved by the admission of additional Member in accordance with the terms of this Agreement. The Company shall dissolve, and (subject to Section 13.3) its affairs shall be wound up, upon:*

(a) an election to dissolve the Company by the affirmative vote of a Majority Interest or, if required by Section 8.4(b) the unanimous vote of the Management Members;

(b) the entry of a decree of judicial dissolution of the Company pursuant to the provisions of the Delaware Act; or

(c) at any time there are no Members, unless the Company is continued without dissolution in accordance with the Delaware Act.

Section 13.2 *Liquidator*. Upon dissolution of the Company in accordance with the provisions of this Article XIII, a Majority Interest shall select one or more Persons to act as Liquidator. The Liquidator (if other than a Member) shall be entitled to receive such compensation for its services as may be approved by a Majority Interest. The Liquidator (if other than a Member) shall agree not to resign at any time without 15 days' prior notice and may be removed at any time, with or without cause, by notice of removal approved by a Majority Interest. Upon dissolution, removal or resignation of the Liquidator, a successor and substitute Liquidator (who shall have and succeed to all rights, powers and duties of the original Liquidator) shall within 30 days thereafter be approved by a Majority Interest. The right to approve a successor or substitute Liquidator in the manner provided herein shall be deemed to refer also to any such successor or substitute Liquidator approved in the manner herein provided. Except as expressly provided in this Article XIII, the Liquidator approved in the manner provided herein shall have and may exercise, without further authorization or consent of any of the Parties hereto, all of the powers conferred upon a Majority Interest under the terms of this Agreement (but subject to all of the applicable limitations, contractual and otherwise, upon the

exercise of such powers) necessary or appropriate to carry out the duties and functions of the Liquidator hereunder for and during the period of time required to complete the winding up and liquidation of the Company as provided for herein.

Section 13.3 *Liquidation*. The Liquidator shall proceed to dispose of the assets of the Company, discharge its liabilities, and otherwise wind up its affairs in such manner and over such period as determined by the Liquidator, subject to Section 18-804 of the Delaware Act and the following:

(a) The assets may be disposed of by public or private sale or by distribution in kind to one or more Economic Members on such terms as the Liquidator and such Economic Member or Economic Members may agree. If any property is distributed in kind, the Economic Member receiving the property shall be deemed for purposes of Section 13.3(c) to have received cash equal to its fair market value, net of Liabilities; and contemporaneously therewith, appropriate cash distributions must be made to the other Economic Members. The Liquidator may defer liquidation or distribution of the Company's assets for a reasonable time if it determines that an immediate sale or distribution of all or some of the Company's assets would be impractical or would cause undue loss to the Members. The Liquidator may distribute the Company's assets, in whole or in part, in kind if it determines that a sale would be impractical or would cause undue loss to the Members.

(b) Liabilities of the Company include amounts owed to the Liquidator as compensation for serving in such capacity (subject to the terms of Section 13.2) and amounts to Economic Members otherwise than in respect of their distribution rights under Article VII. With respect to any liability that is contingent, conditional or unmatured or is otherwise not yet due and payable, the Liquidator shall either settle such claim for such amount as it thinks appropriate or establish a reserve of cash or other assets to provide for its payment. When paid, any unused portion of the reserve shall be distributed as additional liquidation proceeds.

(c) Notwithstanding Section 7.2, any items of income, gain, loss or deduction for the taxable year during which the Company dissolves pursuant to this Section 13.3 will be allocated among the Economic Members in a manner that ensures, to the maximum extent possible, distributions pursuant to the Economic Members Capital Accounts will be in accordance with the Economic Members' Liquidation Percentages.

(d) After taking into account the allocation set forth in Section 13.3(c), all property and all cash in excess of that required to satisfy or discharge liabilities as provided in Section 13.3(b) shall be distributed to the Economic Members pro rata in accordance with the Economic Member's Liquidation Percentages.

(e) For purposes of this Section 13.3, the Liquidation Percentages shall be determined using Forecasted Project Values calculated as of the date of any disposition of the assets of the Company, discharge of its liabilities, or such other action as may be taken in connection with the winding up of its affairs, in each case taking into account the then current facts and circumstances and other current information.

Section 13.4 *Certificate of Cancellation*. Upon the completion of the distribution of Company cash and property as provided in Section 13.3 in connection with the liquidation of the Company, the Certificate of Formation and all qualifications of the Company as a foreign limited liability company in jurisdictions other than the State of Delaware shall be canceled and such other actions as may be necessary to terminate the Company shall be taken.

Section 13.5 *Return of Contributions*. No Member shall be personally liable for, and each Member shall have no obligation to contribute or loan any monies or property to the Company to enable it to effectuate, the return of the Capital Contributions of the Members, or any portion thereof, it being expressly understood that any such return shall be made solely from assets of the Company.

Section 13.6 *Waiver of Partition*. To the maximum extent permitted by law, each Member hereby waives any right to partition of the Company property.

Section 13.7 *Capital Account Restoration*. No Member shall have any obligation to restore any negative balance in its Capital Account upon liquidation of the Company.

ARTICLE XIV
GENERAL PROVISIONS

Section 14.1 *Offset*. Whenever the Company is to pay any sum to any Economic Member, including distributions pursuant to Article VII, any amounts that Economic Member owes the Company, as determined by a Majority Interest, may be deducted from that sum before payment.

Section 14.2 *Specific Performance*. The Members acknowledge and agree that an award of money damages would be inadequate for any breach of the provisions of this Agreement and any such breach would cause the non-breaching Member irreparable harm. Accordingly, the Members agree that, in the event of any breach or threatened breach of this Agreement by a Member, the other Member, to the fullest extent permitted by law, will also be entitled, without the requirement of posting a bond or other security, to equitable relief, including injunctive relief and specific performance; *provided* that a requirement for a Member seeking equitable relief to post a bond or other security shall not be waived if such Member is in material default hereunder. Such remedies will not be the exclusive remedies for any breach of this Agreement but will be in addition to all other remedies available at law or equity to each of the Members.

Section 14.3 *Amendment*. Subject to Section 8.4(b)(i), this Agreement shall not be altered modified or changed except by a written instrument approved by a Majority Interest.

Section 14.4 *Addresses and Notices; Written Communication*.

(a) Any notice, demand, request, report or proxy materials required or permitted to be given or made to a Member under this Agreement shall be in writing and shall be deemed given or made when delivered by hand, courier or overnight delivery service or three days after being mailed by certified or registered mail, return receipt requested, with appropriate postage prepaid, delivered by electronic mail or when

received in the form of a facsimile, and shall be directed to the address or facsimile number of such Member at the address set forth on Exhibit E; provided, that to be effective any such notice sent originally by facsimile or email must be followed within two Business Days by a copy of such notice sent by overnight courier service (other than any notice delivered by email for which the intended recipient thereof, by reply email, waives delivery of such copy).

(b) If a Member shall consent to receiving notices, demands, requests, reports or other materials via electronic mail, any such notice, demand, request, report or other materials shall be deemed given or made when delivered or made available via such mode of delivery. An affidavit or certificate of making of any notice, payment or report in accordance with the provisions of this Section 14.4 executed by the Company or the mailing organization shall be prima facie evidence of the giving or making of such notice, payment or report.

(c) Any notice to the Company shall be deemed given if received by the Company at the principal office of the Company designated pursuant to Section 2.3. The Company may rely and shall be protected in relying on any notice or other document from a Member or other Person if believed by it to be genuine.

(d) The terms "in writing," "written communications," "written notice" and words of similar import shall be deemed satisfied under this Agreement by use of e-mail and other forms of electronic communication.

Section 14.5 *Further Action*. In connection with this Agreement and the transactions contemplated hereby, the Parties shall execute and deliver any additional documents and instruments and perform any additional acts that may be necessary or appropriate to effectuate and perform the provisions of this Agreement and those transactions.

Section 14.6 *Confidential Information*. From and after the date hereof, each Party (each, a "Receiving Party") in possession of Confidential Information of the other Party, the Company, the YieldCo General Partner, any Group Member or any Joint Venture (each, a "Disclosing Party") shall (a) hold, and shall cause its Subsidiaries and Affiliates and its and their shareholders, partners, members, directors, officers, employees, agents, consultants, advisors, lenders, potential lenders, investors, potential investors, and any officer or director of the YieldCo General Partner, any Group Member or any Joint Venture appointed by it and any other representatives (the "Party Representatives") to hold all Confidential Information of each Disclosing Party in strict confidence with at least the same degree of care that applies to such Receiving Party's confidential and proprietary information, (b) not use such Confidential Information, except as expressly permitted by such Disclosing Party, and (c) not release or disclose such Confidential Information to any other Person, except its Party Representatives or except as required by applicable law; *provided* that notwithstanding the foregoing, a Receiving Party shall be permitted to (i) disclose any Confidential Information to the extent required by court order or under applicable law (*provided*, that it shall (A) exercise commercially reasonable efforts to preserve the confidentiality of such Confidential Information, (B) to the extent legally permissible, use commercially reasonable efforts to provide the Disclosing Party in advance of such disclosure, with copies of any Confidential Information it intends to disclose (and, if

applicable, the text of the disclosure language itself), and (C) reasonably cooperate with the Disclosing Party and its Affiliates to the extent they may seek to limit such disclosure), (ii) make a public announcement regarding such matters (A) as agreed to in writing by the Disclosing Party or (B) as required by the provisions of any securities laws or the requirements of any exchange on which any Party's securities may be listed, or (iii) disclose any Confidential Information to its Affiliates and its and their Party Representatives (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Confidential Information and instructed to keep such Confidential Information confidential pursuant to the terms hereof).

Section 14.7 *Binding Effect*. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their heirs, executors, administrators, successors, legal representatives and permitted assigns.

Section 14.8 *Integration*. This Agreement constitutes the entire agreement among the Parties hereto pertaining to the subject matter hereof and supersedes all prior agreements and understandings pertaining thereto.

Section 14.9 *Creditors*. None of the provisions of this Agreement shall be for the benefit of, or shall be enforceable by, any creditor of the Company.

Section 14.10 *Waiver*. No failure by any party to insist upon the strict performance of any covenant, duty, agreement or condition of this Agreement or to exercise any right or remedy consequent upon a breach thereof shall constitute waiver of any such breach of any other covenant, duty, agreement or condition.

Section 14.11 *Third-Party Beneficiaries*. Each Member agrees that any Indemnitee shall be entitled to assert rights and remedies hereunder as a third-party beneficiary hereto with respect to those provisions of this Agreement affording a right, benefit or privilege to such Indemnitee.

Section 14.12 *Counterparts*. This Agreement may be executed in counterparts, all of which together shall constitute an agreement binding on all the Parties hereto, notwithstanding that all such Parties are not signatories to the original or the same counterpart. Each Party shall become bound by this Agreement immediately upon affixing its signature hereto.

Section 14.13 *Applicable Law; Forum and Venue*.

(a) This Agreement shall be construed in accordance with and governed by the laws of the State of Delaware, without regard to the principles of conflicts of law. In the event of a direct conflict between the provisions of this Agreement and any mandatory, non-waivable provision of the Delaware Act, such provision of the Delaware Act shall control. If any provision of the Delaware Act may be varied or superseded in a limited liability company agreement (or otherwise by agreement of the members or managers of a limited liability company), such provision shall be deemed superseded and waived in its entirety if this Agreement contains a provision addressing the same issue or subject matter.

(b) Subject to Section 8.5(c), any and all claims, suits, actions or proceedings arising out of, in connection with or relating in any way to this Agreement shall be exclusively brought in the Court of Chancery of the State of Delaware. Each party hereto unconditionally and irrevocably submits to the exclusive jurisdiction of the Court of Chancery of the State of Delaware with respect to any such claim, suit, action or proceeding and waives any objection that such party may have to the laying of venue of any claim, suit, action or proceeding in the Court of Chancery of the State of Delaware.

Section 14.14 Invalidity of Provisions. If any provision or part of a provision of this Agreement is or becomes for any reason, invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions and/or parts thereof contained herein shall not be affected thereby and this Agreement shall, to the fullest extent permitted by law, be reformed and construed as if such invalid, illegal or unenforceable provision, or part of a provision, had never been contained herein, and such provisions and/or part shall be reformed so that it would be valid, legal and enforceable to the maximum extent possible.

Section 14.15 Facsimile and Email Signatures. The use of facsimile signatures and signatures delivered by email in portable document format (.pdf) or similar format affixed in the name and on behalf of the Company on certificates representing Membership Interests is expressly permitted by this Agreement.

[Signature page follows.]

IN WITNESS WHEREOF, the Members have executed this Agreement as of the date first set forth above.

MEMBERS:

SunPower YC Holdings, LLC

By: /s/ Kenneth Mahaffey
Name: Kenneth Mahaffey
Title: Assistant Secretary

First Solar 8point3 Holdings, LLC

By: /s/ Alexander R. Bradley
Name: Alexander R. Bradley
Title: Vice President, Treasury and Project Finance

EXHIBIT A

ECONOMIC UNITS

Economic Member	Capital Contribution	Capital Account Balance	Economic Units	Ownership Percentage
SP Member	$500.00	$500.00	500	50%
FS Member	500.00	500.00	500	50%
Total:	$1,000.00	$1,000.00	1,000	100.00%

EXHIBIT B

MANAGEMENT UNITS

Management Member	**Management Units**	**Percentage Ownership**
SP Member	500	50%
FS Member	500	50%
Total:	1,000	100.00%

EXHIBIT C

INITIAL DIRECTORS OF THE YIELDCO GENERAL PARTNER

Charles D. Boynton	SP Director Chairman of the Board of Directors
Ty P. Daul	SP Director
Mark R. Widmar	FS Director
Joseph G. Kishkill	FS Director
Thomas C. O'Connor	Independent Director
Norman J. Szydlowski	Independent Director
Michael W. Yackira	Independent Director

EXHIBIT D

TARGET DISTRIBUTED CASH INCREASE SCHEDULE

Fiscal Year Ending November 30	Target Distributed Cash Increase Range	
	Low	High
2016	***	***
2017	***	***
2018	***	***
2019	***	***
2020	***	***
2021	***	***
2022	***	***
2023	***	***
2024	***	***
2025	***	***

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

EXHIBIT E

MEMBERS' ADDRESS FOR NOTICE

SP Member

SunPower YC Holdings, LLC
c/o SunPower Corporation
77 Rio Robles
San Jose, California 95134
Tel: (408) 240-5500
Email: chuck.boynton@sunpower.com
Attention: Charles Boynton, Chief Financial Officer

with copies, which shall not constitute notice, to:

SunPower YC Holdings, LLC
c/o SunPower Corporation
77 Rio Robles
San Jose, California 95134
Tel: (408) 240-5500
Email: lisa.bodensteiner@sunpower.com
Attention: Lisa Bodensteiner, General Counsel

FS Member

First Solar 8point3 Holdings, LLC
c/o First Solar, Inc.
350 West Washington Street, Suite 600
Tempe, Arizona 85281
Tel: (602) 414-9300
Email: mark.widmar@firstsolar.com
Attention: Mark Widmar, Chief Financial Officer

with copies, which shall not constitute notice, to:

First Solar 8point3 Holdings, LLC
c/o First Solar, Inc.
350 West Washington Street, Suite 600
Tempe, Arizona 85281
Tel: (602) 427-2925
Email: generalcounsel@firstsolar.com
Attention: Paul Kaleta, General Counsel

EXHIBIT F

REPRESENTATIVES

SP Member’s Initial Representative: Natalie F. Jackson

FS Member’s Initial Representative: Alexander R. Bradley

Exhibit 10.3

EXECUTION VERSION

AMENDED AND RESTATED

LIMITED LIABILITY COMPANY AGREEMENT

OF

8POINT3 OPERATING COMPANY, LLC

A Delaware Limited Liability Company

Dated as of

June 24, 2015

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AMENDED AND RESTATED

LIMITED LIABILITY COMPANY AGREEMENT

OF

8POINT3 OPERATING COMPANY, LLC

A Delaware Limited Liability Company

THIS AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT OF 8POINT3 OPERATING COMPANY, LLC, dated as of June 24, 2015, is entered into by and between 8POINT3 ENERGY PARTNERS LP, a Delaware limited partnership, SUNPOWER YC HOLDINGS, LLC, a Delaware limited liability company, FIRST SOLAR 8POINT3 HOLDINGS, LLC, a Delaware limited liability company, MARYLAND SOLAR HOLDINGS, INC., a Delaware corporation, and 8POINT3 HOLDING COMPANY, LLC, a Delaware limited liability company. In consideration of the covenants, conditions and agreements contained herein, the parties hereto hereby agree as follows:

ARTICLE I
DEFINITIONS

Section 1.1 *Definitions.* As used in this Agreement, the following terms have the respective meanings set forth below or set forth in the Sections referred to below:

"Additional Book Basis" means, with respect to any Adjusted Property, the portion of the Carrying Value of such Adjusted Property that is attributable to positive adjustments made to such Carrying Value as determined in accordance with the provisions set forth below in this definition of Additional Book Basis. For purposes of determining the extent to which Carrying Value constitutes Additional Book Basis:

(a) Any negative adjustment made to the Carrying Value of an Adjusted Property as a result of either a Book-Down Event or a Book-Up Event shall first be deemed to offset or decrease that portion of the Carrying Value of such Adjusted Property that is attributable to any prior positive adjustments made thereto pursuant to a Book-Up Event or Book-Down Event; and

(b) If Carrying Value that constitutes Additional Book Basis is reduced as a result of a Book-Down Event and the Carrying Value of other property is increased as a result of such Book-Down Event, an allocable portion of any such increase in Carrying Value shall be treated as Additional Book Basis; provided, however, that the amount treated as Additional Book Basis pursuant hereto as a result of such Book-Down Event shall not exceed the amount by which the Aggregate Remaining Net Positive Adjustments after such Book-Down Event exceeds the remaining Additional Book Basis attributable to all of the Company's Adjusted Property after such Book-Down Event (determined without regard to the application of this clause (b) to such Book-Down Event).

"Additional Book Basis Derivative Items" means any Book Basis Derivative Items that are computed with reference to Additional Book Basis. To the extent that the Additional Book Basis attributable to all of the Company's Adjusted Property as of the beginning of any taxable period exceeds the Aggregate Remaining Net Positive Adjustments as of the beginning of such period (the "Excess Additional Book Basis"), the Additional Book Basis Derivative Items for such period shall be reduced by the amount that bears the same ratio to the amount of Additional Book Basis Derivative Items determined without regard to this sentence as the Excess Additional Book Basis bears to the Additional Book Basis as of the beginning of such period. With respect to a Disposed of Adjusted Property, the Additional Book Basis Derivative Items shall be the amount of Additional Book Basis taken into account in computing gain or loss from the disposition of such Disposed of Adjusted Property; *provided* that the provisions of the immediately preceding sentence shall apply to the determination of the Additional Book Basis Derivative Items attributable to Disposed of Adjusted Property.

"Adjusted Capital Account" means, with respect to any Member, the balance in such Member's Capital Account at the end of each taxable period of the Company, after giving effect to the following adjustments: (a) credit to such Capital Account any amounts that such Member is obligated to restore under the standards set by Treasury Regulation Section 1.704-1(b)(2)(ii)(c) (or is deemed obligated to restore pursuant to the penultimate sentences of Treasury Regulation Sections 1.704-2(g)(1) and 1.704-2(i)(5)) and (b) debit to such Capital Account the items described in Treasury Regulation Sections 1.704-1(b)(2)(ii)(d)(4), (5) and (6). The foregoing definition of Adjusted Capital Account is intended to comply with the provisions of Treasury Regulation Section 1.704-1(b)(2)(ii)(d) and shall be interpreted consistently therewith. The "Adjusted Capital Account" of a Member in respect of any Membership Interest shall be the amount that such Adjusted Capital Account would be if such Membership Interest were the only interest in the Company held by such Member from and after the date on which such Membership Interest was first issued.

"Adjusted Operating Surplus" means, with respect to any period, (a) Operating Surplus generated with respect to such period less (b)(i) the amount of any net increase in Working Capital Borrowings (or the Company's share of any net increase in Working Capital Borrowings in the case of Subsidiaries that are not wholly owned) with respect to such period and (ii) the amount of any net decrease in cash reserves (or the Company's share of any net decrease in cash reserves in the case of Subsidiaries that are not wholly owned) for Operating Expenditures with respect to such period not relating to an Operating Expenditure made with respect to such period, and plus (c)(i) the amount of any net decrease in Working Capital Borrowings (or the Company's share of any net decrease in Working Capital Borrowings in the case of Subsidiaries that are not wholly owned) with respect to such period, (ii) the amount of any net increase in cash reserves (or the Company's share of any net increase in cash reserves in the case of Subsidiaries that are not wholly owned) for Operating Expenditures with respect to such period required by any debt instrument for the repayment of principal, interest or premium and (iii) the amount of any net decrease made in subsequent periods in cash reserves for Operating Expenditures initially established with respect to such period to the extent such decrease results in a reduction in Adjusted Operating Surplus in subsequent periods pursuant to clause (b)(ii) above. Adjusted Operating Surplus does not include that portion of Operating Surplus included in clause (a)(i) of the definition of Operating Surplus. To the extent that disbursements made, cash received or cash reserves established, increased or reduced after the end of a period are

included in the determination of Operating Surplus for such period (as contemplated by the proviso in the definition of "Operating Surplus") such disbursements, cash receipts and changes in cash reserves shall be deemed to have occurred in such period (and not in any future period) for purposes of calculating increases or decreases in Working Capital Borrowings or cash reserves during such period.

"Adjusted Property" means any property the Carrying Value of which has been adjusted pursuant to Section 5.3(d).

"Affiliate" means, with respect to any Person, any other Person that directly or indirectly through one or more intermediaries controls, is controlled by or is under common control with, the Person in question. As used herein, the term "control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting securities, by contract or otherwise. Without limiting the foregoing, for purposes of this Agreement, any Person that, individually or together with its Affiliates, has the direct or indirect right to designate or cause the designation of at least one member to the Board of Directors of the General Partner, and any such Person's Affiliates, shall be deemed to be an Affiliate of the Managing Member. Notwithstanding anything in the foregoing to the contrary, SunPower and its Affiliates (other than the Managing Member or any Group Member), on the one hand, and First Solar and its Affiliates (other than the Managing Member or any Group Member), on the other hand, will not be deemed to be Affiliates of one another hereunder unless there is a basis for such Affiliation independent of their respective Affiliation with any Group Member, the General Partner, the Managing Member or any Affiliate of any Group Member or the Managing Member.

"Aggregate Quantity of IDR Reset Common Units" has the meaning set forth in Section 5.12(a).

"Aggregate Remaining Net Positive Adjustments" means, as of the end of any taxable period, the sum of the Remaining Net Positive Adjustments of all the Members.

"Agreed Allocation" means any allocation, other than a Required Allocation, of an item of income, gain, loss or deduction pursuant to the provisions of Section 6.1, including a Curative Allocation (if appropriate to the context in which the term "Agreed Allocation" is used).

"Agreed Value" of (a) a Contributed Property means the fair market value of such property or other consideration at the time of contribution and (b) an Adjusted Property means the fair market value of such Adjusted Property on the date of the Revaluation Event, in each case as determined by the Managing Member. The Managing Member shall use such method as it determines to be appropriate to allocate the aggregate Agreed Value of Contributed Properties contributed to the Company in a single or integrated transaction among each separate property on a basis proportional to the fair market value of each Contributed Property.

"Agreement" means this Amended and Restated Limited Liability Company Agreement of 8point3 Operating Company, LLC, as it may be amended, modified, supplemented or restated from time to time.

"Associate" means, when used to indicate a relationship with any Person, (a) any corporation or organization of which such Person is a director, officer, manager, general partner or managing member or is, directly or indirectly, the owner of 20% or more of any class of voting stock or other voting interest, (b) any trust or other estate in which such Person has at least a 20% beneficial interest or as to which such Person serves as trustee or in a similar fiduciary capacity, and (c) any relative or spouse of such Person, or any relative of such spouse, who has the same principal residence as such Person.

"Available Cash" means, with respect to any Quarter ending prior to the Liquidation Date:

(a) the sum of:

(i) all cash and cash equivalents of the Company Group (or the Company's share of cash and cash equivalents in the case of Subsidiaries that are not wholly owned) on hand at the end of such Quarter;

(ii) all cash and cash equivalents of the Company Group (or the Company's share of cash and cash equivalents in the case of Subsidiaries that are not wholly owned) resulting from dividends or distributions received after the end of such Quarter from equity interests in any Person other than a Subsidiary in respect of operations conducted by such Person during such Quarter; and

(iii) if the Managing Member so determines, all or any portion of additional cash and cash equivalents of the Company Group (or the Company's share of cash and cash equivalents in the case of Subsidiaries that are not wholly owned) on hand on the date of determination of Available Cash with respect to such Quarter resulting from Working Capital Borrowings made subsequent to the end of such Quarter, less

(b) the amount of any cash reserves established by the Managing Member (or the Company's share of cash reserves in the case of Subsidiaries that are not wholly owned) to:

(i) provide for the proper conduct of the business of the Company Group, including reserves for anticipated future debt service requirements, future capital expenditures and future acquisitions, subsequent to such Quarter;

(ii) comply with applicable law or any loan agreement, security agreement, mortgage, debt instrument or other agreement or obligation to which any Group Member is a party or by which it is bound or its assets are subject; or

(iii) provide funds for distributions under Section 6.4 or Section 6.5 in respect of any one or more of the next four Quarters;

provided, however, that the Managing Member may not establish cash reserves pursuant to subclause (b)(iii) above if the effect of such reserves would be that the Company is unable to distribute the Minimum Quarterly Distribution on all Common Units, plus any Cumulative

Common Unit Arrearage on all Common Units, with respect to such Quarter; and, provided further, that disbursements made by a Group Member or cash reserves established, increased or reduced after the end of such Quarter, but on or before the date of determination of Available Cash with respect to such Quarter, shall be deemed to have been made, established, increased or reduced, for purposes of determining Available Cash, within such Quarter if the Managing Member so determines.

Notwithstanding the foregoing, "Available Cash" with respect to the Quarter in which the Liquidation Date occurs and any subsequent Quarter shall equal zero.

"Board of Directors" means the board of directors or board of managers of the Managing Member, as applicable, if the Managing Member is a corporation or limited liability company, or the board of directors or board of managers of the general partner of the Managing Member, if the Managing Member is a limited partnership, as applicable.

"Book Basis Derivative Items" means any item of income, deduction, gain or loss that is computed with reference to the Carrying Value of an Adjusted Property (e.g., depreciation, depletion, or gain or loss with respect to an Adjusted Property).

"Book-Down Event" means a Revaluation Event that gives rise to a Net Termination Loss.

"Book-Tax Disparity" means, with respect to any item of Contributed Property or Adjusted Property, as of the date of any determination, the difference between the Carrying Value of such Contributed Property or Adjusted Property and the adjusted basis thereof for federal income tax purposes as of such date. A Member's share of the Company's Book-Tax Disparities in all of its Contributed Property and Adjusted Property will be reflected by the difference between such Member's Capital Account balance as maintained pursuant to Section 5.3 and the hypothetical balance of such Member's Capital Account computed as if it had been maintained strictly in accordance with federal income tax accounting principles.

"Book-Up Event" means a Revaluation Event that gives rise to a Net Termination Gain.

"Business Day" means Monday through Friday of each week, except that a legal holiday recognized as such by the government of the United States of America or the State of New York shall not be regarded as a Business Day.

"Capital Account" means the capital account maintained for a Member pursuant to Section 5.3. The "Capital Account" of a Member in respect of any Membership Interest shall be the amount that such Capital Account would be if such Membership Interest were the only interest in the Company held by such Member from and after the date on which such Membership Interest was first issued.

"Capital Contribution" means (a) any cash, cash equivalents or the Net Agreed Value of Contributed Property that a Member contributes to the Company or that is contributed or deemed contributed to the Company on behalf of a Member (including in the case of an underwritten offering of Class A Shares, the amount of any underwriting discounts and commissions) or (b) current distributions that a Member is entitled to receive but otherwise waives.

"Capital Improvement" means (a) the acquisition (through an asset acquisition, merger, stock acquisition or other form of investment) by a Group Member of existing assets or assets under construction, (b) the construction or development of new capital assets by a Group Member, (c) the replacement, improvement or expansion of existing capital assets by a Group Member or (d) a capital contribution by a Group Member to a Person that is not a Subsidiary in which a Group Member has, or after such capital contribution will have, directly or indirectly, an equity interest, to fund such Group Member's share of the cost of the acquisition, construction or development of new, or the replacement, improvement or expansion of existing capital assets by such Person, in each case if and to the extent such acquisition, construction, development, replacement, improvement or expansion is made to increase, over the long-term, the operating capacity or operating income of the Company Group, in the case of clauses (a), (b) and (c), or such Person, in the case of clause (d), from the operating capacity or operating income of the Company Group or such Person, as the case may be, existing immediately prior to such acquisition, construction, development, replacement, improvement, expansion or Capital Contribution. For purposes of this definition, "long-term" generally refers to a period of not less than twelve months.

"Capital Surplus" means Available Cash distributed by the Company in excess of Operating Surplus, as described in Section 6.3(a).

"Carrying Value" means (a) with respect to a Contributed Property or Adjusted Property, the Agreed Value of such property reduced (but not below zero) by all depreciation, amortization and other cost recovery deductions charged to the Members' Capital Accounts in respect of such property and (b) with respect to any other Company property, the adjusted basis of such property for federal income tax purposes, all as of the time of determination; provided that the Carrying Value of any property shall be adjusted from time to time in accordance with Section 5.3(d) and to reflect changes, additions or other adjustments to the Carrying Value for dispositions and acquisitions of Company properties, as deemed appropriate by the Managing Member.

"Cause" means a court of competent jurisdiction has entered a final, non-appealable judgment finding the Managing Member liable to the Company or any Non-Managing Member for actual fraud or willful misconduct in its capacity as a managing member of the Company.

"Certificate" means a certificate, in such form as may be adopted by the Managing Member, issued by the Company evidencing ownership of one or more classes of Membership Interests. The initial form of certificate approved by the Managing Member for the Common Units is attached as Exhibit A to this Agreement.

"Certificate of Formation" means the Certificate of Formation of the Company filed with the Secretary of State of the State of Delaware as referenced in Section 7.3, as such Certificate of Formation may be amended, supplemented or restated from time to time.

"Class A Share" has the meaning set forth in the Partnership Agreement.

"Class B Share" has the meaning set forth in the Partnership Agreement.

"Closing Price" means, in respect of Class A Shares or the Common Units, as of the date of determination, the last sale price on such day, regular way, or in case no such sale takes place

on such day, the average of the closing bid and asked prices on such day, regular way, as reported on the principal National Securities Exchange on which such Class A Shares are listed or admitted to trading or, if such Class A Shares are not listed or admitted to trading on any National Securities Exchange, the last quoted price on such day, or if not so quoted, the average of the high bid and low asked prices on such day in the over-the-counter market, as reported by any quotation system then in use with respect to such Class A Shares, or, if on any such day such Class A Shares are not quoted by any such system, the average of the closing bid and asked prices on such day as furnished by a professional market maker making a market in such Class A Shares selected by the Board of Directors, or if on any such day no market maker is making a market in such Class A Shares, the fair value of such Class A Shares on such day as determined by the Board of Directors.

"Code" means the Internal Revenue Code of 1986, as amended and in effect from time to time. Any reference herein to a specific section or sections of the Code shall be deemed to include a reference to any corresponding provision of any successor law.

"Combined Interest" has the meaning set forth in Section 11.3(a).

"Commences Commercial Service" means the date upon which a Capital Improvement is first put into commercial service by a Group Member (or other Person that is not a Subsidiary of a Group Member, as contemplated in the definition of "Capital Improvement") following completion of acquisition, construction, development, replacement, improvement, addition or expansion and testing, as applicable.

"Commission" means the United States Securities and Exchange Commission.

"Common Unit" means a limited liability company interest in the Company having the rights and obligations specified with respect to "Common Units" in this Agreement. The term Common Unit does not include a Subordinated Unit prior to its conversion into a Common Unit pursuant to the terms hereof.

"Common Unit Arrearage" means, with respect to any Common Unit, whenever issued, as to any Quarter wholly within the Subordination Period, the excess, if any, of (a) the Minimum Quarterly Distribution with respect to a Common Unit in respect of such Quarter over (b) the sum of all Available Cash distributed with respect to a Common Unit in respect of such Quarter pursuant to Section 6.4(a)(i).

"Company" means 8point3 Operating Company, LLC, a Delaware limited liability company.

"Company Employee" means any employee of a Group Member, the Managing Member or the General Partner.

"Company Group" means, collectively, the Company and its Subsidiaries.

"Company Minimum Gain" means that amount determined in accordance with the principles of Treasury Regulation Sections 1.704-2(b)(2) and 1.704-2(d).

"Conflicts Committee" has the meaning set forth in the Partnership Agreement.

"Construction Debt" means debt incurred to fund (a) all or a portion of a Capital Improvement, (b) interest payments (including periodic net payments under related interest rate swap agreements) and related fees on other Construction Debt or (c) distributions (including incremental Incentive Distributions) paid in respect of Construction Equity.

"Construction Equity" means equity issued to fund (a) all or a portion of a Capital Improvement, (b) interest payments (including periodic net payments under related interest rate swap agreements) and related fees on Construction Debt or (c) distributions paid in respect of Construction Equity and incremental Incentive Distributions in respect thereof. Construction Equity does not include equity issued in connection with the Initial Public Offering.

"Construction Period" means the period beginning on the date that a Group Member (or other Person that is not a Subsidiary of a Group Member, as contemplated in the definition of "Capital Improvement") enters into a binding obligation to commence a Capital Improvement and ending on the earlier to occur of the date that such Capital Improvement Commences Commercial Service and the date that the Group Member (or other Person that is not a Subsidiary of a Group Member, as contemplated in the definition of "Capital Improvement") abandons or disposes of such Capital Improvement.

"Contributed Property" means each property or other asset, in such form as may be permitted by the Delaware Act, but excluding cash, contributed or deemed contributed to the Company. Once the Carrying Value of a Contributed Property is adjusted pursuant to Section 5.3(d), such property or other asset shall no longer constitute a Contributed Property, but shall be deemed an Adjusted Property.

"Cumulative Common Unit Arrearage" means, with respect to any Common Unit, whenever issued, and as of the end of any Quarter, the excess, if any, of (a) the sum of the Common Unit Arrearages as to an Initial Common Unit for each of the Quarters within the Subordination Period ending on or before the last day of such Quarter over (b) the sum of any distributions theretofore made pursuant to Section 6.4(a)(ii) and the second sentence of Section 6.5 with respect to an Initial Common Unit (including any distributions to be made in respect of the last of such Quarters).

"Curative Allocation" means any allocation of an item of income, gain, deduction, loss or credit pursuant to the provisions of Section 6.1(c)(xi).

"Current Market Price" means, as of any date, for the Class A Shares or the Common Units, the average of the daily Closing Prices per Class A Share for the 20 consecutive Trading Days immediately prior to such date.

"Deferred Issuance and Distribution" means (i) the issuance by the Company of a number of additional Common Units that is equal to the excess, if any, of (a) the number of Class A Shares subject to the Underwriters' Option over (b) the number of Common Units equal to the aggregate number, if any, of Class A Shares actually purchased by and issued to the IPO Underwriters pursuant to the Underwriters' Option on one or more dates and (ii) the distribution

by the Company in an amount equal to the aggregate amount of cash, if any, contributed to the Company by the Partnership upon exercise of the Underwriters' Option.

"Delaware Act" means the Delaware Limited Liability Company Act, 6 Del C. Section 18-101, et seq., as amended, supplemented or restated from time to time, and any successor to such statute.

"Departing Managing Member" means a former Managing Member from and after the effective date of any withdrawal or removal of such former Managing Member pursuant to Section 11.1 or Section 11.2.

"Derivative Membership Interests" means any options, rights, warrants, appreciation rights, tracking, profit and phantom interests and other derivative securities relating to, convertible into or exchangeable for Membership Interests.

"Disqualified Person" means (a) a "tax-exempt entity" (unless such Person would be subject to tax under Section 511 of the Code on all income from the Company) or "tax-exempt controlled entity" (unless with respect to a "tax-exempt controlled entity," an election is made under Section 168(h)(6)(F)(ii) of the Code) as those terms are defined in Section 168(h) of the Code; (b) a Person described in Section 50(b)(3) (unless such Person would be subject to tax under Section 511 of the Code on all income from the Company), Section 50(b)(4) or Section 50(d) of the Code; (c) an entity described in paragraph (4) of Section 54(j) of the Code; or (d) any partnership or other pass-through entity (including a single-member disregarded entity) any direct or indirect partner of which (or other direct or indirect holder of an equity or profits interest) is described in clauses (a) through (c) above, unless such Person holds its interest in the partnership or other pass-through entity indirectly through an entity taxable as a corporation for U.S. federal income tax purposes, other than an (i) a "tax-exempt controlled entity" as defined in Section 168(h) (unless with respect to a "tax-exempt controlled entity," an election is made under Section 168(h)(6)(F)(ii) of the Code) or (ii) a corporation with respect to which the rules of Section 50(d) would apply.

"Disposed of Adjusted Property" has the meaning set forth in Section 6.1(c)(xiii)(B).

"Distribution Forbearance Period" means the period beginning on the IPO Closing Date and ending on the first business day of any Quarter commencing on or after March 1, 2016 that the Board of Directors, with the concurrence of the Conflicts Committee, determines that (a) the Company will be able to make aggregate distributions of Available Cash from Operating Surplus on the Outstanding Common Units, Subordinated Units and any other Outstanding Units that are senior or equal in right of distribution to the Subordinated Units with respect to equal to or exceeding the sum of the Minimum Quarterly Distribution on such Outstanding Common Units, Subordinated Units and other Outstanding Units, in each case in respect of such Quarter and the successive Quarter and (b) the Adjusted Operating Surplus for such Quarter and the successive Quarter will equal or exceed the sum of the Minimum Quarterly Distribution on all of the Common Units, Subordinated Units and other Units that are senior or equal in right of distribution to the Subordinated Units that are Outstanding on the first day of the first Quarter (and treating all Common Units and Subordinated Units as Outstanding, notwithstanding the proviso to the definition thereof).

"Economic Risk of Loss" has the meaning set forth in Treasury Regulation Section 1.752-2(a).

"Equity Plan" means any unit or equity purchase plan, restricted unit or equity plan or other similar equity compensation plan now or hereafter adopted by the Managing Member or the General Partner.

"Estimated Incremental Quarterly Tax Amount" has the meaning set forth in Section 6.9.

"Event Issue Value" means, with respect to any Common Unit as of any date of determination, (i) in the case of a Revaluation Event that includes the issuance of Class A Shares pursuant to a public offering and solely for cash, the price paid for such Class A Shares or (ii) in the case of any other Revaluation Event, the Closing Price of the Class A Shares on the date of such Revaluation Event or, if the Managing Member determines that a value for the Class A Shares other than such Closing Price more accurately reflects the Event Issue Value, the value determined by the Managing Member.

"Event of Withdrawal" has the meaning set forth in Section 11.1(a).

"Excess Distribution" has the meaning set forth in Section 6.1(c)(iii)(A).

"Excess Distribution Unit" has the meaning set forth in Section 6.1(c)(iii)(A).

"Exchange Act" means the Securities Exchange Act of 1934, as amended, supplemented or restated from time to time, and any successor to such statute.

"Exchange Agreement" means the Exchange Agreement, dated as of June 24, 2015, among the Managing Member, the General Partner, SunPower, First Solar Holdings and the Company.

"Expansion Capital Expenditures" means cash expenditures (including transaction expenses) for Capital Improvements. Expansion Capital Expenditures shall not include Maintenance Capital Expenditures or Investment Capital Expenditures. Expansion Capital Expenditures shall include interest payments (including periodic net payments under related interest rate swap agreements) and related fees paid in respect of the Construction Period on Construction Debt. Where cash expenditures are made in part for Expansion Capital Expenditures and in part for other purposes, the Managing Member shall determine the allocation between the amounts paid for each.

"Final Subordinated Units" has the meaning given such term in Section 6.1(c)(x)(A).

"First Liquidation Target Amount" has the meaning set forth in Section 6.1(b)(i)(D).

"First Solar" means, collectively, First Solar Holdings and MD Solar.

"First Solar Holdings" means First Solar 8point3 Holdings, LLC, a Delaware limited liability company.

"First Target Distribution" means $0.31455 per Unit per Quarter (or, with respect to periods of less than a full fiscal quarter, it means the product of $0.31455 multiplied by a fraction, of which the numerator is the number of days in such period and of which the denominator is the total number of days in such fiscal quarter), subject to adjustment in accordance with Section 5.12, Section 6.6 and Section 6.9.

"Fully Diluted Weighted Average Basis" means, when calculating the number of Outstanding Units for any period, the sum of (1) the weighted-average number of Outstanding Units during such period plus (2) all Membership Interests and Derivative Membership Interests (a) that are convertible into or exercisable or exchangeable for Units or for which Units are issuable, in each case that are senior to or *pari passu* with the Subordinated Units, (b) whose conversion, exercise or exchange price is less than the Current Market Price on the date of such calculation, (c) that may be converted into or exercised or exchanged for such Units prior to or during the Quarter immediately following the end of the period for which the calculation is being made without the satisfaction of any contingency beyond the control of the holder other than the payment of consideration and the compliance with administrative mechanics applicable to such conversion, exercise or exchange and (d) that were not converted into or exercised or exchanged for such Units during the period for which the calculation is being made; *provided*, that for purposes of determining the number of Outstanding Units on a Fully Diluted Weighted Average Basis when calculating whether the Subordination Period has ended or Subordinated Units are entitled to convert into Common Units pursuant to Section 5.5, such Membership Interests and Derivative Membership Interests shall be deemed to have been Outstanding Units only for the four Quarters that comprise the last four Quarters of the measurement period; and *provided*, *further*, that if consideration will be paid to any Group Member in connection with such conversion, exercise or exchange, the number of Units to be included in such calculation shall be that number equal to the difference between (i) the number of Units issuable upon such conversion, exercise or exchange and (ii) the number of Units that such consideration would purchase at the Current Market Price.

"General Partner" means 8point3 General Partner, LLC, a Delaware limited liability company, and its successors and permitted assigns that are admitted to the Managing Member as general partner of the Managing Member, in their capacity as general partner of the Managing Member (except as the context otherwise requires).

"Gross Liability Value" means, with respect to any Liability of the Company described in Treasury Regulation Section 1.752-7(b)(3)(i), the amount of cash that a willing assignor would pay to a willing assignee to assume such Liability in an arm's-length transaction.

"Group" means two or more Persons that, with or through any of their respective Affiliates or Associates, have any contract, arrangement, understanding or relationship for the purpose of acquiring, holding, voting (except voting pursuant to a revocable proxy or consent given to such Person in response to a proxy or consent solicitation made to 10 or more Persons), exercising investment power over or disposing of any Membership Interests with any other Person that beneficially owns, or whose Affiliates or Associates beneficially own, directly or indirectly, Membership Interests.

"Group Member" means a member of the Company Group.

"Group Member Agreement" means the partnership agreement of any Group Member that is a limited or general partnership, the limited liability company agreement of any Group Member that is a limited liability company, other than the Company, the certificate of incorporation and bylaws or similar organizational documents of any Group Member that is a corporation, the joint venture agreement or similar governing document of any Group Member that is a joint venture and the governing or organizational or similar documents of any other Group Member that is a Person other than a limited or general partnership, limited liability company, corporation or joint venture, as such may be amended, supplemented or restated from time to time.

"Hedge Contract" means any exchange, swap, forward, future, cap, floor, collar, option or other similar agreement or arrangement entered into for the purpose of reducing the exposure of a Group Member to fluctuations in interest rates, commodity prices or currency exchange rates in their operations or financing activities and not for speculative purposes.

"Holdings" means 8point3 Holding Company, LLC, a Delaware limited liability company.

"Holdings Limited Liability Company Agreement" means the Amended and Restated Limited Liability Company Agreement of Holdings, dated as of June 24, 2015, as the same may be amended, supplemented or restated from time to time.

"IDR Reset Common Units" has the meaning set forth in Section 5.12(a).

"IDR Reset Election" has the meaning set forth in Section 5.12(a).

"Incentive Distribution Right" means a Membership Interest having the rights and obligations specified with respect to Incentive Distribution Rights in this Agreement (and no other rights otherwise available to or other obligations of a holder of a Membership Interest).

"Incentive Distributions" means any amount of cash distributed to the holders of the Incentive Distribution Rights pursuant to Sections 6.4(a)(v), (vi) and (vii), and Sections 6.4(b)(iii), (iv) and (v).

"Incremental Income Taxes" has the meaning set forth in Section 6.9.

"Indemnitee" means (a) the Managing Member, (b) any Departing Managing Member, (c) any Person who is or was an Affiliate of the Managing Member or any Departing Managing Member, (d) any Person who is or was a manager, managing member, general partner, director, officer, fiduciary or trustee of (i) any Group Member, the Managing Member or any Departing Managing Member or (ii) any Affiliate of any Group Member, the Managing Member or any Departing Managing Member, (e) any Person who is or was serving at the request of the Managing Member or any Departing Managing Member or any Affiliate of the Managing Member or any Departing Managing Member as a manager, managing member, general partner, employee, agent, fiduciary or trustee of another Person owing a fiduciary duty to any Group Member; provided that a Person shall not be an Indemnitee by reason of providing, on a fee-for-services basis, trustee, fiduciary or custodial services, and (f) any Person the Managing Member designates as an "Indemnitee" for purposes of this Agreement because such Person's status,

service or relationship exposes such Person to potential claims, demands, suits or proceedings relating to the Company Group's business and affairs.

"Initial Common Units" means the Common Units outstanding on the IPO Closing Date.

"Initial Public Offering" means the initial offering and sale of Class A Shares to the public (including the offer and sale of Class A Shares pursuant to the Underwriters' Option), as described in the IPO Registration Statement.

"Initial Unit Price" means (a) with respect to the Common Units and the Subordinated Units, the initial public offering price per Class A Share at which the Class A Shares were first offered to the public for sale as set forth on the cover page of the IPO Prospectus or (b) with respect to any other class or series of Units, the price per Unit at which such class or series of Units is initially sold by the Company, as determined by the Managing Member, in each case adjusted as the Managing Member determines to be appropriate to give effect to any distribution, subdivision or combination of Units.

"Interim Capital Transactions" means the following transactions if they occur prior to the Liquidation Date: (a) borrowings, including sales of debt securities and other incurrences of indebtedness for borrowed money (other than Working Capital Borrowings) by any Group Member and sales of debt securities of any Group Member; (b) sales of equity interests of any Group Member to anyone other than a Group Member; (c) sales or other dispositions of any assets of any Group Member (including assets acquired using Investment Capital Expenditures) other than (i) sales or other dispositions of inventory, accounts receivable and other assets in the ordinary course of business and (ii) sales or other dispositions of assets as part of normal retirements or replacements; and (d) Capital Contributions received by the Company Group.

"Investment Capital Expenditures" means capital expenditures that are neither Expansion Capital Expenditures nor Maintenance Capital Expenditures.

"IPO Closing Date" means the first date on which Class A Shares are sold by the Managing Member to the IPO Underwriters pursuant to the provisions of the Underwriting Agreement.

"IPO Prospectus" means the final prospectus relating to the Initial Public Offering dated June 18, 2015 and filed by the Managing Member with the Commission pursuant to Rule 424 under the Securities Act on June 19, 2015.

"IPO Registration Statement" means the Registration Statement on Form S-1 (File No. 333-202634) as it has been or as it may be amended or supplemented from time to time, filed by the Managing Member with the Commission under the Securities Act to register the offering and sale of the Class A Shares in the Initial Public Offering.

"IPO Underwriter" means each Person named as an underwriter in Schedule A to the Underwriting Agreement who purchases Class A Shares pursuant thereto.

"Joint Venture" means a joint venture that is not a Subsidiary and through which a Group Member conducts its business and operations and in which such Group Member owns an equity interest.

"Liability" means any liability or obligation of any nature, whether accrued, contingent or otherwise.

"Liquidation Date" means (a) in the case of an event giving rise to the dissolution of the Company of the type described in clauses (a) and (b) of Section 12.2, the date on which the applicable time period during which the holders of Outstanding Units have the right to elect to continue the business of the Company has expired without such an election being made and (b) in the case of any other event giving rise to the dissolution of the Company, the date on which such event occurs.

"Liquidator" means one or more Persons selected by the Managing Member to perform the functions described in Section 12.4 as liquidating trustee of the Company within the meaning of the Delaware Act.

"Maintenance Capital Expenditures" means cash expenditures, including expenditures for (a) the acquisition (through an asset acquisition, merger, stock acquisition or other form of investment) by any Group Member of existing assets or assets under construction, (b) the construction or development of new capital assets by a Group Member, (c) the replacement, improvement or expansion of existing capital assets by a Group Member or (d) a capital contribution by a Group Member to a Person that is not a Subsidiary in which a Group Member has, or after such capital contribution will have, directly or indirectly, an equity interest, to fund such Group Member's share of the cost of the acquisition, construction or development of new, or the replacement, improvement or expansion of existing, capital assets by such Person, in each case if and to the extent such acquisition, construction, development, replacement, improvement or expansion is made to maintain, over the long-term, the operating capacity or operating income of the Company Group, in the case of clauses (a), (b) and (c), or such Person, in the case of clause (d), as the operating capacity or operating income of the Company Group or such Person, as the case may be, existed immediately prior to such acquisition, construction, development, replacement, improvement, expansion or capital contribution. For purposes of this definition, "long-term" generally refers to a period of not less than twelve months. Maintenance Capital Expenditures shall not include Expansion Capital Expenditures or Investment Capital Expenditures.

"Management Services Agreements" means, collectively, (i) the Management Services Agreement, dated as of June 24, 2015, among the Company, the Managing Member, the General Partner and SunPower Capital Services, LLC and (ii) the Management Services Agreement, dated as of June 24, 2015, among the Company, the Managing Member, the General Partner, Holdings and First Solar 8point3 Management Services, LLC.

"Managing Member" means 8point3 Energy Partners LP, a Delaware limited partnership, and its successors and permitted assigns that are admitted to the Company as the managing member of the Company, in its capacity as the managing member of the Company. The Managing Member is the sole managing member of the Company and the holder of the

Managing Member Interest. For the avoidance of doubt, such Person shall be the Managing Member solely with respect to the Managing Member Interest and shall be a Non-Managing Member with respect to any Non-Managing Member Interests of such Person.

"Managing Member Interest" means the non-economic management interest of the Managing Member in the Company (in its capacity as managing member without reference to any Membership Interest), which includes any and all rights, powers and benefits to which the Managing Member is entitled as provided in this Agreement, together with all obligations of the Managing Member to comply with the terms and provisions of this Agreement. The Managing Member Interest does not include any rights to ownership or profits or losses or any rights to receive distributions from operations or upon the liquidation or winding-up of the Company.

"MD Solar" means Maryland Solar Holdings, Inc., a Delaware corporation.

"Member" means any of the Managing Member and the Non-Managing Members; provided, however, that, for purposes of the provisions of this Agreement relating to the maintenance of Capital Accounts and the allocation of items of income, gain, loss, deduction, or credit, the term "Members" shall not include the Managing Member for so long as the Managing Member's sole interest in the Company is a non-economic interest.

"Member Nonrecourse Debt" has the meaning set forth in Treasury Regulation Section 1.704-2(b)(4).

"Member Nonrecourse Debt Minimum Gain" has the meaning set forth in Treasury Regulation Section 1.704-2(i)(2).

"Member Nonrecourse Deductions" means any and all items of loss, deduction or expenditure (including any expenditure described in Section 705(a)(2)(B) of the Code) that, in accordance with the principles of Treasury Regulation Section 1.704-2(i), are attributable to a Member Nonrecourse Debt.

"Membership Interest" means the Managing Member Interest and any class or series of equity interest in the Company, which shall include any Non-Managing Member Interests but shall exclude any Derivative Membership Interests.

"Merger Agreement" has the meaning set forth in Section 14.1.

"Minimum Quarterly Distribution" means $0.2097 per Unit per Quarter (or with respect to periods of less than a full fiscal quarter, it means the product of $0.2097 multiplied by a fraction, of which the numerator is the number of days in such period and of which the denominator is the total number of days in such fiscal quarter), subject to adjustment in accordance with Section 6.6 and Section 6.9.

"National Securities Exchange" means an exchange registered with the Commission under Section 6(a) of the Exchange Act (or any successor to such Section).

"Net Agreed Value" means, (a) in the case of any Contributed Property, the Agreed Value of such Contributed Property reduced by any Liabilities either assumed by the Company

upon such contribution or to which such Contributed Property is subject when contributed and (b) in the case of any property distributed to a Member by the Company, the Company's Carrying Value of such property (as adjusted pursuant to Section 5.3(d)) at the time such property is distributed, reduced by any Liabilities either assumed by such Member upon such distribution or to which such property is subject at the time of distribution, in either case as determined and required by the Treasury Regulations promulgated under Section 704(b) of the Code.

"Net Income" means, for any taxable period, the excess, if any, of the Company's items of income and gain (other than those items taken into account in the computation of Net Termination Gain or Net Termination Loss) for such taxable period over the Company's items of loss and deduction (other than those items taken into account in the computation of Net Termination Gain or Net Termination Loss) for such taxable period. The items included in the calculation of Net Income shall be determined in accordance with Section 5.3(b) and shall not include any items specially allocated under Section 6.1(c); *provided, however*, that the determination of the items that have been specially allocated under Section 6.1(c) shall be made without regard to any reversal of such items under Section 6.1(c)(xiii).

"Net Loss" means, for any taxable period, the excess, if any, of the Company's items of loss and deduction (other than those items taken into account in the computation of Net Termination Gain or Net Termination Loss) for such taxable period over the Company's items of income and gain (other than those items taken into account in the computation of Net Termination Gain or Net Termination Loss) for such taxable period. The items included in the calculation of Net Loss shall be determined in accordance with Section 5.3(b) and shall not include any items specially allocated under Section 6.1(c); *provided, however*, that the determination of the items that have been specially allocated under Section 6.1(c) shall be made without regard to any reversal of such items under Section 6.1(c)(xiii).

"Net Positive Adjustment" means, with respect to any Member, the excess, if any, of the total positive adjustments over the total negative adjustments made to the Capital Account of such Member pursuant to Book-Up Events and Book-Down Events.

"Net Termination Gain" means, for any taxable period, (a) the sum, if positive, of all items of income, gain, loss or deduction (determined in accordance with Section 5.3(b)) that are recognized by the Company (i) after the Liquidation Date or (ii) upon the sale, exchange or other disposition of all or substantially all of the assets of the Company Group, taken as a whole, in a single transaction or a series of related transactions (excluding any disposition to a member of the Company Group), or (b) the excess, if any, of the aggregate amount of Unrealized Gain over the aggregate amount of Unrealized Loss deemed recognized by the Company pursuant to Section 5.3(d) on the date of a Revaluation Event; *provided, however*, that the items included in the determination of Net Termination Gain shall not include any items of income, gain or loss specially allocated under Section 6.1(c).

"Net Termination Loss" means, for any taxable period, (a) the sum, if negative, of all items of income, gain, loss or deduction (determined in accordance with Section 5.3(b)) that are recognized by the Company (i) after the Liquidation Date or (ii) upon the sale, exchange or other disposition of all or substantially all of the assets of the Company Group, taken as a whole, in a

single transaction or a series of related transactions (excluding any disposition to a member of the Company Group), or (b) the excess, if any, of the aggregate amount of Unrealized Loss over the aggregate amount of Unrealized Gain deemed recognized by the Company pursuant to Section 5.3(d) on the date of a Revaluation Event; *provided*, *however*, that items included in the determination of Net Termination Loss shall not include any items of income, gain or loss specially allocated under Section 6.1(c).

"Non-Managing Member" means the Sponsors, Holdings, each additional Person that becomes a Non-Managing Member pursuant to the terms of this Agreement and any Departing Managing Member upon the change of its status from Managing Member to Non-Managing Member pursuant to Section 11.3, in each case, in such Person's capacity as a Non-Managing Member. Non-Managing Members may include custodians, nominees or any other individual or entity in its own or any representative capacity. For the avoidance of doubt, the Managing Member shall be a Non-Managing Member for all purposes of this Agreement with respect to any Non-Managing Member Interest.

"Non-Managing Member Interest" means an interest of a Non-Managing Member in the Company, which may be evidenced by Common Units or other Membership Interests (other than a Managing Member Interest) or a combination thereof (but excluding Derivative Membership Interests), and includes any and all benefits to which such Member is entitled as provided in this Agreement, together with all obligations of such Member pursuant to the terms and provisions of this Agreement.

"Noncompensatory Option" has the meaning set forth in Treasury Regulation Section 1.721-2(f).

"Nonrecourse Built-in Gain" means with respect to any Contributed Properties or Adjusted Properties that are subject to a mortgage or pledge securing a Nonrecourse Liability, the amount of any taxable gain that would be allocated to the Members pursuant to Section 6.2(b) if such properties were disposed of in a taxable transaction in full satisfaction of such liabilities and for no other consideration.

"Nonrecourse Deductions" means any and all items of loss, deduction or expenditure (including any expenditure described in Section 705(a)(2)(B) of the Code) that, in accordance with the principles of Treasury Regulation Section 1.704-2(b)(1), are attributable to a Nonrecourse Liability.

"Nonrecourse Liability" has the meaning set forth in Treasury Regulation Section 1.752-1(a)(2).

"Operating Expenditures" means (i) all Company Group cash expenditures (or the Company's share of expenditures in the case of Subsidiaries that are not wholly owned), including taxes, compensation of officers and directors of the General Partner, reimbursement of expenses of the General Partner and its Affiliates, Maintenance Capital Expenditures, repayment of Working Capital Borrowings and payments made under any Hedge Contracts, and (ii) all cash expenditures of the Managing Member, including reimbursement of expenses of the General

Partner and its Affiliates, other than federal income taxes payable by the Managing Member, subject to the following:

(a) repayments of Working Capital Borrowings deducted from Operating Surplus pursuant to clause (b)(iii) of the definition of Operating Surplus shall not constitute Operating Expenditures when actually repaid;

(b) payments (including prepayments and prepayment penalties and the purchase price of indebtedness that is repurchased and cancelled) of principal of and premium on indebtedness other than Working Capital Borrowings shall not constitute Operating Expenditures;

(c) Operating Expenditures shall not include (i) Expansion Capital Expenditures or Investment Capital Expenditures, (ii) payment of transaction expenses (including taxes) relating to Interim Capital Transactions, (iii) distributions to Members, or (iv) repurchases of Membership Interests, including repurchases or redemptions of Membership Interests under the Exchange Agreement, other than repurchases of Membership Interests by the Company to satisfy obligations under employee benefit plans or reimbursement of expenses of the General Partner for purchases of Membership Interests by the General Partner to satisfy obligations under employee benefit plans;

(d) (i) amounts paid in connection with the initial purchase of a Hedge Contract shall be amortized over the life of such Hedge Contract and (ii) payments made in connection with the termination of any Hedge Contract prior to its scheduled settlement or termination date shall be included in equal quarterly installments over the remaining scheduled life of such Hedge Contract; and

(e) any expenditures made by the Company Group for which a Group Member is entitled to be reimbursed or indemnified by a Sponsor pursuant to Section 2.2, 3.1 or 3.2 of the Omnibus Agreement shall not constitute Operating Expenditures.

Where capital expenditures consist of both (y) Maintenance Capital Expenditures and (z) Expansion Capital Expenditures and/or Investment Capital Expenditures, the Board of Directors shall determine the allocation between the amounts paid for each.

"Operating Surplus" means, with respect to any period ending prior to the Liquidation Date, on a cumulative basis and without duplication,

(a) the sum of (i) $45.0 million, (ii) all cash receipts of the Company Group (or the Company's share of cash receipts in the case of Subsidiaries that are not wholly owned) for the period beginning on the IPO Closing Date and ending on the last day of such period, but excluding cash receipts from Interim Capital Transactions (provided that cash receipts from the termination of a Hedge Contract prior to its scheduled settlement or termination date shall be included in Operating Surplus in equal quarterly installments over the remaining scheduled life of such Hedge Contract), (iii) all cash receipts of the Company Group (or the Company's share of cash receipts in the case of Subsidiaries that are not wholly owned) resulting from dividends or distributions received after the end of such period from equity interests held by the Company in any Person other than a

Subsidiary in respect of operations conducted by such Person during such period but excluding cash receipts from Interim Capital Transactions by such Persons, (iv) all cash receipts of the Company Group (or the Company's share of cash receipts in the case of Subsidiaries that are not wholly owned) after the end of such period but on or before the date of determination of Operating Surplus with respect to such period resulting from Working Capital Borrowings and (v) the amount of cash distributions paid in respect of the Construction Period (including incremental Incentive Distributions) on Construction Equity, less

(b) the sum of (i) Operating Expenditures for the period beginning on the IPO Closing Date and ending on the last day of such period, (ii) the amount of cash reserves (or the Company's share of cash reserves in the case of Subsidiaries that are not wholly owned) established by the General Partner, the Managing Member or the boards of any Subsidiaries of the Company to provide funds for future Operating Expenditures, (iii) all Working Capital Borrowings not repaid within twelve months after having been incurred, or repaid within such 12-month period with the proceeds of additional Working Capital Borrowings and (iv) any cash loss realized on the disposition of an Investment Capital Expenditure;

provided, however, that disbursements made (including contributions to a Group Member or disbursements on behalf of a Group Member), cash received or cash reserves established, increased or reduced after the end of such period but on or before the date of determination of Available Cash with respect to such period shall be deemed to have been made, established, increased or reduced, for purposes of determining Operating Surplus, within such period if the Managing Member so determines.

Notwithstanding the foregoing, "Operating Surplus" with respect to the Quarter in which the Liquidation Date occurs and any subsequent Quarter shall equal zero. Cash receipts from Investment Capital Expenditures shall be treated as cash receipts only to the extent they are a return on capital, but in no event shall a return of capital be treated as cash receipts.

"Opinion of Counsel" means a written opinion of counsel (who may be regular counsel to, or the general counsel or other inside counsel of, the Company, the Managing Member or the General Partner or any of its Affiliates) acceptable to the Managing Member or to such other person selecting such counsel or obtaining such opinion.

"Optionee" means a Person to whom a unit option is granted under any Unit Option Plan.

"Outstanding" means, with respect to Membership Interests, all Membership Interests that are issued by the Company and reflected as outstanding in the Register as of the date of determination; *provided*, that during the Distribution Forbearance Period, the Common Units and Subordinated Units owned by the Sponsors shall be deemed to not be Outstanding for purposes of Section 6.3, Section 6.4 and Section 6.5 and for purposes of determining whether the tests set forth in the definition of Subordination Period have been met.

"Partnership Agreement" means the Amended and Restated Agreement of Limited Partnership of the Managing Member, dated as of June 24, 2015, as the same may be amended, supplemented or restated from time to time.

"Per Unit Capital Amount" means, as of any date of determination, the Capital Account, stated on a per Unit basis, underlying the Units held by the Managing Member.

"Percentage Interest" means as of any date of determination (a) as to any Unitholder with respect to Units, as the case may be, the quotient obtained by dividing (A) the number of Units held by such Unitholder by (B) the total number of Outstanding Units. The Percentage Interest with respect to the Managing Member Interest and the Incentive Distribution Rights shall at all times be zero.

"Person" means an individual or a corporation, firm, limited liability company, partnership, joint venture, trust, estate, unincorporated organization, association, government agency or political subdivision thereof or other entity.

"Plan of Conversion" has the meaning set forth in Section 14.1.

"Pro Rata" means (a) when used with respect to Units or any class thereof, apportioned among all designated Units in accordance with their relative Percentage Interests, (b) when used with respect to Members or Record Holders, apportioned among all Members or Record Holders in accordance with their relative Percentage Interests and (c) when used with respect to holders of Incentive Distribution Rights, apportioned among all holders of Incentive Distribution Rights in accordance with the relative number or percentage of Incentive Distribution Rights held by each such holder.

"Quarter" means, unless the context requires otherwise, a fiscal quarter of the Company, or, with respect to the fiscal quarter of the Company that includes the IPO Closing Date, the portion of such fiscal quarter from the IPO Closing Date.

"Recapture Income" means any gain recognized by the Company (computed without regard to any adjustment required by Section 734 or Section 743 of the Code) upon the disposition of any property or asset of the Company, which gain is characterized as ordinary income because it represents the recapture of deductions previously taken with respect to such property or asset.

"Record Date" means the date established by the Managing Member or otherwise in accordance with this Agreement for determining (a) the identity of the Record Holders entitled to receive notice of, or to vote at, any meeting of Non-Managing Members or entitled to vote by ballot or give approval of Company action in writing without a meeting or entitled to exercise rights in respect of, any lawful action of Non-Managing Members (including voting) or (b) the identity of Record Holders entitled to receive any report or distribution or to participate in any offer.

"Record Holder" means the Person in whose name any Membership Interest is registered in the Register as of the Company's close of business on a particular Business Day.

"Register" has the meaning set forth in Section 4.5(a).

"Remaining Net Positive Adjustments" means as of the end of any taxable period, (i) with respect to the Unitholders holding Common Units or Subordinated Units, the excess of (a) the Net Positive Adjustments of the Unitholders holding Common Units or Subordinated Units as of the end of such period over (b) the sum of those Unitholders' Share of Additional Book Basis Derivative Items for each prior taxable period, and (ii) with respect to the holders of Incentive Distribution Rights, the excess of (a) the Net Positive Adjustments of the holders of Incentive Distribution Rights as of the end of such period over (b) the sum of the Share of Additional Book Basis Derivative Items of the holders of the Incentive Distribution Rights for each prior taxable period.

"Required Allocations" means any allocation of an item of income, gain, loss or deduction pursuant to Section 6.1(c).

"Reset MQD" has the meaning set forth in Section 5.12(d).

"Reset Notice" has the meaning set forth in Section 5.12(b).

"Retained Converted Subordinated Units" has the meaning set forth in Section 5.3(c)(ii).

"Revaluation Event" means an event that results in adjustment of the Carrying Value of each Company property pursuant to Section 5.3(d).

"ROFO Agreement" means, collectively, (i) the Right of First Offer Agreement, dated as of June 24, 2015, by and between the Company and SunPower Corporation and (ii) the Right of First Offer Agreement, dated as of June 24, 2015, by and between the Company and First Solar, Inc.

"Second Liquidation Target Amount" has the meaning set forth in Section 6.1(b)(i)(E).

"Second Target Distribution" means $0.366975 per Unit per Quarter (or, with respect to periods of less than a full fiscal quarter, it means the product of $0.366975 multiplied by a fraction of which the numerator is equal to the number of days in such period and of which the denominator is the total number of days in such fiscal quarter), subject to adjustment in accordance with Section 5.12, Section 6.6 and Section 6.9.

"Securities Act" means the Securities Act of 1933, as amended, supplemented or restated from time to time, and any successor to such statute.

"Share of Additional Book Basis Derivative Items" means in connection with any allocation of Additional Book Basis Derivative Items for any taxable period, (i) with respect to the Unitholders holding Common Units or Subordinated Units, the amount that bears the same ratio to such Additional Book Basis Derivative Items as the Unitholders' Remaining Net Positive Adjustments as of the end of such taxable period bears to the Aggregate Remaining Net Positive Adjustments as of that time, and (ii) with respect to the Members holding Incentive Distribution Rights, the amount that bears the same ratio to such Additional Book Basis Derivative Items as the Remaining Net Positive Adjustments of the Members holding the Incentive Distribution

Rights as of the end of such taxable period bear to the Aggregate Remaining Net Positive Adjustments as of that time.

"Special Approval" means approval by a majority of the members of the Conflicts Committee.

"Sponsor" or "Sponsors" means SunPower and First Solar, individually or collectively, as applicable.

"Subordinated Unit" means a Membership Interest having the rights and obligations specified with respect to Subordinated Units in this Agreement. The term "Subordinated Unit" does not include a Common Unit. A Subordinated Unit that is convertible into a Common Unit shall not constitute a Common Unit until such conversion occurs.

"Subordination Period" means the period commencing on the IPO Closing Date and ending on the first to occur of the following dates:

(a) the first Business Day following the distribution of Available Cash to Members pursuant to Section 6.3(a) in respect of any Quarter beginning with the Quarter ending on August 31, 2018, in respect of which (i)(A) aggregate distributions of Available Cash from Operating Surplus on the Outstanding Common Units, Subordinated Units and any other Outstanding Units that are senior or equal in right of distribution to the Subordinated Units with respect to each of the three consecutive, non-overlapping four-Quarter periods immediately preceding such date equaled or exceeded the sum of the Minimum Quarterly Distribution on such Outstanding Common Units, Subordinated Units and other Outstanding Units, in each case in respect of such periods and (B) the Adjusted Operating Surplus for each of such periods equaled or exceeded the sum of the Minimum Quarterly Distribution on all of the Common Units, Subordinated Units and other Units that are senior or equal in right of distribution to the Subordinated Units and in each case that were Outstanding during such period on a Fully Diluted Weighted Average Basis, and (ii) there are no Cumulative Common Unit Arrearages; and

(b) the first Business Day following the distribution of Available Cash to Members pursuant to Section 6.3(a) in respect of any Quarter beginning with the Quarter ending on August 31, 2016 in respect of which (i)(A) aggregate distributions of Available Cash from Operating Surplus on the Outstanding Common Units, Subordinated Units and any other Outstanding Units that are senior or equal in right of distribution to the Subordinated Units with respect to the four consecutive-Quarter period immediately preceding such date equaled or exceeded 150% of the Minimum Quarterly Distribution on all of such Outstanding Common Units, Subordinated Units and other Outstanding Units, in each case in respect of such period, and (B) the Adjusted Operating Surplus for such period equaled or exceeded 150% of the sum of the Minimum Quarterly Distribution on all of the Common Units, Subordinated Units and other Units that are senior or equal in right of distribution to the Subordinated Units, in each case that were Outstanding during such period on a Fully Diluted Weighted Average Basis and (ii) there are no Cumulative Common Unit Arrearages.

"Subsidiary" means, with respect to any Person, (a) a corporation of which more than 50% of the voting power of shares entitled (without regard to the occurrence of any contingency) to vote in the election of directors or other governing body of such corporation is owned, directly or indirectly, at the date of determination, by such Person, by one or more Subsidiaries (as defined, but excluding subsection (d) of this definition) of such Person or a combination thereof, (b) a partnership (whether general or limited) in which such Person or a Subsidiary (as defined, but excluding subsection (d) of this definition) of such Person is, at the date of determination, a general or limited partner of such partnership, but only if such Person, one or more Subsidiaries (as defined, but excluding subsection (d) of this definition) of such Person, or a combination thereof, controls such partnership on the date of determination; (c) any other Person in which such Person, one or more Subsidiaries (as defined, but excluding subsection (d) of this definition) of such Person, or a combination thereof, directly or indirectly, at the date of determination, has (i) a majority ownership interest or (ii) the power to elect or direct the election of a majority of the directors or other governing body of such Person; or (d) any other Person formed by such Person, one or more Subsidiaries (as defined, but excluding subsection (d) of this definition) of such Person, or a combination thereof, and a third party investor in order to utilize various federal income tax incentives for the development of solar or other renewable projects that meet the following criteria: (i) such Person, one or more Subsidiaries (as defined, but excluding subsection (d) of this definition) of such Person, or a combination thereof, has less than a majority ownership interest in such other Person or less than the power to elect or direct the election of a majority of the directors or other governing body of such other Person; (ii) such Person, one or more Subsidiaries (as defined, but excluding subsection (d) of this definition) of such Person, or a combination thereof, has, directly or indirectly, at the date of determination, at least a 49% ownership interest in such other Person; (iii) the Partnership accounts for such other Person (under U.S. GAAP, as in effect on the later of the date of investment in such other Person or material expansion of the operations of such other Person) on a consolidated or equity accounting basis; (iv) such Person, one or more Subsidiaries (as defined, but excluding subsection (d) of this definition) of such Person, or a combination thereof, has, directly or indirectly, material negative control rights regarding such other Person, including such Person's ability to materially expand its operations beyond that contemplated at the date of investment in such other Person; and (v) such other Person is obligated under its constituent documents or as a result of unanimous agreement of its owners, to distribute to its owners all of its distributable cash on at least a semiannual basis (less any cash reserves that are approved by such Person, one or more Subsidiaries (as defined, but excluding subsection (d) of this definition) of such Person, or a combination thereof).

"SunPower" means SunPower YC Holdings, LLC, a Delaware limited liability company.

"Surviving Business Entity" has the meaning set forth in Section 14.2(b)(ii).

"Target Distributions" means, collectively, the Minimum Quarterly Distribution, the First Target Distribution, Second Target Distribution and Third Target Distribution.

"Third Target Distribution" means $0.4194 per Unit per Quarter (or, with respect to periods of less than a full fiscal quarter, it means the product of $0.4194 multiplied by a fraction, of which the numerator is equal to the number of days in such period and of which the

denominator is the total number of days in such fiscal quarter), subject to adjustment in accordance with Sections 5.12, 6.6 and 6.9.

"Trading Day" means a day on which the principal National Securities Exchange on which the Class A Shares or the referenced Membership Interests of any class are listed or admitted for trading is open for the transaction of business or, if such Class A Shares or such Membership Interests are not listed or admitted for trading on any National Securities Exchange, a day on which banking institutions in New York City are not legally required to be closed.

"Transaction Documents" has the meaning set forth in Section 7.1(b).

"transfer" has the meaning set forth in Section 4.4(a).

"Treasury Regulations" means the regulations (including temporary regulations) promulgated by the United States Department of the Treasury pursuant to and in respect of provisions of the Code. All references herein to sections of the Treasury Regulations shall include any corresponding provision or provisions of succeeding, similar or substitute, temporary or final Treasury Regulations.

"Underwriters' Option" means the option to purchase additional Class A Shares granted to the IPO Underwriters by the Managing Member pursuant to the Underwriting Agreement.

"Underwriting Agreement" means the Underwriting Agreement, dated as of June 18, 2015, among the IPO Underwriters, the Managing Member, the General Partner and Holdings, providing for the purchase of Class A Shares by the IPO Underwriters.

"Unit" means a Membership Interest that is designated by the Managing Member as a "Unit" and shall include Common Units and Subordinated Units but shall not include Incentive Distribution Rights.

"Unit Majority" means (i) during the Subordination Period, a majority of the Outstanding Common Units (excluding Common Units whose voting power is, with respect to the subject vote, controlled by the General Partner or its Affiliates, other than the Managing Member, through ownership or otherwise), voting as a class, and a majority of the Outstanding Subordinated Units, voting as a class, and (ii) after the end of the Subordination Period, a majority of the Outstanding Common Units.

"Unit Option Plan" means any unit option plan now or hereafter adopted by the Company, the Managing Member or the General Partner.

"Unitholders" means the Record Holders of Units.

"Unpaid MQD" has the meaning set forth in Section 6.1(b)(i)(B).

"Unrealized Gain" means, as of any date of determination, the excess, if any, attributable to any item of Company property, of (a) the fair market value of such property as of such date (as determined under Section 5.3(d)) over (b) the Carrying Value of such property as of such date (prior to any adjustment to be made pursuant to Section 5.3(d) as of such date).

"Unrealized Loss" means, as of any date of determination, the excess, if any, attributable to any item of Company property, of (a) the Carrying Value of such property as of such date (prior to any adjustment to be made pursuant to Section 5.3(d) as of such date) over (b) the fair market value of such property as of such date (as determined under Section 5.3(d)).

"Unrecovered Initial Unit Price" means at any time, with respect to a Unit, the Initial Unit Price less the sum of all distributions constituting Capital Surplus theretofore made in respect of an Initial Common Unit and any distributions of cash (or the Net Agreed Value of any distributions in kind) in connection with the dissolution and liquidation of the Company theretofore made in respect of an Initial Common Unit, adjusted as the Managing Member determines to be appropriate to give effect to any distribution, subdivision or combination of such Units.

"Unrestricted Person" means (a) each Indemnitee, (b) each Member, (c) each Person who is or was a member, partner, director, officer, employee or agent of any Group Member, a Managing Member or any Departing Managing Member or any Affiliate of any Group Member, a Managing Member or any Departing Managing Member and (d) any Person the Managing Member designates from time to time as an "Unrestricted Person" for purposes of this Agreement.

"U.S. GAAP" means United States generally accepted accounting principles, as in effect from time to time, consistently applied.

"Working Capital Borrowings" means borrowings incurred pursuant to a credit facility, commercial paper facility or similar financing arrangement that are used solely for working capital purposes or to pay distributions to the Members; provided that when such borrowings are incurred it is the intent of the borrower to repay such borrowings within 12 months from the date of such borrowings other than from additional Working Capital Borrowings.

Section 1.2 *Construction.* Unless the context requires otherwise: (i) any pronoun used in this Agreement shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns, pronouns and verbs shall include the plural and vice versa; (ii) references to Articles and Sections refer to Articles and Sections of this Agreement; (iii) the terms "include," "includes," "including" or words of like import shall be deemed to be followed by the words "without limitation"; and (iv) the terms "hereof," "herein" or "hereunder" refer to this Agreement as a whole and not to any particular provision of this Agreement. The table of contents and headings contained in this Agreement are for reference purposes only, and shall not affect in any way the meaning or interpretation of this Agreement. The Managing Member has the power to construe and interpret this Agreement and to act upon any such construction or interpretation. To the fullest extent permitted by law, any construction or interpretation of this Agreement by the Managing Member and any action taken pursuant thereto and any determination made by the Managing Member in good faith shall, in each case, be conclusive and binding on all Record Holders and all other Persons for all purposes.

ARTICLE II
ORGANIZATION

Section 2.1 *Formation.* SunPower has formed the Company as a limited liability company pursuant to the provisions of the Delaware Act and hereby amends and restates the original Limited Liability Company Agreement of 8point3 Operating Company, LLC in its entirety. This amendment and restatement shall become effective on the date of this Agreement. Except as expressly provided to the contrary in this Agreement, the rights, duties, liabilities and obligations of the Members and the administration, dissolution and termination of the Company shall be governed by the Delaware Act.

Section 2.2 *Name.* The name of the Company shall be "8point3 Operating Company, LLC". Subject to applicable law, the Company's business may be conducted under any other name or names as determined by the Managing Member, including the name of the Managing Member. The words "limited liability company," "LLC" or similar words or letters shall be included in the Company's name where necessary for the purpose of complying with the laws of any jurisdiction that so requires. The Managing Member may change the name of the Company at any time and from time to time and shall notify the Non-Managing Members of such change in the next regular communication to the Members.

Section 2.3 *Registered Office; Registered Agent; Principal Office; Other Offices.* Unless and until changed by the Managing Member, the registered office of the Company in the State of Delaware shall be located at 1209 Orange Street, Wilmington, New Castle County, Delaware 19801, and the registered agent for service of process on the Company in the State of Delaware at such registered office shall be The Corporation Trust Company. The principal office of the Company shall be located at 77 Rio Robles, San Jose, California 95134 or such place as the Managing Member may from time to time designate. The Company may maintain offices at such other place or places within or outside the State of Delaware as the Managing Member determines to be necessary or appropriate. The address of the Managing Member shall be 77 Rio Robles, San Jose, California 95134 or such other place as the Managing Member may from time to time designate.

Section 2.4 *Purpose and Business.* The purpose and nature of the business to be conducted by the Company shall be to (a) engage directly in, or enter into or form, hold and dispose of any corporation, partnership, joint venture, limited liability company or other arrangement to engage indirectly in, any business activity that is approved by the Managing Member and that lawfully may be conducted by a limited liability company organized pursuant to the Delaware Act and, in connection therewith, to exercise all of the rights and powers conferred upon the Company pursuant to the agreements relating to such business activity, and (b) do anything necessary or appropriate to the foregoing, including the making of capital contributions or loans to a Group Member; provided, however, that the Managing Member shall not cause the Company to engage, directly or indirectly, in any business activity that the Managing Member determines would be reasonably likely to cause the Company to be treated as an association taxable as a corporation or otherwise taxable as an entity for federal income tax purposes. The Managing Member has no obligation or duty (including any fiduciary duty) to the Company or the Members to propose or approve, and may decline to propose or approve, the conduct by the Company of any business in its sole discretion.

Section 2.5 *Powers.* The Company shall be empowered to do any and all acts and things necessary, appropriate, proper, advisable, incidental to or convenient for the furtherance and accomplishment of the purposes and business described in Section 2.4 and for the protection and benefit of the Company.

Section 2.6 *Term.* The term of the Company commenced upon the filing of the Certificate of Formation in accordance with the Delaware Act and shall continue in existence until the dissolution of the Company in accordance with the provisions of Article XII. The existence of the Company as a separate legal entity shall continue until the cancellation of the Certificate of Formation as provided in the Delaware Act.

Section 2.7 *Title to Company Assets.* Title to the assets of the Company, whether real, personal or mixed and whether tangible or intangible, shall be deemed to be owned by the Company as an entity, and no Member, individually or collectively, shall have any ownership interest in such assets of the Company or any portion thereof. Title to any or all assets of the Company may be held in the name of the Company, the Managing Member, one or more of its Affiliates or one or more nominees of the Managing Member or its Affiliates, as the Managing Member may determine. The Managing Member hereby declares and warrants that any assets of the Company for which record title is held in the name of the Managing Member or one or more of its Affiliates or one or more nominees of the Managing Member or its Affiliates shall be held by the Managing Member or such Affiliate or nominee for the use and benefit of the Company in accordance with the provisions of this Agreement; provided, however, that the Managing Member shall use reasonable efforts to cause record title to such assets (other than those assets in respect of which the Managing Member determines that the expense and difficulty of conveyancing makes transfer of record title to the Company impracticable) to be vested in the Company or one or more of the Company's designated Affiliates as soon as reasonably practicable; provided, further, that, prior to the withdrawal or removal of the Managing Member or as soon thereafter as practicable, the Managing Member shall use reasonable efforts to effect the transfer of record title to the Company and, prior to any such transfer, will provide for the use of such assets in a manner satisfactory to any successor Managing Member. All assets of the Company shall be recorded as the property of the Company in its books and records, irrespective of the name in which record title to such assets of the Company is held.

ARTICLE III
RIGHTS OF MEMBERS

Section 3.1 *Limitation of Liability.* The Members shall have no liability under this Agreement except as expressly provided in this Agreement or the Delaware Act.

Section 3.2 *Management of Business.* Other than the Managing Member, no Member, in its capacity as such, shall participate in the operation, management or control of the Company's business, transact any business in the Company's name or have the power to sign documents for or otherwise bind the Company.

Section 3.3 *Outside Activities of Members*. Subject to the provisions of Section 7.6 and the ROFO Agreement, each Member shall be entitled to and may have business interests and engage in business activities in addition to those relating to the Company, including business

interests and activities in direct competition with the Company Group. Neither the Company nor any of the other Members shall have any rights by virtue of this Agreement in any business ventures of any Member.

Section 3.4 *Rights of Members.*

(a) Each Member shall have the right, upon written request and at such Member's own expense to obtain a copy of this Agreement and the Certificate of Formation and all amendments thereto.

(b) Each of the Members and each other Person or Group who acquires an interest in Membership Interests hereby agrees to the fullest extent permitted by law that they do not have any rights as Members to receive any information either pursuant to Section 18-305(a) of the Delaware Act or otherwise except for the right to obtain a copy of this Agreement and the Certificate of Formation set forth in Section 3.4(a).

ARTICLE IV
CERTIFICATES; RECORD HOLDERS; TRANSFER OF MEMBERSHIP INTERESTS

Section 4.1 *Certificates.* Owners of Membership Interests and, where appropriate, Derivative Membership Interests, shall be recorded in the Register and, when deemed appropriate by the Board of Directors, ownership of such interests shall be evidenced by a physical certificate or book entry notation in the Register. Notwithstanding anything to the contrary in this Agreement, unless the Managing Member shall determine otherwise in respect of some or all of any or all classes of Membership Interests and Derivative Membership Interests, Membership Interests and Derivative Membership Interests shall not be evidenced by physical certificates. Certificates, if any, shall be executed on behalf of the Membership by the Chief Executive Officer, President, Chief Financial Officer or any Vice President and the Secretary, any Assistant Secretary, or other authorized officer of the General Partner. The signatures of such officers upon a certificate may, to the extent permitted by law, be facsimiles. In case any officer who has signed or whose signature has been placed upon such certificate shall have ceased to be such officer before such certificate is issued, it may be issued by the Company with the same effect as if he were such officer at the date of its issuance. If Common Units are evidenced by Certificates, on or after the date on which Subordinated Units are converted into Common Units pursuant to the terms of Section 5.5, the Record Holders of such Subordinated Units (i) if the Subordinated Units are evidenced by Certificates, may exchange such Certificates for Certificates evidencing the Common Units into which such Record Holder's Subordinated Units converted, or (ii) if the Subordinated Units are not evidenced by Certificates, shall be issued Certificates evidencing the Common Units into which such Record Holders' Subordinated Units converted. With respect to any Membership Interests that are represented by physical certificates, the Managing Member may determine that such Membership Interests will no longer be represented by physical certificates and may, upon written notice to the holders of such Membership Interests and subject to applicable law, take whatever actions it deems necessary or appropriate to cause such Membership Interests to be registered in book entry or global form and may cause such physical certificates to be cancelled or deemed cancelled. The Managing Member shall have the power and authority to make all such other rules and regulations as it may deem expedient concerning the issue, transfer and registration or replacement of Certificates.

Section 4.2 *Mutilated, Destroyed, Lost or Stolen Certificates.*

(a) If any mutilated Certificate is surrendered to the Company, the appropriate officers of the General Partner on behalf of the Company shall execute and deliver in exchange therefor, a new Certificate evidencing the same number and type of Membership Interests or Derivative Membership Interests as the Certificate so surrendered.

(b) The appropriate officers of the General Partner, on behalf of the Company, shall execute and deliver a new Certificate in place of any Certificate previously issued, if the Record Holder of the Certificate:

(i) makes proof by affidavit, in form and substance satisfactory to the Managing Member, that a previously issued Certificate has been lost, destroyed or stolen;

(ii) requests the issuance of a new Certificate before the Managing Member has notice that the Certificate has been acquired by a purchaser for value in good faith and without notice of an adverse claim;

(iii) if requested by the Managing Member, delivers to the Managing Member a bond, in form and substance satisfactory to the Managing Member, with surety or sureties and with fixed or open penalty as the Managing Member may direct to indemnify the Company, the Members and the Managing Member against any claim that may be made on account of the alleged loss, destruction or theft of the Certificate; and

(iv) satisfies any other reasonable requirements imposed by the Managing Member.

If a Member fails to notify the Managing Member within a reasonable period of time after such Member has notice of the loss, destruction or theft of a Certificate, and a transfer of the Non-Managing Member Interests represented by the Certificate is registered before the Company or the Managing Member receives such notification, to the fullest extent permitted by law, the Member shall be precluded from making any claim against the Company or the Managing Member for such transfer or for a new Certificate.

(c) As a condition to the issuance of any new Certificate under this Section 4.2, the Managing Member may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other expenses reasonably connected therewith.

Section 4.3 *Record Holders.* The names and addresses of Unitholders as they appear in the Register shall be the official list of Record Holders of the Membership Interests for all purposes. The Company and the Managing Member shall be entitled to recognize the Record Holder as the Member with respect to any Membership Interest and, accordingly, shall not be bound to recognize any equitable or other claim to, or interest in, such Membership Interest on

the part of any other Person or Group, regardless of whether the Company or the Managing Member shall have actual or other notice thereof, except as otherwise provided by law. Without limiting the foregoing, when a Person (such as a broker, dealer, bank, trust company or clearing corporation or an agent of any of the foregoing) is acting as nominee, agent or in some other representative capacity for another Person or Group in acquiring and/or holding Membership Interests, as between the Company on the one hand, and such other Person or Group on the other, such representative Person shall be the Member with respect to such Membership Interest upon becoming the Record Holder in accordance with Section 10.1(b) and have the rights and obligations of a Member hereunder as, and to the extent, provided herein, including Section 10.1(c).

Section 4.4 *Transfer Generally.*

(a) The term "transfer," when used in this Agreement with respect to a Membership Interest, shall mean a transaction by which the holder of a Membership Interest assigns all or any part of such Membership Interest to another Person who is or becomes a Member as a result thereof, and includes a sale, assignment, gift, exchange or any other disposition by law or otherwise (but not the pledge, grant of security interest, encumbrance, hypothecation or mortgage), including any transfer upon foreclosure or other exercise of remedies of any pledge, security interest, encumbrance, hypothecation or mortgage.

(b) No Membership Interest shall be transferred, in whole or in part, except in accordance with the terms and conditions set forth in this Article IV. Any transfer or purported transfer of a Membership Interest not made in accordance with this Article IV shall be null and void.

(c) Except as provided in Sections 4.2(a), nothing contained in this Agreement shall be construed to prevent or limit a disposition by any stockholder, member, partner or other owner of the Managing Member or any Non-Managing Member of any or all of such Person's shares of stock, membership interests, partnership interests or other ownership interests in the Managing Member or such Non-Managing Member and the term "transfer" shall not include any such disposition.

Section 4.5 *Registration and Transfer of Non-Managing Member Interests.*

(a) The Managing Member shall keep one or more registers in which, subject to such reasonable regulations as it may prescribe and subject to the provisions of Section 4.5(b), the registration and transfer of Non-Managing Member Interests, and any Derivative Membership Interests as applicable, shall be recorded (the "Register").

(b) The Managing Member shall not recognize any transfer of Non-Managing Member Interests evidenced by Certificates until the Certificates evidencing such Non-Managing Member Interests are surrendered for registration of transfer. No charge shall be imposed by the Managing Member for such transfer; provided, that as a condition to the issuance of any new Certificate under this Section 4.5, the Managing Member may

require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed with respect thereto and any other expenses reasonably connected therewith. Upon surrender of a Certificate for registration of transfer of any Non-Managing Member Interests evidenced by a Certificate, and subject to the provisions of this Section 4.5(b), the appropriate officers of the General Partner on behalf of the Company shall execute and deliver in the name of the holder or the designated transferee or transferees, as required pursuant to the holder's instructions, one or more new Certificates evidencing the same aggregate number and type of Non-Managing Member Interests as was evidenced by the Certificate so surrendered. Upon the proper surrender of a Certificate, such transfer shall be recorded in the Register.

(c) Upon the receipt by the Managing Member of proper transfer instructions from the Record Holder of uncertificated Membership Interests, such transfer shall be recorded in the Register.

(d) By acceptance of any Non-Managing Member Interests pursuant to a transfer in accordance with this Article IV, each transferee of Non-Managing Member Interests (including any nominee, or agent or representative acquiring such Non-Managing Member Interests for the account of another Person or Group) shall be admitted as a Member pursuant to the provisions of Section 10.1(b).

(e) Subject to (i) the provisions of this Section 4.5, (ii) Section 4.3, (iii) Section 4.8, (iv) with respect to any class or series of Non-Managing Member Interests, the provisions of any statement of designations or an amendment to this Agreement establishing such class or series, (v) any contractual provisions binding on any Non-Managing Member and (vi) provisions of applicable law, including the Securities Act, Non-Managing Member Interests shall be freely transferable.

Section 4.6 *Transfer of the Managing Member's Managing Member Interest.*

(a) Subject to Section 4.6(b), the Managing Member may transfer all or any part of its Managing Member Interest without Unitholder approval or the approval of any other Person.

(b) Notwithstanding anything herein to the contrary, no transfer by the Managing Member of all or any part of its Managing Member Interest to another Person shall be permitted unless (i) the transferee agrees to assume the rights and duties of the Managing Member under this Agreement and to be bound by the provisions of this Agreement, (ii) the Company receives an Opinion of Counsel that such transfer would not result in the loss of limited liability of any Non-Managing Member under the Delaware Act or cause the Company to be treated as an association taxable as a corporation or otherwise to be taxed as an entity for federal income tax purposes (to the extent not already so treated or taxed) and (iii) such transferee also agrees to purchase all (or the appropriate portion thereof, if applicable) of the partnership or membership interest of the Managing Member as the general partner or managing member, if any, of each other Group Member. In the case of a transfer pursuant to and in compliance with this Section 4.6, the transferee or successor (as the case may be) shall, subject to

compliance with the terms of Section 10.2, be admitted to the Company as the Managing Member effective immediately prior to the transfer of the Managing Member Interest, and the business of the Company shall continue without dissolution.

Section 4.7 *Restrictions on Transfers.*

(a) Notwithstanding the other provisions of this Article IV, (i) no transfer (which, for purposes of subclause (D) hereof, includes any indirect transfer of such Membership Interest to the extent such indirect transfer could result in a transfer of a Membership Interest for purposes of Code Section 708) of any Membership Interests shall be made if such transfer would (A) violate the then-applicable federal or state securities laws or rules and regulations of the Commission, any state securities commission or any other governmental authority with jurisdiction over such transfer, (B) terminate the existence or qualification of the Company under the laws of the jurisdiction of its formation; (C) cause the Company to be treated as an association taxable as a corporation or otherwise to be taxed as an entity for federal income tax purposes (to the extent not already so treated or taxed); or (D) result in a termination of the Company under Code Section 708 unless, prior to such transfer, the transferring Member agrees to indemnify the Company and the other Members for any adverse tax consequences caused as a result of such termination and (ii) any transfer of a Membership Interest to a Disqualified Person will be void *ab initio*.

(b) The Managing Member may impose restrictions on the transfer of Membership Interests, including by requiring the Managing Member's prior written consent for any transfer (which consent may be withheld in the discretion of the Managing Member), if it receives written advice of counsel that such restrictions are necessary or advisable to (i) avoid a significant risk of the Company's becoming taxable as a corporation or otherwise becoming taxable as an entity for federal income tax purposes (to the extent not already so treated or taxed) or (ii) preserve the uniformity of the Non-Managing Member Interests (or any class or classes thereof). The Managing Member may impose such restrictions by amending this Agreement.

ARTICLE V
CAPITAL CONTRIBUTIONS AND ISSUANCE OF MEMBERSHIP INTERESTS

Section 5.1 *Organizational Contributions.* In connection with the formation of the Company under the Delaware Act, SunPower made an initial Capital Contribution to the Company in the amount of $1,000. As of the IPO Closing Date, the interest of SunPower shall be redeemed and the initial Capital Contribution of SunPower shall be refunded, and all interest or other profit that may have resulted from the investment or other use of such initial Capital Contribution shall be allocated and distributed to SunPower.

(a) Prior to the IPO Closing Date, SunPower contributed assets to the Company with respect to its 100% ownership interest in the Company.

(b) On the IPO Closing Date, the Managing Member contributed to the Company $393,750,000.00 in exchange for 20,000,000 Common Units and the Managing Member Interest.

(c) On the IPO Closing Date, all of the Incentive Distribution Rights of the Company were issued to Holdings.

(d) On the IPO Closing Date, First Solar contributed assets to the Company in exchange for (i) 5,420,815 Common Units (of which 760,078 were issued to MD Solar and 4,660,737 were issued to First Solar Holdings), (ii) 15,395,115 Subordinated Units (of which 2,158,622 were issued to MD Solar and 13,236,493 were issued to First Solar Holdings), (iii) $283,726,174.76 in cash (of which $39,782,592.55 was paid to MD Solar and $243,943,582.21 was paid to First Solar Holdings) and (iv) the right to receive one-half of the Deferred Issuance and Distribution.

(e) On the IPO Closing Date, the equity interest in the Company held by SunPower described above was recapitalized as (i) 7,079,185 Common Units, (ii) 20,104,885 Subordinated Units, (iii) $370,525,475.24 in cash and (iv) the right to receive one-half of the Deferred Issuance and Distribution.

(f) Upon any exercise of the Underwriters Option by the IPO Underwriters, the Managing Member will contribute the net cash proceeds from such offering to the Company in exchange for an additional number of Common Units equal to the number of Class A Shares purchased by the IPO Underwriters pursuant to the Underwriters' Option.

(g) No Non-Managing Member Interests will be issued or issuable as of, at, or in connection with the IPO Closing Date other than (i) the Common Units issued to the Managing Member under Section 5.1(b) and Section 5.1(f), (ii) the Incentive Distribution Rights issued to Holdings under Section 5.1(c), (iii) the Common Units and Subordinated Units issued to First Solar under Section 5.1(d), and (iv) the Common Units and Subordinated Units issued to SunPower under Section 5.1(e). Neither the Managing Member nor any Non-Managing Member will be required to make any additional Capital Contribution to the Company pursuant to this Agreement.

Section 5.2 *Interest and Withdrawal.* No interest shall be paid by the Company on Capital Contributions. No Member shall be entitled to the withdrawal or return of its Capital Contribution, except to the extent, if any, that distributions made pursuant to this Agreement or upon termination of the Company may be considered as such by law and then only to the extent provided for in this Agreement. Except to the extent expressly provided in this Agreement, no Member shall have priority over any other Member either as to the return of Capital Contributions or as to profits, losses or distributions.

Section 5.3 *Capital Accounts.*

(a) (i) The Company shall maintain for each Member (or a beneficial owner of Membership Interests held by a nominee, agent or representative in any case in which such nominee, agent or representative has furnished the identity of such beneficial owner to the Company in accordance with Section 6031(c) of the Code or any other method

acceptable to the Managing Member) owning a Membership Interest a separate Capital Account with respect to such Membership Interest in accordance with the rules of Treasury Regulation Section 1.704-1(b)(2)(iv). The Capital Account shall in respect of each such Membership Interest be increased by (i) the amount of all Capital Contributions made to the Company with respect to such Membership Interest (including the amount paid to the Company for any Noncompensatory Option) and (ii) all items of Company income and gain (including income and gain exempt from tax) computed in accordance with Section 5.3(b) and allocated with respect to such Membership Interest pursuant to Section 6.1, and decreased by (x) the amount of cash or Net Agreed Value of all actual and deemed distributions of cash or property made with respect to such Membership Interest and (y) all items of Company deduction and loss computed in accordance with Section 5.3(b) and allocated with respect to such Membership Interest pursuant to Section 6.1.

(ii) The initial Capital Account balance of each Member on the IPO Closing Date is shown on Schedule 5.3(a).

(b) For purposes of computing the amount of any item of income, gain, loss or deduction that is to be allocated pursuant to Article VI and is to be reflected in the Members' Capital Accounts, the determination, recognition and classification of any such item shall be the same as its determination, recognition and classification for federal income tax purposes (including any method of depreciation, cost recovery or amortization used for that purpose), provided, that:

(i) Solely for purposes of this Section 5.3, the Managing Member in its discretion may treat the Company as owning directly its share (as determined by the Managing Member based upon the provisions of the applicable Group Member Agreement or governing, organizational or similar documents) of all property owned by (x) any other Group Member that is classified as a partnership for federal income tax purposes and (y) any other partnership, limited liability company, unincorporated business or other entity classified as a partnership for federal income tax purposes of which a Group Member is, directly or indirectly, a partner, member or other equity holder.

(ii) All fees and other expenses incurred by the Company to promote the sale of (or to sell) a Membership Interest that can neither be deducted nor amortized under Section 709 of the Code, if any, shall, for purposes of Capital Account maintenance, be treated as an item of deduction at the time such fees and other expenses are incurred and shall be allocated among the Members pursuant to Section 6.1.

(iii) The computation of all items of income, gain, loss and deduction shall be made (x) except as otherwise provided in Treasury Regulation Section 1.704-1(b)(2)(iv)(m), without regard to any election under Section 754 of the Code that may be made by the Company and (y) as to those items described in Section 705(a)(1)(B) or 705(a)(2)(B) of the Code, without regard to the fact that

such items are not includable in gross income or are neither currently deductible nor capitalized for U.S. federal income tax purposes.

(iv) To the extent an adjustment to the adjusted basis of any Company asset pursuant to Section 734(b) of the Code (including pursuant to Treasury Regulation Section 1.734-2(b)(1)) is required, pursuant to Treasury Regulation Section 1.704-1(b)(2)(iv)(m), to be taken into account in determining Capital Accounts, the amount of such adjustment in the Capital Accounts shall be treated as an item of gain or loss.

(v) In the event the Carrying Value of Company property is adjusted pursuant to Section 5.3(d), any Unrealized Gain resulting from such adjustment shall be treated as an item of gain and any Unrealized Loss resulting from such adjustment shall be treated as an item of loss.

(vi) Any income, gain or loss attributable to the taxable disposition of any Company property shall be determined as if the adjusted basis of such property as of such date of disposition were equal in amount to the Company's Carrying Value with respect to such property as of such date.

(vii) In accordance with the requirements of Section 704(b) of the Code, any deductions for depreciation, cost recovery or amortization attributable to any Contributed Property shall be determined as if the adjusted basis of such property on the date it was acquired by the Company were equal to the Agreed Value of such property. Upon an adjustment pursuant to Section 5.3(d) to the Carrying Value of any Company property subject to depreciation, cost recovery or amortization, any further deductions for such depreciation, cost recovery or amortization attributable to such property shall be determined under the rules prescribed by Treasury Regulation Section 1.704-3(d)(2) as if the adjusted basis of such property were equal to the Carrying Value of such property immediately following such adjustment.

(viii) The Gross Liability Value of each Liability of the Company described in Treasury Regulation Section 1.752-7(b)(3)(i) shall be adjusted at such times as provided in this Agreement for an adjustment to Carrying Values. The amount of any such adjustment shall be treated for purposes hereof as an item of loss (if the adjustment increases the Carrying Value of such Liability of the Company) or an item of gain (if the adjustment decreases the Carrying Value of such Liability of the Company).

(c) (i) Except as otherwise provided in this Section 5.3(c), a transferee of a Membership Interest shall succeed to a Pro Rata portion of the Capital Account of the transferor relating to the Membership Interest so transferred.

(ii) Immediately prior to the transfer of a Subordinated Unit or of a Subordinated Unit that has converted into a Common Unit pursuant to Section 5.5 by a holder thereof (other than a transfer to an Affiliate unless the Managing

Member elects to have this subparagraph 5.3(c)(ii) apply), the Capital Account maintained for such Person with respect to its Subordinated Units or converted Subordinated Units will (A) first, be allocated to the Subordinated Units or converted Subordinated Units to be transferred in an amount equal to the product of (x) the number of such Subordinated Units or converted Subordinated Units to be transferred and (y) the Per Unit Capital Amount for a Common Unit, and (B) second, any remaining balance in such Capital Account will be retained by the transferor, regardless of whether it has retained any converted Subordinated Units ("Retained Converted Subordinated Units") or Subordinated Units.

(iii) Immediately prior to the transfer of an IDR Reset Common Unit by a holder thereof (other than a transfer to an Affiliate unless the Managing Member elects to have this subparagraph (iii) apply), the Capital Account maintained for such Person with respect to its IDR Reset Common Units will (A) first, be allocated to the IDR Reset Common Units to be transferred in an amount equal to the product of (x) the number of such IDR Reset Common Units to be transferred and (y) the Per Unit Capital Amount for a Common Unit, and (B) second, any remaining balance in such Capital Account will be retained by the transferor, regardless of whether it has retained any IDR Reset Common Units.

(d) (i) In accordance with Treasury Regulation Section 1.704-1(b)(2)(iv)(f), on an issuance of any Membership Interests for cash or Contributed Property, the issuance of Membership Interests as consideration for the provision of services, the issuance of IDR Reset Common Units pursuant to Section 5.12, or the conversion of the Managing Member's Combined Interest to Common Units pursuant to Section 11.3(b), the Capital Account of each Member and the Carrying Value of each Company property immediately prior to such issuance shall be adjusted upward or downward to reflect any Unrealized Gain or Unrealized Loss attributable to such Company property; provided, however, that in the event of an issuance of Membership Interests for a de minimis amount of cash or Contributed Property, or in the event of an issuance of a de minimis amount of Membership Interests as consideration for the provision of services, the Managing Member may determine that such adjustments are unnecessary for the proper administration of the Company. If upon the occurrence of a Revaluation Event described in this Section 5.3(d), a Noncompensatory Option of the Company is outstanding, the Company shall adjust the Carrying Value of each Company property in accordance with Treasury Regulation Sections 1.704-1(b)(2)(iv)(f)(1) and 1.704-1(b)(2)(iv)(h)(2). In determining such Unrealized Gain or Unrealized Loss, the aggregate fair market value of all Company property (including cash or cash equivalents) immediately prior to the issuance of additional Membership Interests (or, in the case of an issuance of a Noncompensatory Option, immediately after such issuance if required pursuant to Treasury Regulation Section 1.704-1(b)(2)(iv)(s)(1)) shall be determined by the Managing Member using such method of valuation as it may adopt. In making its determination of the fair market values of individual properties, the Managing Member may first determine an aggregate value for the assets of the Company that takes into account the current trading price of the Class A Shares, the fair

market value of the Membership Interests at such time and the amount of Company Liabilities. The Managing Member may allocate such aggregate value among the individual properties of the Company (in such manner as it determines appropriate). Absent a contrary determination by the Managing Member, the aggregate fair market value of all Company assets (including, without limitation, cash or cash equivalents) immediately prior to a Revaluation Event shall be the value that would result in the Capital Account for each Common Unit that is Outstanding prior to such Revaluation Event being equal to the Event Issue Value.

(ii) In accordance with Treasury Regulation Section 1.704-1(b)(2)(iv)(f), immediately prior to any actual distribution to a Member of any Company property (other than a distribution of cash that is not in redemption or retirement of a Membership Interest), the Capital Accounts of all Members and the Carrying Value of all Company property shall be adjusted upward or downward to reflect any Unrealized Gain or Unrealized Loss attributable to such Company property. In determining such Unrealized Gain or Unrealized Loss the aggregate fair market value of all Company property (including cash or cash equivalents) immediately prior to a distribution shall (A) in the case of a distribution that is not made pursuant to Section 12.4, be determined in the same manner as that provided in Section 5.3(d)(i) or (B) in the case of a liquidating distribution pursuant to Section 12.4, be determined by the Liquidator using such method of valuation as it may adopt.

Section 5.4 *Issuances of Additional Membership Interests.*

(a) The Company may issue additional Membership Interests and Derivative Membership Interests for any Company purpose at any time and from time to time to such Persons for such consideration and on such terms and conditions as the Managing Member shall determine, all without the approval of any Non-Managing Members.

(b) Each additional Membership Interest authorized to be issued by the Company pursuant to Section 5.4(a) may be issued in one or more classes, or one or more series of any such classes, with such designations, preferences, rights, powers and duties (which may be senior to existing classes and series of Membership Interests), as shall be fixed by the Managing Member, including (i) the right to share in Company profits and losses or items thereof; (ii) the right to share in Company distributions; (iii) the rights upon dissolution and liquidation of the Company; (iv) whether, and the terms and conditions upon which, the Company may or shall be required to redeem the Membership Interest (including sinking fund provision); (v) whether such Membership Interest is issued with the privilege of conversion or exchange and, if so, the terms and conditions of such conversion or exchange; (vi) the terms and conditions upon which each Membership Interest will be issued, evidenced by Certificates and assigned or transferred; (vii) the method for determining the Percentage Interest as to such Membership Interest; and (viii) the right, if any, of each such Membership Interest to vote on Company matters, including matters relating to the relative rights, preferences and privileges of such Membership Interest.

(c) The Managing Member shall take all actions that it determines to be necessary or appropriate in connection with (i) each issuance of Membership Interests and Derivative Membership Interests pursuant to this Section 5.4, (ii) the conversion of the Combined Interest into Units pursuant to the terms of this Agreement, (iii) the issuance of Common Units pursuant to Section 5.12, (iv) reflecting admission of such additional Non-Managing Members in the Register as the Record Holders of such Non-Managing Member Interests and (v) all additional issuances of Membership Interests and Derivative Membership Interests. The Managing Member shall determine the relative rights, powers and duties of the holders of the Units or other Membership Interests or Derivative Membership Interests being so issued. The Managing Member shall do all things necessary to comply with the Delaware Act and is authorized and directed to do all things that it determines to be necessary or appropriate in connection with any future issuance of Membership Interests or Derivative Membership Interests or in connection with the conversion of the Combined Interest into Units pursuant to the terms of this Agreement, including compliance with any statute, rule, regulation or guideline of any federal, state or other governmental agency or any National Securities Exchange on which the Class A Shares or other Membership Interests are listed or admitted to trading.

(d) No additional Common Units shall be issued to the Managing Member unless (i) the additional Common Units are issued to all Members holding Common Units in proportion to their respective Percentage Interests in the Common Units, (ii) (a) the additional Common Units are Common Units issued in connection with an issuance of Class A Shares and (b) the Managing Member contributes to the Company the cash proceeds or other consideration received in connection with the issuance of such Class A Shares, (iii) the additional Common Units are issued upon the conversion, redemption or exchange of other securities issued by the Company or (iv) the additional Common Units are issued pursuant to Section 5.6.

(e) No fractional Units shall be issued by the Company.

Section 5.5 *Conversion of Subordinated Units.*

(a) All of the Subordinated Units shall convert into Common Units on a one-for-one basis on the expiration of the Subordination Period.

(b) A Subordinated Unit that has converted into a Common Unit shall be subject to the provisions of Section 6.7.

Section 5.6 *Issuances of Securities by the Managing Member.* The Managing Member shall not issue any additional Class A Shares unless the Managing Member contributes the cash proceeds or other consideration received from the issuance of such additional Class A Shares in exchange for an equivalent number of Common Units; provided, however, that notwithstanding the foregoing, the Managing Member may issue Class A Shares (a) pursuant to the Exchange Agreement or (b) pursuant to a distribution (including any split or combination) of Class A Shares to all of the holders of Class A Shares. In the event that the Managing Member issues any additional Class A Shares and contributes the cash proceeds or other consideration received from the issuance thereof to the Company, the Company is authorized to issue a number of

Common Units equal to the number of Class A Shares so issued without any further act, approval or vote of any Member or any other Persons.

Section 5.7 *Limited Preemptive Right.* Except as provided in this Section 5.7 and in Section 5.12 or as otherwise provided in a separate agreement by the Company, no Person shall have any preemptive, preferential or other similar right with respect to the issuance of any Membership Interest, whether unissued, held in the treasury or hereafter created. The General Partner shall have the right, which it may from time to time assign in whole or in part to any of its Affiliates, to purchase Membership Interests from the Company whenever, and on the same terms that, the Company issues Membership Interests to Persons other than the General Partner and its Affiliates, to the extent necessary to maintain the Percentage Interests of the General Partner and its Affiliates equal to that which existed immediately prior to the issuance of such Membership Interests. The determination of the General Partner to exercise (or refrain from exercising) its right pursuant to the immediately preceding sentence shall be a determination made in its individual capacity. In the event of a Sponsor's exercise of the rights under this Section 5.7 to acquire additional Common Units, the Managing Member shall issue a number of Class B Shares equal to the number of Common Units to such exercising Sponsor.

Section 5.8 *Splits and Combinations.*

(a) Subject to Sections 5.8(d), 6.6 and 6.9 (dealing with adjustments of distribution levels), the Company may make a Pro Rata distribution of Membership Interests to all Record Holders or may effect a subdivision or combination of Membership Interests so long as, after any such event, each Member shall have the same Percentage Interest in the Company as before such event, and any amounts calculated on a per Unit basis (including any Common Unit Arrearage or Cumulative Common Unit Arrearage) or stated as a number of Units are proportionately adjusted, provided, however, that the Company may not effect a subdivision or combination of Membership Interests described in this Section 5.8(a) unless the Managing Member also effects an equivalent subdivision or combination, as determined by the Managing Member.

(b) Whenever such a distribution, subdivision or combination of Membership Interests is declared, the Managing Member shall select a Record Date as of which the distribution, subdivision or combination shall be effective and shall send notice thereof at least 20 days prior to such Record Date to each Record Holder as of a date not less than 10 days prior to the date of such notice. The Managing Member also may cause a firm of independent public accountants selected by it to calculate the number of Membership Interests to be held by each Record Holder after giving effect to such distribution, subdivision or combination. The Managing Member shall be entitled to rely on any certificate provided by such firm as conclusive evidence of the accuracy of such calculation.

(c) Promptly following any such distribution, subdivision or combination, the Managing Member may issue Certificates or uncertificated Membership Interests to the Record Holders of Membership Interests as of the applicable Record Date representing the new number of Membership Interests held by such Record Holders, or the Managing Member may adopt such other procedures that it determines to be necessary or

appropriate to reflect such changes. If any such combination results in a smaller total number of Membership Interests Outstanding, the Company shall require, as a condition to the delivery to a Record Holder of Membership Interests represented by Certificates, the surrender of any Certificate held by such Record Holder immediately prior to such Record Date.

(d) The Company shall not issue fractional Units upon any distribution, subdivision or combination of Units. If a distribution, subdivision or combination of Units would result in the issuance of fractional Units but for the provisions of Section 5.4(e) and this Section 5.8(d), each fractional Unit shall be rounded to the nearest whole Unit (with fractional Units equal to or greater than a 0.5 Unit being rounded to the next higher Unit).

Section 5.9 *Redemption, Repurchase or Forfeiture of Class A Shares. I*f, at any time, any Class A Shares are redeemed, repurchased or otherwise acquired (whether by exercise of a put or call, upon forfeiture of any award granted under any Equity Plan, automatically or by means of another arrangement) by the Managing Member, then, immediately prior to such redemption, repurchase or acquisition of Class A Shares, the Company shall redeem a number of Common Units held by the Managing Member equal to the number of Class A Shares so redeemed, repurchased or acquired, such redemption, repurchase or acquisition to be upon the same terms and for the same price per Common Unit as such Class A Shares that are redeemed, repurchased or acquired.

Section 5.10 *Issuance of Class B Shares.* In the event that the Company issues Common Units or Subordinated Units to, or cancels Common Units or Subordinated Units held by, any Person other than the Managing Member, the Managing Member shall issue Class B Shares to such Person or cancel Class B Shares held by such Person such that the number of Class B Shares held by such Person is equal to the number of Common Units and Subordinated Units held by such Person.

Section 5.11 *Fully Paid and Non-Assessable Nature of Non-Managing Member Interests.* All Non-Managing Member Interests issued pursuant to, and in accordance with the requirements of, this Article V shall be fully paid and non-assessable Non-Managing Member Interests in the Company, except as such non-assessability may be affected by Sections 18-607 and 18-804 of the Delaware Act.

Section 5.12 *Issuance of Common Units in Connection with Reset of Incentive Distribution Rights.*

(a) Subject to the provisions of this Section 5.12, the holder of the Incentive Distribution Rights (or, if there is more than one holder of the Incentive Distribution Rights, the holders of a majority in interest of the Incentive Distribution Rights) shall have the right, at any time when there are no Subordinated Units Outstanding and the Company has made a distribution pursuant to Section 6.4(b)(v) for each of the four most recently completed Quarters and the aggregate amounts distributed in respect of such four-Quarter period did not exceed Adjusted Operating Surplus for such four-Quarter period, to make an election (the "IDR Reset Election") to cause the Target Distributions

to be reset in accordance with the provisions of Section 5.12(d) and, in connection therewith, the holder or holders of the Incentive Distribution Rights will become entitled to receive their respective share of a number of Common Units (the "IDR Reset Common Units") derived by dividing (i) the average amount of cash distributions made by the Company for the two full Quarters immediately preceding the giving of the Reset Notice (as defined in Section 5.12(b)) in respect of the Incentive Distribution Rights by (ii) the average of the cash distributions made by the Company in respect of each Common Unit for the two full Quarters immediately preceding the giving of the Reset Notice (the number of Common Units determined by such quotient is referred to herein as the "Aggregate Quantity of IDR Reset Common Units"). If at the time of any IDR Reset Election Holdings and its Affiliates are not the holders of a majority interest of the Incentive Distribution Rights, then the IDR Reset Election shall be subject to the prior written concurrence of the Managing Member that the conditions described in the immediately preceding sentence have been satisfied. The making of the IDR Reset Election in the manner specified in this Section 5.12 shall cause the Target Distributions to be reset in accordance with the provisions of Section 5.12(d) and, in connection therewith, the holder or holders of the Incentive Distribution Rights will become entitled to receive IDR Reset Common Units on the basis specified above, without any further approval required by the Managing Member or the Unitholders other than as set forth in this Section 5.12(a), at the time specified in Section 5.12(c).

(b) To exercise the right specified in Section 5.12(a), the holder of the Incentive Distribution Rights (or, if there is more than one holder of the Incentive Distribution Rights, the holders of a majority in interest of the Incentive Distribution Rights) shall deliver a written notice (the "Reset Notice") to the Company. Within 10 Business Days after the receipt by the Company of such Reset Notice, the Company shall deliver a written notice to the holder or holders of the Incentive Distribution Rights of the Company's determination of the Aggregate Quantity of IDR Reset Common Units that each holder of Incentive Distribution Rights will be entitled to receive.

(c) The holder or holders of the Incentive Distribution Rights will be entitled to receive the Aggregate Quantity of IDR Reset Common Units on the 15th Business Day after receipt by the Company of the Reset Notice.

(d) The Target Distributions, shall be adjusted at the time of the issuance of IDR Reset Common Units pursuant to this Section 5.12 such that (i) the Minimum Quarterly Distribution shall be reset to equal the average cash distribution amount per Common Unit for the two Quarters immediately prior to the Company's receipt of the Reset Notice (the "Reset MQD"), (ii) the First Target Distribution shall be reset to equal 150% of the Reset MQD, (iii) the Second Target Distribution shall be reset to equal 175% of the Reset MQD and (iv) the Third Target Distribution shall be reset to equal 200% of the Reset MQD.

(e) Upon the issuance of IDR Reset Common Units pursuant to Section 5.12(a), the Capital Account maintained with respect to the Incentive Distribution Rights will (i) first, be allocated to IDR Reset Common Units in an amount equal to the product of (A) the Aggregate Quantity of IDR Reset Common Units and (B) the Per Unit Capital

Amount for an Initial Common Unit, and (ii) second, as to any remaining balance in such Capital Account, will be retained by the holder of the Incentive Distribution Rights. If there is not sufficient capital associated with the Incentive Distribution Rights to allocate the full Per Unit Capital Amount for an Initial Common Unit to the IDR Reset Common Units in accordance with clause (i) of this Section 5.12(e), the IDR Reset Common Units shall be subject to Sections 6.1(c)(x)(B) and (C).

Section 5.13 *Unit Option Plans.*

(a) If at any time or from time to time, in connection with any Unit Option Plan, an option to purchase Class A Shares granted to a Person other than a Company Employee is duly exercised:

(i) The Managing Member, shall, as soon as practicable after such exercise, make a Capital Contribution to the Company in an amount equal to the exercise price paid to the Managing Member by such exercising party in connection with the exercise of such unit option.

(ii) Notwithstanding the amount of the Capital Contribution actually made pursuant to Section 5.13(a)(i), the Managing Member shall be deemed to have contributed to the Managing Member as a Capital Contribution an amount equal to the Current Market Price of a Class A Share as of the date of exercise multiplied by the number of Class A Shares then being issued in connection with the exercise of such unit option. In exchange for such Capital Contribution, the Company shall issue a number of Common Units to the Managing Member equal to the number of Class A Shares issued in connection with the exercise of such unit option.

(b) If at any time or from time to time, in connection with any Unit Option Plan, an option to purchase Class A Shares granted to a Company Employee is duly exercised:

(i) The Managing Member shall sell to the Company, and the Company shall purchase from the Managing Member, the number of Class A Shares as to which such unit option is being exercised. The purchase price per Class A Share for such sale of Class A Shares to the Company shall be the Current Market Price of a Class A Share as of the date of exercise of such unit option.

(ii) The Company shall sell to the Optionee (or if the Optionee is an employee of a Group Member other than the Company, the Company shall sell to such Group Member, which in turn shall sell to the Optionee), for a cash price per share equal to the Current Market Price of a Class A Share at the time of the exercise, the number of Class A Shares equal to (a) the exercise price paid to the Managing Member by the exercising party in connection with the exercise of such unit option divided by (b) the Current Market Price of a Class A Share at the time of such exercise.

(iii) The Company shall transfer to the Optionee (or if the Optionee is an employee of another Group Member, the Company shall transfer to such Group Member, which in turn shall transfer to the Optionee) at no additional cost, as additional compensation, the number of Class A Shares equal to the number of Class A Shares described in Section 5.13(b)(i) less the number of Class A Shares described in Section 5.13(b)(ii) hereof.

(iv) The Managing Member shall, as soon as practicable after such exercise, make a Capital Contribution to the Company of an amount equal to all proceeds received (from whatever source, but excluding any payment in respect of payroll taxes or other withholdings) by the Managing Member in connection with the exercise of such unit option. In exchange for such Capital Contribution, the Company shall issue a number of Common Units to the Managing Member equal to the number of Class A Shares issued in connection with the exercise of such unit option.

(c) Restricted Units Granted to Company Employees. If at any time or from time to time, in connection with any Equity Plan (other than a Unit Option Plan), any Class A Shares are issued to a Company Employee (including any Class A Shares that are subject to forfeiture in the event such Company Employee terminates his employment by the Company or another Group Member) in consideration for services performed for the Company or such other Group Member:

(i) The Managing Member shall issue such number of Class A Shares as are to be issued to the Company Employee in accordance with the Equity Plan;

(ii) The following events will be deemed to have occurred: (a) the Managing Member shall be deemed to have sold such Class A Shares to the Company (or if the Company Employee is an employee or other service provider of another Group Member, to such Group Member) for a purchase price equal to the Current Market Price of such Class A Shares, (b) the Company (or such Group Member) shall be deemed to have delivered the Class A Shares to the Company Employee, (c) the Managing Member shall be deemed to have contributed the purchase price to the Company as a Capital Contribution, and (d) in the case where the Company Employee is an employee of another Group Member, the Company shall be deemed to have contributed such amount to the capital of such Group Member; and

(iii) The Company shall issue to the Managing Member a number of Common Units equal to the number of newly issued Class A Shares in consideration for a deemed Capital Contribution in an amount equal to (x) the number of newly issued Common Units, multiplied by the Current Market Price of a Class A Share at such time.

(d) Restricted Units Granted to Persons other than Company Employees. If at any time or from time to time, in connection with any Equity Plan (other than a Unit Option Plan), any Class A Shares are issued to a Person other than a Company Employee

in consideration for services performed for Managing Member, the General Partner or a Group Member:

(i) The Managing Member shall issue such number of Class A Shares as are to be issued to such Person in accordance with the Equity Plan; and

(ii) The Managing Member shall be deemed to have contributed the Current Market Price of such Class A Shares to the Company as a Capital Contribution, and the Company shall issue to the Managing Member a number of newly issued Common Units equal to the number of newly issued Class A Shares divided.

(e) Nothing in this Agreement shall be construed or applied to preclude or restrain the Managing Member or the General Partner from adopting, modifying or terminating stock incentive plans for the benefit of employees, directors or other business associates of the Managing Member, the Company or the General Partner or any of their Affiliates. The Members acknowledge and agree that, in the event that any such plan is adopted, modified or terminated by the Managing Member or the General Partner, amendments to this Section 5.13 may become necessary or advisable and that any approval or consent to any such amendments requested by the Managing Member shall be deemed granted.

(f) The Company is expressly authorized to issue Common Units in the numbers specified in this Section 5.13 without any further act, approval or vote of any Member or any other Persons.

ARTICLE VI

ALLOCATIONS AND DISTRIBUTIONS

Section 6.1 *Allocations for Capital Account Purposes.* For purposes of maintaining the Capital Accounts and in determining the rights of the Members among themselves, the Company's items of income, gain, loss, deduction, and credit (computed in accordance with Section 5.3(b)) for each taxable period shall be allocated among the Members as provided herein below.

(a) Net Income and Net Loss. After giving effect to the special allocations set forth in Section 6.1(c), Net Income and Net Loss for each taxable period and all items of income, gain, loss, deduction, and credit taken into account in computing Net Income and Net Loss for such taxable period shall be allocated as follows:

(i) *Net Income*. Net Income for each taxable period and all items of income, gain, loss, deduction, and credit taken into account in computing Net Income for such taxable period shall be allocated as follows:

(A) First, to the Managing Member until the aggregate of the Net Income allocated to the Managing Member pursuant to this Section 6.1(a)(i)(A) and the Net Termination Gain allocated to the Managing

Member pursuant to Section 6.1(b)(i)(A) or Section 6.1(b)(iv)(A) for the current and all previous taxable periods is equal to the aggregate Net Losses allocated to the Managing Member pursuant to Section 6.1(a)(ii)(B) for all previous taxable periods and the Net Termination Loss allocated to the Managing Member pursuant to Section 6.1(b)(ii)(C) or Section 6.1(b)(iii)(C) for the current and all previous taxable periods; and

(B) The balance, if any, to all Unitholders, Pro Rata.

(ii) *Net Loss*. Net Loss for each taxable period and all items of income, gain, loss, deduction, and credit taken into account in computing Net Loss for such taxable period shall be allocated as follows:

(A) First, to the Unitholders, Pro Rata; provided, that Net Losses shall not be allocated pursuant to this Section 6.1(a)(ii)(A) to the extent that such allocation would cause any Unitholder to have a deficit balance in its Adjusted Capital Account at the end of such taxable period (or increase any existing deficit balance in its Adjusted Capital Account); and

(B) The balance, if any, to the Managing Member.

(b) Net Termination Gains and Losses. After giving effect to the special allocations set forth in Section 6.1(c), Net Termination Gain or Net Termination Loss (including a pro rata part of each item of income, gain, loss and deduction taken into account in computing Net Termination Gain or Net Termination Loss) for such taxable period shall be allocated in the manner set forth in this Section 6.1(b). All allocations under this Section 6.1(b) shall be made after Capital Account balances have been adjusted by all other allocations provided under this Section 6.1 and after all distributions of Available Cash provided under Section 6.4 and Section 6.5 have been made; *provided, however*, that solely for purposes of this Section 6.1(b), Capital Accounts shall not be adjusted for distributions made pursuant to Section 12.4.

(i) Except as provided in Section 6.1(b)(iv) and Section 6.1(b)(v), and subject to the provisions set forth in the last sentence of this Section 6.1(b)(i), Net Termination Gain (including a pro rata part of each item of income, gain, loss, and deduction taken into account in computing Net Termination Gain) shall be allocated in the following order and priority:

(A) *First*, to each Member having a deficit balance in its Capital Account, in the proportion that such deficit balance bears to the total deficit balances in the Capital Accounts of all Members, until each such Member has been allocated Net Termination Gain equal to any such deficit balance in its Adjusted Capital Account;

(B) *Second*, to all Unitholders holding Common Units, Pro Rata, until the Capital Account in respect of each Common Unit then

Outstanding is equal to the sum of (1) its Unrecovered Initial Unit Price, (2) the Minimum Quarterly Distribution for the Quarter during which the Liquidation Date occurs, reduced by any distribution pursuant to Section 6.4(a)(i) or Section 6.4(b)(i) with respect to such Common Unit for such Quarter (the amount determined pursuant to this clause (2) is hereinafter referred to as the "Unpaid MQD") and (3) any then-existing Cumulative Common Unit Arrearage;

(C) *Third*, if such Net Termination Gain is recognized (or is deemed to be recognized) prior to the conversion of the last Outstanding Subordinated Unit into a Common Unit, to all Unitholders holding Subordinated Units, Pro Rata, until the Capital Account in respect of each Subordinated Unit then Outstanding equals the sum of (1) its Unrecovered Initial Unit Price, determined for the taxable period (or portion thereof) to which this allocation of gain relates, and (2) the Minimum Quarterly Distribution for the Quarter during which the Liquidation Date occurs, reduced by any distribution pursuant to Section 6.4(a)(iii) with respect to such Subordinated Unit for such Quarter;

(D) *Fourth*, to all Unitholders, Pro Rata, until the Capital Account in respect of each Common Unit then Outstanding is equal to the sum of (1) its Unrecovered Initial Unit Price, (2) the Unpaid MQD, (3) any then-existing Cumulative Common Unit Arrearage, and (4) the excess of (aa) the First Target Distribution less the Minimum Quarterly Distribution for each Quarter after the IPO Closing Date or the date of the most recent IDR Reset Election, if any, over (bb) the cumulative per Unit amount of any distributions of Available Cash that is deemed to be Operating Surplus made pursuant to Section 6.4(a)(iv) and Section 6.4(b)(ii) for such period (the sum of (1), (2), (3) and (4) is hereinafter referred to as the "First Liquidation Target Amount");

(E) *Fifth*, 15% to the holders of the Incentive Distribution Rights, Pro Rata, and 85% to all Unitholders, Pro Rata, until the Capital Account in respect of each Common Unit then Outstanding is equal to the sum of (1) the First Liquidation Target Amount, and (2) the excess of (aa) the Second Target Distribution less the First Target Distribution for each Quarter after the IPO Closing Date or the date of the most recent IDR Reset Election, if any, over (bb) the cumulative per Unit amount of any distributions of Available Cash that is deemed to be Operating Surplus made pursuant to Section 6.4(a)(v) and Section 6.4(b)(iii) for such period (the sum of (1) and (2) is hereinafter referred to as the "Second Liquidation Target Amount");

(F) Sixth, 25% to the holders of the Incentive Distribution Rights, Pro Rata, and 75% to all Unitholders, Pro Rata, until the Capital Account in respect of each Common Unit then Outstanding is equal to the sum of (1) the Second Liquidation Target Amount, and (2) the excess of

(aa) the Third Target Distribution less the Second Target Distribution for each Quarter after the IPO Closing Date or the date of the most recent IDR Reset Election, if any, over (bb) the cumulative per Unit amount of any distributions of Available Cash that is deemed to be Operating Surplus made pursuant to Section 6.4(a)(vi) and Section 6.4(b)(iv) for such period; and

(G) Finally, 50% to the holders of the Incentive Distribution Rights, Pro Rata, and 50% to all Unitholders, Pro Rata.

Notwithstanding the foregoing provisions in this Section 6.1(b)(i), the Managing Member may adjust the amount of any Net Termination Gain arising in connection with a Revaluation Event that is allocated to the holders of Incentive Distribution Rights in a manner that will result (i) in the Capital Account for each Common Unit that is Outstanding prior to such Revaluation Event being equal to the Event Issue Value and (ii) to the greatest extent possible, the Capital Account with respect to the Incentive Distribution Rights that are Outstanding prior to such Revaluation Event being equal to the amount of Net Termination Gain that would be allocated to the holders of the Incentive Distribution Rights pursuant to this Section 6.1(b)(i) if the Capital Accounts with respect to all Membership Interests that were Outstanding immediately prior to such Revaluation Event and the Carrying Value of each Company property were equal to zero.

(ii) Except as otherwise provided by Section 6.1(b)(iii) or Section 6.1(b)(v), Net Termination Loss (including a pro rata part of each item of income, gain, loss, and deduction taken into account in computing Net Termination Loss) shall be allocated:

(A) *First*, if Subordinated Units remain Outstanding, to all Unitholders holding Subordinated Units, Pro Rata, until the Adjusted Capital Account in respect of each Subordinated Unit then Outstanding has been reduced to zero; and

(B) *Second*, to all Unitholders holding Common Units, Pro Rata, until the Adjusted Capital Account in respect of each Common Unit then Outstanding has been reduced to zero; and

(C) *Third*, the balance, if any, to the Managing Member.

(iii) Net Termination Loss deemed recognized pursuant to clause (b) of the definition of Net Termination Loss as a result of a Revaluation Event prior to the conversion of the last Outstanding Subordinated Unit and prior to the Liquidation Date shall be allocated:

(A) *First*, to the Unitholders, Pro Rata, until the Capital Account in respect of each Common Unit then Outstanding equals the Event Issue Value;

(B) *Second*, to all Unitholders holding Subordinated Units, Pro Rata, until the Capital Account in respect of each Subordinated Unit then Outstanding has been reduced to zero; and

(C) *Third*, the balance, if any, to the Managing Member.

(iv) If Net Termination Loss has been allocated pursuant to Section 6.1(b)(iii), any subsequent Net Termination Gain recognized as a result of a Revaluation Event prior to the Liquidation Date shall be allocated:

(A) First, to all Unitholders, Pro Rata until the aggregate Net Termination Gain allocated to all Unitholders, Pro Rata pursuant to this Section 6.1(b)(iv)(A) is equal to the aggregate Net Termination Loss previously allocated pursuant to Section 6.1(b)(iii)(C);

(B) Second, to the Unitholders, Pro Rata, until the aggregate Net Termination Gain allocated pursuant to this Section 6.1(b)(iv)(B) is equal to the aggregate Net Termination Loss previously allocated pursuant to Section 6.1(b)(iii)(B); and

(C) *Third*, the balance, if any, pursuant to the provisions of Section 6.1(b)(i).

(v) If (A) a Net Termination Loss has been allocated pursuant to Section 6.1(b)(iii), (B) a Net Termination Gain or Net Termination Loss subsequently occurs (other than as a result of a Revaluation Event) prior to the conversion of the last Outstanding Subordinated Unit and (C) after tentatively making all allocations of such Net Termination Gain or Net Termination Loss provided for in Section 6.1(b)(i) or Section 6.1(b)(ii), as applicable, the Capital Account in respect of each Common Unit does not equal the amount such Capital Account would have been if Section 6.1(b)(iii) had not been part of this Agreement and all prior allocations of Net Termination Gain and Net Termination Loss had been made pursuant to Section 6.1(b)(i) or Section 6.1(b)(ii), as applicable, then items of income, gain, loss and deduction included in such Net Termination Gain or Net Termination Loss, as applicable, shall be specially allocated to the Managing Member and all Unitholders in a manner that will, to the maximum extent possible, cause the Capital Account in respect of each Common Unit to equal the amount such Capital Account would have been if all allocations of Net Termination Gain and Net Termination Loss had been made pursuant to Section 6.1(b)(i) or Section 6.1(b)(ii), as applicable.

(c) Special Allocations. Notwithstanding any other provision of this Section 6.1, the following special allocations shall be made for such taxable period in the following order:

(i) Company Minimum Gain Chargeback. Notwithstanding any other provision of this Section 6.1, if there is a net decrease in Company Minimum Gain during any Company taxable period, each Member shall be allocated items

of Company income and gain for such period (and, if necessary, subsequent periods) in the manner and amounts provided in Treasury Regulation Sections 1.704-2(f)(6), 1.704-2(g)(2) and 1.704-2(j)(2)(i), or any successor provision. For purposes of this Section 6.1(c), each Member's Adjusted Capital Account balance shall be determined, and the allocation of income or gain required hereunder shall be effected, prior to the application of any other allocations pursuant to this Section 6.1(c) with respect to such taxable period (other than an allocation pursuant to Section 6.1(c)(vi) and Section 6.1(c)(vii)). This Section 6.1(c)(i) is intended to comply with the Company Minimum Gain chargeback requirement in Treasury Regulation Section 1.704-2(f) and shall be interpreted consistently therewith.

(ii) Chargeback of Member Nonrecourse Debt Minimum Gain. Notwithstanding the other provisions of this Section 6.1 (other than Section 6.1(c)(i)), except as provided in Treasury Regulation Section 1.704-2(i)(4), if there is a net decrease in Member Nonrecourse Debt Minimum Gain during any Company taxable period, any Member with a share of Member Nonrecourse Debt Minimum Gain at the beginning of such taxable period shall be allocated items of Company income and gain for such period (and, if necessary, subsequent periods) in the manner and amounts provided in Treasury Regulation Sections 1.704-2(i)(4) and 1.704-2(j)(2)(ii), or any successor provisions. For purposes of this Section 6.1(c), each Member's Adjusted Capital Account balance shall be determined, and the allocation of income or gain required hereunder shall be effected, prior to the application of any other allocations pursuant to this Section 6.1(c) with respect to such taxable period (other than an allocation pursuant to Section 6.1(c)(i), Section 6.1(c)(vi) and Section 6.1(c)(vii)). This Section 6.1(c)(ii) is intended to comply with the chargeback of items of income and gain requirement in Treasury Regulation Section 1.704-2(i)(4) and shall be interpreted consistently therewith.

(iii) Priority Allocations.

(A) If the amount of cash or the Net Agreed Value of any property distributed (except cash or property distributed pursuant to Section 12.4) with respect to a Unit exceeds the amount of cash or the Net Agreed Value of property distributed with respect to another Unit (the amount of the excess, an "Excess Distribution" and the Unit with respect to which the greater distribution is paid, an "Excess Distribution Unit"), then there shall be allocated gross income and gain to each Unitholder receiving an Excess Distribution with respect to the Excess Distribution Unit until the aggregate amount of such items allocated with respect to such Excess Distribution Unit pursuant to this Section 6.1(c)(iii)(A) for the current taxable period and all previous taxable periods is equal to the amount of the Excess Distribution.

(B) After the application of Section 6.1(c)(iii)(A), all or any portion of the remaining items of Company gross income or gain for the

taxable period, if any, shall be allocated to the holders of Incentive Distribution Rights, Pro Rata, until the aggregate amount of such items allocated to the holders of Incentive Distribution Rights pursuant to this Section 6.1(c)(iii)(B) for the current taxable period and all previous taxable periods is equal to the cumulative amount of all Incentive Distributions made to the holders of Incentive Distribution Rights from the IPO Closing Date to a date 45 days after the end of the current taxable period.

(iv) Qualified Income Offset. In the event any Member unexpectedly receives any adjustments, allocations or distributions described in Treasury Regulation Sections 1.704-1(b)(2)(ii)(d)(4), 1.704-1(b)(2)(ii)(d)(5), or 1.704-1(b)(2)(ii)(d)(6), items of Company gross income and gain shall be specially allocated to such Member in an amount and manner sufficient to eliminate, to the extent required by the Treasury Regulations promulgated under Section 704(b) of the Code, the deficit balance, if any, in its Adjusted Capital Account created by such adjustments, allocations or distributions as quickly as possible; provided, that an allocation pursuant to this Section 6.1(c)(iv) shall be made only if and to the extent that such Member would have a deficit balance in its Adjusted Capital Account as adjusted after all other allocations provided for in this Section 6.1 have been tentatively made as if this Section 6.1(c)(iv) were not in this Agreement. This Section 6.1(c)(iv) is intended to constitute a "qualified income offset" within the meaning of Treasury Regulation Section 1.704-1(b)(2)(ii)(d) and shall be interpreted consistently therewith.

(v) Gross Income Allocation. In the event any Member has a deficit balance in its Capital Account at the end of any taxable period in excess of the sum of (A) the amount such Member is required to restore pursuant to the provisions of this Agreement and (B) the amount such Member is deemed obligated to restore pursuant to Treasury Regulation Sections 1.704-2(g) and 1.704-2(i)(5), such Member shall be specially allocated items of Company gross income and gain in the amount of such excess as quickly as possible; provided, that an allocation pursuant to this Section 6.1(c)(v) shall be made only if and to the extent that such Member would have a deficit balance in its Capital Account as adjusted after all other allocations provided for in this Section 6.1 have been tentatively made as if Section 6.1(c)(iv) and this Section 6.1(c)(v) were not in this Agreement.

(vi) Nonrecourse Deductions. Nonrecourse Deductions for any taxable period shall be allocated to the Members Pro Rata. If the Managing Member determines that the Company's Nonrecourse Deductions should be allocated in a different ratio to satisfy the safe harbor requirements of the Treasury Regulations promulgated under Section 704(b) of the Code, the Managing Member is authorized, upon notice to the other Members, to revise the prescribed ratio to the numerically closest ratio that does satisfy such requirements.

(vii) Member Nonrecourse Deductions. Member Nonrecourse Deductions for any taxable period shall be allocated 100% to the Member that bears the Economic Risk of Loss with respect to the Member Nonrecourse Debt to which such Member Nonrecourse Deductions are attributable in accordance with Treasury Regulation Section 1.704-2(i). If more than one Member bears the Economic Risk of Loss with respect to a Member Nonrecourse Debt, the Member Nonrecourse Deductions attributable thereto shall be allocated between or among such Member in accordance with the ratios in which they share such Economic Risk of Loss.

(viii) Nonrecourse Liabilities. For purposes of Treasury Regulation Section 1.752-3(a)(3), the Members agree that Nonrecourse Liabilities of the Managing Member in excess of the sum of (A) the amount of Company Minimum Gain and (B) the total amount of Nonrecourse Built-in Gain shall be allocated among the Members Pro Rata.

(ix) Code Section 754 Adjustments. To the extent an adjustment to the adjusted tax basis of any Company asset pursuant to Section 734(b) or 743(b) of the Code (including pursuant to Treasury Regulation Section 1.734-2(b)(1)) is required, pursuant to Treasury Regulation Section 1.704-1(b)(2)(iv)(m), to be taken into account in determining Capital Accounts, the amount of such adjustment to the Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis) taken into account pursuant to Section 5.3, and such item of gain or loss shall be specially allocated to the Members in a manner consistent with the manner in which their Capital Accounts are required to be adjusted pursuant to such Section of the Treasury Regulations.

(x) Economic Uniformity; Changes in Law.

(A) At the election of the Managing Member with respect to any taxable period ending upon, or after, the termination of the Subordination Period, all or a portion of the remaining items of Company's gross income or gain for such taxable period, after taking into account allocations pursuant to Section 6.1(c)(iii), shall be allocated 100% to each Member holding Subordinated Units that are Outstanding as of the termination of the Subordination Period ("Final Subordinated Units") in the proportion of the number of Final Subordinated Units held by such Member to the total number of Final Subordinated Units then Outstanding, until each such Member has been allocated an amount of gross income or gain that increases the Capital Account maintained with respect to such Final Subordinated Units to an amount that after taking into account the other allocations of income, gain, loss and deduction to be made with respect to such taxable period will equal the product of (A) the number of Final Subordinated Units held by such Member and (B) the Per Unit Capital Amount for a Common Unit. The purpose of this allocation is to establish uniformity between the Capital Accounts underlying Final

Subordinated Units and the Capital Accounts underlying Common Units held by Persons other than the Managing Member and its Affiliates immediately prior to the conversion of such Final Subordinated Units into Common Units. This allocation method for establishing such economic uniformity will be available to the Managing Member only if the method for allocating the Capital Account maintained with respect to the Subordinated Units between the transferred and retained Subordinated Units pursuant to Section 5.3(c)(ii) does not otherwise provide such economic uniformity to the Final Subordinated Units.

(B) With respect to an event triggering an adjustment to the Carrying Value of Company property pursuant to Section 5.3(d) during any taxable period of the Company ending upon, or after, the issuance of IDR Reset Common Units pursuant to Section 5.12, after the application of Section 6.1(c)(x)(A), any Unrealized Gains and Unrealized Losses shall be allocated among the Members in a manner that to the nearest extent possible results in the Capital Accounts maintained with respect to such IDR Reset Common Units issued pursuant to Section 5.12 equaling the product of (A) the Aggregate Quantity of IDR Reset Common Units and (B) the Per Unit Capital Amount for an Initial Common Unit.

(C) With respect to any taxable period during which an IDR Reset Common Unit is transferred to any Person who is not an Affiliate of the transferor, all or a portion of the remaining items of Company gross income or gain for such taxable period shall be allocated 100% to the transferor Member of such transferred IDR Reset Common Unit until such transferor Member has been allocated an amount of gross income or gain that increases the Capital Account maintained with respect to such transferred IDR Reset Common Unit to an amount equal to the Per Unit Capital Amount for an Initial Common Unit.

(D) For the proper administration of the Company and for the preservation of uniformity of the Non-Managing Member Interests (or any class or classes thereof), the Managing Member may (i) adopt such conventions as it deems appropriate in determining the amount of depreciation, amortization and cost recovery deductions; (ii) make special allocations of income, gain, loss, deduction, Unrealized Gain or Unrealized Loss; and (iii) amend the provisions of this Agreement as appropriate (x) to reflect the proposal or promulgation of Treasury Regulations under Section 704(b) or Section 704(c) of the Code or (y) otherwise to preserve or achieve uniformity of the Non-Managing Member Interests (or any class or classes thereof). The Managing Member may adopt such conventions, make such allocations and make such amendments to this Agreement as provided in this Section 6.1(c)(x)(D) only if such conventions, allocations or amendments would not have a material adverse effect on the Members, the holders of any class or classes of Non-Managing Member Interests issued and

Outstanding or the Company, and if such allocations are consistent with the principles of Section 704 of the Code.

(xi) Noncompensatory Option. Any Member who has received its interest pursuant to the exercise of a Noncompensatory Option shall be allocated gain or loss or reallocated capital from other Members' Capital Accounts as necessary to comply with Treasury Regulations Section 1.704-1(b)(2)(iv)(5).

(xii) Curative Allocation.

(A) Notwithstanding any other provision of this Section 6.1, other than the Required Allocations, the Required Allocations shall be taken into account in making the Agreed Allocations so that, to the extent possible, the net amount of items of gross income, gain, loss and deduction allocated to each Member pursuant to the Required Allocations and the Agreed Allocations, together, shall be equal to the net amount of such items that would have been allocated to each such Member under the Agreed Allocations had the Required Allocations and the related Curative Allocation not otherwise been provided in this Section 6.1. Notwithstanding the preceding sentence, Required Allocations relating to (1) Nonrecourse Deductions shall not be taken into account except to the extent that there has been a decrease in Company Minimum Gain and (2) Member Nonrecourse Deductions shall not be taken into account except to the extent that there has been a decrease in Member Nonrecourse Debt Minimum Gain. In exercising its discretion under this Section 6.1(c)(xii)(A), the Managing Member may take into account future Required Allocations that, although not yet made, are likely to offset other Required Allocations previously made. Allocations pursuant to this Section 6.1(c)(xii)(A) shall only be made with respect to Required Allocations to the extent the Managing Member determines that such allocations will otherwise be inconsistent with the economic agreement among the Members. Further, allocations pursuant to this Section 6.1(c)(xii)(A) shall be deferred with respect to allocations pursuant to clauses (1) and (2) hereof to the extent the Managing Member determines that such allocations are likely to be offset by subsequent Required Allocations.

(B) The Managing Member shall, with respect to each taxable period, (1) apply the provisions of Section 6.1(c)(xii)(A) in whatever order is most likely to minimize the economic distortions that might otherwise result from the Required Allocations, and (2) divide all allocations pursuant to Section 6.1(c)(xii)(A) among the Members in a manner that is likely to minimize such economic distortions.

(xiii) Corrective and Other Allocations. In the event of any allocation of Additional Book Basis Derivative Items or a Net Termination Loss, the following rules shall apply:

(A) The Managing Member shall allocate Additional Book Basis Derivative Items consisting of depreciation, amortization, depletion or any other form of cost recovery (other than Additional Book Basis Derivative Items included in Net Termination Gain or Net Termination Loss) with respect to any Adjusted Property to the Unitholders, Pro Rata, and the holders of Incentive Distribution Rights, all in the same proportion as the Net Termination Gain or Net Termination Loss resulting from the Revaluation Event that gave rise to such Additional Book Basis Derivative Items was allocated to them pursuant to Section 6.1(b).

(B) If a sale or other taxable disposition of an Adjusted Property, including, for this purpose, inventory ("Disposed of Adjusted Property") occurs other than in connection with an event giving rise to Net Termination Gain or Net Termination Loss, the Managing Member shall allocate (1) items of gross income and gain (aa) away from the holders of Incentive Distribution Rights and (bb) to the Unitholders, or (2) items of deduction and loss (aa) away from the Unitholders and (bb) to the holders of Incentive Distribution Rights, to the extent that the Additional Book Basis Derivative Items with respect to the Disposed of Adjusted Property (determined in accordance with the last sentence of the definition of Additional Book Basis Derivative Items) treated as having been allocated to the Unitholders pursuant to this Section 6.1(c)(xiii)(B) exceed their Share of Additional Book Basis Derivative Items with respect to such Disposed of Adjusted Property. For purposes of this Section 6.1(c)(xiii)(B), the Unitholders shall be treated as having been allocated Additional Book Basis Derivative Items to the extent that such Additional Book Basis Derivative Items have reduced the amount of income that would otherwise have been allocated to the Unitholders under this Agreement (e.g., Additional Book Basis Derivative Items taken into account in computing cost of goods sold would reduce the amount of book income otherwise available for allocation among the Members). Any allocation made pursuant to this Section 6.1(c)(xiii)(B) shall be made after all of the other Agreed Allocations have been made as if this Section 6.1(c)(xiii) were not in this Agreement and, to the extent necessary, shall require the reallocation of items that have been allocated pursuant to such other Agreed Allocations.

(C) Net Termination Loss in an amount equal to the lesser of (1) such Net Termination Loss and (2) the Aggregate Remaining Net Positive Adjustments shall be allocated in such a manner, as determined by the Managing Member, that to the extent possible, the Capital Account balances of the Members will equal the amount they would have been had no prior Book-Up Events occurred, and any remaining Net Termination Loss shall be allocated pursuant to Section 6.1(b) hereof. In allocating Net Termination Loss pursuant to this Section 6.1(c)(xiii)(C), the Managing Member shall attempt, to the extent possible, to cause the Capital Accounts of the Unitholders, on the one hand, and holders of the Incentive

Distribution Rights, on the other hand, to equal the amount they would equal if (i) the Carrying Values of the Company's property had not been previously adjusted in connection with any prior Book-Up Events, (ii) Unrealized Gain and Unrealized Loss (or, in the case of a liquidation, actual gain or loss) with respect to such Company Property were determined with respect to such unadjusted Carrying Values, and (iii) any resulting Net Termination Gain had been allocated pursuant to Section 6.1(b)(i) (including, for the avoidance of doubt, taking into account the provisions set forth in the last sentence of Section 6.1(b)(i)).

(D) In making the allocations required under this Section 6.1(c)(xiii), the Managing Member may apply whatever conventions or other methodology it determines will satisfy the purpose of this Section 6.1(c)(xiii). Without limiting the foregoing, if an Adjusted Property is contributed by the Company to another entity classified as a partnership for federal income tax purposes (the "lower tier partnership"), the Managing Member may make allocations similar to those described in Section 6.1(c)(xiii)(A) through Section 6.1(c)(xiii)(C) to the extent the Managing Member determines such allocations are necessary to account for the Company's allocable share of income, gain, loss and deduction of the lower tier partnership that relate to the contributed Adjusted Property in a manner that is consistent with the purpose of this Section 6.1(c)(xiii).

(xiv) Special Curative Allocation in Event of Liquidation Prior to Conversion of the Last Outstanding Subordinated Unit. Notwithstanding any other provision of this Section 6.1 (other than the Required Allocations), if (A) the Liquidation Date occurs prior to the conversion of the last Outstanding Subordinated Unit and (B) after having made all other allocations provided for in this Section 6.1 for the taxable period in which the Liquidation Date occurs, the Capital Account in respect of each Common Unit does not equal the amount such Capital Account would have been if Section 6.1(b)(iii) and Section 6.1(b)(v) had not been part of this Agreement and all prior allocations of Net Termination Gain and Net Termination Loss had been made pursuant to Section 6.1(b)(i) or Section 6.1(b)(ii), as applicable, then items of income, gain, loss and deduction for such taxable period shall be reallocated among the Managing Member and all Unitholders in a manner determined appropriate by the Managing Member so as to cause, to the maximum extent possible, the Capital Account in respect of each Common Unit to equal the amount such Capital Account would have been if all prior allocations of Net Termination Gain and Net Termination Loss had been made pursuant to Section 6.1(b)(i) or Section 6.1(b)(ii), as applicable. For the avoidance of doubt, the reallocation of items set forth in the immediately preceding sentence provides that, to the extent necessary to achieve the Capital Account balances described above, (x) items of income and gain that would otherwise be included in Net Income or Net Loss, as the case may be, for the taxable period in which the Liquidation Date occurs, shall be reallocated from the Managing Member and Unitholders holding Subordinated Units to Unitholders holding Common Units and (y) items of deduction and loss that would otherwise

be included in Net Income or Net Loss, as the case may be, for the taxable period in which the Liquidation Date occurs shall be reallocated from Unitholders holding Common Units to the Managing Member and Unitholders holding Subordinated Units. In the event that (i) the Liquidation Date occurs on or before the date (not including any extension of time prescribed by law for the filing of the Company's federal income tax return for the taxable period immediately prior to the taxable period in which the Liquidation Date occurs and (ii) the reallocation of items for the taxable period in which the Liquidation Date occurs as set forth above in this Section 6.1(c)(xiv) fails to achieve the Capital Account balances described above, items of income, gain, loss and deduction that would otherwise be included in the Net Income or Net Loss, as the case may be, for such prior taxable period shall be reallocated among the Managing Member and all Unitholders in a manner that will, to the maximum extent possible and after taking into account all other allocations made pursuant to this Section 6.1(c)(xiv), cause the Capital Account in respect of each Common Unit to equal the amount such Capital Account would have been if all prior allocations of Net Termination Gain and Net Termination Loss had been made pursuant to Section 6.1(b)(i) or Section 6.1(b)(ii), as applicable.

Section 6.2 *Allocations for Tax Purposes.*

(a) Except as otherwise provided herein, for federal income tax purposes, each item of income, gain, loss, deduction and credit shall be allocated among the Members in the same manner as its correlative item of "book" income, gain, loss or deduction is allocated pursuant to Section 6.1.

(b) In an attempt to eliminate Book-Tax Disparities attributable to a Contributed Property or Adjusted Property, items of income, gain, loss, depreciation, amortization and cost recovery deductions shall be allocated for federal income tax purposes among the Members in the manner provided under Section 704(c) of the Code, and the Treasury Regulations promulgated under Section 704(b) and 704(c) of the Code, as determined to be appropriate by the Managing Member (taking into account the Managing Member's discretion under Section 6.1(c)(x)(D)).

(c) In accordance with Treasury Regulation Sections 1.1245-1(e) and 1.1250-1(f), any gain allocated to the Members upon the sale or other taxable disposition of any Company asset shall, to the extent possible, after taking into account other required allocations of gain pursuant to this Section 6.2, be characterized as Recapture Income in the same proportions and to the same extent as such Members (or their predecessors in interest) have been allocated any deductions directly or indirectly giving rise to the treatment of such gains as Recapture Income.

(d) All items of income, gain, loss, deduction and credit recognized by the Company for federal income tax purposes and allocated to the Members in accordance with the provisions hereof shall be determined without regard to any election under Section 754 of the Code that may be made by the Company; provided, however, that such allocations, once made, shall be adjusted (in the manner determined by the Managing

Member) to take into account those adjustments permitted or required by Sections 734 and 743 of the Code.

(e) Each item of Company income, gain, loss and deduction, for federal income tax purposes, shall be determined for each taxable period and the Managing Member shall prorate and allocate such items to the Members in a manner permitted by Section 706 of the Code and the regulations and rulings promulgated thereunder.

(f) If, as a result of an exercise of a Noncompensatory Option, a Capital Account reallocation is required under Treasury Regulation Section 1.704-1(b)(2)(iv)(s)(3), the Managing Member shall make corrective allocations pursuant to Treasury Regulation Section 1.704-1(b)(4)(x).

Section 6.3 *Requirement and Characterization of Distributions; Distributions to Record Holders.*

(a) Within 45 days following the end of each Quarter commencing with the Quarter ending on August 31, 2015, an amount equal to 100% of Available Cash with respect to such Quarter shall be distributed in accordance with this Article VI by the Company to the Members as of the Record Date selected by the Managing Member; *provided*, that our Sponsors shall not receive distributions on their Units with respect to the Distribution Forbearance Period. After the date on which the Distribution Forbearance Period ends, distributions will be made to the Sponsors in accordance with this Article VII. All amounts of Available Cash distributed by the Company on any date from any source shall be deemed to be Operating Surplus until the sum of all amounts of Available Cash theretofore distributed by the Company to the Members pursuant to Section 6.4 equals the Operating Surplus from the IPO Closing Date through the close of the immediately preceding Quarter. Any remaining amounts of Available Cash distributed by the Managing Member on such date shall, except as otherwise provided in Section 6.5, be deemed to be "Capital Surplus." All distributions required to be made under this Agreement shall be made subject to Sections 18-607 and 18-804 of the Delaware Act and other applicable law, notwithstanding any other provision of this Agreement.

(b) Notwithstanding Section 6.3(a), in the event of the dissolution and liquidation of the Company, all cash received during or after the Quarter in which the Liquidation Date occurs shall be applied and distributed solely in accordance with, and subject to the terms and conditions of, Section 12.4.

(c) The Managing Member may treat taxes paid by the Company on behalf of, or amounts withheld with respect to, all or less than all of the Members, as a distribution of Available Cash to such Members as determined appropriate under the circumstances by the Managing Member.

(d) Each distribution in respect of a Membership Interest shall be paid by the Company, directly or through any other Person or agent, only to the Record Holder of such Membership Interest as of the Record Date set for such distribution. Such payment

shall constitute full payment and satisfaction of the Company's liability in respect of such payment, regardless of any claim of any Person who may have an interest in such payment by reason of an assignment or otherwise.

Section 6.4 *Distributions of Available Cash from Operating Surplus.*

(a) *During the Subordination Period*. Available Cash with respect to any Quarter or portion thereof wholly within the Subordination Period that is deemed to be Operating Surplus pursuant to the provisions of Section 6.3 or Section 6.5 shall be distributed as follows, except as otherwise contemplated by Section 5.4 in respect of other Membership Interests issued pursuant thereto:

(i) *First*, 100% to all the Unitholders holding Common Units, Pro Rata, until there has been distributed in respect of each Common Unit then Outstanding an amount equal to the Minimum Quarterly Distribution for such Quarter;

(ii) *Second*, 100% to all Unitholders holding Common Units, Pro Rata, until there has been distributed in respect of each Common Unit then Outstanding an amount equal to the Cumulative Common Unit Arrearage existing with respect to such Quarter;

(iii) *Third*, 100% to all Unitholders holding Subordinated Units, Pro Rata, until there has been distributed in respect of each Subordinated Unit then Outstanding an amount equal to the Minimum Quarterly Distribution for such Quarter;

(iv) *Fourth*, 100% to all Unitholders, Pro Rata, until there has been distributed in respect of each Unit then Outstanding an amount equal to the excess of the First Target Distribution over the Minimum Quarterly Distribution for such Quarter;

(v) *Fifth*, (A) 15% to the holders of the Incentive Distribution Rights, Pro Rata, and (B) 85% to all Unitholders, Pro Rata, until there has been distributed in respect of each Unit then Outstanding an amount equal to the excess of the Second Target Distribution over the First Target Distribution for such Quarter;

(vi) *Sixth*, (A) 25% to the holders of the Incentive Distribution Rights, Pro Rata, and (B) 75% to all Unitholders, Pro Rata, until there has been distributed in respect of each Unit then Outstanding an amount equal to the excess of the Third Target Distribution over the Second Target Distribution for such Quarter; and

(vii) *Thereafter*, (A) 50% to the holders of the Incentive Distribution Rights, Pro Rata, and (B) 50% to all Unitholders, Pro Rata;

provided, *however*, that if the Target Distributions have been reduced to zero pursuant to the second sentence of Section 6.6(a), the distribution of Available Cash that is deemed to be Operating Surplus with respect to any Quarter will be made solely in accordance with Section 6.4(a)(vii).

(b) *After the Subordination Period.* Available Cash with respect to any Quarter after the Subordination Period that is deemed to be Operating Surplus pursuant to the provisions of Section 6.3 or Section 6.5 shall be distributed as follows, except as otherwise contemplated by Section 5.4 in respect of other Membership Interests issued pursuant thereto:

(i) *First*, 100% to the Unitholders, Pro Rata, until there has been distributed in respect of each Unit then Outstanding an amount equal to the Minimum Quarterly Distribution for such Quarter;

(ii) *Second*, 100% to the Unitholders, Pro Rata, until there has been distributed in respect of each Unit then Outstanding an amount equal to the excess of the First Target Distribution over the Minimum Quarterly Distribution for such Quarter;

(iii) *Third*, (A) 15% to the holders of the Incentive Distribution Rights, Pro Rata, and (B) 85% to all Unitholders, Pro Rata, until there has been distributed in respect of each Unit then Outstanding an amount equal to the excess of the Second Target Distribution over the First Target Distribution for such Quarter;

(iv) *Fourth*, (A) 25% to the holders of the Incentive Distribution Rights, Pro Rata, and (B) 75% to all Unitholders, Pro Rata, until there has been distributed in respect of each Unit then Outstanding an amount equal to the excess of the Third Target Distribution over the Second Target Distribution for such Quarter; and

(v) *Thereafter*, (A) 50% to the holders of the Incentive Distribution Rights, Pro Rata, and (B) 50% to all Unitholders, Pro Rata;

provided, *however*, that if the Target Distributions have been reduced to zero pursuant to the second sentence of Section 6.6(a), the distribution of Available Cash that is deemed to be Operating Surplus with respect to any Quarter will be made solely in accordance with Section 6.4(b)(v).

Section 6.5 *Distributions of Available Cash from Capital Surplus. Available Cash that is deemed to be Capital Surplus pursuant to the provisions of Section 6.3(a) shall be distributed, unless the provisions of Section 6.3 require otherwise:*

(a) First, 100% to the Unitholders, Pro Rata, until the Minimum Quarterly Distribution has been reduced to zero pursuant to the second sentence of Section 6.6(a);

(b) Second, 100% to all Unitholders holding Common Units, Pro Rata, until there has been distributed in respect of each Common Unit then Outstanding an amount equal to the Cumulative Common Unit Arrearage; and

(c) Thereafter, all Available Cash shall be distributed as if it were Operating Surplus and shall be distributed in accordance with Section 6.4.

Section 6.6 *Adjustment of Target Distribution Levels.*

(a) The Target Distributions, Common Unit Arrearages and Cumulative Common Unit Arrearages shall be proportionately adjusted in the event of any distribution, combination or subdivision (whether effected by a distribution payable in Units or otherwise) of Units or other Membership Interests in accordance with Section 5.8. In the event of a distribution of Available Cash that is deemed to be from Capital Surplus, the then applicable Target Distributions shall be reduced in the same proportion that the distribution had to the fair market value of the Common Units prior to the announcement of the distribution.

(b) The Target Distributions shall also be subject to adjustment pursuant to Section 5.12 and Section 6.9.

Section 6.7 *Special Provisions Relating to the Holders of Subordinated Units.* Except with respect to the right to vote on or approve matters requiring the vote or approval of a percentage of the holders of Outstanding Common Units and the right to participate in allocations of income, gain, loss and deduction and distributions made with respect to Common Units, the holder of a Subordinated Unit shall have all of the rights and obligations of a Unitholder holding Common Units hereunder; provided, however, that immediately upon the conversion of Subordinated Units into Common Units pursuant to Section 5.5, the Unitholder holding a Subordinated Unit shall possess all of the rights and obligations of a Unitholder holding Common Units hereunder with respect to such converted Subordinated Units, including the right to vote as a Unitholder and the right to participate in allocations of income, gain, loss and deduction and distributions made with respect to Common Units; provided, however, that such converted Subordinated Units shall remain subject to the provisions of Sections 5.3(c)(ii) and 6.1(c)(x)(A).

Section 6.8 *Special Provisions Relating to the Holders of Incentive Distribution Rights.* Notwithstanding anything to the contrary set forth in this Agreement, the holders of the Incentive Distribution Rights (1) shall (x) possess the rights and obligations provided in this Agreement with respect to a Non-Managing Member pursuant to Article III and Article VII and (y) have a Capital Account as a Non-Managing Member pursuant to Section 5.3 and all other provisions related thereto and (2) shall not (x) be entitled to vote on any matters requiring the approval or vote of the holders of Outstanding Units, except as provided by law, (y) be entitled to any distributions other than as provided in Section 6.4(a)(v), (vi) and (vii), Section 6.4(b)(iii), (iv) and (v), and Section 12.4 or (z) be allocated items of income, gain, loss or deduction other than as specified in this Article VI; provided, however, that, for the avoidance of doubt, the foregoing shall not preclude the Company from making any other payments or distributions in connection with other actions permitted by this Agreement.

Section 6.9 *Entity Level Taxation. I*f legislation is enacted or the official interpretation of existing legislation is modified by a governmental authority, which after giving effect to such enactment or modification, results in a Group Member becoming subject to federal, state or local or non-U.S. income or withholding taxes in excess of the amount of such taxes due from the Group Member prior to such enactment or modification (including, for the avoidance of doubt, any increase in the rate of such taxation applicable to the Group Member), then the Managing Member may, at its option, reduce the Target Distributions by the amount of income or withholding taxes that are payable by reason of any such new legislation or interpretation (the "Incremental Income Taxes"), or any portion thereof selected by the Managing Member, in the manner provided in this Section 6.9. If the Managing Member elects to reduce the Target Distributions for any Quarter with respect to all or a portion of any Incremental Income Taxes, the Managing Member shall estimate for such Quarter the Company Group's aggregate liability (the "Estimated Incremental Quarterly Tax Amount") for all (or the relevant portion of) such Incremental Income Taxes; provided, however, that any difference between such estimate and the actual liability for Incremental Income Taxes (or the relevant portion thereof) for such Quarter may, to the extent determined by the Managing Member, be taken into account in determining the Estimated Incremental Quarterly Tax Amount with respect to each Quarter in which any such difference can be determined. For each such Quarter, the Target Distributions shall be the product obtained by multiplying (a) the amounts therefor that are set out herein prior to the application of this Section 6.9 times (b) the quotient obtained by dividing (i) Available

Cash with respect to such Quarter by (ii) the sum of Available Cash with respect to such Quarter and the Estimated Incremental Quarterly Tax Amount for such Quarter, as determined by the Managing Member. For purposes of the foregoing, Available Cash with respect to a Quarter will be deemed reduced by the Estimated Incremental Quarterly Tax Amount for that Quarter.

ARTICLE VII
MANAGEMENT AND OPERATION OF BUSINESS

Section 7.1 *Management.*

(a) The Managing Member shall conduct, direct and manage all activities of the Company. Except as otherwise expressly provided in this Agreement, but without limitation on the ability of the Managing Member to delegate its rights and power to other Persons, all management powers over the business and affairs of the Company shall be exclusively vested in the Managing Member, and no Non-Managing Member in its capacity as such shall have any management power over the business and affairs of the Company. In addition to the powers now or hereafter granted to a managing member of a limited liability company under applicable law or that are granted to the Managing Member under any other provision of this Agreement, the Managing Member, subject to Section 7.4, shall have full power and authority to do all things and on such terms as it determines to be necessary or appropriate to conduct the business of the Company, to exercise all powers set forth in Section 2.5 and to effectuate the purposes set forth in Section 2.4, including the following:

(i) the making of any expenditures, the lending or borrowing of money, the assumption or guarantee of, or other contracting for, indebtedness and other liabilities, the issuance of evidences of indebtedness, including indebtedness that is convertible into or exchangeable for Membership Interests, and the incurring of any other obligations;

(ii) the making of tax, regulatory and other filings, or rendering of periodic or other reports to governmental or other agencies having jurisdiction over the business or assets of the Company;

(iii) the acquisition, disposition, mortgage, pledge, encumbrance, hypothecation or exchange of any or all of the assets of the Company or the merger or other combination of the Company with or into another Person (the matters described in this clause (iii) being subject, however, to any prior approval that may be required by Section 7.4 and Article XIV);

(iv) the use of the assets of the Company (including cash on hand) for any purpose consistent with the terms of this Agreement, including (A) the financing of the conduct of the business or operations of the Company Group, whether through a Subsidiary or a Joint Venture; (B) the lending of funds to other Persons (including other Group Members); (C) the repayment or guarantee of obligations of any Group Member; and (D) the making of capital contributions to any Group Member;

(v) the negotiation, execution and performance of any contracts, conveyances or other instruments (including instruments that limit the liability of the Company under contractual arrangements to all or particular assets of the Company, with the other party to the contract to have no recourse against the Managing Member or its assets other than its interest in the Company, even if the same results in the terms of the transaction being less favorable to the Company than would otherwise be the case);

(vi) the distribution of cash held by the Company;

(vii) the selection and dismissal of employees (including employees having titles such as "president," "vice president," "secretary" and "treasurer") and agents, internal and outside attorneys, accountants, consultants and contractors and the determination of their compensation and other terms of employment or hiring;

(viii) the maintenance of insurance for the benefit of the Company Group, the Members and Indemnitees;

(ix) the formation of, or acquisition of an interest in, and the contribution of property and the making of loans to, any further limited or general partnerships, joint ventures, corporations, limited liability companies or other Persons (including the acquisition of interests in, and the contributions of property to, any Group Member from time to time) subject to the restrictions set forth in Section 2.4;

(x) the control of any matters affecting the rights and obligations of the Company, including the bringing and defending of actions at law or in equity and otherwise engaging in the conduct of litigation, arbitration or mediation and the incurring of legal expense and the settlement of claims and litigation;

(xi) the indemnification of any Person against liabilities and contingencies to the extent permitted by law;

(xii) the purchase, sale or other acquisition or disposition of Membership Interests, or the issuance of Derivative Membership Interests;

(xiii) the undertaking of any action in connection with the Company's participation in the management of any Group Member or Joint Venture; and

(xiv) the entering into of agreements with any of its Affiliates to render services to a Group Member or to itself in the discharge of its duties as Managing Member of the Company.

(b) Notwithstanding any other provision of this Agreement, any Group Member Agreement, the Delaware Act or any applicable law, rule or regulation, each of the Members and each other Person who may acquire an interest in Membership Interests or is otherwise bound by this Agreement hereby (i) approves, ratifies and confirms the

execution, delivery and performance by the parties thereto of this Agreement and the Group Member Agreement of each other Group Member, the Management Services Agreements, the Underwriting Agreement, the Exchange Agreement and the other agreements described in or filed as exhibits to the IPO Registration Statement that are related to the transactions contemplated by the IPO Registration Statement (collectively, the "Transaction Documents") (in each case other than this Agreement, without giving effect to any amendments, supplements or restatements thereof entered into after the date such Person becomes bound by the provisions of this Agreement); (ii) agrees that the Managing Member (on its own or on behalf of the Company) is authorized to execute, deliver and perform the agreements referred to in clause (i) of this sentence and the other agreements, acts, transactions and matters described in or contemplated by the IPO Registration Statement on behalf of the Company without any further act, approval or vote of the Members or the other Persons who may acquire an interest in Membership Interests or otherwise bound by this Agreement; and (iii) agrees that the execution, delivery or performance by the Managing Member, any Group Member or any Affiliate of any of them of this Agreement or any agreement authorized or permitted under this Agreement shall not constitute a breach by the Managing Member of any duty or any other obligation of any type whatsoever that the Managing Member may owe the Company or the Non-Managing Members or any other Persons under this Agreement (or any other agreements) or of any duty existing at law, in equity or otherwise.

Section 7.2 *Replacement of Fiduciary Duties.* Notwithstanding any other provision of this Agreement, to the extent that, at law or in equity, the Managing Member or any other Indemnitee would have duties (including fiduciary duties) to the Company, to another Member, to any Person who acquires an interest in a Membership Interest or to any other Person bound by this Agreement, all such duties (including fiduciary duties) are hereby eliminated, to the fullest extent permitted by law, and replaced with the duties expressly set forth herein. The elimination of duties (including fiduciary duties) and replacement thereof with the duties expressly set forth herein are approved by the Company, each of the Members, each other Person who acquires an interest in a Membership Interest and each other Person bound by this Agreement.

Section 7.3 *Certificate of Formation.* The Managing Member has caused the Certificate of Formation to be filed with the Secretary of State of the State of Delaware as required by the Delaware Act. The Managing Member shall use all reasonable efforts to cause to be filed such other certificates or documents that the Managing Member determines to be necessary or appropriate for the formation, continuation, qualification and operation of a limited liability company in the State of Delaware or any other state in which the Company may elect to do business or own property. To the extent the Managing Member determines such action to be necessary or appropriate, the Managing Member shall file amendments to and restatements of the Certificate of Formation and do all things to maintain the Company as a limited liability company under the laws of the State of Delaware or of any other state in which the Company may elect to do business or own property. Subject to the terms of Section 3.4(a), the Managing Member shall not be required, before or after filing, to deliver or mail a copy of the Certificate of Formation, any qualification document or any amendment thereto to any Non-Managing Member.

Section 7.4 *Restrictions on the Managing Member's Authority to Sell Assets of the Company Group.* Except as provided in Article XII and Article XIV, the Managing Member may not sell, exchange or otherwise dispose of all or substantially all of the assets of the Company Group, taken as a whole, in a single transaction or a series of related transactions (including by way of merger, consolidation, other combination or sale of ownership interests in the Company's Subsidiaries) without the approval of a Unit Majority; provided, however, that this provision shall not preclude or limit the Managing Member's ability to mortgage, pledge, hypothecate or grant a security interest in all or substantially all of the assets of the Company Group and shall not apply to any forced sale of any or all of the assets of the Company Group pursuant to the foreclosure of, or other realization upon, any such encumbrance.

Section 7.5 *Reimbursement of the Managing Member.*

(a) Except as provided in this Section 7.5, the Management Services Agreements and elsewhere in this Agreement, the Managing Member shall not be compensated for its services as a general partner or managing member of any Group Member.

(b) The Managing Member shall be reimbursed on a monthly basis, or such other basis as the Managing Member may determine, for (i) all direct and indirect expenses it incurs or payments it makes on behalf of the Company Group (including salary, bonus, incentive compensation and other amounts paid to any Person, including Affiliates of the Managing Member, to perform services for the Company Group or for the Managing Member in the discharge of its duties to the Company Group), and (ii) all other expenses allocable to the Company Group or otherwise incurred by the Managing Member or its Affiliates in connection with managing and operating the Company Group's business and affairs (including expenses allocated to Managing Member by its Affiliates). The Managing Member shall determine the expenses that are allocable to the Company Group. Reimbursements pursuant to this Section 7.5 shall be in addition to any reimbursement to the Managing Member as a result of indemnification pursuant to Section 7.7. This provision does not affect the ability of the Managing Member and its Affiliates to enter into an agreement to provide services to any Group Member for a fee or otherwise than for cost.

(c) The Managing Member, without the approval of any Member, may propose and adopt on behalf of the Company benefit plans, programs and practices (including plans, programs and practices involving the issuance of Membership Interests or Derivative Membership Interests), or cause the Company to issue Membership Interests or Derivative Membership Interests in connection with, or pursuant to, any benefit plan, program or practice maintained or sponsored by the Managing Member or any of its Affiliates, any Group Member or their Affiliates, or any of them, in each case for the benefit of officers, employees, consultants and directors of the Managing Member or any of its Affiliates, in respect of services performed, directly or indirectly, for the benefit of the Company Group. The Company agrees to issue and sell to the Managing Member or any of its Affiliates any Membership Interests or Derivative Membership Interests that the Managing Member or such Affiliates are obligated to provide to any officers, consultants and directors pursuant to any such benefit plans, programs or

practices. Expenses incurred by the Managing Member in connection with any such plans, programs and practices (including the net cost to the Managing Member or such Affiliates of Membership Interests or Derivative Membership Interests purchased by the Managing Member or such Affiliates from the Company to fulfill options or awards under such plans, programs and practices) shall be reimbursed in accordance with Section 7.5(b). Any and all obligations of the Managing Member under any benefit plans, programs or practices adopted by the Managing Member as permitted by this Section 7.5(c) shall constitute obligations of the Managing Member hereunder and shall be assumed by any successor Managing Member approved pursuant to Section 11.1 or Section 11.2 or the transferee of or successor to all of the Managing Member's Managing Member Interest pursuant to Section 4.6.

Section 7.6 *Outside Activities.*

(a) Subject to the terms of Section 7.6(c) and the ROFO Agreement, each Unrestricted Person shall have the right to engage in businesses of every type and description and other activities for profit and to engage in and possess an interest in other business ventures of any and every type or description, whether in businesses engaged in or anticipated to be engaged in by any Group Member, independently or with others, including business interests and activities in direct competition with the business and activities of any Group Member, and none of the same shall constitute a breach of this Agreement or any duty otherwise existing at law, in equity or otherwise, to any Group Member or any Member. None of any Group Member, any Non-Managing Member or any other Person shall have any rights by virtue of this Agreement, any Group Member Agreement, or the partnership relationship established hereby in any business ventures of any Unrestricted Person.

(b) Notwithstanding anything to the contrary in this Agreement, the doctrine of corporate opportunity, or any analogous doctrine, shall not apply to any Unrestricted Person (including the Managing Member). No Unrestricted Person (including the Managing Member) who acquires knowledge of a potential transaction, agreement, arrangement or other matter that may be an opportunity for the Company, shall have any duty to communicate or offer such opportunity to the Company, and such Unrestricted Person (including the Managing Member) shall not be liable to the Company, to any Member or any other Person bound by this Agreement for breach of any duty otherwise existing at law, in equity or otherwise, by reason of the fact that such Unrestricted Person (including the Managing Member) pursues or acquires for itself, directs such opportunity to another Person or does not communicate such opportunity or information to the Company, provided such Unrestricted Person does not engage in such business or activity using confidential or proprietary information provided by or on behalf of the Company to such Unrestricted Person.

(c) The Managing Member and each of its Affiliates may acquire Units or other Membership Interests and, except as otherwise provided in this Agreement, shall be entitled to exercise, at their option, all rights relating to all Units and/or other

Membership Interests acquired by them. The term "Affiliates" when used in this Section 7.6(d) with respect to the Managing Member shall not include any Group Member.

Section 7.7 *Indemnification.*

(a) To the fullest extent permitted by law but subject to the limitations expressly provided in this Agreement, all Indemnitees shall be indemnified and held harmless by the Company from and against any and all losses, claims, damages, liabilities, joint or several, expenses (including legal fees and expenses), judgments, fines, penalties, interest, settlements or other amounts arising from any and all threatened, pending or completed claims, demands, actions, suits or proceedings, whether civil, criminal, administrative or investigative, and whether formal or informal and including appeals, in which any Indemnitee may be involved, or is threatened to be involved, as a party or otherwise, by reason of its status as an Indemnitee and acting (or omitting or refraining to act) in such capacity on behalf of or for the benefit of the Company; provided, that the Indemnitee shall not be indemnified and held harmless pursuant to this Agreement if there has been a final and non-appealable judgment entered by a court of competent jurisdiction determining that, in respect of the matter for which the Indemnitee is seeking indemnification pursuant to this Agreement, the Indemnitee acted in bad faith or engaged in fraud, willful misconduct or, in the case of a criminal matter, acted with knowledge that the Indemnitee's conduct was unlawful; provided, further, no indemnification pursuant to this Section 7.7 shall be available to any Indemnitee (other than a Group Member) with respect to any such Affiliate's obligations pursuant to the Transaction Documents. Any indemnification pursuant to this Section 7.7 shall be made only out of the assets of the Company, it being agreed that the Managing Member shall not be personally liable for such indemnification and shall have no obligation to contribute or loan any monies or property to the Company to enable it to effectuate such indemnification.

(b) To the fullest extent permitted by law, expenses (including legal fees and expenses) incurred by an Indemnitee who is indemnified pursuant to Section 7.7(a) in appearing at, participating in or defending any claim, demand, action, suit or proceeding shall, from time to time, be advanced by the Company prior to a final and non-appealable judgment entered by a court of competent jurisdiction determining that, in respect of the matter for which the Indemnitee is seeking indemnification pursuant to this Section 7.7, the Indemnitee is not entitled to be indemnified upon receipt by the Company of any undertaking by or on behalf of the Indemnitee to repay such amount if it shall be ultimately determined that the Indemnitee is not entitled to be indemnified as authorized by this Section 7.7.

(c) The indemnification provided by this Section 7.7 shall be in addition to any other rights to which an Indemnitee may be entitled under this Agreement, any other agreement, pursuant to any vote of the holders of Outstanding Non-Managing Member Interests, as a matter of law, in equity or otherwise, both as to actions in the Indemnitee's capacity as an Indemnitee and as to actions in any other capacity (including any capacity under the Underwriting Agreement), and shall continue as to an Indemnitee who has

ceased to serve in such capacity and shall inure to the benefit of the heirs, successors, assigns and administrators of the Indemnitee.

(d) The Company may purchase and maintain (or reimburse the Managing Member or its Affiliates for the cost of) insurance, on behalf of the Managing Member, its Affiliates, the Indemnitees and such other Persons as the Managing Member shall determine, against any liability that may be asserted against, or expense that may be incurred by, such Person in connection with the Company's or any of its Affiliates' activities or such Person's activities on behalf of the Company or any of its Affiliates, regardless of whether the Company would have the power to indemnify such Person against such liability under the provisions of this Agreement.

(e) For purposes of this Section 7.7: (i) the Company shall be deemed to have requested an Indemnitee to serve as fiduciary of an employee benefit plan whenever the performance by it of its duties to the Company also imposes duties on, or otherwise involves services by, it to the plan or participants or beneficiaries of the plan; (ii) excise taxes assessed on an Indemnitee with respect to an employee benefit plan pursuant to applicable law shall constitute "fines" within the meaning of Section 7.7(a); and (iii) action taken or omitted by it with respect to any employee benefit plan in the performance of its duties for a purpose reasonably believed by it to be in the best interest of the participants and beneficiaries of the plan shall be deemed to be for a purpose that is in the best interests of the Company.

(f) In no event may an Indemnitee subject the Non-Managing Members to personal liability by reason of the indemnification provisions set forth in this Agreement.

(g) An Indemnitee shall not be denied indemnification in whole or in part under this Section 7.7 because the Indemnitee had an interest in the transaction with respect to which the indemnification applies if the transaction was otherwise permitted by the terms of this Agreement.

(h) The provisions of this Section 7.7 are for the benefit of the Indemnitees and their heirs, successors, assigns, executors and administrators and shall not be deemed to create any rights for the benefit of any other Persons.

(i) No amendment, modification or repeal of this Section 7.7 or any provision hereof shall in any manner terminate, reduce or impair the right of any past, present or future Indemnitee to be indemnified by the Company, nor the obligations of the Company to indemnify any such Indemnitee under and in accordance with the provisions of this Section 7.7 as in effect immediately prior to such amendment, modification or repeal with respect to claims arising from or relating to matters occurring, in whole or in part, prior to such amendment, modification or repeal, regardless of when such claims may arise or be asserted.

Section 7.8 *Liability of Indemnitees.*

(a) Notwithstanding anything to the contrary set forth in this Agreement, any Group Member Agreement, under the Delaware Act or any other law, rule or regulation

or at equity, to the fullest extent allowed by law, no Indemnitee or any of its employees or Persons acting on its behalf shall be liable for monetary damages to the Company, the Members, or any other Persons who have acquired interests in Membership Interests or are bound by this Agreement, for losses sustained or liabilities incurred, of any kind or character, as a result of any act or omission of an Indemnitee or any of its employees or Persons acting on its behalf unless there has been a final and non-appealable judgment entered by a court of competent jurisdiction determining that, in respect of the matter in question, the Indemnitee or any of its employees or Persons acting on its behalf acted in bad faith or engaged in fraud, willful misconduct or, in the case of a criminal matter, acted with knowledge that the Indemnitee's conduct was unlawful.

(b) The Managing Member may exercise any of the powers granted to it by this Agreement and perform any of the duties imposed upon it hereunder either directly or by or through its agents, and the Managing Member shall not be responsible for any misconduct or negligence on the part of any such agent appointed by the Managing Member if such appointment was not made in bad faith.

(c) To the extent that, at law or in equity, an Indemnitee or any of its employees or Persons acting on its behalf has duties (including fiduciary duties) and liabilities relating thereto to the Company or to the Members or to any other Persons who have acquired a Membership Interest or are otherwise bound by this Agreement, the Managing Member and any other Indemnitee or any of its employees or Persons acting on its behalf acting in connection with the Company's business or affairs shall not be liable to the Company, the Non-Managing Members, or any other Persons who have acquired interests in the Membership Interests or are bound by this Agreement for its good faith reliance on the provisions of this Agreement, to the extent that they restrict, eliminate or otherwise modify the duties and liabilities, including fiduciary duties, of any Indemnitee otherwise existing at law or in equity, are agreed by the Members to replace such other duties and liabilities of the Indemnitee.

(d) Any amendment, modification or repeal of this Section 7.8 or any provision hereof shall be prospective only and shall not in any way affect the limitations on the liability of the Indemnitees under this Section 7.8 as in effect immediately prior to such amendment, modification or repeal with respect to claims arising from or relating to matters occurring, in whole or in part, prior to such amendment, modification or repeal, regardless of when such claims may arise or be asserted.

Section 7.9 *Resolution of Conflicts of Interest; Standards of Conduct and Modification of Duties.*

(a) Unless otherwise expressly provided in this Agreement or any Group Member Agreement, whenever a potential conflict of interest exists or arises between the Managing Member or any of its Affiliates, on the one hand, and the Company, any Group Member or any Member, on the other, any resolution or course of action by the Managing Member or its Affiliates in respect of such conflict of interest shall be permitted and deemed approved by all Members, and shall not constitute a breach of this Agreement, of any Group Member Agreement, of any agreement contemplated herein or

therein, or of any duty stated or implied by law or equity, if the resolution or course of action in respect of such conflict of interest is (i) approved by Special Approval, (ii) approved by the vote of a majority of the Outstanding Class A Shares (excluding Class A Shares owned by the Managing Member and its Affiliates, other than the Managing Member), (iii) determined by the Board of Directors of the General Partner to be on terms no less favorable to the Company than those generally being provided to or available from unrelated third parties or (iv) determined by the Board of Directors of the General Partner to be fair and reasonable to the Company, taking into account the totality of the relationships between the parties involved (including other transactions that may be particularly favorable or advantageous to the Company). The Managing Member shall be authorized but not required in connection with its resolution of such conflict of interest to seek Special Approval or approval by the holders of Class A Shares of such resolution, and the Managing Member may also adopt a resolution or course of action that has not received Special Approval or the approval by the holders of Class A Shares. Unless otherwise expressly provided in this Agreement or any Group Member Agreement, whenever the Managing Member makes a determination to refer or not to refer any potential conflict of interest to the Conflicts Committee for Special Approval or to seek or not to seek approval by the holders of the Class A Shares, then the Managing Member shall be entitled, to the fullest extent permitted by law, to make such determination free of any duty (including any fiduciary duty) or obligation whatsoever to the Company or any Member, and the Managing Member shall not, to the fullest extent permitted by law, be required to act in good faith or pursuant to any other standard or duty imposed by this Agreement, any Group Member Agreement, any other agreement contemplated hereby or under the Delaware Act or any other law, rule or regulation or at equity, and the Managing Member in making such determination shall be permitted to do so in its sole discretion. If Special Approval is sought, then it shall be presumed that, in making its decision, the Conflicts Committee acted in good faith, and if neither Special Approval nor Unitholder approval is sought, the Board of Directors of the General Partner determines that the resolution or course of action taken with respect to a conflict of interest satisfies either of the standards set forth in clauses (iii) or (iv) above, then it shall be presumed that, in making its decision, the Board of Directors of the General Partner acted in good faith. In any proceeding brought by any Member or by or on behalf of such Member or any other Member or the Company challenging any action by the Conflicts Committee with respect to any matter referred to the Conflicts Committee for Special Approval by the General Partner, any action by the Board of Directors of the General Partner in determining whether the resolution or course of action taken with respect to a conflict of interest satisfies either of the standards set forth in clauses (iii) or (iv) above, the Person bringing or prosecuting such proceeding shall have the burden of overcoming such presumption; in all cases subject to the provisions for conclusive determination in Section 7.9(b). Notwithstanding anything to the contrary in this Agreement or any duty otherwise existing at law or equity, the existence of the conflicts of interest described in the IPO Registration Statement are hereby approved by all Members and shall not constitute a breach of this Agreement or any such duty.

(b) Whenever the Managing Member or the Board of Directors of the General Partner or any committee thereof (including the Conflicts Committee), makes a determination or takes or declines to take any other action, or any Affiliate of the

Managing Member causes the Managing Member to do so, in its capacity as the managing member of the Company as opposed to in its individual capacity, whether under this Agreement, any Group Member Agreement or any other agreement, then, unless another express standard is provided for in this Agreement, the Managing Member, such Board of Directors or such committee or such Affiliates causing the Managing Member to do so, shall make such determination or take or decline to take such other action in good faith and shall not be subject to any other or different duties or standards (including fiduciary duties or standards) imposed by this Agreement, any Group Member Agreement, any other agreement contemplated hereby or under the Delaware Act or any other law, rule or regulation or at equity. A determination or other action or inaction will conclusively be deemed to be in "good faith" for all purposes of this Agreement, if the Person or Persons making such determination or taking or declining to take such other action subjectively believe that the determination or other action or inaction is in, or not adverse to, the best interests of the Company Group; provided, that if the Board of Directors of the General Partner is making a determination or taking or declining to take an action pursuant to clause (iii) or clause (iv) of the first sentence of Section 7.9(a), then in lieu thereof, such determination or other action or inaction will conclusively be deemed to be in "good faith" for all purposes of this Agreement if the members of the Board of Directors of the General Partner making such determination or taking or declining to take such other action subjectively believe that the determination or other action or inaction meets the standard set forth in clause (iii) or clause (iv) of the first sentence of Section 7.9(a), as applicable.

(c) Whenever the Board of Directors of the General Partner or any committee thereof (including the Conflicts Committee) causes the Managing Member to make a determination or to take or decline to take any action makes a determination or takes or declines to take any other action, or any Affiliate of the Managing Member causes the Managing Member to do so, in its individual capacity as opposed to in its capacity as the managing member of the Company, whether under this Agreement, any Group Member Agreement or any other agreement contemplated hereby or otherwise, then the Managing Member, or such Affiliates causing it to do so, are entitled, to the fullest extent permitted by law, to make such determination or to take or decline to take such other action free of any duty (including any fiduciary duty) or obligation whatsoever to the Company or any Member, and the Managing Member, or the Board of Directors or such Affiliates causing it to do so, shall not, to the fullest extent permitted by law, be required to act in good faith or pursuant to any other standard imposed by this Agreement, any Group Member Agreement, any other agreement contemplated hereby or under the Delaware Act or any other law, rule or regulation or at equity, and the Person or Persons making such determination or taking or declining to take such other action or causing such determination to be made or such action to be taken or declined to be taken shall be permitted to do so in their sole discretion. By way of illustration and not of limitation, whenever the phrase, "the Managing Member at its option" or "the Managing Member, in its sole discretion," or some variation of such phrases, is used in this Agreement, it indicates that the Managing Member is acting in its individual capacity. For the avoidance of doubt, whenever the Managing Member votes or transfers its Membership Interests, or refrains from voting or transferring its Membership Interests, it shall be acting in its individual capacity.

(d) Notwithstanding anything to the contrary in this Agreement, the Managing Member and its Affiliates shall have no duty or obligation, express or implied, to (i) sell or otherwise dispose of any asset of the Company Group other than in the ordinary course of business or (ii) permit any Group Member to use any facilities or assets of the Managing Member and its Affiliates, except as may be provided in contracts entered into from time to time specifically dealing with such use. Any determination by the Managing Member or any of its Affiliates to enter into such contracts shall be at its option.

(e) Except as expressly set forth in this Agreement or required by the Delaware Act, neither the Managing Member nor any other Indemnitee shall have any duties or liabilities, including fiduciary duties, to the Company or any Member and the provisions of this Agreement, to the extent that they restrict, eliminate or otherwise modify the duties and liabilities, including fiduciary duties, of the Managing Member or any other Indemnitee otherwise existing at law or in equity, are agreed by the Members to replace such other duties and liabilities of the Managing Member or such other Indemnitee.

(f) The Unitholders hereby authorize the Managing Member, on behalf of the Company as a general partner or managing member of a Group Member, to approve actions by the general partner or managing member of such Group Member similar to those actions permitted to be taken by the Managing Member pursuant to this Section 7.9.

Section 7.10 *Other Matters Concerning the Managing Member.*

(a) The Managing Member and any other Indemnitee may rely and shall be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, bond, debenture or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties.

(b) The Managing Member and any other Indemnitee may consult with legal counsel, accountants, appraisers, management consultants, investment bankers and other consultants and advisers selected by it, and any act taken or omitted to be taken in reliance upon the advice or opinion (including an Opinion of Counsel) of such Persons as to matters that the Managing Member or such Indemnitee, respectively, reasonably believes to be within such Person's professional or expert competence shall be conclusively presumed to have been done or omitted in good faith and in accordance with such advice or opinion.

(c) The Managing Member shall have the right, in respect of any of its powers or obligations hereunder, to act through any duly authorized officers of the General Partner, a duly appointed attorney or attorneys-in-fact or the duly authorized officers of the Company or any Group Member.

Section 7.11 *Purchase or Sale of Membership Interests.* The Managing Member may cause the Company to purchase or otherwise acquire Membership Interests or Derivative Membership Interests; provided that, the Managing Member may not cause any Group Member

to purchase Subordinated Units during the Subordination Period. As long as Membership Interests are held by any Group Member, such Membership Interests shall not be considered Outstanding for any purpose, except as otherwise provided herein. The Managing Member or any Affiliate of the Managing Member may also purchase or otherwise acquire and sell or otherwise dispose of Membership Interests for its own account, subject to the provisions of Article IV and Article X.

Section 7.12 *Reliance by Third Parties.* Notwithstanding anything to the contrary in this Agreement, any Person dealing with the Company shall be entitled to assume that the Managing Member and any officer of the General Partner authorized by the Managing Member to act on behalf of and in the name of the Company has full power and authority to encumber, sell or otherwise use in any manner any and all assets of the Company and to enter into any authorized contracts on behalf of the Company, and such Person shall be entitled to deal with the Managing Member or any such officer as if it were the Company's sole party in interest, both legally and beneficially. Each Non-Managing Member, each other Person who acquires an interest in a Membership Interest and each other party who becomes bound by this Agreement hereby waives, to the fullest extent permitted by law, any and all defenses or other remedies that may be available against such Person to contest, negate or disaffirm any action of the Managing Member or any such officer in connection with any such dealing. In no event shall any Person dealing with the Managing Member or any such officer or its representatives be obligated to ascertain that the terms of this Agreement have been complied with or to inquire into the necessity or expedience of any act or action of the Managing Member or any such officer or its representatives. Each and every certificate, document or other instrument executed on behalf of the Company by the Managing Member or its representatives shall be conclusive evidence in favor of any and every Person relying thereon or claiming thereunder that (a) at the time of the execution and delivery of such certificate, document or instrument, this Agreement was in full force and effect, (b) the Person executing and delivering such certificate, document or instrument was duly authorized and empowered to do so for and on behalf of the Company and (c) such certificate, document or instrument was duly executed and delivered in accordance with the terms and provisions of this Agreement and is binding upon the Company.

ARTICLE VIII
BOOKS, RECORDS, ACCOUNTING AND REPORTS

Section 8.1 *Records and Accounting.* The Managing Member shall keep or cause to be kept at the principal office of the Company appropriate books and records with respect to the Company's business, including the Register. Any books and records maintained by or on behalf of the Company in the regular course of its business, including the Register, books of account and records of Company proceedings, may be kept on, or be in the form of, computer disks, hard drives, photographs, micrographics or any other information storage device; provided, that the books and records so maintained are convertible into clearly legible written form within a reasonable period of time. The books of the Company shall be maintained, for financial reporting purposes, on an accrual basis in accordance with U.S. GAAP. The Company shall not be required to keep books maintained on a cash basis and Managing Member shall be permitted to calculate cash-based measures, including Operating Surplus and Adjusted Operating Surplus, by making such adjustments to its accrual basis books to account for non-cash items and other adjustments as the Managing Member determines to be necessary or appropriate.

Section 8.2 *Fiscal Year.* The fiscal year of the Company shall end on November 30 of each year.

Section 8.3 *Reports.* The Managing Member shall cause to be prepared and delivered to the Members such reports, forecasts, studies, budgets and other information as the Members may reasonably request from time to time.

ARTICLE IX
TAX MATTERS

Section 9.1 *Tax Returns and Information.* The Company shall timely file all returns of the Company that are required for federal, state and local income tax purposes on the basis of the taxable period or year that it is required by law to adopt, from time to time, as determined by the Managing Member. In the event the Company is required to use a taxable period other than a year ending on December 31, the Managing Member shall use reasonable efforts to change the taxable period of the Company to a year ending on December 31. The tax information reasonably required by Members for federal and state income tax reporting purposes with respect to a taxable period shall be furnished to them within 90 days of the close of the calendar year in which the Company's taxable period ends. In addition, the Company shall furnish to each Non-Managing Member any additional tax information reasonably requested by such Non-Managing Member in order to comply with its organizational documents, including additional detail regarding the source of any items of income, gain, loss, deduction, or credit allocated to such Non-Managing Member to the extent not otherwise reflected in the information provided to the Members under the preceding sentence.

Section 9.2 *Tax Characterization.* Unless otherwise determined by the Managing Member, the Company shall be treated as a partnership and not as an association taxable as a corporation for U.S. federal income tax purposes, and the Members and the Company shall not take any action that would cause the Company to be treated as a corporation for U.S. federal income tax purposes (as well as for any analogous state or local tax purposes).

Section 9.3 *Tax Elections.*

(a) The Company shall make the election under Section 754 of the Code in accordance with applicable regulations thereunder, subject to the reservation of the right to seek to revoke any such election upon the Managing Member's determination that such revocation is in the best interests of the Non-Managing Members.

(b) The Company shall make the election under Section 6231(a)(1)(B)(ii) of the Code to have the provisions of Sections 6221 through 6234 of the Code apply to the Company.

(c) Except as otherwise provided herein, the Managing Member shall determine whether the Company should make any other elections permitted by the Code.

Section 9.4 *Tax Controversies.* Subject to the provisions hereof, the Managing Member is designated as the "tax matters partner" (as defined in Section 6231(a)(7) of the Code) and is authorized and required to represent the Company (at the Company's expense) in

connection with all examinations of the Company's affairs by tax authorities, including resulting administrative and judicial proceedings, and to expend Company funds for professional services and costs associated therewith. Each Member agrees to cooperate with the Managing Member and to do or refrain from doing any or all things reasonably required by the Managing Member to conduct such proceedings.

Section 9.5 *Withholding.* Notwithstanding any other provision of this Agreement, the Managing Member is authorized to take any action that may be required to cause the Company and other Group Members to comply with any withholding requirements established under the Code or any other federal, state or local law including pursuant to Sections 1441, 1442, 1445 and 1446 of the Code, or established under any foreign law. To the extent that the Company is required or elects to withhold and pay over to any taxing authority any amount resulting from the allocation or distribution of income to any Member (including by reason of Section 1446 of the Code), the Managing Member may treat the amount withheld as a distribution of cash pursuant to Article VI or Section 12.4(c) in the amount of such withholding from such Member. To the extent such amount exceeds the amount of distributions to which the Member is otherwise entitled under Article VI, such amounts withheld shall constitute a loan by the Company to such Member, which loan shall be repaid upon demand of the Managing Member, and the Managing Member may offset any future distributions to which such Member is otherwise entitled by the unpaid amount of such loan.

Section 9.6 *Disqualified Person.* No Member will become a Disqualified Person.

ARTICLE X
ADMISSION OF MEMBERS

Section 10.1 *Admission of Non-Managing Members.*

(a) Upon the issuance by the Company of Common Units, Subordinated Units and Incentive Distribution Rights to SunPower, First Solar, Holdings and the Managing Member prior to and on the IPO Closing Date, such Persons shall, by acceptance of such Membership Interests, and upon becoming the Record Holders of such Membership Interests, be admitted to the Membership as Members in respect of the Common Units, Subordinated Units and Incentive Distribution Rights issued to them and be bound by this Agreement, all with or without execution of this Agreement by such Persons.

(b) By acceptance of any Non-Managing Member Interests transferred in accordance with Article IV or acceptance of any Non-Managing Member Interests issued pursuant to Article V or pursuant to a merger, consolidation or conversion pursuant to Article XIV, each transferee of, or other such Person acquiring, a Non-Managing Member Interest (including any nominee, agent or representative acquiring such Non-Managing Member Interests for the account of another Person or Group, which nominee, agent or representative shall be subject to Section 10.1(c) below) (i) shall be admitted to the Company as a Non-Managing Member with respect to the Non-Managing Member Interests so transferred or issued to such Person when such Person becomes the Record Holder of the Non-Managing Member Interests so transferred or acquired, (ii) shall become bound, and shall be deemed to have agreed to be bound, by the terms of this

Agreement, (iii) shall be deemed to represent that the transferee or acquirer has the capacity, power and authority to enter into this Agreement and (iv) shall be deemed to make any consents, acknowledgements or waivers contained in this Agreement, all with or without execution of this Agreement by such Person. The transfer of any Non-Managing Member Interests and the admission of any new Non-Managing Member shall not constitute an amendment to this Agreement. A Person may become a Non-Managing Member without the consent or approval of any of the Members. A Person may not become a Non-Managing Member without acquiring a Non-Managing Member Interest and becoming the Record Holder of such Non-Managing Member Interest.

(c) With respect to Units that are held for a Person's account by another Person that is the Record Holder (such as a broker, dealer, bank, trust company or clearing corporation, or an agent of any of the foregoing), such Record Holder shall, in exercising the rights of a Non-Managing Member in respect of such Units, including the right to vote, on any matter, and unless the arrangement between such Persons provides otherwise, take all action as a Non-Managing Member by virtue of being the Record Holder of such Units in accordance with the direction of the Person who is the beneficial owner of such Units, and the Company shall be entitled to assume such Record Holder is so acting without further inquiry. The provisions of this Section 10.1(c) are subject to the provisions of Section 4.3.

(d) The name and mailing address of each Record Holder shall be listed in the Register. The Managing Member shall update the Register from time to time as necessary to reflect accurately the information therein.

(e) Any transfer of a Non-Managing Member Interest shall not entitle the transferee to share in the profits and losses, to receive distributions, to receive allocations of income, gain, loss, deduction or credit or any similar item or to any other rights to which the transferor was entitled until the transferee becomes a Non-Managing Member pursuant to Section 10.1(b).

Section 10.2 *Admission of Successor Managing Member.* A successor Managing Member approved pursuant to Section 11.1 or Section 11.2 or the transferee of or successor to all of the Managing Member Interest pursuant to Section 4.6 who is proposed to be admitted as a successor Managing Member shall be admitted to the Company as the Managing Member, effective immediately prior to the withdrawal or removal of the predecessor or transferring Managing Member, pursuant to Section 11.1 or Section 11.2 or the transfer of the Managing Member Interest pursuant to Section 4.6, provided, however, that no such successor shall be admitted to the Company until compliance with the terms of Section 4.6 has occurred and such successor has executed and delivered such other documents or instruments as may be required to effect such admission. Any such successor is hereby authorized to and shall, subject to the terms hereof, carry on the business of the members of the Company Group without dissolution.

Section 10.3 *Amendment of Agreement and Certificate of Formation.* To effect the admission to the Company of any Member, the Managing Member shall take all steps necessary or appropriate under the Delaware Act to amend the Register and any other records of the Company to reflect such admission and, if necessary, to prepare as soon as practicable an

amendment to this Agreement and, if required by law, the Managing Member shall prepare and file an amendment to the Certificate of Formation.

ARTICLE XI
WITHDRAWAL OR REMOVAL OF MEMBERS

Section 11.1 *Withdrawal of the Managing Member.*

(a) The Managing Member shall be deemed to have withdrawn as the managing member of the Company upon the occurrence of any one of the following events (each such event herein referred to as an "Event of Withdrawal");

(i) The Managing Member voluntarily withdraws as the managing member of the Company by giving written notice to the other Members pursuant to Section 11.1(b);

(ii) The Managing Member transfers all of its Managing Member Interest pursuant to Section 4.6;

(iii) The Managing Member is removed as the managing member of the Company pursuant to Section 11.2;

(iv) The Managing Member (A) makes a general assignment for the benefit of creditors; (B) files a voluntary bankruptcy petition for relief under Chapter 7 of the United States Bankruptcy Code; (C) files a petition or answer seeking for itself a liquidation, dissolution or similar relief (but not a reorganization) under any law; (D) files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against the Managing Member in a proceeding of the type described in clauses (A) through (C) of this Section 11.1(a)(iv); or (E) seeks, consents to or acquiesces in the appointment of a trustee (but not a debtor-in-possession), receiver or liquidator of the Managing Member or of all or any substantial part of its properties;

(v) A final and non-appealable order of relief under Chapter 7 of the United States Bankruptcy Code is entered by a court with appropriate jurisdiction pursuant to a voluntary or involuntary petition by or against the Managing Member; or

(vi) (A) if the Managing Member is a corporation, a certificate of dissolution or its equivalent is filed for the Managing Member, or 90 days expire after the date of notice to the Managing Member of revocation of its charter without a reinstatement of its charter, under the laws of its state of incorporation; (B) if the Managing Member is a partnership or a limited liability company, the dissolution and commencement of winding up of the Managing Member; (C) if the Managing Member is acting in such capacity by virtue of being a trustee of a trust, the termination of the trust; and (D) if the Managing Member is a natural person, his death or adjudication of incompetency; and (E) otherwise upon the termination of the Managing Member.

If an Event of Withdrawal specified in Section 11.1(a)(iv), (v) or (vi)(A), (B), (C) or (E) occurs, the withdrawing Managing Member shall give notice to the Non-Managing Members within 30 days after such occurrence. The Members hereby agree that only the Events of Withdrawal described in this Section 11.1 shall result in the withdrawal of the Managing Member from the Company.

(b) Withdrawal of the Managing Member as the managing member of the Company upon the occurrence of an Event of Withdrawal shall not constitute a breach of this Agreement under the following circumstances: (i) (A) the General Partner has withdrawn or has been removed from Managing Member and (B) the Managing Member voluntarily withdraws by giving at least 90 days' advance notice of its intention to withdraw to the Unitholders, such withdrawal to take effect on the date specified in such notice; or (ii) at any time that the Managing Member ceases to be the Managing Member pursuant to Section 11.1(a)(ii) or is removed pursuant to Section 11.2. The withdrawal of the Managing Member as the managing member of the Company upon the occurrence of an Event of Withdrawal shall also constitute the withdrawal of the Managing Member as general partner or managing member, if any, to the extent applicable, of the other Group Members. If the Managing Member gives a notice of withdrawal pursuant to Section 11.1(a)(i), the holders of a Unit Majority, may, prior to the effective date of such withdrawal, elect a successor Managing Member. The Person so elected as successor Managing Member shall automatically become the successor general partner or managing member, to the extent applicable, of the other Group Members of which the Managing Member is a general partner or a managing member. Any successor Managing Member elected in accordance with the terms of this Section 11.1 shall be subject to the provisions of Section 10.2.

Section 11.2 *Removal of the Managing Member*. The Managing Member may not be removed as the managing member of the Company unless the General Partner is removed as a general partner of the Managing Member in accordance with the Partnership Agreement. The removal of the Managing Member as the managing member of the Company shall also automatically constitute the removal of the Managing Member as general partner or managing member, to the extent applicable, of the other Group Members of which the Managing Member is a general partner or a managing member. If a Person is elected as a successor Managing Member in accordance with the terms of this Section 11.2, such Person shall, upon admission pursuant to Section 10.2, automatically become a successor general partner or managing member, to the extent applicable, of the other Group Members of which the Managing Member is a general partner or a managing member. Any successor Managing Member elected in accordance with the terms of this Section 11.2 shall be subject to the provisions of Section 10.2.

Section 11.3 *Interest of Departing Managing Member and Successor Managing Member.*

(a) In the event of (i) withdrawal of the Managing Member under circumstances where such withdrawal does not violate this Agreement or (ii) removal of the Managing Member by the holders of Outstanding Units under circumstances where Cause does not exist, if the successor Managing Member is elected in accordance with the terms of Section 11.1 or Section 11.2, the Departing Managing Member shall have

the option, exercisable prior to the effective date of the withdrawal or removal of such Departing Managing Member, to require its successor to purchase its Managing Member Interest and its or its Affiliates' general partner interest (or equivalent interest), if any, in the other Group Members and all of its or its Affiliates' Incentive Distribution Rights (collectively, the "Combined Interest") in exchange for an amount in cash equal to the fair market value of such Combined Interest, such amount to be determined and payable as of the effective date of its withdrawal or removal. If the Managing Member is removed by the Unitholders under circumstances where Cause exists or if the Managing Member withdraws under circumstances where such withdrawal violates this Agreement, and if a successor Managing Member is elected in accordance with the terms of Section 11.1 or Section 11.2 (or if the business of the Company is continued pursuant to Section 12.2 and the successor Managing Member is not the former Managing Member), such successor shall have the option, exercisable prior to the effective date of the withdrawal or removal of such Departing Managing Member (or, in the event the business of the Company is continued, prior to the date the business of the Company is continued), to purchase the Combined Interest for such fair market value of such Combined Interest. In either event, the Departing Managing Member shall be entitled to receive all reimbursements due such Departing Managing Member pursuant to Section 7.5, including any employee-related liabilities (including severance liabilities), incurred in connection with the termination of any employees employed by the Departing Managing Member or its Affiliates (other than any Group Member) for the benefit of the Company or the other Group Members.

For purposes of this Section 11.3(a), the fair market value of the Combined Interest shall be determined by agreement between the Departing Managing Member and its successor or, failing agreement within 30 days after the effective date of such Departing Managing Member's withdrawal or removal, by an independent investment banking firm or other independent expert selected by the Departing Managing Member and its successor, which, in turn, may rely on other experts, and the determination of which shall be conclusive as to such matter. If such parties cannot agree upon one independent investment banking firm or other independent expert within 45 days after the effective date of such withdrawal or removal, then the Departing Managing Member shall designate an independent investment banking firm or other independent expert, the Departing Managing Member's successor shall designate an independent investment banking firm or other independent expert, and such firms or experts shall mutually select a third independent investment banking firm or independent expert, which third independent investment banking firm or other independent expert shall determine the fair market value of the Combined Interest. In making its determination, such third independent investment banking firm or other independent expert may consider the then current trading price of the Class A Shares on any National Securities Exchange on which the Class A Shares are then listed or admitted to trading, the value of the Company's assets, the rights and obligations of the Departing Managing Member, the value of the Incentive Distribution Rights and the Managing Member Interest and other factors it may deem relevant.

(b) If the Combined Interest is not purchased in the manner set forth in Section 11.3(a), the Departing Managing Member (or its transferee) shall become a

Non-Managing Member and its Combined Interest shall be converted into Common Units pursuant to a valuation made by an investment banking firm or other independent expert selected pursuant to Section 11.3(a), without reduction in such Membership Interest (but subject to proportionate dilution by reason of the admission of its successor). Any successor Managing Member shall indemnify the Departing Managing Member (or its transferee) as to all debts and liabilities of the Company arising on or after the date on which the Departing Managing Member (or its transferee) becomes a Non-Managing Member. For purposes of this Agreement, conversion of the Combined Interest of the Departing Managing Member to Common Units will be characterized as if the Departing Managing Member (or its transferee) contributed its Combined Interest to the Company in exchange for the newly issued Common Units.

(c) If a successor Managing Member is elected in accordance with the terms of Section 11.1 or Section 11.2 (or if the business of the Company is continued pursuant to Section 12.2 and the successor Managing Member is not the former Managing Member) and the option described in Section 11.3(a) is not exercised by the party entitled to do so, the successor Managing Member shall be admitted to the Company and receive the Combined Interest.

Section 11.4 *Conversion of Subordinated Units .* Notwithstanding any provision of this Agreement, if the General Partner is removed as general partner of the Managing Member under circumstances where "Cause" (as defined in the Partnership Agreement) does not exist Subordinated Units held by any Person will immediately and automatically convert into Common Units on a one-for-one basis, provided (i) neither such Person nor any of its Affiliates voted any of its "Shares" (as defined in the Partnership Agreement) in favor of the removal and (ii) such Person is not an Affiliate of the successor General Partner, provided, however, that such converted Subordinated Units shall remain subject to the provisions of Section 5.3(c)(ii) and Section 6.1(c)(x).

Section 11.5 *Withdrawal of Non-Managing Members.* No Non-Managing Member shall have any right to withdraw from the Company; provided, however, that when a transferee of a Non-Managing Member's Non-Managing Member Interest becomes a Record Holder of the Non-Managing Member Interest so transferred, such transferring Non-Managing Member shall cease to be a Non-Managing Member with respect to the Non-Managing Member Interest so transferred.

ARTICLE XII
DISSOLUTION AND LIQUIDATION

Section 12.1 *Dissolution.* The Company shall not be dissolved by the admission of additional Non-Managing Members or by the admission of a successor Managing Member in accordance with the terms of this Agreement. Upon the removal or withdrawal of the Managing Member, if a successor Managing Member is elected pursuant to Section 11.1, Section 11.2 or Section 12.2, to the fullest extent permitted by law, the Company shall not be dissolved and such successor Managing Member shall continue the business of the Company. The Company shall dissolve, and (subject to Section 12.2) its affairs shall be wound up, upon:

(a) an Event of Withdrawal of the Managing Member as provided in Section 11.1(a) (other than Section 11.1(a)(ii)), unless a successor is elected and an Opinion of Counsel is received as provided in Section 12.2 and such successor is admitted to the Company pursuant to Section 10.2;

(b) an election to dissolve the Company by the Managing Member that is approved by the holders of a Unit Majority;

(c) the entry of a decree of judicial dissolution of the Company pursuant to the provisions of the Delaware Act; or

(d) at any time there are no Members, unless the Company is continued without dissolution in accordance with the Delaware Act.

Section 12.2 *Continuation of the Business of the Company After Dissolution.* Upon (a) dissolution of the Company following an Event of Withdrawal caused by the withdrawal or removal of the Managing Member as provided in Section 11.1(a)(i) or (iii) and the failure of the Members to select a successor to such Departing Managing Member pursuant to Section 11.1 or Section 11.2, then, to the maximum extent permitted by law, within 90 days thereafter, or (b) dissolution of the Company upon an event constituting an Event of Withdrawal as defined in Section 11.1(a)(iv), (v) or (vi), then, to the maximum extent permitted by law, within 180 days thereafter, the holders of a Unit Majority may elect to continue the business of the Company on the same terms and conditions set forth in this Agreement by appointing as a successor Managing Member a Person approved by the holders of a Unit Majority. Unless such an election is made within the applicable time period as set forth above, the Company shall conduct only activities necessary to wind up its affairs. If such an election is so made, then:

(i) the Company shall continue without dissolution unless earlier dissolved in accordance with this Article XII;

(ii) if the successor Managing Member is not the former Managing Member, then the interest of the former Managing Member shall be treated in the manner provided in Section 11.3; and

(iii) the successor Managing Member shall be admitted to the Company as Managing Member, effective as of the Event of Withdrawal, by agreeing in writing to be bound by this Agreement;

provided, that the right of the holders of a Unit Majority to approve a successor Managing Member and to continue the business of the Company shall not exist and may not be exercised unless the Company has received an Opinion of Counsel that (x) the exercise of the right would not result in the loss of limited liability of any Non-Managing Member under the Delaware Act and (y) neither the Company nor any Group Member would be treated as an association taxable as a corporation or otherwise be taxable as an entity for federal income tax purposes upon the exercise of the right to continue (to the extent not already so treated or taxed).

Section 12.3 *Liquidator.* Upon dissolution of the Company in accordance with the provisions of Article XII, unless the business of the Company is continued pursuant to Section 12.2, the Managing Member shall select one or more Persons to act as Liquidator. The Liquidator (if other than the Managing Member) shall be entitled to receive such compensation for its services as may be approved by holders of a majority of the Outstanding Common Units and Subordinated Units voting as a single class. The Liquidator (if other than the Managing Member) shall agree not to resign at any time without 15 days' prior notice and may be removed at any time, with or without cause, by notice of removal approved by holders of a majority of the Outstanding Common Units and Subordinated Units voting as a single class. Upon dissolution, removal or resignation of the Liquidator, a successor and substitute Liquidator (who shall have and succeed to all rights, powers and duties of the original Liquidator) shall within 30 days thereafter be approved by holders of a majority of the Outstanding Common Units and Subordinated Units voting as a single class. The right to approve a successor or substitute Liquidator in the manner provided herein shall be deemed to refer also to any such successor or substitute Liquidator approved in the manner herein provided. Except as expressly provided in this Article XII, the Liquidator approved in the manner provided herein shall have and may exercise, without further authorization or consent of any of the parties hereto, all of the powers conferred upon the Managing Member under the terms of this Agreement (but subject to all of the applicable limitations, contractual and otherwise, upon the exercise of such powers, other than the limitation on sale set forth in Section 7.4) necessary or appropriate to carry out the duties and functions of the Liquidator hereunder for and during the period of time required to complete the winding up and liquidation of the Company as provided for herein.

Section 12.4 *Liquidation.* The Liquidator shall proceed to dispose of the assets of the Company, discharge its liabilities, and otherwise wind up its affairs in such manner and over such period as determined by the Liquidator, subject to Section 18-804 of the Delaware Act and the following:

(a) The assets may be disposed of by public or private sale or by distribution in kind to one or more Members on such terms as the Liquidator and such Member or Members may agree. If any property is distributed in kind, the Member receiving the property shall be deemed for purposes of Section 12.4(c) to have received cash equal to its Net Agreed Value; and contemporaneously therewith, appropriate cash distributions must be made to the other Members. The Liquidator may defer liquidation or distribution of the Company's assets for a reasonable time if it determines that an immediate sale or distribution of all or some of the Company's assets would be impractical or would cause undue loss to the Members. The Liquidator may distribute the Company's assets, in whole or in part, in kind if it determines that a sale would be impractical or would cause undue loss to the Members.

(b) Liabilities of the Company include amounts owed to the Liquidator as compensation for serving in such capacity (subject to the terms of Section 12.3) and amounts to Members otherwise than in respect of their distribution rights under Article VI. With respect to any liability that is contingent, conditional or unmatured or is otherwise not yet due and payable, the Liquidator shall either settle such claim for such amount as it thinks appropriate or establish a reserve of cash or other assets to provide for

its payment. When paid, any unused portion of the reserve shall be distributed as additional liquidation proceeds.

(c) All property and all cash in excess of that required to satisfy or discharge liabilities as provided in Section 12.4(b) shall be distributed to the Members in accordance with, and to the extent of, the positive balances in their respective Capital Accounts, as determined after taking into account all Capital Account adjustments (other than those made by reason of distributions pursuant to this Section 12.4(c)) for the taxable period of the Company during which the liquidation of the Company occurs (with such date of occurrence being determined pursuant to Treasury Regulation Section 1.704-1(b)(2)(ii)(g)), and such distribution shall be made by the end of such taxable period (or, if later, within 90 days after said date of such occurrence).

Section 12.5 *Cancellation of Certificate of Formation.* Upon the completion of the distribution of Company cash and property as provided in Section 12.4 in connection with the liquidation of the Company, the Certificate of Formation and all qualifications of the Company as a foreign limited liability company in jurisdictions other than the State of Delaware shall be canceled and such other actions as may be necessary to terminate the Company shall be taken.

Section 12.6 *Return of Contributions.* The Managing Member shall not be personally liable for, and shall have no obligation to contribute or loan any monies or property to the Company to enable it to effectuate, the return of the Capital Contributions of the Members or Unitholders, or any portion thereof, it being expressly understood that any such return shall be made solely from assets of the Company.

Section 12.7 *Waiver of Partition.* To the maximum extent permitted by law, each Member hereby waives any right to partition of the Company property.

Section 12.8 *Capital Account Restoration.* No Non-Managing Member shall have any obligation to restore any negative balance in its Capital Account upon liquidation of the Company. The Managing Member shall be obligated to restore any negative balance in its Capital Account upon liquidation of its interest in the Company by the end of the taxable year of the Company during which such liquidation occurs, or, if later, within 90 days after the date of such liquidation.

ARTICLE XIII
AMENDMENT OF LIMITED LIABILITY COMPANY AGREEMENT; MEETINGS; RECORD DATE

Section 13.1 *Amendments to be Adopted Solely by the Managing Member.* Each Member agrees that the Managing Member, without the approval of any Member, may amend any provision of this Agreement and execute, swear to, acknowledge, deliver, file and record whatever documents may be required in connection therewith, to reflect:

(a) a change in the name of the Company, the location of the principal office of the Company, the registered agent of the Company or the registered office of the Company;

(b) admission, substitution, withdrawal or removal of Members in accordance with this Agreement;

(c) a change that the Managing Member determines to be necessary or appropriate to qualify or continue the qualification of the Company as a limited liability company or an entity in which the Non-Managing Members have limited liability under the laws of any state or to ensure that the Group Members (other than the Company) will not be treated as associations taxable as corporations or otherwise taxed as entities for federal income tax purposes;

(d) a change that the Managing Member determines (i) does not adversely affect the Non-Managing Members considered as a whole or any particular class of Membership Interests as compared to other classes of Membership Interests in any material respect, (ii) to be necessary or appropriate to satisfy any requirements, conditions or guidelines contained in any opinion, directive, order, ruling or regulation of any federal or state agency or judicial authority or contained in any federal or state statute (including the Delaware Act), (iii) to be necessary or appropriate in connection with action taken by the Managing Member pursuant to Section 5.8 or (iv) is required to effect the intent expressed in the IPO Registration Statement or the intent of the provisions of this Agreement or is otherwise contemplated by this Agreement;

(e) a change in the fiscal year or taxable year of the Company and any other changes that the Managing Member determines to be necessary or appropriate as a result of a change in the fiscal year or taxable year of the Company including a change in the definition of "Quarter" and the dates on which distributions are to be made by the Company;

(f) an amendment that is necessary, in the Opinion of Counsel, to prevent the Company, or the Managing Member or its directors, officers, trustees or agents from in any manner being subjected to the provisions of the Investment Company Act of 1940, as amended, the Investment Advisers Act of 1940, as amended, or "plan asset" regulations adopted under the Employee Retirement Income Security Act of 1974, as amended, regardless of whether such are substantially similar to plan asset regulations currently applied or proposed by the United States Department of Labor;

(g) an amendment that the Managing Member determines to be necessary or appropriate in connection with the authorization or issuance of any class or series of Membership Interests or Derivative Membership Interests pursuant to Section 5.4;

(h) any amendment expressly permitted in this Agreement to be made by the Managing Member acting alone;

(i) an amendment effected, necessitated or contemplated by a Merger Agreement or Plan of Conversion approved in accordance with Section 14.3;

(j) an amendment that the Managing Member determines to be necessary or appropriate to reflect and account for the formation by the Company of, or investment by the Company in, any corporation, partnership, joint venture, limited liability company or

other entity, in connection with the conduct by the Company of activities permitted by the terms of Section 2.4 or Section 7.1(a);

(k) a merger, conveyance or conversion pursuant to Section 14.3(c) or (d); or

(l) any other amendments substantially similar to the foregoing.

Section 13.2 *Amendment Procedures.* Amendments to this Agreement may be proposed only by the Managing Member. To the fullest extent permitted by law, the Managing Member shall have no duty or obligation to propose or approve any amendment to this Agreement and may decline to do so free of any duty (including any fiduciary duty) or obligation whatsoever to the Company, any Non-Managing Member or any other Person bound by this Agreement, and, in declining to propose or approve an amendment to this Agreement, to the fullest extent permitted by law shall not be required to act in good faith or pursuant to any other standard imposed by this Agreement, any Group Member Agreement, any other agreement contemplated hereby or under the Delaware Act or any other law, rule or regulation or at equity, and the Managing Member in determining whether to propose or approve any amendment to this Agreement shall be permitted to do so in its sole discretion. An amendment to this Agreement shall be effective upon its approval by the Managing Member and, except as otherwise provided by Section 13.1 or Section 13.3, the holders of a Unit Majority, unless a greater or different percentage of Outstanding Units is required under this Agreement. Each proposed amendment that requires the approval of the holders of a specified percentage of Outstanding Units shall be set forth in a writing that contains the text of the proposed amendment. If such an amendment is proposed, the Managing Member shall seek the written approval of the requisite percentage of Outstanding Units or call a meeting of the Unitholders to consider and vote on such proposed amendment. The Managing Member shall notify all Record Holders upon final adoption of any amendments. The Managing Member shall be deemed to have notified all Record Holders as required by this Section 13.2 if it has posted or made accessible such amendment through the Company's or the Commission's website.

Section 13.3 *Amendment Requirements.*

(a) Notwithstanding the provisions of Section 13.1 and Section 13.2, no provision of this Agreement that establishes a percentage of Outstanding Units (including Units deemed owned by the Managing Member) required to take any action shall be amended, altered, changed, repealed or rescinded in any respect that would have the effect of (i) in the case of any provision of this Agreement other than Section 13.4, reducing such percentage or (ii) in the case of Section 13.4, increasing such percentage, unless such amendment is approved by the written consent or the affirmative vote of holders of Outstanding Units whose aggregate Outstanding Units constitute (x) in the case of a reduction as described in subclause (a)(i) hereof, not less than the voting requirement sought to be reduced, or (y) in the case of an increase in the percentage in Section 13.4, not less than a majority of the Outstanding Units.

(b) Notwithstanding the provisions of Section 13.1 and Section 13.2, no amendment to this Agreement may (i) enlarge the obligations of any Non-Managing Member without its consent, unless such shall be deemed to have occurred as a result of

an amendment approved pursuant to Section 13.3(c) or (ii) enlarge the obligations of, restrict, change or modify in any way any action by or rights of, or reduce in any way the amounts distributable, reimbursable or otherwise payable to, the Managing Member or any of its Affiliates without its consent, which consent may be given or withheld at its option.

(c) Except as provided in Section 14.3 or Section 13.1, any amendment that would have a material adverse effect on the rights or preferences of any class of Membership Interests in relation to other classes of Membership Interests must be approved by the holders of not less than a majority of the Outstanding Membership Interests of the class affected. If the Managing Member determines an amendment does not satisfy the requirements of Section 13.1(d)(i) because it adversely affects one or more classes of Membership Interests, as compared to other classes of Membership Interests, in any material respect, such amendment shall only be required to be approved by the adversely affected class or classes

(d) Notwithstanding any other provision of this Agreement, except for amendments pursuant to Section 13.1 and except as otherwise provided by Section 14.3(a), no amendments shall become effective without the approval of the holders of at least 90% of the Outstanding Units voting as a single class unless the Company obtains an Opinion of Counsel to the effect that such amendment will not affect the limited liability of any Non-Managing Member under applicable partnership law of the state under whose laws the Company is organized.

(e) Except as provided in Section 13.1, Section 11.2 and this Section 13.3 shall only be amended with the approval of the holders of at least 90% of the Outstanding Units.

Section 13.4 *Special Meetings.* All acts of Non-Managing Members to be taken pursuant to this Agreement shall be taken in the manner provided in this Article XIII. Special meetings of the Non-Managing Members may be called by (i) the Managing Member, (ii) the Board of Directors, or (iii) the President or Secretary of the General Partner upon request of Non-Managing Members owning 20% or more of the Outstanding Units of the class or classes for which a meeting is proposed. Within a reasonable amount of time after receipt of such a call from Non-Managing Members, the Managing Member shall send a notice of the meeting to the Non-Managing Members either directly or indirectly. A meeting shall be held at a time and place determined by the Managing Member on a date not less than 10 days nor more than 60 days after the time notice of the meeting is given as provided in Section 15.1.

Section 13.5 *Notice of a Meeting.* Notice of a meeting called pursuant to Section 13.4 shall be given to the Record Holders of the class or classes of Units for which a meeting is proposed in writing by mail or other means of written communication in accordance with Section 15.1. The notice shall be deemed to have been given at the time when deposited in the mail or sent by other means of written communication.

Section 13.6 *Record Date.* For purposes of determining the Non-Managing Members who are Record Holders of the class or classes of Non-Managing Member Interests entitled to

notice of or to vote at a meeting of the Non-Managing Members or to give approvals without a meeting as provided in Section 13.11, the Managing Member shall set a Record Date, which shall not be less than 10 nor more than 60 days before (a) the date of the meeting or (b) in the event that approvals are sought without a meeting, the date by which such Non-Managing Members are requested in writing by the Managing Member to give such approvals.

Section 13.7 *Postponement and Adjournment.* Prior to the date upon which any meeting of Non-Managing Members is to be held, the Managing Member may postpone such meeting one or more times for any reason by giving notice to each Non-Managing Members entitled to vote at the meeting so postponed of the place, date and hour at which such meeting would be held. Such notice shall be given not fewer than two days before the date of such meeting and otherwise in accordance with this Article XIII. When a meeting is postponed, a new Record Date need not be fixed. Any meeting of Non-Managing Members may be adjourned by the Managing Member one or more times for any reason and no vote of the Non-Managing Members shall be required for any adjournment. A meeting of Non-Managing Members may be adjourned by the Managing Member as to one or more proposals regardless of whether action has been taken on other matters. When a meeting is adjourned to another time or place, notice need not be given of the adjourned meeting and a new Record Date need not be fixed, if the time and place thereof are announced at the meeting at which the adjournment is taken, unless such adjournment shall be for more than 45 days. At the adjourned meeting, the Company may transact any business which might have been transacted at the original meeting. If the adjournment is for more than 45 days or if a new Record Date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given in accordance with this Article XIII.

Section 13.8 *Waiver of Notice; Approval of Meeting.* The transactions of any meeting of Non-Managing Members, however called and noticed, and whenever held, shall be as valid as if it had occurred at a meeting duly held after call and notice in accordance with Section 13.4 and Section 13.5, if a quorum is present either in person or by proxy. Attendance of a Non-Managing Member at a meeting shall constitute a waiver of notice of the meeting, except when the Non-Managing Member attends the meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened; and except that attendance at a meeting is not a waiver of any right to disapprove of any matters submitted for consideration or to object to the failure to submit for consideration any matters required to be included in the notice of the meeting, but not so included, if such objection is expressly made at the beginning of the meeting.

Section 13.9 *Quorum and Voting.* The presence, in person or by proxy, of holders of a majority of the Outstanding Units of the class or classes for which a meeting has been called (including Outstanding Units deemed owned by the Managing Member and its Affiliates) shall constitute a quorum at a meeting of Non-Managing Members of such class or classes unless any such action by the Non-Managing Members requires approval by holders of a greater percentage of such Units, in which case the quorum shall be such greater percentage. At any meeting of the Non-Managing Members duly called and held in accordance with this Agreement at which a quorum is present, the act of Non-Managing Members holding Outstanding Units that in the aggregate represent a majority of the Outstanding Units entitled to vote at such meeting shall be deemed to constitute the act of all Non-Managing Members, unless a different percentage is

required with respect to such action under the provisions of this Agreement, in which case the act of the Non-Managing Members holding Outstanding Units that in the aggregate represent at least such different percentage shall be required; provided, however, that if, as a matter of law or provision of this Agreement, approval by plurality vote of Members (or any class thereof) is required to approve any action, no minimum quorum shall be required. The Non-Managing Members present at a duly called or held meeting at which a quorum is present may continue to transact business until adjournment, notwithstanding the exit of enough Non-Managing Members to leave less than a quorum, if any action taken (other than adjournment) is approved by the required percentage of Outstanding Units specified in this Agreement.

Section 13.10 *Conduct of a Meeting.* The Managing Member shall have full power and authority concerning the manner of conducting any meeting of the Non-Managing Members or solicitation of approvals in writing, including the determination of Persons entitled to vote, the existence of a quorum, the satisfaction of the requirements of Section 13.4, the conduct of voting, the validity and effect of any proxies and the determination of any controversies, votes or challenges arising in connection with or during the meeting or voting. The Managing Member shall designate a Person to serve as chairman of any meeting and shall further designate a Person to take the minutes of any meeting. All minutes shall be kept with the records of the Company maintained by the Managing Member. The Managing Member may make such other regulations consistent with applicable law and this Agreement as it may deem advisable concerning the conduct of any meeting of the Non-Managing Members or solicitation of approvals in writing, including regulations in regard to the appointment of proxies, the appointment and duties of inspectors of votes and approvals, the submission and examination of proxies and other evidence of the right to vote, and the submission and revocation of approvals in writing.

Section 13.11 *Action Without a Meeting. I*f authorized by the Managing Member, any action that may be taken at a meeting of the Non-Managing Members may be taken without a meeting if an approval in writing setting forth the action so taken is signed by Non-Managing Members owning not less than the minimum percentage of the Outstanding Units (including Units deemed owned by the Managing Member and its Affiliates) that would be necessary to authorize or take such action at a meeting at which all the Non-Managing Members were present and voted. Prompt notice of the taking of action without a meeting shall be given to the Non-Managing Members who have not approved in writing. The Managing Member may specify that any written ballot submitted to Non-Managing Members for the purpose of taking any action without a meeting shall be returned to the Company within the time period, which shall be not less than 20 days, specified by the Managing Member. If a ballot returned to the Company does not vote all of the Outstanding Units held by such Non-Managing Members, the Company shall be deemed to have failed to receive a ballot for the Outstanding Units that were not voted. If approval of the taking of any permitted action by the Non-Managing Members is solicited by any Person other than by or on behalf of the Managing Member, the written approvals shall have no force and effect unless and until (a) approvals sufficient to take the action proposed are deposited with the Company in care of the Managing Member and (b) approvals sufficient to take the action proposed are dated as of a date not more than 90 days prior to the date sufficient approvals are first deposited with the Company and is otherwise permissible under the state statutes then governing the rights, duties and liabilities of the Company and the Members.

Section 13.12 *Right to Vote and Related Matters.*

(a) Only those Record Holders of the Outstanding Units on the Record Date set pursuant to Section 13.6 shall be entitled to notice of, and to vote at, a meeting of Non-Managing Members or to act with respect to matters as to which the holders of the Outstanding Units have the right to vote or to act. All references in this Agreement to votes of, or other acts that may be taken by, the Outstanding Units shall be deemed to be references to the votes or acts of the Record Holders of such Outstanding Units.

(b) With respect to Units that are held for a Person's account by another Person that is the Record Holder (such as a broker, dealer, bank, trust company or clearing corporation, or an agent of any of the foregoing), such Record Holder shall, in exercising the voting rights in respect of such Units on any matter, and unless the arrangement between such Persons provides otherwise, vote such Units in favor of, and in accordance with the direction of, the Person who is the beneficial owner of such Units, and the Managing Member shall be entitled to assume such Record Holder is so acting without further inquiry. The provisions of this Section 13.12(b) (as well as all other provisions of this Agreement) are subject to the provisions of Section 4.3.

ARTICLE XIV
MERGER, CONSOLIDATION OR CONVERSION

Section 14.1 *Authority.* The Company may merge or consolidate with or into one or more corporations, limited liability companies, statutory trusts or associations, real estate investment trusts, common law trusts or unincorporated businesses, including a partnership (whether general or limited (including a limited liability partnership)) or convert into any such entity, whether such entity is formed under the laws of the State of Delaware or any other state of the United States of America or any other country, pursuant to a written plan of merger or consolidation ("Merger Agreement") or a written plan of conversion ("Plan of Conversion"), as the case may be, in accordance with this Article XIV.

Section 14.2 *Procedure for Merger, Consolidation or Conversion.*

(a) Merger, consolidation or conversion of the Company pursuant to this Article XIV requires the approval of the Managing Member; provided, however, that, to the fullest extent permitted by law, the Managing Member, in declining to consent to a merger, consolidation or conversion, may act in its sole discretion.

(b) If the Managing Member shall determine to consent to the merger or consolidation, the Managing Member shall approve the Merger Agreement, which shall set forth:

(i) name and state or country of domicile of each of the business entities proposing to merge or consolidate;

(ii) the name and state of domicile of the business entity that is to survive the proposed merger or consolidation (the "Surviving Business Entity");

(iii) the terms and conditions of the proposed merger or consolidation;

(iv) the manner and basis of exchanging or converting the equity securities of each constituent business entity for, or into, cash, property or interests, rights, securities or obligations of the Surviving Business Entity; and (A) if any general or limited partner interests, securities or rights of any constituent business entity are not to be exchanged or converted solely for, or into, cash, property or general or limited partner interests, rights, securities or obligations of the Surviving Business Entity, the cash, property or interests, rights, securities or obligations of any general or limited partnership, corporation, trust, limited liability company, unincorporated business or other entity (other than the Surviving Business Entity) which the holders of such general or limited partner interests, securities or rights are to receive in exchange for, or upon conversion of their interests, securities or rights; and (B) in the case of securities represented by certificates, upon the surrender of such certificates, which cash, property or general or limited partner interests, rights, securities or obligations of the Surviving Business Entity or any general or limited partnership, corporation, trust, limited liability company, unincorporated business or other entity (other than the Surviving Business Entity), or evidences thereof, are to be delivered;

(v) a statement of any changes in the constituent documents or the adoption of new constituent documents (the articles or certificate of incorporation, articles of trust, declaration of trust, certificate or agreement of limited partnership, operating agreement or other similar charter or governing document) of the Surviving Business Entity to be effected by such merger or consolidation;

(vi) the effective time of the merger, which may be the date of the filing of the certificate of merger pursuant to Section 14.4 or a later date specified in or determinable in accordance with the Merger Agreement (provided, that if the effective time of the merger is to be later than the date of the filing of such certificate of merger, the effective time shall be fixed at a date or time certain at or prior to the time of the filing of such certificate of merger and stated therein); and

(vii) such other provisions with respect to the proposed merger or consolidation that the Managing Member determines to be necessary or appropriate.

(c) If the Managing Member shall determine to consent to the conversion, the Managing Member shall approve the Plan of Conversion, which shall set forth:

(i) the name of the converting entity and the converted entity;

(ii) a statement that the Company is continuing its existence in the organizational form of the converted entity;

(iii) a statement as to the type of entity that the converted entity is to be and the state or country under the laws of which the converted entity is to be incorporated, formed or organized;

(iv) the manner and basis of exchanging or converting the equity securities of each constituent business entity for, or into, cash, property or interests, rights, securities or obligations of the converted entity;

(v) in an attachment or exhibit, the Certificate of Formation of the Company;

(vi) in an attachment or exhibit, the certificate of limited partnership, articles of incorporation, or other organizational documents of the converted entity;

(vii) the effective time of the conversion, which may be the date of the filing of the articles of conversion or a later date specified in or determinable in accordance with the Plan of Conversion (provided, that if the effective time of the conversion is to be later than the date of the filing of such articles of conversion, the effective time shall be fixed at a date or time certain at or prior to the time of the filing of such articles of conversion and stated therein); and

(viii) such other provisions with respect to the proposed conversion that the Managing Member determines to be necessary or appropriate.

Section 14.3 *Approval by Non-Managing Members.* Except as provided in Section 14.3(c) and (d), the Managing Member, upon its approval of the Merger Agreement or the Plan of Conversion, as the case may be, shall direct that the Merger Agreement or the Plan of Conversion, as applicable, be submitted to a vote of Non-Managing Members, whether at a special meeting or by written consent, in either case in accordance with the requirements of Article XIII. A copy or a summary of the Merger Agreement or the Plan of Conversion, as the case may be, shall be included in or enclosed with the notice of a special meeting or the written consent and no other disclosure regarding the proposed merger, consolidation or conversion shall be required.

(a) Except as provided in Section 14.3(c) and (d), the Merger Agreement or Plan of Conversion, as the case may be, shall be approved upon receiving the affirmative vote or consent of the holders of a Unit Majority unless the Merger Agreement or Plan of Conversion, as the case may be, effects an amendment to any provision of this Agreement that, if contained in an amendment to this Agreement adopted pursuant to Article XIII, would require for its approval the vote or consent of a greater percentage of the Outstanding Units or of any class of Non-Managing Members, in which case such greater percentage vote or consent shall be required for approval of the Merger Agreement or the Plan of Conversion, as the case may be.

(b) Except as provided in Section 14.3(c) and (d), after such approval by vote or consent of the Non-Managing Members, and at any time prior to the filing of the certificate of merger or articles of conversion pursuant to Section 14.4, the merger, consolidation or conversion may be abandoned pursuant to provisions therefor, if any, set forth in the Merger Agreement or Plan of Conversion, as the case may be.

(c) Notwithstanding anything else contained in this Article XIV or in this Agreement, the Managing Member is permitted, without Non-Managing Member approval, to convert the Company or any Group Member into a new limited liability entity, to merge the Company or any Group Member into, or convey all of the Company's assets to, another limited liability entity that shall be newly formed and shall have no assets, liabilities or operations at the time of such conversion, merger or conveyance other than those it receives from the Company or other Group Member if (i) the Managing Member has received an Opinion of Counsel that the conversion, merger or conveyance, as the case may be, would not result in the loss of limited liability under the laws of the jurisdiction governing the other limited liability entity (if that jurisdiction is not Delaware) of any Non-Managing Member as compared to its limited liability under the Delaware Act or cause the Company to be treated as an association taxable as a corporation or otherwise to be taxed as an entity for federal income tax purposes (to the extent not previously treated as such), (ii) the sole purpose of such conversion, merger, or conveyance is to effect a mere change in the legal form of the Company into another limited liability entity and (iii) the Managing Member determines that the governing instruments of the new entity provide the Non-Managing Members and the Managing Member with substantially the same rights and obligations as are herein contained.

(d) Additionally, notwithstanding anything else contained in this Article XIV or in this Agreement, the Managing Member is permitted, without Non-Managing Member approval, to merge or consolidate the Company with or into another limited liability entity if (i) the Managing Member has received an Opinion of Counsel that the merger or consolidation, as the case may be, would not result in the loss of the limited liability of any Non-Managing Member under the laws of the jurisdiction governing the other limited liability entity (if that jurisdiction is not Delaware) as compared to its limited liability under the Delaware Act or cause the Company to be treated as an association taxable as a corporation or otherwise to be taxed as an entity for federal income tax purposes (to the extent not previously treated as such), (ii) the merger or consolidation would not result in an amendment to this Agreement, other than any amendments that could be adopted pursuant to Section 13.1, (iii) the Company is the Surviving Business Entity in such merger or consolidation, (iv) each Unit outstanding immediately prior to the effective date of the merger or consolidation is to be an identical Unit of the Company after the effective date of the merger or consolidation, and (v) the number of Membership Interests to be issued by the Company in such merger or consolidation does not exceed 20% of the Membership Interests (other than Incentive Distribution Rights) Outstanding immediately prior to the effective date of such merger or consolidation.

(e) Pursuant to Section 18-209(f) of the Delaware Act, an agreement of merger or consolidation approved in accordance with this Article XIV may (i) effect any amendment to this Agreement or (ii) effect the adoption of a new limited liability company agreement for the Company if it is the Surviving Business Entity. Any such amendment or adoption made pursuant to this Section 14.3 shall be effective at the effective time or date of the merger or consolidation.

Section 14.4 *Certificate of Merger or Certificate of Conversion.* Upon the required approval by the Managing Member and the Unitholders of a Merger Agreement or the Plan of Conversion, as the case may be, a certificate of merger or certificate of conversion or other filing, as applicable, shall be executed and filed with the Secretary of State of the State of Delaware or the appropriate filing office of any other jurisdiction, as applicable, in conformity with the requirements of the Delaware Act or other applicable law.

Section 14.5 *Effect of Merger, Consolidation or Conversion.*

(a) At the effective time of the merger:

(i) all of the rights, privileges and powers of each of the business entities that has merged or consolidated, and all property, real, personal and mixed, and all debts due to any of those business entities and all other things and causes of action belonging to each of those business entities, shall be vested in the Surviving Business Entity and after the merger or consolidation shall be the property of the Surviving Business Entity to the extent they were of each constituent business entity;

(ii) the title to any real property vested by deed or otherwise in any of those constituent business entities shall not revert and is not in any way impaired because of the merger or consolidation;

(iii) all rights of creditors and all liens on or security interests in property of any of those constituent business entities shall be preserved unimpaired; and

(iv) all debts, liabilities and duties of those constituent business entities shall attach to the Surviving Business Entity and may be enforced against it to the same extent as if the debts, liabilities and duties had been incurred or contracted by it.

(b) At the effective time of the conversion:

(i) the Company shall continue to exist, without interruption, but in the organizational form of the converted entity rather than in its prior organizational form;

(ii) all rights, title, and interests to all real estate and other property owned by the Company shall continue to be owned by the converted entity in its new organizational form without reversion or impairment, without further act or deed, and without any transfer or assignment having occurred, but subject to any existing liens or other encumbrances thereon;

(iii) all liabilities and obligations of the Company shall continue to be liabilities and obligations of the converted entity in its new organizational form without impairment or diminution by reason of the conversion;

(iv) all rights of creditors or other parties with respect to or against the prior interest holders or other owners of the Company in their capacities as such in existence as of the effective time of the conversion will continue in existence as to those liabilities and obligations and may be pursued by such creditors and obligees as if the conversion did not occur;

(v) a proceeding pending by or against the Company or by or against any of Members in their capacities as such may be continued by or against the converted entity in its new organizational form and by or against the prior Members without any need for substitution of parties; and

(vi) the Membership Interests that are to be converted into membership interests, shares, evidences of ownership, or other securities in the converted entity as provided in the plan of conversion shall be so converted, and Members shall be entitled only to the rights provided in the Plan of Conversion.

ARTICLE XV
GENERAL PROVISIONS

Section 15.1 *Addresses and Notices; Written Communication.*

(a) Any notice, demand, request, report or proxy materials required or permitted to be given or made to the Members under this Agreement shall be in writing and shall be deemed given or made when delivered in person or when sent by first class United States mail or by other means of written communication to the Members at the address described below. Except as otherwise provided herein, any notice, payment or report to be given or made to the Members hereunder shall be deemed conclusively to have been given or made, and the obligation to give such notice or report or to make such payment shall be deemed conclusively to have been fully satisfied, upon sending of such notice, payment or report to the record holder of such Membership Interests at his address as shown in the register, regardless of any claim of any Person who may have an interest in such Membership Interests by reason of any assignment or otherwise. Notwithstanding the foregoing, if (i) the Members shall consent to receiving notices, demands, requests, reports or proxy materials via electronic mail or by the Internet or (ii) the rules of the Commission shall permit any report or proxy materials to be delivered electronically or made available via the Internet, any such notice, demand, request, report or proxy materials shall be deemed given or made when delivered or made available via such mode of delivery. An affidavit or certificate of making of any notice, payment or report in accordance with the provisions of this Section 15.1 executed by the Managing Member or the mailing organization shall be prima facie evidence of the giving or making of such notice, payment or report. If any notice, payment or report addressed to a record holder at the address of such record holder appearing in the register is returned by the United States Postal Service marked to indicate that the United States Postal Service is unable to deliver it, such notice, payment or report and any subsequent notices, payments and reports shall be deemed to have been duly given or made without further mailing (until such time as such record holder or another Person notifies the Company of a change in his address) if they are available for the Member at the principal office of the Company

for a period of one year from the date of the giving or making of such notice, payment or report to the other Members. Any notice to the Company shall be deemed given if received by the Managing Member at the principal office of the Company designated pursuant to Section 2.3. The Managing Member may rely and shall be protected in relying on any notice or other document from any Member or other Person if believed by it to be genuine.

(b) The terms "in writing," "written communications," "written notice" and words of similar import shall be deemed satisfied under this Agreement by use of e-mail and other forms of electronic communication.

Section 15.2 *Further Action.* In connection with this Agreement and the transactions contemplated hereby, the parties shall execute and deliver any additional documents and instruments and perform any additional acts that may be necessary or appropriate to effectuate and perform the provisions of this Agreement and those transactions.

Section 15.3 *Binding Effect.* This Agreement shall be binding upon and inure to the benefit of the parties hereto and their heirs, executors, administrators, successors, legal representatives and permitted assigns.

Section 15.4 *Integration.* This Agreement constitutes the entire agreement among the parties hereto pertaining to the subject matter hereof and supersedes all prior agreements and understandings pertaining thereto.

Section 15.5 *Creditors.* None of the provisions of this Agreement shall be for the benefit of, or shall be enforceable by, any creditor of the Company.

Section 15.6 *Waiver.* No failure by any party to insist upon the strict performance of any covenant, duty, agreement or condition of this Agreement or to exercise any right or remedy consequent upon a breach thereof shall constitute waiver of any such breach of any other covenant, duty, agreement or condition.

Section 15.7 *Third-Party Beneficiaries.* Each Member agrees that (a) any Indemnitee shall be entitled to assert rights and remedies hereunder as a third-party beneficiary hereto with respect to those provisions of this Agreement affording a right, benefit or privilege to such Indemnitee and (b) any Unrestricted Person shall be entitled to assert rights and remedies hereunder as a third-party beneficiary hereto with respect to those provisions of this Agreement affording a right, benefit or privilege to such Unrestricted Person.

Section 15.8 *Counterparts.* This Agreement may be executed in counterparts, all of which together shall constitute an agreement binding on all the parties hereto, notwithstanding that all such parties are not signatories to the original or the same counterpart. Each party shall become bound by this Agreement immediately upon affixing its signature hereto or, in the case of a Person acquiring Membership Interests, pursuant to Section 10.1(b) without execution hereof.

Section 15.9 *Applicable Law; Forum; Venue and Jurisdiction; Waiver of Trial by Jury.*

(a) This Agreement shall be construed in accordance with and governed by the laws of the State of Delaware, without regard to the principles of conflicts of law.

(b) Each of the Members and each Person or Group holding any beneficial interest in the Company (whether through a broker, dealer, bank, trust company or clearing corporation or an agent of any of the foregoing or otherwise):

(i) irrevocably agrees that any claims, suits, actions or proceedings (A) arising out of or relating in any way to this Agreement (including any claims, suits or actions to interpret, apply or enforce the provisions of this Agreement or the duties, obligations or liabilities among Members or of Members to the Company, or the rights or powers of, or restrictions on, the Members or the Company), (B) brought in a derivative manner on behalf of the Company, (C) asserting a claim of breach of a duty (including a fiduciary duty) owed by any director, officer, or other employee of the Company or the General Partner, or owed by the Managing Member, to the Company or the Non-Managing Members, (D) asserting a claim arising pursuant to any provision of the Delaware Act or (E) asserting a claim governed by the internal affairs doctrine shall be exclusively brought in the Court of Chancery of the State of Delaware (or, if such court does not have subject matter jurisdiction, any other court located in the State of Delaware with subject matter jurisdiction), in each case regardless of whether such claims, suits, actions or proceedings sound in contract, tort, fraud or otherwise, are based on common law, statutory, equitable, legal or other grounds, or are derivative or direct claims;

(ii) irrevocably submits to the exclusive jurisdiction of such courts in connection with any such claim, suit, action or proceeding;

(iii) agrees not to, and waives any right to, assert in any such claim, suit, action or proceeding that (A) it is not personally subject to the jurisdiction of such courts or of any other court to which proceedings in such courts may be appealed, (B) such claim, suit, action or proceeding is brought in an inconvenient forum, or (C) the venue of such claim, suit, action or proceeding is improper;

(iv) expressly waives any requirement for the posting of a bond by a party bringing such claim, suit, action or proceeding; and

(v) consents to process being served in any such claim, suit, action or proceeding by mailing, certified mail, return receipt requested, a copy thereof to such party at the address in effect for notices hereunder, and agrees that such services shall constitute good and sufficient service of process and notice thereof; *provided*, nothing in clause (v) hereof shall affect or limit any right to serve process in any other manner permitted by law.

Section 15.10 *Invalidity of Provisions.* If any provision or part of a provision of this Agreement is or becomes for any reason, invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions and/or parts thereof contained

herein shall not be affected thereby and this Agreement shall, to the fullest extent permitted by law, be reformed and construed as if such invalid, illegal or unenforceable provision, or part of a provision, had never been contained herein, and such provisions and/or part shall be reformed so that it would be valid, legal and enforceable to the maximum extent possible.

Section 15.11 *Consent of Members.* Each Member hereby expressly consents and agrees that, whenever in this Agreement it is specified that an action may be taken upon the affirmative vote or consent of less than all of the Members and each Member shall be bound by the results of such action.

Section 15.12 *Facsimile and Email Signatures.* The use of facsimile signatures and signatures delivered by email in portable document format (.pdf) or similar format affixed in the name and on behalf of the Company on certificates representing Membership Interests is expressly permitted by this Agreement.

[Signature page follows.]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first set forth above.

Sunpower YC Holdings, LLC

By: /s/ Kenneth Mahaffey
Name: Kenneth Mahaffey
Title: Assistant Secretary

First Solar 8point3 Holdings, LLC

By: /s/ Alexander R. Bradley
Name: Alexander R. Bradley
Title: Vice President, Treasury and Project Finance

8point3 Energy Partners LP

By: 8point3 General Partner, LLC, its general partner

By: /s/ Charles D. Boynton
Name: Charles D. Boynton
Title: Chief Executive Officer

8point3 Holding Company, LLC

By: First Solar 8point3 Holdings, LLC, its member

By: /s/ Alexander R. Bradley
Name: Alexander R. Bradley
Title: Vice President, Treasury and Project Finance

By: SunPower YC Holdings, LLC, its member

By: /s/ Kenneth Mahaffey
Name: Kenneth Mahaffey
Title: Assistant Secretary

Maryland Solar Holdings, Inc.

By: /s/ Alexander R. Bradley
Name: Alexander R. Bradley
Title: Vice President, Treasury and Project Finance

EXHIBIT A

to the Amended and Restated Limited Liability Company Agreement of
8point3 Operating Company, LLC

CERTIFICATE EVIDENCING COMMON UNITS
REPRESENTING LIMITED LIABILITY COMPANY INTERESTS IN
8POINT3 OPERATING COMPANY, LLC

No. Common Units

In accordance with Section 4.1 of the Amended and Restated Limited Liability Company Agreement of 8point3 Operating Company, LLC, as amended, supplemented or restated from time to time (the "Limited Liability Company Agreement"), 8point3 Operating Company, LLC, a Delaware limited liability company (the "Company"), hereby certifies that (the "Holder") is the registered owner of Common Units representing membership interests in the Company (the "Common Units") transferable on the books of the Company, in person or by duly authorized attorney, upon surrender of this Certificate properly endorsed. The rights, preferences and limitations of the Common Units are set forth in, and this Certificate and the Common Units represented hereby are issued and shall in all respects be subject to the terms and provisions of, the Limited Liability Company Agreement. Copies of the Limited Liability Company Agreement are on file at, and will be furnished without charge on delivery of written request to the Company at, the principal office of the Company located at 77 Rio Robles, San Jose, California 95134. Capitalized terms used herein but not defined shall have the meanings given them in the Limited Liability Company Agreement.

THE HOLDER OF THIS SECURITY ACKNOWLEDGES FOR THE BENEFIT OF 8POINT3 OPERATING COMPANY, LLC THAT THIS SECURITY MAY NOT BE TRANSFERRED IF SUCH TRANSFER (AS DEFINED IN THE LIMITED LIABILITY COMPANY AGREEMENT) WOULD (A) VIOLATE THE THEN APPLICABLE FEDERAL OR STATE SECURITIES LAWS OR RULES AND REGULATIONS OF THE SECURITIES AND EXCHANGE COMMISSION, ANY STATE SECURITIES COMMISSION OR ANY OTHER GOVERNMENTAL AUTHORITY WITH JURISDICTION OVER SUCH TRANSFER, (B) TERMINATE THE EXISTENCE OR QUALIFICATION OF 8POINT3 OPERATING COMPANY, LLC UNDER THE LAWS OF THE STATE OF DELAWARE, (C) CAUSE 8POINT3 OPERATING COMPANY, LLC TO BE TREATED AS AN ASSOCIATION TAXABLE AS A CORPORATION OR OTHERWISE TO BE TAXED AS AN ENTITY FOR FEDERAL INCOME TAX PURPOSES (TO THE EXTENT NOT ALREADY SO TREATED OR TAXED), OR (D) RESULT IN A TERMINATION OF THE COMPANY UNDER INTERNAL REVENUE CODE OF 1986, AS AMENDED, SECTION 708 UNLESS, PRIOR TO SUCH TRANSFER, THE TRANSFERRING MEMBER AGREES TO INDEMNIFY THE COMPANY AND THE OTHER MEMBERS FOR ANY ADVERSE TAX CONSEQUENCES CAUSED AS A RESULT OF SUCH TERMINATION. THE MANAGING MEMBER OF 8POINT3 OPERATING COMPANY, LLC MAY IMPOSE ADDITIONAL RESTRICTIONS ON THE TRANSFER OF THIS SECURITY IF IT RECEIVES AN OPINION OF COUNSEL THAT SUCH RESTRICTIONS ARE

NECESSARY TO AVOID A SIGNIFICANT RISK OF 8POINT3 OPERATING COMPANY, LLC BECOMING TAXABLE AS A CORPORATION OR OTHERWISE BECOMING TAXABLE AS AN ENTITY FOR FEDERAL INCOME TAX PURPOSES (TO THE EXTENT NOT ALREADY SO TREATED OR TAXED). THIS SECURITY MAY BE SUBJECT TO ADDITIONAL RESTRICTIONS ON ITS TRANSFER PROVIDED IN THE LIMITED LIABILITY COMPANY AGREEMENT. COPIES OF SUCH AGREEMENT MAY BE OBTAINED AT NO COST BY WRITTEN REQUEST MADE BY THE HOLDER OF RECORD OF THIS SECURITY TO THE SECRETARY OF THE MANAGING MEMBER AT THE PRINCIPAL OFFICE OF THE COMPANY.

The Holder, by accepting this Certificate, is deemed to have (i) requested admission as, and agreed to become, a Non-Managing Member and to have agreed to comply with and be bound by and to have executed the Limited Liability Company Agreement, (ii) represented and warranted that the Holder has all right, power and authority and, if an individual, the capacity necessary to enter into the Limited Liability Company Agreement, and (iii) made the waivers and given the consents and approvals contained in the Limited Liability Company Agreement.

This Certificate shall be governed by and construed in accordance with the laws of the State of Delaware.

Dated: _____

8point3 Operating Company, LLC

By: 8point3 Energy Partners LP

By: _____

By: _____

[Reverse of Certificate]

ABBREVIATIONS

The following abbreviations, when used in the inscription on the face of this Certificate, shall be construed as follows according to applicable laws or regulations:

TEN COM—as tenants in common	UNIF GIFT TRANSFERS MIN ACT
TEN ENT—as tenants by the entireties	_____ Custodian _____
JT TEN—as joint tenants with right of survivorship and not as tenants in common	(Cust) (Minor)
	under Uniform Gifts/Transfers to CD Minors Act (State)

Additional abbreviations, though not in the above list, may also be used.

ASSIGNMENT OF COMMON UNITS OF
8POINT3 OPERATING COMPANY, LLC

FOR VALUE RECEIVED, _____ hereby assigns, conveys, sells and transfers unto

_____

_____

_____ _____

(Please print or typewrite name and address of assignee) (Please insert Social Security or other identifying number of assignee)

Common Units representing limited liability company interests evidenced by this Certificate, subject to the Limited Liability Company Agreement, and does hereby irrevocably constitute and appoint as its attorney-in-fact with full power of substitution to transfer the same on the books of 8point3 Operating Company, LLC.

Date: _____

NOTE: The signature to any endorsement hereon must correspond with the name as written upon the face of this Certificate in every particular, without alteration, enlargement or change.

_____
(Signature)

_____
(Signature)

THE SIGNATURE(S) MUST BE GUARANTEED BY AN ELIGIBLE GUARANTOR INSTITUTION (BANKS, STOCKBROKERS, SAVINGS AND LOAN ASSOCIATIONS AND CREDIT UNIONS WITH MEMBERSHIP IN AN APPROVED SIGNATURE GUARANTEE MEDALLION PROGRAM), PURSUANT TO S.E.C. RULE 17Ad-15

No transfer of the Common Units evidenced hereby will be registered on the books of the Company, unless the Certificate evidencing the Common Units to be transferred is surrendered for registration or transfer.

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: October 28, 2015

/S/ THOMAS H. WERNER

Thomas H. Werner
President, Chief Executive Officer and Director
(Principal Executive Officer)

EXHIBIT 31.2

CERTIFICATIONS

I, Charles D. Boynton, 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: October 28, 2015

/S/ CHARLES D. BOYNTON

Charles D. Boynton
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 June 28, 2015 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), each of Thomas H. Werner and Charles D. Boynton 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: October 28, 2015

/S/ THOMAS H. WERNER

Thomas H. Werner
President, Chief Executive Officer and Director
(Principal Executive Officer)

/S/ CHARLES D. BOYNTON

Charles D. Boynton
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.