

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

FORM 10-Q

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

For the quarterly period ended March 29, 2009

OR

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

For the transition period from _____ to _____

Commission file number 001-34166

SunPower Corporation

(Exact Name of Registrant as Specified in Its Charter)

Delaware

(State or Other Jurisdiction of Incorporation or Organization)

94-3008969

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

3939 North First Street, San Jose, California 95134

(Address of Principal Executive Offices and Zip Code)

(408) 240-5500

(Registrant's Telephone Number, Including Area Code)

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

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

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

Large Accelerated Filer ☐

Accelerated Filer ☐

Non-accelerated filer ☐
(Do not check if a smaller reporting company)

Smaller reporting company ☐

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

The total number of outstanding shares of the registrant's class A common stock as of April 30, 2009 was 44,105,162.

The total number of outstanding shares of the registrant's class B common stock as of April 30, 2009 was 42,033,287.

INDEX TO FORM 10-Q

	Page
PART I. FINANCIAL INFORMATION	3
Item 1. <u>Financial Statements (unaudited)</u>	3
<u>Condensed Consolidated Balance Sheets as of March 29, 2009 and December 28, 2008</u>	3
<u>Condensed Consolidated Statements of Operations for the three months ended March 29, 2009 and March 30, 2008</u>	4
<u>Condensed Consolidated Statements of Cash Flows for the three months ended March 29, 2009 and March 30, 2008</u>	5
<u>Notes to Condensed Consolidated Financial Statements</u>	6
Item 2. <u>Management's Discussion and Analysis of Financial Condition and Results of Operations</u>	28
Item 3. <u>Quantitative and Qualitative Disclosure About Market Risks</u>	39
Item 4. <u>Controls and Procedures</u>	41
PART II. OTHER INFORMATION	41
Item 1. <u>Legal Proceedings</u>	41
Item 1A. <u>Risk Factors</u>	41
Item 6. <u>Exhibits</u>	43
<u>Signatures</u>	44
<u>Index to Exhibits</u>	45

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

	March 29, 2009	December 28, 2008(1)
Assets		
Current assets:		
Cash and cash equivalents	\$ 149,110	\$ 202,331
Restricted cash and cash equivalents, current portion	12,663	13,240
Short-term investments	2,297	17,179
Accounts receivable, net	149,179	194,222
Costs and estimated earnings in excess of billings	34,164	30,326
Inventories	343,169	251,542
Advances to suppliers, current portion	39,647	43,190
Prepaid expenses and other current assets	75,119	98,254
Total current assets	805,348	850,284
Restricted cash and cash equivalents, net of current portion	171,799	162,037
Long-term investments	18,971	23,577
Property, plant and equipment, net	687,159	629,247
Goodwill	196,224	196,720
Intangible assets, net	35,385	39,490
Advances to suppliers, net of current portion	114,879	119,420
Other long-term assets	78,316	76,751
Total assets	<u>\$ 2,108,081</u>	<u>\$ 2,097,526</u>
Liabilities and Stockholders' Equity		
Current liabilities:		
Accounts payable	\$ 272,600	\$ 263,241
Accrued liabilities	104,346	157,049
Billings in excess of costs and estimated earnings	6,904	11,806
Customer advances, current portion	15,404	19,035
Total current liabilities	399,254	451,131
Long-term debt	103,850	54,598
Convertible debt	363,768	357,173
Long-term deferred tax liability	10,963	8,141
Customer advances, net of current portion	85,668	91,359
Other long-term liabilities	24,509	25,950
Total liabilities	988,012	988,352
Commitments and contingencies (Note 8)		
Stockholders' equity:		
Preferred stock, \$0.001 par value, 10,042,490 shares authorized; none issued and outstanding	—	—
Common stock, \$0.001 par value, 150,000,000 shares of class B common stock authorized; 42,033,287 shares of class B common stock issued and outstanding; \$0.001 par value, 217,500,000 shares of class A common stock authorized; 44,274,852 and 44,055,644 shares of class A common stock issued; 43,999,060 and 43,849,566 shares of class A common stock outstanding, at March 29, 2009 and December 28, 2008, respectively	86	86
Additional paid-in capital	1,077,851	1,065,745
Accumulated other comprehensive loss	(19,677)	(25,611)
Retained earnings	72,825	77,611
	1,131,085	1,117,831
Less: shares of class A common stock held in treasury, at cost; 275,792 and 206,078 shares at March 29, 2009 and December 28, 2008, respectively	(11,016)	(8,657)
Total stockholders' equity	1,120,069	1,109,174
Total liabilities and stockholders' equity	<u>\$ 2,108,081</u>	<u>\$ 2,097,526</u>

(1) As adjusted due to the implementation of FSP APB 14-1 (see Note 1).

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

SunPower Corporation

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

	Three Months Ended	
	March 29, 2009	March 30, 2008(1)
Revenue:		
Systems	\$ 106,097	\$ 178,851
Components	107,690	94,850
Total revenue	<u>213,787</u>	<u>273,701</u>
Costs and expenses:		
Cost of systems revenue	88,351	143,264
Cost of components revenue	77,688	77,242
Research and development	7,964	4,642
Sales, general and administrative	42,283	33,858
Total costs and expenses	<u>216,286</u>	<u>259,006</u>
Operating income (loss)	(2,499)	14,695
Other income (expense):		
Interest income	1,184	4,147
Interest expense	(6,121)	(6,297)
Other, net	(7,157)	715
Other income (expense), net	<u>(12,094)</u>	<u>(1,435)</u>
Income (loss) before income taxes and equity in earnings of unconsolidated investees	(14,593)	13,260
Income tax provision (benefit)	<u>(8,562)</u>	<u>1,805</u>
Income (loss) before equity in earnings of unconsolidated investees	(6,031)	11,455
Equity in earnings of unconsolidated investees, net of taxes	1,245	544
Net income (loss)	<u>\$ (4,786)</u>	<u>\$ 11,999</u>
Net income (loss) per share of class A and class B common stock:		
Basic	\$ (0.06)	\$ 0.15
Diluted	\$ (0.06)	\$ 0.14
Weighted-average shares:		
Basic	83,749	78,965
Diluted	83,749	83,002

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

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

SunPower Corporation

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

	Three Months Ended	
	March 29, 2009	March 30, 2008(1)
Cash flows from operating activities:		
Net income (loss)	\$ (4,786)	\$ 11,999
Adjustments to reconcile net income (loss) to net cash used in operating activities:		
Stock-based compensation	9,483	14,508
Depreciation	18,365	10,139
Amortization of intangible assets	4,052	4,317
Impairment of long-lived assets	1,318	5,489
Non-cash interest expense	5,021	4,384
Amortization of debt issuance costs	537	537
Equity in earnings of unconsolidated investees	(1,245)	(544)
Excess tax benefits from stock-based award activity	—	(4,361)
Deferred income taxes and other tax liabilities	(6,369)	(455)
Changes in operating assets and liabilities, net of effect of acquisition:		
Accounts receivable	40,931	(17,162)
Costs and estimated earnings in excess of billings	(3,797)	(20,709)
Inventories	(95,870)	(39,530)
Prepaid expenses and other assets	11,913	(13,948)
Advances to suppliers	7,993	(2,559)
Accounts payable and other accrued liabilities	(27,199)	22,983
Billings in excess of costs and estimated earnings	(4,612)	(43,663)
Customer advances	(8,860)	(786)
Net cash used in operating activities	(53,125)	(69,361)
Cash flows from investing activities:		
Increase in restricted cash and cash equivalents	(9,185)	(55,550)
Purchase of property, plant and equipment	(52,101)	(50,790)
Purchase of available-for-sale securities	—	(50,970)
Proceeds from sales or maturities of available-for-sale securities	18,177	84,106
Cash paid for acquisition, net of cash acquired	—	(13,484)
Cash paid for investments in joint ventures and other non-public companies	—	(5,625)
Net cash used in investing activities	(43,109)	(92,313)
Cash flows from financing activities:		
Proceeds from issuance of long-term debt	51,232	—
Proceeds from exercise of stock options	396	1,138
Excess tax benefits from stock-based award activity	—	4,361
Purchases of stock for tax withholding obligations on vested restricted stock	(2,359)	(3,334)
Net cash provided by financing activities	49,269	2,165
Effect of exchange rate changes on cash and cash equivalents	(6,256)	6,817
Net decrease in cash and cash equivalents	(53,221)	(152,692)
Cash and cash equivalents at beginning of period	202,331	285,214
Cash and cash equivalents at end of period	\$ 149,110	\$ 132,522
Non-cash transactions:		
Additions to property, plant and equipment acquired under accounts payable and other accrued liabilities	\$ 22,571	\$ 4,446
Non-cash interest expense capitalized and added to the cost of qualified assets	2,073	1,784
Change in goodwill relating to adjustments to acquired net assets	—	231

(1) As adjusted due to the implementation of FSP APB 14-1 (see Note 1).

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

SunPower Corporation

Notes to Condensed Consolidated Financial Statements (unaudited)

Note 1. THE COMPANY AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

The Company

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

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

Recently Adopted Accounting Pronouncements

Convertible Debt

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

In February 2007, the Company issued \$200.0 million in principal amount of its 1.25% senior convertible debentures, or the 1.25% debentures. In the fourth quarter of fiscal 2008, the Company received notices for the conversion of approximately \$1.4 million of the 1.25% debentures. In July 2007, the Company issued \$225.0 million in principal amount of its 0.75% senior convertible debentures, or the 0.75% debentures. The 1.25% debentures and the 0.75% debentures contain partial cash settlement features and are therefore subject to FSP APB 14-1. As of December 28, 2008, the carrying value of the equity component was \$61.8 million and the principal amount of the outstanding debentures, the unamortized discount and the net carrying value was \$423.6 million, \$66.4 million and \$357.2 million, respectively (see Note 10). On a cumulative basis from the respective issuance dates of the 1.25% debentures and the 0.75% debentures through December 28, 2008, the Company has retrospectively recognized \$22.6 million in non-cash interest expense related to the adoption of FSP APB 14-1 excluding the related tax effects.

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

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

As a result of the Company's adoption of FSP APB 14-1, the Company's Condensed Consolidated Statement of Operations for the three months ended March 30, 2008 has been adjusted as follows:

(In thousands)	As Adjusted in this Quarterly Report on Form 10-Q	As Previously Reported in Quarterly Report on Form 10-Q
Cost of systems revenue	\$ 143,264	\$ 143,213
Cost of components revenue	77,242	77,168
Operating income	14,695	14,820
Interest expense	(6,297)	(1,464)
Other, net	715	(257)
Income before income taxes and equity in earnings of unconsolidated investees	13,260	17,246
Income tax provision	1,805	5,033
Income before equity in earnings of unconsolidated investees	11,455	12,213
Net income	11,999	12,757

As a result of the Company's adoption of FSP APB 14-1, the Company's Condensed Consolidated Statement of Cash Flows for the three months ended March 30, 2008 has been adjusted as follows:

(In thousands)	As Adjusted in this Quarterly Report on Form 10-Q	As Previously Reported in Quarterly Report on Form 10-Q
Cash flows from operating activities:		
Net income	\$ 11,999	\$ 12,757
Depreciation	10,139	10,102
Non-cash interest expense	4,384	—
Amortization of debt issuance costs	537	972
Deferred income taxes and other tax liabilities	(455)	2,773
Net cash used in operating activities	(69,361)	(69,361)

Earnings Per Share

On December 29, 2008, the Company adopted FSP Emerging Issues Task Force Issue ("EITF") 03-6-1, "Determining Whether Instruments Granted in Share-Based Payment Transactions Are Participating Securities" ("FSP EITF 03-6-1"), which clarifies that all outstanding unvested share-based payment awards that contain rights to nonforfeitable dividends participate in undistributed earnings with common shareholders. In fiscal 2007, the Company granted restricted stock awards with the same dividend rights as its other stockholders, therefore, unvested restricted stock awards are considered participating securities and the two-class method of computing basic and diluted earnings per share must be applied (see Note 14). The new guidance was applied retroactively to the Company's historical results of operations, and as a result, the Company's Condensed Consolidated Statement of Operations for the three months ended March 30, 2008 has been adjusted as follows:

(In thousands, except per share data)	As Adjusted in this Quarterly Report on Form 10-Q	As Previously Reported in Quarterly Report on Form 10-Q
Net income	\$ 11,999	\$ 11,999
Net income per share of class A and class B common stock:		
Basic	\$ 0.15	\$ 0.15
Diluted	\$ 0.14	\$ 0.14
Weighted-average shares:		
Basic	78,965	78,965
Diluted	83,002	83,661

Disclosures about Derivative Instruments and Hedging Activities

On December 29, 2008, the Company adopted Statement of Financial Accounting Standards (“SFAS”) No. 161, “Disclosures about Derivative Instruments and Hedging Activities — an amendment of SFAS No. 133” (“SFAS No. 161”), which had no financial impact on the Company’s condensed consolidated financial statements and only required additional financial statement disclosures as set forth in Note 12. SFAS No. 161 specifically requires entities to provide enhanced disclosures addressing the following: (a) how and why an entity uses derivative instruments; (b) how derivative instruments and related hedged items are accounted for under SFAS No. 133 “Accounting for Derivative Instruments and Hedging Activities” (“SFAS No. 133”), and its related interpretations; and (c) how derivative instruments and related hedged items affect an entity’s financial position, financial performance, and cash flows.

Fair Value of Nonfinancial Assets and Nonfinancial Liabilities

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

Recent Accounting Pronouncements Not Yet Adopted

In April 2009, the FASB issued three Staff Positions: (i) FSP SFAS No. 157-4, “Determining Fair Value When the Volume and Level of Activity for the Asset or Liability have Significantly Decreased and Identifying Transactions That Are Not Orderly” (“FSP SFAS No. 157-4”), (ii) SFAS No. 115-2 and SFAS No. 124-2, “Recognition and Presentation of Other-Than-Temporary Impairments” (“FSP SFAS No. 115-2 and FSP SFAS No. 124-2”), and (iii) SFAS No. 107-1 and APB 28-1, “Interim Disclosures about Fair Value of Financial Instruments” (“FSP SFAS No. 107 and APB 28-1”), which will be effective for interim and annual periods ending after June 15, 2009. FSP SFAS No. 157-4 provides guidance on how to determine the fair value of assets and liabilities under SFAS No. 157 in the current economic environment and reemphasizes that the objective of a fair value measurement remains an exit price. If the Company were to conclude that there has been a significant decrease in the volume and level of activity of the asset or liability in relation to normal market activities, quoted market values may not be representative of fair value and the Company may conclude that a change in valuation technique or the use of multiple valuation techniques may be appropriate. FSP SFAS No. 115-2 and FSP SFAS No. 124-2 modify the requirements for recognizing other-than-temporarily impaired debt securities and revise the existing impairment model for such securities by modifying the current intent and ability indicator in determining whether a debt security is other-than-temporarily impaired. FSP SFAS No. 107 and APB 28-1 enhance the disclosure of instruments under the scope of SFAS No. 157 for both interim and annual periods. The Company is currently evaluating the potential impact, if any, of the adoption of these Staff Positions on its financial position, results of operations and disclosures.

In April 2009, the FASB issued FSP SFAS No. 141(R)-1 which amends the provisions in SFAS No. 141 (revised 2007), “Business Combinations” (“SFAS No. 141(R)”), for the initial recognition and measurement, subsequent measurement and accounting, and disclosures for assets and liabilities arising from contingencies in business combinations. FSP SFAS No. 141(R)-1 eliminates the distinction between contractual and non-contractual contingencies, including the initial recognition and measurement criteria in SFAS No. 141(R) and instead carries forward most of the provisions in SFAS No. 141, “Business Combinations” (“SFAS No. 141”), for acquired contingencies. FSP SFAS No. 141(R)-1 is effective for contingent assets and contingent liabilities acquired in business combinations for which the acquisition date is on or after the beginning of the first annual reporting period beginning on or after December 15, 2008. The Company expects FSP SFAS No. 141(R)-1 will have an impact in its condensed consolidated financial statements, but the nature and magnitude of the specific effects will depend upon the nature, term and size of the acquired contingencies.

Fiscal Years

The Company reports on a fiscal-year basis and ends its quarters on the Sunday closest to the end of the applicable calendar quarter, except in a 53-week fiscal year, in which case the additional week falls into the fourth quarter of that fiscal year. Fiscal year 2009 consists of 53 weeks while fiscal year 2008 consists of 52 weeks. The first quarter of fiscal 2009 ended on March 29, 2009 and the first quarter of fiscal 2008 ended on March 30, 2008.

Basis of Presentation

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

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

In the opinion of management, the accompanying condensed consolidated interim financial statements contain all adjustments, consisting only of normal recurring adjustments, which the Company believes are necessary for a fair statement of the Company's financial position as of March 29, 2009 and its results of operations for the three months ended March 29, 2009 and March 30, 2008 and its cash flows for the three months ended March 29, 2009 and March 30, 2008. These condensed consolidated interim financial statements are not necessarily indicative of the results to be expected for the entire year.

Note 2. INVENTORIES

(In thousands)	March 29, 2009	December 28, 2008(2)
Inventories:		
Raw materials(1)	\$ 124,759	\$ 130,082
Work-in-process	12,872	15,505
Finished goods	205,538	105,955
	<u>\$ 343,169</u>	<u>\$ 251,542</u>

- (1) In addition to polysilicon and other raw materials for solar cell manufacturing, raw materials include solar panels purchased from third-party vendors and installation materials for systems projects.
- (2) The balance of finished goods increased by \$0.2 million for the change in amortization of capitalized non-cash interest expense capitalized in inventory as a result of the Company's adoption of FSP APB 14-1 (see Note 1).

Note 3. PROPERTY, PLANT AND EQUIPMENT

(In thousands)	March 29, 2009	December 28, 2008(1)
Property, plant and equipment, net:		
Land and buildings	\$ 13,914	\$ 13,912
Manufacturing equipment	450,879	387,860
Computer equipment	36,849	26,957
Furniture and fixtures	4,330	4,327
Leasehold improvements	159,748	148,190
Construction-in-process	141,869	149,657
	<u>807,589</u>	<u>730,903</u>
Less: Accumulated depreciation	(120,430)	(101,656)
	<u>\$ 687,159</u>	<u>\$ 629,247</u>

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

Certain manufacturing equipment associated with solar cell manufacturing lines located at our second facility in the Philippines are collateralized in favor of a customer by way of a chattel mortgage, a first ranking mortgage and a security interest in the property. The Company provided security for advance payments received from a customer in fiscal 2008 totaling \$40.0 million in the form of collateralized manufacturing equipment with a net book value of \$41.2 million and \$43.1 million as of March 29, 2009 and December 28, 2008, respectively.

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

Ongoing weak global credit market conditions have had a negative impact on the Company's earnings during the first quarter of fiscal 2009. In addition, the Company expects that the current credit market conditions will continue through at least the first half of fiscal 2009, reducing demand for its solar power products in the near term, which could harm future earnings. From time to time, the Company may temporarily remove certain long-lived assets from service based on projections of reduced capacity needs. The Company believes the current adverse change in its business climate resulting in lower forecasted revenue for fiscal 2009 is temporary in nature and does not indicate that the fair values of its long-lived assets have fallen below their carrying values as of March 29, 2009.

Note 4. GOODWILL AND INTANGIBLE ASSETS

Goodwill

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

(In thousands)	Systems	Components	Total
As of December 28, 2008	\$ 181,801	\$ 14,919	\$ 196,720
Translation adjustment	—	(496)	(496)
As of March 29, 2009	\$ 181,801	\$ 14,423	\$ 196,224

The Company records a translation adjustment for the revaluation of its Euro functional currency and Australian dollar functional currency subsidiaries' goodwill and intangible assets into U.S. dollar. As of March 29, 2009, the translation adjustment decreased the balance of goodwill by \$0.5 million.

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

Under SFAS No. 142, goodwill of a reporting unit shall be tested for impairment between annual tests if an event occurs or circumstances change that would more likely than not reduce the fair value of a reporting unit below its carrying amount. Ongoing weak global credit market conditions have had a negative impact on the Company's earnings and the profitability of its reporting units during the first quarter of fiscal 2009. The Company expects that the current credit market conditions will continue through at least the first half of fiscal 2009, negatively affecting its ability to finance systems projects. Management evaluated all the facts and circumstances, including the duration and severity of the decline in its revenue and market capitalization and the reasons for it, to assess whether an impairment indicator exists that would require impairment testing of its reporting units. Management has concluded that no impairment indicator exists as of March 29, 2009, because the decline in revenue is temporary in nature and management does not believe that there is a significant adverse change in the long-term business climate.

Intangible Assets

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

(In thousands)	Gross	Accumulated Amortization	Net
As of March 29, 2009			
Patents and purchased technology	\$ 51,398	\$ (33,995)	\$ 17,403
Tradenames	2,478	(1,768)	710
Customer relationships and other	27,381	(10,109)	17,272
	<u>\$ 81,257</u>	<u>\$ (45,872)</u>	<u>\$ 35,385</u>
As of December 28, 2008			
Patents and purchased technology	\$ 51,398	\$ (31,322)	\$ 20,076
Tradenames	2,501	(1,685)	816
Customer relationships and other	27,456	(8,858)	18,598
	<u>\$ 81,355</u>	<u>\$ (41,865)</u>	<u>\$ 39,490</u>

All of the Company's acquired identifiable intangible assets are subject to amortization. Amortization expense for intangible assets totaled \$4.1 million and \$4.3 million for the three months ended March 29, 2009 and March 30, 2008, respectively. As of March 29, 2009, the estimated future amortization expense related to intangible assets is as follows (in thousands):

2009 (remaining nine months)	\$	12,182
2010		14,656
2011		4,546
2012		3,896
Thereafter		105
	\$	<u>35,385</u>

Note 5. INVESTMENTS

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

Assets Measured at Fair Value on a Recurring Basis

The following tables present information about the Company's available-for-sale securities accounted for under SFAS No. 115, "Accounting for Investment in Certain Debt and Equity Securities" ("SFAS No. 115"), that are measured at fair value on a recurring basis and indicate the fair value hierarchy of the valuation techniques utilized by the Company to determine such fair value in accordance with the provisions of SFAS No. 157. Information about the Company's foreign currency derivatives measured at fair value on a recurring basis is disclosed in Note 12 below. The Company does not have any nonfinancial assets or nonfinancial liabilities that are recognized or disclosed at fair value in its condensed consolidated financial statements on a recurring basis.

(In thousands)	March 29, 2009			
	Level 1	Level 2	Level 3	Total
Asset				
Money market funds	\$ 186,462	\$ —	\$ 2,297	\$ 188,759
Bank notes	16,631	—	—	16,631
Corporate securities	—	—	18,971	18,971
Total available-for-sale securities	<u>\$ 203,093</u>	<u>\$ —</u>	<u>\$ 21,268</u>	<u>\$ 224,361</u>

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

Available-for-sale securities utilizing Level 3 inputs to determine fair value are comprised of investments in money market funds totaling \$2.3 million and \$7.2 million as of March 29, 2009 and December 28, 2008, respectively, and auction rate securities totaling \$19.0 million and \$23.6 million as of March 29, 2009 and December 28, 2008, respectively.

Money Market Funds

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

Auction Rate Securities

Auction rate securities in which the Company invested are typically over-collateralized and secured by pools of student loans originated under the Federal Family Education Loan Program ("FFELP") that are guaranteed and insured by the U.S. Department of Education. In addition, all auction rate securities held are rated by one or more of the Nationally Recognized Statistical Rating Organizations ("NRSRO") as triple-A. Historically, these securities have provided liquidity through a Dutch auction at pre-determined intervals every 7 to 49 days. At the end of each reset period, investors can continue to hold the securities or sell the securities at par through an auction process. The "stated" or "contractual" maturities for these securities generally are between 20 to 30 years. Beginning in February 2008, the auction rate securities market experienced a significant increase in the number of failed auctions, resulting from a lack of liquidity, which occurs when sell orders exceed buy orders, and does not necessarily signify a default by the issuer.

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

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

- 5 years to liquidity;
- continued receipt of contractual interest which provides a premium spread for failed auctions; and
- discount rates ranging from 4.5% to 6.3%, which incorporates a spread for both credit and liquidity risk.

Based on these assumptions, the Company estimated that the auction rate securities with a stated par value of \$21.1 million at March 29, 2009 would be valued at approximately 90% of their stated par value, or \$19.0 million, representing a decline in value of approximately \$2.1 million. At December 28, 2008, the Company estimated that auction rate securities with a stated par value of \$26.1 million would be valued at approximately 91% of their stated par value, or \$23.6 million, representing a decline in value of approximately \$2.5 million. Due to the length of time that has passed since the auctions failed and the ongoing uncertainties regarding future access to liquidity, the Company has determined the impairment is other-than-temporary and recorded impairment losses of \$0.1 million and \$2.5 million in the first quarter of fiscal 2009 and fourth quarter of fiscal 2008, respectively, in "Other, net" in its Condensed Consolidated Statements of Operations. The following table provides a summary of changes in fair value of the Company's available-for-sale securities utilizing Level 3 inputs for the three months ended March 29, 2009:

(In thousands)	Money Market Funds	Auction Rate Securities
Balance at December 28, 2008	\$ 7,185	\$ 23,577
Sales and distributions (1)	(3,650)	(4,526)
Impairment loss recorded in "Other, net"	(1,238)	(80)
Balance at March 29, 2009 (2)	<u>\$ 2,297</u>	<u>\$ 18,971</u>

- (1) The Company sold an auction rate security with a carrying value of \$4.5 million for \$4.6 million to a third-party outside of the auction process and received distributions of \$3.7 million from the Reserve Funds.
- (2) On April 17, 2009, the Company received distributions of \$1.1 million from the Reserve Funds.

The following table provides a summary of changes in fair value of the Company's available-for-sale securities which utilized Level 3 inputs for the three months ended March 30, 2008:

(In thousands)	Auction Rate Securities
Balance at December 31, 2007	\$ —
Transfers from Level 2 to Level 3	29,050
Purchases	10,000
Unrealized loss included in other comprehensive income	(1,445)
Balance at March 30, 2008	<u>\$ 37,605</u>

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

(In thousands)	March 29, 2009	December 28, 2008
Included in:		
Cash equivalents	\$ 18,631	\$ 101,523
Short-term restricted cash and cash equivalents(1)	12,663	13,240
Short-term investments	2,297	17,179
Long-term restricted cash and cash equivalents(1, 2)	171,799	162,037
Long-term investments	18,971	23,577
	<u>\$ 224,361</u>	<u>\$ 317,556</u>

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

(2) In January 2009 and December 2008, the Company borrowed Malaysian Ringgit 185.0 million and 190.0 million, respectively, or approximately \$51.2 million and \$52.7 million, respectively, from the Malaysian Government under its facility agreement to finance the construction of its planned third solar cell manufacturing facility in Malaysia.

Note 6. ADVANCES TO SUPPLIERS

The Company has entered into agreements with various polysilicon, ingot, wafer, solar cell and solar panel vendors and manufacturers. These agreements specify future quantities and pricing of products to be supplied by the vendors for periods up to 12 years. Certain agreements also provide for penalties or forfeiture of advanced deposits in the event the Company terminates the arrangements (see Note 8). Under certain of these agreements, the Company is required to make prepayments to the vendors over the terms of the arrangements. In the first quarter of fiscal 2009, the Company paid advances totaling \$5.6 million in accordance with the terms of existing supply agreements. As of March 29, 2009 and December 28, 2008, advances to suppliers totaled \$154.5 million and \$162.6 million, respectively, the current portion of which is \$39.6 million and \$43.2 million, respectively.

The Company's future prepayment obligations related to these agreements as of March 29, 2009 are as follows (in thousands):

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

Note 7. RESTRUCTURING COSTS

The Company records restructuring costs in accordance with SFAS No. 146, "Accounting for Costs Associated with Exit or Disposal Activities" ("SFAS No. 146"). In response to deteriorating economic conditions, the Company reduced its global workforce of regular employees by approximately 60 positions in the first quarter of fiscal 2009 in order to reduce its annual operating expenses. The restructuring actions included charges of \$1.2 million for other severance, benefits and related costs.

A summary of total restructuring activity for the three months ended March 29, 2009 is as follows:

(in thousands)	Workforce Reduction
Balance as of December 28, 2008	\$ —
Restructuring charges	1,185
Cash payments	(1,029)
Balance as of March 29, 2009	<u>\$ 156</u>

Restructuring accruals totaled \$0.2 million as of March 29, 2009 and are recorded in "Accrued liabilities" in the Condensed Consolidated Balance Sheet and represent estimated future cash outlays primarily related to severance expected to be paid within the second quarter of fiscal 2009.

A summary of the charges in the Condensed Consolidated Statement of Operations resulting from workforce reductions is as follows:

(in thousands)	Three Months Ended March 29, 2009
Cost of systems revenue	\$ 179
Cost of components revenue	28
Research and development	77
Sales, general and administrative	901
Total restructuring charges	<u>\$ 1,185</u>

Note 8. COMMITMENTS AND CONTINGENCIES**Operating Lease Commitments**

The Company leases its San Jose, California facility under a non-cancelable operating lease from Cypress, which expires in April 2011. In addition, the Company leases its Richmond, California facility under a non-cancelable operating lease from an unaffiliated third-party, which expires in September 2018. The Company also has various lease arrangements, including its European headquarters located in Geneva, Switzerland under a lease that expires in September 2012, as well as sales and support offices in Southern California, New Jersey, Australia, Canada, Germany, Italy, Spain and South Korea, all of which are leased from unaffiliated third-parties. Future minimum obligations under all non-cancelable operating leases as of March 29, 2009 are as follows (in thousands):

2009 (remaining nine months)	\$	4,096
2010		4,932
2011		3,642
2012		2,814
2013		2,756
Thereafter		14,597
	<u>\$</u>	<u>32,837</u>

Purchase Commitments

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

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

As of March 29, 2009, total obligations related to non-cancelable purchase orders totaled approximately \$115.6 million and long-term supply agreements totaled approximately \$3,992.2 million. Future purchase obligations under non-cancelable purchase orders and long-term supply agreements as of March 29, 2009 are as follows (in thousands):

2009 (remaining nine months)	\$	376,790
2010		519,550
2011		546,438
2012		359,223
2013		277,531
Thereafter		2,028,257
	\$	<u>4,107,789</u>

Total future purchase commitments of \$4,107.8 million as of March 29, 2009 include tolling agreements with suppliers in which the Company provides polysilicon required for silicon ingot manufacturing and procures the manufactured silicon ingots from the supplier. Annual future purchase commitments in the table above are calculated using the gross price paid by the Company for silicon ingots and are not reduced by the price paid by suppliers for polysilicon. Total future purchase commitments as of March 29, 2009 would be reduced by \$614.9 million to \$3,492.9 million had the Company's obligations under such tolling agreements been disclosed using net cash outflows.

Product Warranties

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

Provisions for warranty reserves charged to cost of revenue were \$3.7 million and \$4.9 million during the three months ended March 29, 2009 and March 30, 2008, respectively. Activity within accrued warranty for the three months ended March 29, 2009 and March 30, 2008 is summarized as follows:

(In thousands)	March 29, 2009	March 30, 2008
Balance at the beginning of the period	\$ 28,062	\$ 17,194
Accruals for warranties issued during the period	3,677	4,899
Settlements made during the period	(1,173)	(2,576)
Balance at the end of the period	<u>\$ 30,566</u>	<u>\$ 19,517</u>

The accrued warranty balance at March 29, 2009 and December 28, 2008 includes \$3.9 million and \$4.2 million, respectively, of accrued costs primarily related to servicing the Company's obligations under long-term maintenance contracts entered into under the Systems Segment and the balance is included in "Other long-term liabilities" in the Condensed Consolidated Balance Sheets.

Uncertain Tax Positions

Total liabilities associated with uncertain tax positions under FASB Interpretation No. 48, "Accounting for Uncertainty in Income Taxes, and Related Implementation Issues" ("FIN 48"), were \$12.8 million as of both March 29, 2009 and December 28, 2008 and are included in "Other long-term liabilities" in the Company's Condensed Consolidated Balance Sheets as they are not expected to be paid within the next twelve months. Due to the complexity and uncertainty associated with its tax positions, the Company cannot make a reasonably reliable estimate of the period in which cash settlement will be made for its liabilities associated with uncertain tax positions in other long-term liabilities.

Indemnifications

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

Legal Matters

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

Note 9. JOINT VENTURES

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

The Company and Woongjin Holdings Co., Ltd. ("Woongjin"), a provider of environmental products located in Korea, formed Woongjin Energy in fiscal 2006, a joint venture to manufacture monocrystalline silicon ingots. The Company and Woongjin have funded the joint venture through capital investments. In January 2008, the Company invested an additional \$5.4 million in the joint venture. Until Woongjin Energy engages in an IPO, Woongjin Energy will refrain from declaring or making any distributions, including dividends, unless its debt-to-equity ratio immediately following such distribution would not be greater than 200%. The Company supplies polysilicon, services and technical support required for silicon ingot manufacturing to the joint venture, and the Company procures the manufactured silicon ingots from the joint venture under a five-year agreement. For the three months ended March 29, 2009 and March 30, 2008, the Company paid \$32.3 million and \$5.8 million, respectively, to Woongjin Energy for manufacturing silicon ingots. As of March 29, 2009 and December 28, 2008, \$29.9 million and \$22.5 million, respectively, remained due and payable to Woongjin Energy.

As of March 29, 2009 and December 28, 2008, the Company had a \$25.3 million and \$24.0 million, respectively, investment in the joint venture in its Condensed Consolidated Balance Sheets which consisted of a 40% equity investment. The Company periodically evaluates the qualitative and quantitative attributes of its relationship with Woongjin Energy to determine whether the Company is the primary beneficiary of the joint venture and needs to consolidate Woongjin Energy's results into the Company's financial statements in accordance with FSP FASB Interpretation No. 46, "Consolidation of Variable Interest Entities" ("FSP FIN 46(R)"). The Company has concluded it is not the primary beneficiary of the joint venture because Woongjin Energy supplies only a portion of the Company's future estimated total ingot requirement through 2012 and the existing supply agreement is shorter than the estimated economic life of the joint venture. In addition, the Company believes that Woongjin is the primary beneficiary of the joint venture because Woongjin guarantees the initial \$33.0 million loan for Woongjin Energy and exercises significant control over Woongjin Energy's board of directors, management, and daily operations.

The Company accounts for its investment in Woongjin Energy under APB Opinion No. 18, “The Equity Method of Accounting for Investments in Common Stock” (the “equity method”), in which the investment is classified as “Other long-term assets” in the Condensed Consolidated Balance Sheets and the Company’s share of Woongjin Energy’s income totaling \$1.3 million and \$0.5 million for the three months ended March 29, 2009 and March 30, 2008, respectively, is included in “Equity in earnings of unconsolidated investees” in the Condensed Consolidated Statements of Operations. The amount of equity earnings increased due to 1) increases in production since Woongjin Energy began manufacturing in the third quarter of fiscal 2007; and 2) the Company’s equity investment increased from 27.4% as of March 30, 2008 to 40% as of March 29, 2009. Neither party has contractual obligations to provide any additional funding to the joint venture. The Company’s maximum exposure to loss as a result of its involvement with Woongjin Energy is limited to its carrying value.

The Company conducted other related-party transactions with Woongjin Energy during fiscal 2008. The Company recognized \$0.6 million in components revenue during the three months ended March 30, 2008 related to the sale of solar panels to Woongjin Energy. As of March 29, 2009 and December 28, 2008, zero and \$0.8 million, respectively, remained due and receivable from Woongjin Energy related to the sale of solar panels.

First Philec Solar Corporation (“First Philec Solar”)

The Company and First Philippine Electric Corporation (“First Philec”) formed First Philec Solar in fiscal 2007, a joint venture to provide wafer slicing services of silicon ingots to the Company. The Company and First Philec have funded the joint venture through capital investments. In fiscal 2008, the Company invested an additional \$4.2 million in the joint venture. The Company supplies to the joint venture silicon ingots and technology required for slicing silicon, and the Company procures the silicon wafers from the joint venture under a five-year wafering supply and sales agreement. This joint venture is located in the Philippines and became operational in the second quarter of fiscal 2008. In the three months ended March 29, 2009, the Company paid \$6.8 million to First Philec Solar for wafer slicing services of silicon ingots. As of March 29, 2009 and December 28, 2008, \$2.1 million and \$1.9 million, respectively, remained due and payable to First Philec Solar.

As of March 29, 2009 and December 28, 2008, the Company had a \$4.9 million and \$5.0 million, respectively, investment in the joint venture in its Condensed Consolidated Balance Sheets which consisted of a 19% equity investment. The Company periodically evaluates the qualitative and quantitative attributes of its relationship with First Philec Solar to determine whether the Company is the primary beneficiary of the joint venture and needs to consolidate First Philec Solar’s results into the Company’s financial statements in accordance with FSP FIN 46(R). The Company has concluded it is not the primary beneficiary of the joint venture because the existing five-year agreement named above is considered a short period compared against the estimated economic life of the joint venture. In addition, the Company believes that First Philec is the primary beneficiary of the joint venture because First Philec exercises significant control over First Philec Solar’s board of directors, management, and daily operations.

The Company accounts for this investment using the equity method of accounting since the Company is able to exercise significant influence over First Philec Solar due to its board positions. The Company’s investment is classified as “Other long-term assets” in the Condensed Consolidated Balance Sheets and the Company’s share of First Philec Solar’s losses totaling \$0.1 million in the three months ended March 29, 2009 are included in “Equity in earnings of unconsolidated investees” in the Condensed Consolidated Statement of Operations. The Company’s maximum exposure to loss as a result of its involvement with First Philec Solar is limited to its carrying value.

Note 10. DEBT AND CREDIT SOURCES

Line of Credit

On July 13, 2007, the Company entered into a credit agreement with Wells Fargo Bank, N.A. (“Wells Fargo”) and has entered into amendments to the credit agreement from time to time. As of March 29, 2009, the credit agreement provides for a \$50.0 million uncollateralized revolving credit line, with a \$50.0 million uncollateralized letter of credit subfeature, and a separate \$150.0 million collateralized letter of credit facility. The Company may borrow up to \$50.0 million and request that Wells Fargo issue up to \$50.0 million in letters of credit under the uncollateralized letter of credit subfeature through March 27, 2010. Letters of credit issued under the subfeature reduce the Company’s borrowing capacity under the revolving credit line. Additionally, the Company may request that Wells Fargo issue up to \$150.0 million in letters of credit under the collateralized letter of credit facility through March 27, 2014. As detailed in the agreement, the Company pays interest of LIBOR plus 1.25% on outstanding borrowings under the uncollateralized revolving credit line, and a fee of 2% and 0.2% to 0.3% depending on maturity for outstanding letters of credit under the uncollateralized letter of credit subfeature and collateralized letter of credit facility, respectively. At any time, the Company can prepay outstanding loans. All borrowings under the uncollateralized revolving credit line must be repaid by March 27, 2010, and all letters of credit issued under the uncollateralized letter of credit subfeature expire on or before March 27, 2010 unless the Company provides by such date collateral in the form of cash or cash equivalents in the aggregate amount available to be drawn under letters of credit outstanding at such time. All letters of credit issued under the collateralized letter of credit facility expire no later than March 27, 2014.

In connection with the credit agreement, the Company entered into a security agreement with Wells Fargo, granting a security interest in a securities account and deposit account to secure its obligations in connection with any letters of credit that might be issued under the credit agreement. SunPower North America, LLC and SunPower Corporation, Systems (“SP Systems”), both wholly-owned subsidiaries of the Company, also entered into an associated continuing guaranty with Wells Fargo. In addition, SP Systems will pledge 60% of its equity interest in SunPower Systems SA to Wells Fargo in the second quarter of fiscal 2009 to collateralize up to \$50.0 million of the Company’s obligations under the credit agreement. The terms of the credit agreement include certain conditions to borrowings, representations and covenants, and events of default customary for financing transactions of this type. If the Company fails to comply with the financial and other restrictive covenants contained in the credit agreement resulting in an event of default, all debt could become immediately due and payable. Financial and other restrictive covenants include, but are not limited to, net income adjusted for purchase accounting not less than \$1.00 in each period of four consecutive quarters as of the recently completed fiscal quarter, total liabilities divided by tangible net worth not exceeding two to one as of the end of each fiscal quarter, and no declaration or payment of dividends.

As of March 29, 2009 and December 28, 2008, letters of credit totaling \$49.7 million and \$29.9 million, respectively, were issued by Wells Fargo under the uncollateralized letter of credit subfeature. In addition, letters of credit totaling \$74.5 million and \$76.5 million were issued by Wells Fargo under the collateralized letter of credit facility as of March 29, 2009 and December 28, 2008, respectively. As of March 29, 2009 and December 28, 2008, cash available to be borrowed under the uncollateralized revolving credit line was \$0.3 million and \$20.1 million, respectively, and includes letter of credit capacities available to be issued by Wells Fargo under the uncollateralized letter of credit subfeature. Letters of credit available under the collateralized letter of credit facility at March 29, 2009 and December 28, 2008 totaled \$75.5 million and \$73.5 million, respectively.

Debt Facility Agreement with the Malaysian Government

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

Under the terms of the facility agreement, the Company may borrow up to Malaysian Ringgit 1.0 billion (approximately \$276.9 million) to finance the construction of its planned third solar cell manufacturing facility (“FAB3”) in Malaysia. The loans within the facility agreement are divided into two tranches that may be drawn through June 2010. Principal is to be repaid in six quarterly payments starting in July 2015, and a non-weighted average interest rate of approximately 4.4% per annum accrues and is payable starting in July 2015. The Company has the ability to prepay outstanding loans and all borrowings must be repaid by October 30, 2016. The terms of the facility agreement include certain conditions to borrowings, representations and covenants, and events of default customary for financing transactions of this type. As of March 29, 2009 and December 28, 2008, the Company had borrowed Malaysian Ringgit 375.0 million (approximately \$103.9 million) and Malaysian Ringgit 190.0 million (approximately \$54.6 million), respectively, under the facility agreement.

1.25% and 0.75% Convertible Debenture Issuances

In February 2007, the Company issued \$200.0 million in principal amount of its 1.25% senior convertible debentures. Interest on the 1.25% debentures is payable on February 15 and August 15 of each year, which commenced August 15, 2007. The 1.25% debentures mature on February 15, 2027. Holders may require the Company to repurchase all or a portion of their 1.25% debentures on each of February 15, 2012, February 15, 2017 and February 15, 2022, or if the Company experiences certain types of corporate transactions constituting a fundamental change. In addition, the Company may redeem some or all of the 1.25% debentures on or after February 15, 2012. The 1.25% debentures are initially convertible, subject to certain conditions, into cash up to the lesser of the principal amount or the conversion value. If the conversion value is greater than \$1,000, then the excess conversion value will be convertible into the Company’s class A common stock. The initial effective conversion price of the 1.25% debentures is approximately \$56.75 per share, which represented a premium of 27.5% over the closing price of the Company’s class A common stock on the date of issuance. The applicable conversion rate will be subject to customary adjustments in certain circumstances.

In July 2007, the Company issued \$225.0 million in principal amount of its 0.75% senior convertible debentures. Interest on the 0.75% debentures is payable on February 1 and August 1 of each year, which commenced February 1, 2008. The 0.75% debentures mature on August 1, 2027. Holders may require the Company to repurchase all or a portion of their 0.75% debentures on each of August 1, 2010, August 1, 2015, August 1, 2020, and August 1, 2025, or if the Company is involved in certain types of corporate transactions constituting a fundamental change. In addition, the Company may redeem some or all of the 0.75% debentures on or after August 1, 2010. The 0.75% debentures will be classified as short-term debt in the Company’s Condensed Consolidated Balance Sheet beginning on August 1, 2009. The 0.75% debentures are initially convertible, subject to certain conditions, into cash up to the lesser of the principal amount or the conversion value. If the conversion value is greater than \$1,000, then the excess conversion value will be convertible into cash, class A common stock or a combination of cash and class A common stock, at the Company’s election. The initial effective conversion price of the 0.75% debentures is approximately \$82.24 per share, which represented a premium of 27.5% over the closing price of the Company’s class A common stock on the date of issuance. The applicable conversion rate will be subject to customary adjustments in certain circumstances.

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

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

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

The 1.25% debentures and 0.75% debentures are subject to the provisions of FSP APB 14-1, adopted by the Company on December 29, 2008, since the debentures can be settled in cash upon conversion. The Company estimated that the effective interest rate for similar debt without the conversion feature was 9.25% and 8.125% on the 1.25% debentures and 0.75% debentures, respectively. The principal amount of the outstanding debentures, the unamortized discount and the net carrying value as of March 29, 2009 was \$423.6 million, \$59.8 million and \$363.8 million, respectively, and as of December 28, 2008 was \$423.6 million, \$66.4 million and \$357.2 million, respectively. The Company recognized \$5.0 million and \$4.4 million in non-cash interest expense in the three months ended March 29, 2009 and March 30, 2008, respectively, related to the adoption of FSP APB 14-1 (see Note 1). As of March 29, 2009, the remaining weighted average period over which the unamortized discount will be recognized is as follows (in thousands):

2009 (remaining nine months)	\$	20,589
2010		22,667
2011		14,686
2012		1,898
	<u>\$</u>	<u>59,840</u>

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

(In thousands)	As of			
	March 29, 2009		December 28, 2008	
	Face Value	Fair Value*	Face Value	Fair Value*
1.25% debentures	\$ 198,608	\$ 151,190	\$ 198,608	\$ 143,991
0.75% debentures	225,000	187,875	225,000	166,747
Total convertible debt	<u>\$ 423,608</u>	<u>\$ 339,065</u>	<u>\$ 423,608</u>	<u>\$ 310,738</u>

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

Note 11. COMPREHENSIVE INCOME

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

(In thousands)	Three Months Ended	
	March 29, 2009	March 30, 2008
Net income (loss)	\$ (4,786)	\$ 11,999
Other comprehensive income:		
Translation adjustment	(16,608)	10,405
Unrealized gain (loss) on investments, net of tax	8	(1,471)
Unrealized gain (loss) on derivatives, net of tax	22,534	(1,456)
Total comprehensive income	<u>\$ 1,148</u>	<u>\$ 19,477</u>

Note 12. FOREIGN CURRENCY DERIVATIVES

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

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

Under SFAS No. 133, the Company is required to recognize derivative instruments as either assets or liabilities at fair value in the Condensed Consolidated Balance Sheets. The Company calculates the fair value of its option and forward contracts based on market volatilities, spot rates and interest differentials from published sources. The following table presents information about the Company's hedge instruments measured at fair value on a recurring basis as of March 29, 2009 and indicates the fair value hierarchy of the valuation techniques utilized by the Company to determine such fair value in accordance with the provisions of SFAS No. 157:

(In thousands)	Balance Sheet Location	Significant Other Observable Inputs (Level 2)
Asset		
Derivatives not designated as hedging instruments under SFAS No. 133		
Balance sheet hedges		
Foreign currency forward exchange contracts	Prepaid expenses and other current assets	<u>\$ 2,173</u>
Liability		
Derivatives not designated as hedging instruments under SFAS No. 133		
Balance sheet hedges		
Foreign currency forward exchange contracts	Accrued liabilities	<u>\$ 9,940</u>
Derivatives designated as hedging instruments under SFAS No. 133		
Cash flow hedges		
Foreign currency forward exchange contracts	Accrued liabilities	<u>\$ 7,856</u>
Foreign currency option contracts	Accrued liabilities	<u>485</u>
		<u>\$ 8,341</u>

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

	Unrealized Loss Recognized in OCI (Effective Portion)	Loss Reclassified from OCI to Cost of Revenue (Effective Portion)	Loss Recognized in Other, Net on Derivatives (Ineffective Portion and Amount Excluded from Effectiveness Testing)
(In thousands)	As of March 29, 2009	Three Months Ended March 29, 2009	Three Months Ended March 29, 2009
Cash flow hedges			
Foreign currency forward exchange contracts	\$ (3,551)	\$ (125)	\$ (1,478)
Foreign currency option contracts	—	—	(485)
	<u>\$ (3,551)</u>	<u>\$ (125)</u>	<u>\$ (1,963)</u>

The following table summarizes the amount of loss recognized in “Other, net” in the Condensed Consolidated Statement of Operations in the three months ended March 29, 2009:

(In thousands)	
Derivatives not designated as hedging instruments under SFAS No. 133	
Balance sheet hedges	
Foreign currency forward exchange contracts	<u>\$ (1,838)</u>

Foreign Currency Exchange Risk

Cash Flow Exposure

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

In accordance with SFAS No. 133, the Company accounts for its hedges of forecasted foreign currency purchases as cash flow hedges. As of March 29, 2009, the Company has outstanding cash flow hedge forward contracts and option contracts with an aggregate notional value of \$397.9 million and \$76.3 million, respectively. As of December 28, 2008, the Company had outstanding cash flow hedge forward contracts and option contracts with an aggregate notional value of \$364.5 million and \$147.5 million, respectively. The maturity dates of the outstanding contracts as of March 29, 2009 range from April 2009 to December 2009. Changes in fair value of the effective portion of hedge contracts are recorded in “Accumulated other comprehensive loss” in “Stockholders’ equity” in the Condensed Consolidated Balance Sheets. Amounts deferred in accumulated other comprehensive loss are reclassified to “Cost of revenue” in the Condensed Consolidated Statements of Operations in the periods in which the hedged exposure impacts earnings. The Company expects to reclassify \$3.6 million of net losses related to these option and forward contracts that are included in accumulated other comprehensive loss at March 29, 2009 to “Cost of revenue” in the following nine months as the Company realizes the cost effects of the related forecasted foreign currency cost of revenue transactions. The amounts ultimately recorded in the Condensed Consolidated Statements of Operations will be contingent upon the actual exchange rates when the related forecasted foreign currency cost of revenue transactions are realized, and therefore, unrealized losses at March 29, 2009 could change.

Cash flow hedges are tested for effectiveness each period on an average to average rate basis using regression analysis. The change in the time value of the options as well as the cost of forward points (the difference between forward and spot rates at inception) on forward exchange contracts are excluded from the Company’s assessment of hedge effectiveness. The premium paid or time value of an option whose strike price is equal to or greater than the market price on the date of purchase is recorded as an asset in the Condensed Consolidated Balance Sheets. Thereafter, any change to this time value and the cost of forward points is included in “Other, net” in the Condensed Consolidated Statements of Operations. Amounts recorded in “Other, net” were losses of \$2.0 million and none during the three months ended March 29, 2009 and March 30, 2008, respectively, due to loss in time value and cost of forward points.

Transaction Exposure

Other derivatives not designated as hedging instruments under SFAS No. 133 consist of forward contracts used to hedge the net balance sheet effect of foreign currency denominated assets and liabilities primarily for intercompany transactions, receivables from customers, prepayments to suppliers and advances received from customers. Changes in exchange rates between the Company's subsidiaries' functional currencies and the currencies in which these assets and liabilities are denominated can create fluctuations in the Company's reported consolidated financial position, results of operations and cash flows. The Company enters into forward contracts to hedge foreign currency denominated monetary assets and liabilities against the short-term effects of currency exchange rate fluctuations. The Company records its derivative contracts at fair value with the related gains or losses recorded in "Other, net." The gains or losses on these contracts are substantially offset by transaction gains or losses on the underlying balances being hedged. As of March 29, 2009 and December 28, 2008, the Company held forward contracts with an aggregate notional value of \$248.9 million and \$66.6 million, respectively, to hedge balance sheet exposure related to transactions with third-parties. These forward contracts have maturities of one month or less.

Credit Risk

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

Note 13. INCOME TAXES

In the three months ended March 29, 2009, the Company's effective rate of income tax benefit of 58.7% was primarily attributable to domestic and foreign income losses in certain jurisdictions, nondeductible amortization of purchased intangible assets and discrete stock option deductions. The Company's tax provision for the three months ended March 30, 2008 of 13.6% was primarily attributable to domestic and foreign income taxes in certain jurisdictions where the Company's operations were profitable, net of the consumption of non-stock net operating loss carryforwards. As a result of the Company's adoption of FSP APB 14-1, the tax provision during the first quarter of fiscal 2008 was retroactively adjusted from 28.3% to 13.6% (see Note 1). The Company's interim period tax provision is estimated based on the expected annual worldwide tax rate and takes into account the tax effect of discrete items.

Note 14. NET INCOME (LOSS) PER SHARE OF CLASS A AND CLASS B COMMON STOCK

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

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

Holders of the Company's 1.25% debentures and 0.75% debentures may, under certain circumstances at their option, convert the debentures into cash and, if applicable, shares of the Company's class A common stock at the applicable conversion rate, at any time on or prior to maturity (see Note 10). Pursuant to EITF 90-19, "Convertible Bonds with Issuer Option to Settle for Cash upon Conversion" ("EITF 90-19"), the 1.25% debentures and 0.75% debentures are included in the calculation of diluted net income (loss) per share if their inclusion is dilutive under the treasury stock method.

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

(In thousands)	As of	
	March 29, 2009	March 30, 2008
Stock options	2,089	17
Restricted stock units	332	412

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

(In thousands, except per share amounts)	Three Months Ended	
	March 29, 2009	March 30, 2008
Basic net income (loss) per share		
Net income (loss)	\$ (4,786)	\$ 11,999
Less: Undistributed earnings allocated to unvested restricted stock awards(1)	—	187
Net income (loss) available to common stockholders	<u>\$ (4,786)</u>	<u>\$ 11,812</u>
Basic weighted-average common shares	<u>83,749</u>	<u>78,965</u>
Net income (loss) per share	<u>\$ (0.06)</u>	<u>\$ 0.15</u>
Diluted net income (loss) per share		
Net income (loss)	\$ (4,786)	\$ 11,999
Less: Undistributed earnings allocated to unvested restricted stock awards(1)	—	178
Net income (loss) available to common stockholders	<u>\$ (4,786)</u>	<u>\$ 11,821</u>
Basic weighted-average common shares	83,749	78,965
Effect of dilutive securities:		
Stock options	—	3,038
Restricted stock units	—	39
1.25% debentures	—	960
Diluted weighted-average common shares	<u>83,749</u>	<u>83,002</u>
Net income (loss) per share	<u>\$ (0.06)</u>	<u>\$ 0.14</u>

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

Beginning on September 15, 2008, the date on which Lehman Brothers International (Europe) Limited (“LBIE”) commenced administrative proceedings regarding the Lehman bankruptcy, approximately 2.9 million shares of class A common stock lent to LBIE in connection with the 1.25% debentures are included in basic weighted-average common shares. Basic weighted-average common shares exclude approximately 1.8 million shares of class A common stock lent to Credit Suisse International (“CSI”) in connection with the 0.75% debentures. If Credit Suisse Securities (USA) LLC (“Credit Suisse”) or its affiliates, including CSI, were to file bankruptcy or commence similar administrative, liquidating, restructuring or other proceedings, the Company may have to include approximately 1.8 million shares lent to CSI in basic weighted-average common shares.

For the three months ended March 29, 2009, the Company’s average stock price for the period did not exceed the conversion price for the senior convertible debentures. For the three months ended March 30, 2008, dilutive potential common shares includes approximately 1.0 million shares for the impact of the 1.25% debentures as the Company experienced a substantial increase in its common stock price during the first quarter of fiscal 2008 as compared to the conversion price pursuant to the terms of the 1.25% debentures. For the three months ended March 30, 2008, the Company’s average stock price for the period did not exceed the conversion price for the 0.75% debentures. Under the treasury stock method, the Company’s senior convertible debentures will generally have a dilutive impact on net income per share if the Company’s average stock price for the period exceeds the conversion price for the senior convertible debentures.

Note 15. STOCK-BASED COMPENSATION

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

(In thousands)	Three Months Ended	
	March 29, 2009	March 30, 2008
Cost of systems revenue	\$ 298	\$ 2,511
Cost of components revenue	525	1,203
Research and development	1,431	811
Sales, general and administrative	7,229	9,983
Total stock-based compensation expense	<u>\$ 9,483</u>	<u>\$ 14,508</u>

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

(In thousands)	Three Months Ended	
	March 29, 2009	March 30, 2008
Employee stock options	\$ 1,028	\$ 1,187
Restricted stock awards and units	10,513	7,901
Shares and options released from re-vesting restrictions	168	6,006
Change in stock-based compensation capitalized in inventory	(2,226)	(586)
Total stock-based compensation expense	\$ 9,483	\$ 14,508

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

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

	Shares (in thousands)	Weighted- Average Exercise Price Per Share
Outstanding as of December 28, 2008	2,545	\$ 8.96
Exercised	(118)	3.36
Forfeited	(24)	28.83
Outstanding as of March 29, 2009	2,403	9.03
Exercisable as of March 29, 2009	1,625	4.26

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

	Stock Options		Restricted Stock Awards and Units	
	Shares (in thousands)	Weighted- Average Exercise Price Per Share	Shares (in thousands)	Weighted- Average Grant Date Fair Value Per Share
Outstanding as of December 28, 2008	1,113	\$ 14.82	1,604	\$ 69.71
Granted	—	—	1,156	27.94
Vested(1)	(311)	3.28	(211)	63.40
Forfeited	(24)	28.83	(151)	70.83
Outstanding as of March 29, 2009	778	19.00	2,398	49.90

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

Note 16. SEGMENT AND GEOGRAPHICAL INFORMATION

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

	Three Months Ended	
	March 29, 2009	March 30, 2008
Revenue by geography:		
United States	61%	21%
Europe:		
Spain	4	52
Italy	15	3
Germany	11	8
Other	5	4
Rest of world	4	12
	<u>100%</u>	<u>100%</u>
Revenue by segment:		
Systems	50%	65%
Components	50	35
	<u>100%</u>	<u>100%</u>
Gross margin by segment:		
Systems	17%	20%
Components	28%	19%

		Three Months Ended	
		March 29, 2009	March 30, 2008
Significant Customers	Business Segment		
Florida Power & Light Company (“FPL”)	Systems	26%	—%
Sedwick Corporate, S.L.	Systems	*	30%
Naturener Group	Systems	*	13%

* denotes less than 10% during the period

Note 17. SUBSEQUENT EVENTS
Acquisition of Tilt Solar, LLC (“Tilt Solar”)

On April 14, 2009, the Company completed the acquisition of Tilt Solar, a California limited liability company, pursuant to a Membership Interest Purchase Agreement, dated as of April 14, 2009, by and among the selling stockholders and the Company. The acquisition of Tilt Solar was not material to the Company’s financial position or results of operations.

Term Loan with the Union Bank, N.A. (“Union Bank”)

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

Supply Agreement with FPL Group Inc. ("FPL Group")

On April 21, 2009, SP Systems, a wholly-owned subsidiary of the Company, entered into a Photovoltaic Equipment Master Supply Agreement with FPL Group, an affiliate of FPL. The supply agreement sets forth the material terms and conditions pursuant to which SP Systems may sell to FPL Group solar panels and photovoltaic tracking and support structure equipment from 2010 through 2012 for use in solar projects of FPL Group or its affiliates.

Pursuant to the supply agreement, SP Systems guarantees delivery over such three year period of up to 100 megawatts ("MW_{AC}") annually as a base commitment, and up to an additional 100 MW_{AC} annually to the extent FPL Group exercises options to acquire such additional quantities. The parties may elect to satisfy SP Systems' quantity commitments as part of its provision of engineering, procurement and construction services in future FPL Group solar projects.

The supply agreement provides FPL Group the right to reduce or terminate its obligations with respect to the base commitment, which under certain, but not all, circumstances will result in an early termination payment. In addition, FPL Group's purchase obligations are conditioned upon the State of Florida promulgating laws and the State of Florida Public Service Commission promulgating regulations, by no later than September 30, 2009 (or such later date as agreed by FPL Group and SP Systems), that allow FPL Group's utility affiliate to build, own and operate, and receive cost recovery for, photovoltaic solar electric generation facilities that would enable FPL Group to satisfy the base commitment for each year. If such condition is not satisfied by the purchase condition date, then FPL Group shall have the right to reduce or eliminate the base commitment.

4.75% Convertible Debenture Issuance

On April 28, 2009, the Company entered into an underwriting agreement (the "Debenture Underwriting Agreement") with Deutsche Bank Securities Inc. ("Deutsche Bank") and Credit Suisse, as representatives of several underwriters (collectively, the "Debenture Underwriters"), providing for the offer and sale by the Company of \$200.0 million principal amount of 4.75% senior convertible debentures due 2014 (the "4.75% debentures"), with an option in favor of the Debenture Underwriters for the purchase of up to an additional \$30.0 million principal amount of the 4.75% debentures in certain circumstances, which option was exercised by the Debenture Underwriters in full on April 29, 2009. The 4.75% debentures were issued under an indenture, dated February 7, 2007 (the "Base Indenture"), between the Company and Wells Fargo, as trustee (the "Trustee"), as supplemented by a third supplemental indenture (the "Supplemental Indenture" and, together with the Base Indenture, the "Indenture"), which was executed by the Company and the Trustee on May 4, 2009. The Indenture provides, among other things, that the 4.75% debentures are senior unsecured obligations of the Company, ranking equally with all existing and future senior unsecured indebtedness of the Company. The 4.75% debentures are effectively subordinated to the Company's secured indebtedness to the extent of the value of the related collateral and structurally subordinated to indebtedness and other liabilities of the Company's subsidiaries. The 4.75% debentures do not contain any covenants or sinking fund requirements. Net proceeds received from the issuance of \$230.0 million principal amount of the 4.75% debentures, before payment of the cost of the convertible debenture hedge transactions described below, were \$225.0 million which closed on May 4, 2009.

Interest is payable on the 4.75% debentures on April 15 and October 15 of each year, beginning on October 15, 2009. The 4.75% debentures are initially convertible into shares of the Company's class A common stock at a conversion price equal to \$26.40 per \$1,000 principal amount of 4.75% debentures, which represents a premium of 20% over the price of the Company's class A common stock in the concurrent equity offering. The applicable conversion rate may adjust in certain circumstances, including upon a fundamental change (defined in the Supplemental Indenture). If not earlier converted, the 4.75% debentures mature on April 15, 2014. Holders may also require the Company to repurchase all or a portion of their 4.75% debentures upon a fundamental change at a cash repurchase price equal to 100% of the principal amount plus accrued and unpaid interest. In the event of certain events of default (defined in the Indenture), such as the Company's failure to make certain payments or perform or observe certain obligations thereunder, the Trustee or holders of a specified amount of then-outstanding 4.75% debentures will have the right to declare all amounts then outstanding due and payable.

Common Stock Issuance

Also on April 28, 2009, the Company entered into an underwriting agreement (the "Equity Underwriting Agreement") with Credit Suisse and Deutsche Bank, as representatives of several underwriters (collectively, the "Equity Underwriters"), providing for the offer and sale by the Company of 9.0 million shares of its class A common stock at a price of \$22.00 per share. The Company also granted to the Equity Underwriters an option to purchase up to an additional 1.35 million shares of its class A common stock in certain circumstances, which such option was exercised by the Equity Underwriters in full on April 29, 2009. The sale of 10.35 million shares of the Company's class A common stock pursuant to the Equity Underwriting Agreement closed on May 4, 2009 and generated net proceeds of \$218.9 million.

Option and Warrant Issuance

Concurrently with entering into the Debenture Underwriting Agreement, the Company entered into certain convertible debenture hedge transactions with respect to the Company's class A common stock (the "purchased options"), with affiliates of certain of the Debenture Underwriters referred to above. The purchased options cover, subject to antidilution adjustments substantially identical to those in the 4.75% debentures, up to approximately 8.7 million shares of the Company's class A common stock. The purchased options are intended to reduce the potential dilution upon conversion of the 4.75% debentures in the event that the market price per share of the Company's class A common stock, as measured under the 4.75% debentures, at the time of exercise is greater than the conversion price of the 4.75% debentures. The purchased options will be settled on a net share basis. Each convertible debenture hedge transaction is a separate transaction, entered into by the Company with each option counter-party, and is not part of the terms of the 4.75% debentures. The Company paid aggregate consideration of \$97.3 million for the purchased options upon the closing of the purchased option transaction on May 4, 2009.

Separately and concurrently with entering into the Debenture Underwriting Agreement, on April 28, 2009 the Company also entered into certain warrant transactions whereby the Company agreed to sell to affiliates of certain of the Debenture Underwriters warrants (the “Warrants”) to acquire, subject to anti-dilution adjustments, up to approximately 8.7 million shares of the Company’s class A common stock. The Warrants will expire in 2014. If the market price per share of the Company’s class A common stock, as measured under the Warrants, exceeds the strike price of the Warrants, the Warrants will have a dilutive effect on the Company’s earnings per share. Each warrant transaction is a separate transaction, entered into by the Company with each option counter-party, and is not part of the terms of the 4.75% debentures. Holders of the 4.75% debentures will not have any rights with respect to the Warrants. The Warrants were sold for aggregate cash consideration of approximately \$71.0 million upon the closing of the sale of the Warrants on May 4, 2009. The exercise price of the Warrants is \$38.50 per share of the Company’s class A common stock, subject to adjustment for customary anti-dilution and other events.

The purchase options and Warrants transactions described above create a call spread overlay with respect to the 4.75% debentures. Assuming full performance by the counter-parties, the transactions effectively increase the conversion premium of the 4.75% debentures from 20% over the price of the Company’s class A common stock in the concurrent equity offering to 75%, or \$38.50. The net cost of the purchase options and Warrants transactions for the call spread overlay was \$26.3 million.

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

Cautionary Statement Regarding Forward-Looking Statements

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

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

Business

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

Business Segments Overview

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

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

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

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

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

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

Our customers include commercial and governmental entities, investors, utilities, production home builders and home owners. We work with development, construction, system integration and financing companies to deliver our solar power systems to customers. Our solar power systems are designed to generate electricity over a system life typically exceeding 25 years and are principally designed to be used in large-scale applications with system ratings of typically more than 500 kilowatts. Worldwide, more than 500 SunPower solar power systems have been constructed or are under contract, rated in the aggregate at more than 400 megawatts of peak capacity.

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

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

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

Restructuring Costs

In response to deteriorating economic conditions, we reduced our global workforce of regular employees by approximately 60 positions in the first quarter of fiscal 2009 in order to reduce our annual operating expenses. The restructuring actions included charges of \$1.2 million incurred in the first quarter of fiscal 2009 for other severance, benefits and related costs. Restructuring accruals totaled \$0.2 million as of March 29, 2009 and is recorded in "Accrued liabilities" in the Condensed Consolidated Balance Sheets and represents estimated future cash outlays primarily related to severance expected to be paid within the second quarter of fiscal 2009. The restructuring, along with other cost-reduction strategies, is expected to reduce the Company's 2009 operating budget by approximately \$50 million. See Note 7 of Notes to our Condensed Consolidated Financial Statements.

Accounting Changes and Recent Accounting Pronouncements

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

Results of Operations for the Three Months Ended March 29, 2009 and March 30, 2008

Revenue

(Dollars in thousands)	Three Months Ended	
	March 29, 2009	March 30, 2008
Systems	\$ 106,097	\$ 178,851
Components	107,690	94,850
Total revenue	<u>\$ 213,787</u>	<u>\$ 273,701</u>

Total Revenue: During the three months ended March 29, 2009 and March 30, 2008, our total revenue was \$213.8 million and \$273.7 million, respectively, a decrease of 22%. The decrease in our total revenue during the three months ended March 29, 2009 compared to the same period in 2008 is attributable to prolonged winter conditions in Europe, the difficult economic and credit environment domestically, and delayed purchasing decisions by many of our customers. Revenue earned in the three months ended March 30, 2008 resulted from ongoing construction of several large-scale solar power plants in Spain and high demand for our solar cells and solar panels. We had twelve and seven solar cell manufacturing lines in our two facilities as of March 29, 2009 and March 30, 2008, respectively, with a total rated manufacturing capacity of 414 megawatts and 214 megawatts, respectively, per year. During the three months ended March 29, 2009 and March 30, 2008, our two solar cell manufacturing facilities produced 93.7 megawatts and 38.5 megawatts, respectively.

Sales outside the United States represented approximately 39% and 79% of our total revenue for the three months ended March 29, 2009 and March 30, 2008, respectively, representing a shift in the geography of the construction of system projects from Europe to the United States, particularly with the ongoing construction of a 25 megawatt solar power plant for FPL in Desoto County, Florida.

Concentrations: We have three customers that each accounted for more than 10 percent of our total revenue in one of the three months ended March 29, 2009 and March 30, 2008 as follows:

		Three Months Ended	
		March 29, 2009	March 30, 2008
Significant customers	Business Segment		
FPL	Systems	26%	—%
Sedwick Corporate, S.L.	Systems	*	30%
Naturener Group	Systems	*	13%

* denotes less than 10% during the period

We generate revenue from two business segments, as follows:

Systems Segment Revenue: Our systems revenue for the three months ended March 29, 2009 and March 30, 2008 was \$106.1 million and \$178.9 million, respectively, which accounted for 50% and 65%, respectively, of our total revenue. During the three months ended March 29, 2009, our systems revenue decreased 41% as compared to revenue earned in the three months ended March 30, 2008, due to the difficult economic conditions resulting in near-term challenges in financing system projects. In the three months ended March 30, 2008, our Systems Segment benefited from strong power plant scale demand in Europe, primarily in Spain, before the expiration of a pre-existing feed-in tariff in September 2008.

FPL was a significant customer to the Systems Segment during the three months ended March 29, 2009 due to the ongoing construction of a 25 megawatt solar power plant in Desoto County, Florida. Sedwick Corporate, S.L. and Naturener Group were significant customers to the Systems Segment during the three months ended March 30, 2008 due to the ongoing construction of several large-scale solar power plants in Spain. FPL, Sedwick Corporate, S.L. and Naturener Group purchased systems from us as central-station power plants which generate electricity for sale to commercial customers and under tariff to regional and public utilities customers. In the three months ended March 29, 2009 and March 30, 2008, approximately 36% and 46%, respectively, of our total revenue was derived from such sales of systems to financing companies that engage in power purchase agreements with end-users of electricity.

Our systems revenue is largely dependent on the timing of revenue recognition on large construction projects and, accordingly, will fluctuate from period to period. Systems revenue represents sales of engineering, procurement and construction, or EPC, projects and other services relating to solar electric power systems that integrate our solar panels and balance of systems components, as well as materials sourced from other manufacturers. In the United States, where customers often utilize rebate and tax credit programs in connection with projects rated one megawatt or less of capacity, we typically sell solar systems rated up to one megawatt of capacity to provide a supplemental, distributed source of electricity for a customer's facility. In Europe, our systems are often purchased by third-party investors as central-station solar power plants, typically rated from one to twenty megawatts, which generate electricity for sale under tariff to regional and public utilities. We also sell our solar systems under materials-only sales contracts in the United States, Europe and Asia. The balance of our systems revenue are generally derived from sales to new home builders for residential applications and maintenance revenue from servicing installed solar systems. We expect the current credit market conditions to continue through at least the first half of fiscal 2009, negatively affecting our ability to finance systems projects. We expect the U.S. utility and power plant market demand for renewable energy to grow over 50% annually over the next five years.

Components Segment Revenue: Components revenue for the three months ended March 29, 2009 and March 30, 2008 was \$107.7 million and \$94.8 million, respectively, or 50% and 35%, respectively, of our total revenue. During the three months ended March 29, 2009, our components revenue increased 15% as compared to revenue earned in the three months ended March 30, 2008, primarily due to growing demand for our solar power products in Italy. However, components revenue in the three months ended March 29, 2009 was lower than our internal forecast due to a long winter season in Europe, primarily in Germany, and challenging business conditions due to the uncertain economic environment and tight credit conditions which negatively influenced overall demand and timing of customers' buying decisions. In the three months ended March 30, 2008, our Components Segment benefited from strong demand in the residential and small commercial roof-top markets through our dealer network in both Europe and the United States.

Our components revenue represents sales of our solar cells, solar panels and inverters to solar systems installers and other resellers. Factors affecting our components revenue include unit volumes of solar cells and solar panels produced and shipped, average selling prices, product mix, product demand and the percentage of our construction projects sourced with SunPower solar panels sold through our Systems Segment which reduces the inventory available to sell through our Components Segment. As we ramped production beginning in the fourth quarter of fiscal 2004, we have experienced quarter-over-quarter unit volume increases in shipments of our solar power products, until the first quarter of fiscal 2009, when unit volume of shipments for our solar power products decreased due to the challenging business conditions described above. From fiscal 2005 through 2008, we also experienced increases in blended average selling prices for our solar power products primarily due to the strength of end-market demand and favorable currency exchange rates. In the three months ended March 29, 2009, blended average selling prices for our solar power products decreased less than 10% from the fourth quarter in fiscal 2008 mainly due to unfavorable currency exchange rates of Euro-denominated revenue as well as the decrease in our average selling prices in transactions denominated in Euro due to competing market drivers and unprecedented price pressure. Over the next several years, we expect average selling prices for our solar power products to decline as the market becomes more competitive, as financial incentives for solar power decline as typically planned by local, state, and national policy programs designed to accelerate solar power adoption, as certain products mature and as manufacturers are able to lower their manufacturing costs and pass on some of the savings to their customers.

Cost of Revenue

Details to cost of revenue by segment:

(Dollars in thousands)	Three Months Ended					
	Systems		Components		Consolidated	
	March 29, 2009	March 30, 2008	March 29, 2009	March 30, 2008	March 29, 2009	March 30, 2008
Amortization of intangible assets	\$ 1,841	\$ 2,168	\$ 952	\$ 1,044	\$ 2,793	\$ 3,212
Stock-based compensation	298	2,511	525	1,203	823	3,714
Impairment of long-lived assets	—	1,343	—	4,146	—	5,489
Non-cash interest expense	230	36	270	52	500	88
Factory pre-operating costs	236	267	355	386	591	653
Restructuring charges	179	—	28	—	207	—
Materials and other cost of revenue	85,567	136,939	75,558	70,411	161,125	207,350
Total cost of revenue	\$ 88,351	\$ 143,264	\$ 77,688	\$ 77,242	\$ 166,039	\$ 220,506
Total cost of revenue as a percentage of revenue	83%	80%	72%	81%	78%	81%
Total gross margin percentage	17%	20%	28%	19%	22%	19%

Total Cost of Revenue: During the three months ended March 29, 2009 and March 30, 2008, our total cost of revenue was \$166.0 million and \$220.5 million, respectively, which represents a decrease of 25%. The decrease in total cost of revenue corresponds with the decrease of 22% in total revenue during the three months ended March 29, 2009 compared to the same period in 2008. As a percentage of total revenue, our total cost of revenue decreased to 78% in the three months ended March 29, 2009 compared to 81% in the three months ended March 30, 2008. This decrease in total cost of revenue as a percentage of total revenue is reflective of (i) decreased costs of polysilicon beginning in the second quarter of fiscal 2008; (ii) improved manufacturing economies of scale associated with markedly higher production volume; (iii) reduced expenses associated with the amortization of intangible assets and stock-based compensation; and (iv) one-time asset impairment charges of \$5.5 million in the first quarter of fiscal 2008 relating to the wind down of our imaging detector product line and for the write-down of certain solar product manufacturing equipment which became obsolete due to new processes (the costs associated with the \$3.3 million write-down of certain solar product manufacturing equipment was recovered from the vendor in the third quarter of fiscal 2008). This decrease in total cost of revenue as a percentage of total revenue was partially offset by restructuring charges of \$0.2 million in the first quarter of fiscal 2009 and higher amortization of capitalized non-cash interest expense associated with the adoption of Financial Accounting Standards Board, or FASB, Staff Position, or FSP, Accounting Principles Board, or APB, 14-1, "Accounting for Convertible Debt Instruments That May Be Settled in Cash upon Conversion (Including Partial Cash Settlement)," or FSP APB 14-1 (See Note 1 and 3 of Notes to our Condensed Consolidated Financial Statements).

Systems Segment Cost of Revenue: Our cost of systems revenue consists primarily of solar panels, mounting systems, inverters and subcontractor costs. The cost of solar panels is the single largest cost element in our cost of systems revenue. Our Systems Segment sourced approximately 97% and 38% of its solar panel installations with SunPower solar panels in the three months ended March 29, 2009 and March 30, 2008, respectively. Our Systems Segment generally experiences higher gross margin on construction projects that utilize SunPower solar panels compared to construction projects that utilize solar panels purchased from third-parties.

Our cost of systems revenue will also fluctuate from period to period due to the mix of projects completed and recognized as revenue, in particular between large projects and large commercial installation projects. Our gross margin each quarter is affected by a number of factors, including the types of projects in process, the gross margins estimated for those projects in progress and the actual system group department overhead costs. Historically, revenue from materials-only sales contracts generate a higher gross margin percentage for our Systems Segment than revenue generated from turnkey contracts which generate higher revenue per watt from providing both materials as well as EPC management services.

Almost all of our Systems Segment construction contracts are fixed price contracts. However, we have in several instances obtained change orders that reimburse us for additional unexpected costs due to various reasons. The Systems Segment also has long-term agreements for solar cell and solar panel purchases with several major solar panel manufacturers, some with liquidated damages and/or take-or-pay arrangements. An increase in project costs, including solar panel, inverter and subcontractor costs, over the term of a construction contract could have a negative impact on our Systems Segment's overall gross margin. Our Systems Segment's gross margin may also be impacted by provisions for inventory reserves. We are seeking to improve gross margin over time as we implement cost reduction efforts, improve manufacturing processes, and seek better and less expensive materials globally, as we grow the business to attain economies of scale on fixed costs. Any increase in gross margin based on these items, however, could be partially or completely offset by increased raw material costs or our inability to increase revenue in line with expectations, and other competitive pressures on gross margin.

Systems Segment Gross Margin: Gross margin was \$17.7 million and \$35.6 million for the three months ended March 29, 2009 and March 30, 2008, respectively, or 17% and 20%, respectively, of systems revenue. Gross margin decreased due to lower average selling prices for our solar power systems and system group department overhead costs incurred that are fixed in nature when systems revenue decreased 41% in the three months ended March 29, 2009 as compared to the same period in 2008.

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

From time to time, we enter into agreements whereby the selling price for certain of our solar power products is fixed over a defined period. An increase in our manufacturing costs over such a defined period could have a negative impact on our overall gross margin. Our gross margin may also be impacted by fluctuations in manufacturing yield rates and certain adjustments for inventory reserves. We expect our gross margin to increase over time as we improve our manufacturing processes and as we grow our business and leverage certain of our fixed costs. An expected increase in gross margin based on manufacturing efficiencies, however, could be partially or completely offset by increased raw material costs or decreased revenue due to lower average selling prices.

Components Segment Gross Margin: Gross margin was \$30.0 million and \$17.6 million for the three months ended March 29, 2009 and March 30, 2008, respectively, or 28% and 19%, respectively, of components revenue. Gross margin increased due to higher average solar cell conversion efficiency and better silicon utilization, continued reduction in silicon costs and higher volume, partially offset by lower average selling prices for our solar power products.

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

We currently operate 12 solar cell manufacturing lines in our two solar cell manufacturing facilities, with a total rated manufacturing capacity of 414 megawatts per year. By the end of 2009, we plan to operate 16 solar cell manufacturing lines with an aggregate manufacturing capacity of 574 megawatts per year. We plan to begin production in 2010 on the first line of our planned third solar cell manufacturing facility, or FAB3, which will be constructed in Malaysia. FAB3 will be constructed in two phases, with an aggregate manufacturing capacity of more than 500 megawatts per year after the completion of the first phase, and an expected aggregate manufacturing capacity of more than 1 gigawatt per year when the second phase is completed. In addition, we operate both internal and outsourced solar panel manufacturing operations in order to meet volume requirements. As we build additional manufacturing lines or facilities, our fixed costs will increase, and the overall utilization rate of our solar cell manufacturing and solar panel assembly facilities could decline, which could negatively impact our gross margin. This decline may continue until a line's manufacturing output reaches its rated practical capacity.

Research and Development

(Dollars in thousands)	Three Months Ended	
	March 29, 2009	March 30, 2008
Research and development	\$ 7,964	\$ 4,642
As a percentage of revenue	4%	2%

During the three months ended March 29, 2009 and March 30, 2008, our research and development expense was \$8.0 million and \$4.6 million, respectively, which represents an increase of 72%. Research and development expense consists primarily of salaries and related personnel costs, depreciation and the cost of solar cell and solar panel materials and services used for the development of products, including experiment and testing. The increase in spending during the three months ended March 29, 2009 compared to the same period in fiscal 2008 resulted primarily from: (i) increases in salaries, benefits and stock-based compensation costs as a result of increased headcount; and (ii) costs related to the improvement of our current generation solar cell manufacturing technology, development of our third generation of solar cells, development of next generation solar panels, development of next generation trackers and rooftop systems, and development of systems performance monitoring products. These increases were partially offset by grants and cost reimbursements received from various government entities in the United States.

Research and development expense is reported net of any funding received under contracts with governmental agencies because such contracts are considered collaborative arrangements. These awards are typically structured such that only direct costs, research and development overhead, procurement overhead and general and administrative expenses that satisfy government accounting regulations are reimbursed. In addition, our government awards from state agencies will usually require us to pay to the granting governmental agency certain royalties based on sales of products developed with grant funding or economic benefit derived from incremental improvements funded. Royalties paid to governmental agencies will be charged to the cost of goods sold. Our funding from government contracts offset our research and development expense by approximately \$1.8 million and \$1.7 million in the three months ended March 29, 2009 and March 30, 2008, respectively.

As a percentage of total revenue, research and development expense totaled 4% and 2% in the three months ended March 29, 2009 and March 30, 2008, respectively, because we invested more in research and development during the three months ended March 29, 2009 when our revenue was lower as compared to revenue earned in the same period of 2008. We will continue to invest in research and development to produce leading technology that will deliver a competitively priced class of energy to our customers.

Sales, General and Administrative

(Dollars in thousands)	Three Months Ended	
	March 29, 2009	March 30, 2008
Sales, general and administrative	\$ 42,283	\$ 33,858
As a percentage of revenue	20%	12%

During the three months ended March 29, 2009 and March 30, 2008, our sales, general and administrative expense, or SG&A expense, was \$42.3 million and \$33.9 million, respectively, which represents an increase of 25%. SG&A expense for our business consists primarily of salaries and related personnel costs, professional fees, insurance and other selling and marketing expenses. The increase in our SG&A expense during the three months ended March 29, 2009 compared to the same period of fiscal 2008 resulted primarily from higher spending in all areas of sales, marketing, finance and information technology to support the growth of our business, particularly (i) sales and marketing spending to expand our dealer network with nearly 500 dealers worldwide; (ii) outside professional fees for legal and accounting services; (iii) increased headcount and payroll related expenses; and (iv) restructuring charges of \$0.9 million. During the three months ended March 29, 2009 and March 30, 2008, stock-based compensation included in our SG&A expense was approximately \$7.2 million and \$10.0 million, respectively.

As a percentage of revenue, SG&A expense increased to 20% in the three months ended March 29, 2009 from 12% in the three months ended March 30, 2008, because certain expenses increased during the three months ended March 29, 2009 when our revenue was lower as compared to revenue earned in the same period of 2008. We have implemented a new cost-reduction strategy to manage operating costs in the future more effectively, and as a result, we have identified and reduced more than \$50 million from our 2009 operating budget.

Other Income (Expense), Net

(Dollars in thousands)	Three Months Ended	
	March 29, 2009	March 30, 2008
Interest income	\$ 1,184	\$ 4,147
As a percentage of revenue	1%	2%
Interest expense	\$ 6,121	\$ 6,297
As a percentage of revenue	3%	2%
Other, net	\$ (7,157)	\$ 715
As a percentage of revenue	3%	—%

Interest income represents interest income earned on our cash, cash equivalents, restricted cash, restricted cash equivalents, available-for-sale securities and a note receivable. The decrease in interest income of 71% in the three months ended March 29, 2009 as compared to the same period in fiscal 2008 resulted from lower cash holdings related to capital expenditures for our manufacturing capacity expansion.

Interest expense during the three months ended March 29, 2009 relates to borrowings under our senior convertible debentures, the facility agreement with the Malaysian Government and customer advance payments. Interest expense during the three months ended March 30, 2008 relates to borrowings under our senior convertible debentures and customer advance payments. Non-cash interest expense related to the adoption of FSP APB 14-1 was \$4.5 million and \$4.3 million in the three months ended March 29, 2009 and March 30, 2008, respectively (See Note 1 and 10 of Notes to our Condensed Consolidated Financial Statements). The decrease in interest expense of 3% in the three months ended March 29, 2009 as compared to the same period in fiscal 2008 is due to higher capitalized interest of \$2.5 million in the three months ended March 29, 2009 as compared to \$1.5 million in the same period of 2008, partially offset by interest on borrowings totaling Malaysian Ringgit 375.0 million (approximately \$103.9 million) under the facility agreement with the Malaysian Government. Our debt was used to fund our capital expenditures for our manufacturing capacity expansion.

The following table summarizes the components of other, net:

(In thousands)	Three Months Ended	
	March 29, 2009	March 30, 2008
Gain (loss) on derivatives and foreign exchange	\$ (5,778)	\$ 756
Impairment of investments	(1,318)	—
Other income (expense), net	(61)	(41)
Total other, net	<u>\$ (7,157)</u>	<u>\$ 715</u>

Other, net expenses during the three months ended March 29, 2009 consists primarily of losses totaling \$2.0 million from expensing the time value of option contracts and forward points on forward exchange contracts, losses totaling \$3.8 million on derivatives and foreign exchange largely due to the volatility in the current markets and impairment charges for certain money market funds and auction rate securities. Other, net income during the three months ended March 30, 2008 consists primarily of gains on derivatives and foreign exchange. See Note 5 and 12 of Notes to our Condensed Consolidated Financial Statements.

Income Taxes

(Dollars in thousands)	Three Months Ended	
	March 29, 2009	March 30, 2008
Income tax provision (benefit)	\$ (8,562)	\$ 1,805
As a percentage of revenue	4%	1%

In the three months ended March 29, 2009, our effective rate of income tax benefit of 58.7% was primarily due to domestic and foreign income losses in certain jurisdictions, nondeductible amortization of purchased intangible assets and discrete stock option deductions. Our tax provision for the three months ended March 30, 2008 of 13.6% was primarily attributable to domestic and foreign income taxes in certain jurisdictions where our operations are profitable, net of the consumption of non-stock net operating loss carryforwards. As a result of our adoption of FSP APB 14-1, the tax provision during the first quarter of fiscal 2008 was retroactively adjusted from 28.3% to 13.6%. Our interim period tax provision is estimated based on the expected annual worldwide tax rate and takes into account the tax effect of discrete items. See Note 13 of Notes to our Condensed Consolidated Financial Statements.

Deferred tax assets and liabilities are recognized for temporary differences between financial statement and income tax bases of assets and liabilities. We have recorded a valuation allowance to the extent our net deferred tax asset exceeded our net deferred tax liability except for the items contained in other comprehensive income. We have provided a valuation allowance on our deferred tax assets in the U.S., consisting primarily of net operating loss carryforwards and credits, because of the uncertainty of their realizability. We expect it is more likely than not that we will not realize our net deferred tax assets as of March 29, 2009. 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.

Equity in earnings of unconsolidated investees

(Dollars in thousands)	Three Months Ended	
	March 29, 2009	March 30, 2008
Equity in earnings of unconsolidated investees, net of taxes	\$ 1,245	\$ 544
As a percentage of revenue	1%	0%

In fiscal 2006, we formed Woongjin Energy Co., Ltd, or Woongjin Energy, a joint venture located in South Korea, to manufacture monocrystalline silicon ingots. In addition, in fiscal 2007, we formed First Philec Solar Corporation, or First Philec Solar, a joint venture located in the Philippines, to provide wafer slicing services of silicon ingots. We account for these investments under APB Opinion No. 18, “The Equity Method of Accounting for Investments in Common Stock,” or the equity method, in which the equity investments are classified as “Other long-term assets” in the Condensed Consolidated Balance Sheets and our share of the investees’ earnings is included in “Equity in earnings of unconsolidated investees” in the Condensed Consolidated Statements of Operations.

During the three months ended March 29, 2009 and March 30, 2008, our equity in earnings of unconsolidated investees were gains of \$1.2 million and \$0.5 million, respectively. Our share of Woongjin Energy’s income totaled \$1.3 million in the three months ended March 29, 2009 as compared to \$0.5 million in the three months ended March 30, 2008 due to 1) increases in production since Woongjin Energy began manufacturing in the third quarter of fiscal 2007; and 2) our equity investment increased from 27.4% as of March 30, 2008 to 40% as of March 29, 2009. First Philec Solar became operational in the second quarter of fiscal 2008 and our share of the joint venture’s loss totaled \$0.1 million in the three months ended March 29, 2009. See Note 9 of Notes to our Condensed Consolidated Financial Statements.

Liquidity and Capital Resources

Cash Flows

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

(In thousands)	Three Months Ended	
	March 29, 2009	March 30, 2008
Net cash used in operating activities	\$ (53,125)	\$ (69,361)
Net cash used in investing activities	(43,109)	(92,313)
Net cash provided by financing activities	49,269	2,165

Operating Activities

Net cash used in operating activities of \$53.1 million in the three months ended March 29, 2009 was primarily the result of an increase in inventory of \$95.9 million, a decrease in accounts payable and other accrued liabilities of \$27.2 million due to the elimination or delay of costs from our internal expenditure plan until the business climate and overall demand for our solar power products improves, other changes in operating assets and liabilities of \$3.7 million and a net loss of \$4.8 million, offset by non-cash charges totaling \$38.8 million for depreciation, amortization, impairment of investments, stock-based compensation and non-cash interest expense, less non-cash income of \$1.2 million related to our equity share in earnings of joint ventures, and a decrease in accounts receivable of \$40.9 million.

Net cash used in operating activities of \$69.4 million for the three months ended March 30, 2008 was primarily the result of decreases in billings in excess of costs and estimated earnings of \$43.7 million related to contractual timing of system project billings, as well as increases in costs and estimated earnings in excess of billings of \$20.7 million, inventory of \$39.5 million, accounts receivable of \$17.2 million and other changes in operating assets and liabilities totaling \$22.2 million. These items were partially offset by net income of \$12.0 million, plus non-cash charges totaling \$39.4 million for depreciation, amortization, impairment of long-lived assets, stock-based compensation and non-cash interest expense, less non-cash income of \$0.5 million for our equity share in earnings of Woongjin Energy. In addition, these items were offset by increases in accounts payable and other accrued liabilities of \$23.0 million. The significant increases in substantially all of our operating assets and liabilities resulted from our substantial revenue increase in the three months ended March 30, 2008 compared to previous quarters which impacted net income and working capital.

Investing Activities

Net cash used in investing activities during the three months ended March 29, 2009 was \$43.1 million, of which \$52.1 million relates to capital expenditures primarily associated with manufacturing capacity expansion in the Philippines and Malaysia, \$9.2 million relates to increases in restricted cash and cash equivalents for the second drawdown under the facility agreement with the Malaysian government, partially offset by \$18.2 million in proceeds received from the sales or maturities of available-for-sale securities.

Net cash used in investing activities during the three months ended March 30, 2008 was \$92.3 million, of which \$50.8 million relates to capital expenditures primarily associated with manufacturing capacity expansion in the Philippines. Also during the three months ended March 30, 2008, (i) restricted cash and cash equivalents increased by \$55.6 million for advanced payments received from customers that we provided security in the form of cash collateralized bank standby letters of credit; (ii) we paid \$13.5 million in cash for the acquisition of Solar Solutions, a division of Combigas S.r.l., net of cash acquired; and (iii) we invested an additional \$5.6 million in joint ventures. Cash used in investing activities was partially offset by \$33.1 million in proceeds received from the sales or maturities of available-for-sale securities, net of available-for-sale securities purchased during the period.

Financing Activities

Net cash provided by financing activities during the three months ended March 29, 2009 reflects proceeds received of Malaysian Ringgit 185.0 million (approximately \$51.2 million) from the Malaysian Government under our facility agreement, \$0.4 million from stock option exercises, partially offset by cash paid of \$2.4 million for treasury stock purchases that were used to pay withholding taxes on vested restricted stock. Net cash provided by financing activities during the three months ended March 30, 2008 reflects \$1.1 million from stock option exercises and \$4.4 million in excess tax benefits from stock-based award activity, partially offset by cash paid of \$3.3 million for treasury stock purchases that were used to pay withholding taxes on vested restricted stock.

Debt and Credit Sources

Line of Credit

We have a credit agreement with Wells Fargo Bank, N.A., or Wells Fargo, providing for a \$50.0 million uncollateralized revolving credit line, with a \$50.0 million uncollateralized letter of credit subfeature, and a separate \$150.0 million collateralized letter of credit facility as of March 29, 2009. We may borrow up to \$50.0 million and request that Wells Fargo issue up to \$50.0 million in letters of credit under the uncollateralized letter of credit subfeature through March 27, 2010. Letters of credit issued under the subfeature reduce our borrowing capacity under the revolving credit line. Additionally, we may request that Wells Fargo issue up to \$150.0 million in letters of credit under the collateralized letter of credit facility through March 27, 2014. As detailed in the agreement, we pay interest of LIBOR plus 1.25% on outstanding borrowings under the uncollateralized revolving credit line, and a fee of 2% and 0.2% to 0.3% depending on maturity for outstanding letters of credit under the uncollateralized letter of credit subfeature and collateralized letter of credit facility, respectively. At any time, we can prepay outstanding loans. All borrowings under the uncollateralized revolving credit line must be repaid by March 27, 2010, and all letters of credit issued under the uncollateralized letter of credit subfeature expire on or before March 27, 2010 unless we provide by such date collateral in the form of cash or cash equivalents in the aggregate amount available to be drawn under letters of credit outstanding at such time. All letters of credit issued under the collateralized letter of credit facility expire no later than March 27, 2014.

As of March 29, 2009 and December 28, 2008, letters of credit totaling \$49.7 million and \$29.9 million, respectively, were issued by Wells Fargo under the uncollateralized letter of credit subfeature. In addition, letters of credit totaling \$74.5 million and \$76.5 million were issued by Wells Fargo under the collateralized letter of credit facility as of March 29, 2009 and December 28, 2008, respectively. As of March 29, 2009 and December 28, 2008, cash available to be borrowed under the uncollateralized revolving credit line was \$0.3 million and \$20.1 million, respectively, and includes letter of credit capacities available to be issued by Wells Fargo under the uncollateralized letter of credit subfeature. Letters of credit available under the collateralized letter of credit facility as of March 29, 2009 and December 28, 2008 totaled \$75.5 million and \$73.5 million, respectively. See Note 10 of Notes to our Condensed Consolidated Financial Statements.

Term Loan

On April 17, 2009, we entered into a loan agreement with Union Bank, N.A., or Union Bank, under which we borrowed \$30.0 million for three years at an interest rate of LIBOR plus 2%. The loan is to be repaid in eight equal quarterly installments commencing June 30, 2010. See Note 17 of Notes to our Condensed Consolidated Financial Statements.

Debt Facility Agreement with the Malaysian Government

On December 18, 2008, we entered into a facility agreement with the Malaysian Government in which we may borrow up to Malaysian Ringgit 1.0 billion, or approximately \$276.9 million, to finance the construction of FAB3 in Malaysia. The loans within the facility agreement are divided into two tranches that may be drawn through June 2010. Principal is to be repaid in six quarterly payments starting in July 2015, and a non-weighted average interest rate of approximately 4.4% per annum accrues and is payable starting in July 2015. We have the ability to prepay outstanding loans and all borrowings must be repaid by October 30, 2016. As of March 29, 2009 and December 28, 2008, we borrowed Malaysian Ringgit 375.0 million, approximately \$103.9 million, and Malaysian Ringgit 190.0 million, approximately \$54.6 million, respectively, under the facility agreement. See Note 10 of Notes to our Condensed Consolidated Financial Statements.

1.25%, 0.75% and 4.75% Convertible Debenture Issuances

In February 2007, we issued \$200.0 million in principal amount of our 1.25% senior convertible debentures, or 1.25% debentures, and received net proceeds of \$194.0 million. In the fourth quarter of fiscal 2008, we received notices for the conversion of approximately \$1.4 million of the 1.25% debentures. Interest on the 1.25% debentures is payable on February 15 and August 15 of each year, which commenced August 15, 2007. The 1.25% debentures mature on February 15, 2027. Holders may require us to repurchase all or a portion of their 1.25% debentures on each of February 15, 2012, February 15, 2017 and February 15, 2022, or if we experience certain types of corporate transactions constituting a fundamental change. Any repurchase of the 1.25% debentures pursuant to these provisions will be for cash at a price equal to 100% of the principal amount of the 1.25% debentures to be repurchased plus accrued and unpaid interest. In addition, we may redeem some or all of the 1.25% debentures on or after February 15, 2012 for cash at a redemption price equal to 100% of the principal amount of the 1.25% debentures to be redeemed plus accrued and unpaid interest. See Note 10 of Notes to our Condensed Consolidated Financial Statements.

In July 2007, we issued \$225.0 million in principal amount of our 0.75% senior convertible debentures, or 0.75% debentures, and received net proceeds of \$220.1 million. Interest on the 0.75% debentures is payable on February 1 and August 1 of each year, which commenced February 1, 2008. The 0.75% debentures mature on August 1, 2027. Holders may require us to repurchase all or a portion of their 0.75% debentures on each of August 1, 2010, August 1, 2015, August 1, 2020 and August 1, 2025, or if we experience certain types of corporate transactions constituting a fundamental change. Therefore, the 0.75% debentures will be classified as short-term debt in our Condensed Consolidated Balance Sheets beginning on August 1, 2009. Any repurchase of the 0.75% debentures pursuant to these provisions will be for cash at a price equal to 100% of the principal amount of the 0.75% debentures to be repurchased plus accrued and unpaid interest. In addition, we may redeem some or all of the 0.75% debentures on or after August 1, 2010 for cash at a redemption price equal to 100% of the principal amount of the 0.75% debentures to be redeemed plus accrued and unpaid interest. See Note 10 of Notes to our Condensed Consolidated Financial Statements.

On May 4, 2009, we issued \$230.0 million in principal amount of our 4.75% senior convertible debentures, or 4.75% debentures, and received net proceeds of \$225.0 million, before payment of the cost of the convertible debenture hedge transactions of \$26.3 million. Interest on the 4.75% debentures is payable on April 15 and October 15 of each year, beginning on October 15, 2009. The 4.75% debentures mature on April 15, 2014. The 4.75% debentures are initially convertible into shares of our class A common stock at a conversion price equal to \$26.40 per \$1,000 principal amount of 4.75% debentures, which represents a premium of 20% over the price of our class A common stock in the concurrent equity offering described below. See Note 17 of Notes to our Condensed Consolidated Financial Statements.

Liquidity

As of March 29, 2009, we had cash and cash equivalents of \$149.1 million as compared to \$202.3 million as of December 28, 2008. Our cash balances are held in numerous locations throughout the world, including substantial amounts held outside of the U.S. Most of the amounts held outside of the U.S. could be repatriated to the U.S. but, under current law, would be subject to U.S. federal income taxes, less applicable foreign tax credits. We have accrued U.S. federal taxes on the earnings of our foreign subsidiaries except when the earnings are considered indefinitely reinvested outside of the U.S. Repatriation could result in additional U.S. federal income tax payments in future years.

In addition, we had short-term investments and long-term investments of \$2.3 million and \$19.0 million as of March 29, 2009, respectively, as compared to \$17.2 million and \$23.6 million as of December 28, 2008, respectively. The decrease in the balance of our cash and cash equivalents, short-term investments and long-term investments as of March 29, 2009 compared to the balance as of December 28, 2008 was due primarily to the liquidation of our investment portfolio to fund our capital expenditures for our manufacturing capacity expansion.

We estimated that auction rate securities held with a stated par value of \$21.1 million and \$26.1 million at March 29, 2009 and December 28, 2008, respectively, would be valued at approximately 90% and 91%, respectively, of their stated par value, or \$19.0 million and \$23.6 million, respectively, representing a decline in value of approximately \$2.1 million and \$2.5 million, respectively. Due to the length of time that has passed since the auction rate securities failed to clear at auctions and the ongoing uncertainties regarding future access to liquidity, we have determined the impairment is other-than-temporary and recorded impairment losses of \$0.1 million and \$2.5 million in the first quarter of fiscal 2009 and fourth quarter of fiscal 2008, respectively, in "Other, net" in our Condensed Consolidated Statements of Operations. If market conditions were to deteriorate even further such that the current fair value were not achievable, we could realize additional impairment losses related to our auction rate securities. All our auction rate securities as of March 29, 2009 and December 28, 2008 have failed to clear at auctions in subsequent periods. Accordingly, auction rate securities at March 29, 2009 and December 28, 2008 totaling \$19.0 million and \$23.6 million, respectively, are classified as "Long-term investments" in our Condensed Consolidated Balance Sheets, because they are not expected to be used to fund current operations and consistent with their stated contractual maturities between 20 to 30 years. On February 4, 2009, we sold an auction rate security with a carrying value of \$4.5 million as of December 28, 2008 for \$4.6 million to a third-party outside of the auction process. See Note 5 of Notes to our Condensed Consolidated Financial Statements.

Because the closing price of our class A common stock on at least 20 of the last 30 trading days during the fiscal quarters ending March 29, 2009 and December 28, 2008 did not equal or exceed \$70.94, or 125% of the applicable conversion price for our 1.25% debentures, and \$102.80, or 125% of the applicable conversion price governing our 0.75% debentures, holders of the 1.25% debentures and 0.75% debentures are unable to exercise their right to convert the debentures, based on the market price conversion trigger, any day in the first and second quarters of fiscal 2009. Accordingly, the convertible debt is classified as long-term debt in our Condensed Consolidated Balance Sheets as of March 29, 2009 and December 28, 2008. This test is repeated each fiscal quarter, therefore, if the market price conversion trigger is satisfied in a subsequent quarter, the debentures may again be re-classified as short-term debt. See Note 10 of Notes to our Condensed Consolidated Financial Statements.

In addition, the holders of our 1.25% debentures and 0.75% debentures would be able to exercise their right to convert the debentures during the five consecutive business days immediately following any five consecutive trading days in which the trading price of our senior convertible debentures is less than 98% of the average of the closing sale price of a share of class A common stock during the five consecutive trading days, multiplied by the applicable conversion rate. As of March 29, 2009 and December 28, 2008, our 1.25% debentures and 0.75% debentures traded significantly below their historic trading prices. If the trading prices of our debentures continue to decline, holders of the debentures may have the right to convert the debentures in the future.

On May 4, 2009, we received aggregate net proceeds of \$417.6 million from the follow-on public offering of 10.35 million shares of our class A common stock and the issuance of \$230.0 million in principal amount of our 4.75% debentures named above, after deducting the underwriters' discounts and commissions and estimated offering expenses payable by us (including approximately \$26.3 million paid as the cost of convertible debenture hedge transactions entered into in connection with the 4.75% debenture offering). See Note 17 of Notes to our Condensed Consolidated Financial Statements.

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

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

We believe that our current cash and cash equivalents, cash generated from operations, and funds available from the credit agreement with Wells Fargo, facility agreement with the Malaysian Government, the term loan with the Union Bank, and the issuance of the 4.75% debentures and 10.35 million shares of our class A common stock will be sufficient to meet our working capital and capital expenditure commitments for at least the next 12 months. However, there can be no assurance that our liquidity will be adequate over time. We expect total capital expenditures in the range of \$250 million to \$300 million in 2009 as we continue to increase our solar cell and solar panel manufacturing capacity in the Philippines and Malaysia. These expenditures would be greater if we decide to bring capacity on line more rapidly. If our capital resources are insufficient to satisfy our liquidity requirements, we may seek to sell additional equity securities or debt securities or obtain other debt financing. However, after the tax-free distribution of our shares by Cypress Semiconductor Corporation, or Cypress, on September 29, 2008, our ability to sell additional equity securities to obtain additional financing is limited before triggering our obligation to indemnify Cypress for taxes relating to the distribution of our class B common stock. The sale of additional equity securities or convertible debt securities would result in additional dilution to our stockholders and may not be available on favorable terms or at all, particularly in light of the current crises in the financial and credit markets. Additional debt would result in increased expenses and would likely impose new restrictive covenants like the covenants under the credit agreement with Wells Fargo, the facility agreement with the Malaysian Government, the term loan with the Union Bank, the 1.25% debentures, the 0.75% debentures and the 4.75% debentures. Financing arrangements may not be available to us, or may not be available in amounts or on terms acceptable to us.

We expect to experience growth in our operating expenses, including our research and development, sales and marketing and general and administrative expenses, for the foreseeable future to execute our business strategy. We may also be required to purchase polysilicon in advance to secure our wafer supplies or purchase third-party solar panels and materials in advance to support systems projects. We intend to fund these activities with existing cash and cash equivalents, cash generated from operations, borrowings under the term loan with the Union Bank, the issuance of the 4.75% debentures and 10.35 million shares of our class A common stock and, if necessary, borrowings under our credit agreement with Wells Fargo. These anticipated increases in operating expenses may not result in an increase in our revenue and our anticipated revenue may not be sufficient to support these increased expenditures. We anticipate that operating expenses, working capital and capital expenditures will constitute a significant use of our cash resources.

Contractual Obligations

The following summarizes our contractual obligations at March 29, 2009:

(In thousands)	Total	Payments Due by Period			
		2009 (remaining 9 months)	2010 – 2011	2012 – 2013	Beyond 2013
Customer advances, including interest	\$ 101,761	\$ 11,577	\$ 26,184	\$ 16,000	\$ 48,000
Convertible debt, including interest	498,922	3,128	8,340	8,340	479,114
Loan from Malaysian Government	103,850	—	—	—	103,850
Lease commitments	32,837	4,096	8,574	5,570	14,597
Utility obligations	750	—	—	—	750
Royalty obligations	154	154	—	—	—
Non-cancelable purchase orders	115,632	114,982	650	—	—
Purchase commitments under agreements	3,992,157	261,808	1,065,338	636,754	2,028,257
Total	<u>\$ 4,846,063</u>	<u>\$ 395,745</u>	<u>\$ 1,109,086</u>	<u>\$ 666,664</u>	<u>\$ 2,674,568</u>

Customer advances and interest on customer advances relate to advance payments received from customers for future purchases of solar power products. Convertible debt and interest on convertible debt relate to the aggregate of \$423.6 million in outstanding principal amount of our senior convertible debentures. For the purpose of the table above, we assume that all holders of the convertible debt will hold the debentures through the date of maturity in fiscal 2027 and upon conversion, the values of the convertible debt are equal to the aggregate principal amount of \$423.6 million with no premiums. Loan from the Malaysian Government relates to amounts borrowed for the financing and operation of FAB3 to be constructed in Malaysia. Lease commitments primarily relate to our 5-year lease agreement with Cypress for our headquarters in San Jose, California, an 11-year lease agreement with an unaffiliated third-party for our administrative, research and development offices in Richmond, California and other leases for various office space. Utility obligations relate to our 11-year lease agreement with an unaffiliated third-party for our administrative, research and development offices in Richmond, California. Royalty obligations result from several of the Systems Segment government awards and existing agreements. Non-cancelable purchase orders relate to purchases of raw materials for inventory, services and manufacturing equipment from a variety of vendors. Purchase commitments under agreements relate to arrangements entered into with suppliers of polysilicon, ingots, wafers, solar cells and solar panels as well as agreements to purchase solar renewable energy certificates from solar installation owners in New Jersey. These agreements specify future quantities and pricing of products to be supplied by the vendors for periods up to twelve years and there are certain consequences, such as forfeiture of advanced deposits and liquidated damages relating to previous purchases, in the event that we terminate the arrangements. See Note 8 of Notes to our Condensed Consolidated Financial Statements.

As of both March 29, 2009 and December 28, 2008, total liabilities associated with uncertain tax positions under FASB Interpretation No. 48, “Accounting for Uncertainty in Income Taxes, and Related Implementation Issues,” or FIN 48, were \$12.8 million and are included in “Other long-term liabilities” in our Condensed Consolidated Balance Sheets as they are not expected to be paid within the next twelve months. Due to the complexity and uncertainty associated with our tax positions, we cannot make a reasonably reliable estimate of the period in which cash settlement will be made for our liabilities associated with uncertain tax positions in other long-term liabilities, therefore, they have been excluded from the table above. See Note 8 of Notes to our Condensed Consolidated Financial Statements.

On April 17, 2009, we entered into a loan agreement with the Union Bank, under which we borrowed \$30.0 million for three years at an interest rate of LIBOR plus 2%. In addition, on May 4, 2009, we issued \$230.0 million principal amount of our 4.75% debentures. These contractual obligations occurred subsequent to the first quarter of fiscal 2009, therefore, they have been excluded from the table above. See Note 17 of Notes to our Condensed Consolidated Financial Statements.

Item 3. Quantitative and Qualitative Disclosure About Market Risk**Foreign Currency Exchange Risk**

Our exposure to adverse movements in foreign currency exchange rates is primarily related to sales to European customers that are denominated in Euros. Revenue generated from European customers represented approximately 35% and 67% of our total revenue for the three months ended March 29, 2009 and March 30, 2008, respectively. A 10% change in the Euro exchange rate would have impacted our revenue by \$7.5 million and \$18.3 million for the three months ended March 29, 2009 and March 30, 2008, respectively. In connection with our global tax planning, we changed the functional currency of certain European subsidiaries from U.S. dollar to Euro, resulting in greater exposure to changes in the value of the Euro beginning in the second quarter of fiscal 2008. Implementation of this tax strategy had, and will continue to have, the ancillary effect of limiting our ability to fully hedge certain Euro-denominated revenue. From March 29, 2009 to April 30, 2009, the exchange rate to convert one Euro to U.S. dollars decreased from approximately \$1.33 to \$1.32. This decrease in the value of the Euro relative to the U.S. dollar is expected to have an adverse impact on our revenue, gross margin and profitability in the foreseeable future.

In the past, we have experienced an adverse impact on our revenue, gross margin and profitability as a result of foreign currency fluctuations. When foreign currencies appreciate against the U.S. dollar, inventories and expenses denominated in foreign currencies become more expensive. Strengthening of the Korean Won against the U.S. dollar could result in a foreign currency translation loss by our joint venture, Woongjin Energy, which in turn negatively impacts our equity in earnings of the unconsolidated investee. In addition, strengthening of the Malaysian Ringgit against the U.S. dollar will increase our liability under the facility agreement with the Malaysian Government. An increase in the value of the U.S. dollar relative to foreign currencies could make our solar power products more expensive for international customers, thus potentially leading to a reduction in demand, our sales and profitability. Furthermore, many of our competitors are foreign companies that could benefit from such a currency fluctuation, making it more difficult for us to compete with those companies. We currently conduct hedging activities which involve the use of option and forward contracts to address our exposure to changes in the foreign exchange rate between the U.S. dollar and other currencies. As of March 29, 2009, we held option and forward contracts totaling \$76.3 million and \$397.9 million, respectively. As of December 28, 2008, we held option and forward contracts totaling \$147.5 million and \$364.5 million, respectively. We experienced losses on derivatives and foreign exchange, net of tax, of \$5.8 million in the three months ended March 29, 2009 largely due to the volatility in the current markets as compared to gains of \$0.8 million in the three months ended March 30, 2008. We cannot predict the impact of future exchange rate fluctuations on our business and operating results. In the past, we have experienced an adverse impact on our revenue and profitability as a result of foreign currency fluctuations. We believe that we may have increased risk associated with currency fluctuations in the future. See Note 12 of Notes to our Condensed Consolidated Financial Statements.

Credit Risk

We are exposed to credit losses in the event of nonperformance by the counter-parties of our foreign currency option contracts, foreign currency forward contracts and convertible debenture hedge transactions, or the purchased options. We enter into foreign currency derivative contracts and convertible debenture hedge transactions with high-quality financial institutions and limit the amount of credit exposure to any one counter-party. In addition, the foreign currency derivative contracts are limited to a time period of less than one year, while the purchased options will expire in 2014, and we continuously evaluate the credit standing of our counter-party financial institutions. See Note 12 and 17 of Notes to our Condensed Consolidated Financial Statements

Interest Rate Risk

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

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

Reserve Funds

As of March 29, 2009 and December 28, 2008, we had \$2.2 million and \$7.2 million, respectively, invested in the Reserve Primary Fund and the Reserve International Liquidity Fund, or collectively referred to as the Reserve Funds. The net asset value per share for the Reserve Funds fell below \$1.00 because the funds had investments in Lehman Brothers Holdings, Inc., or Lehman, which filed for bankruptcy on September 15, 2008. As a result of this event, the Reserve Funds wrote down their investments in Lehman to zero and also announced that the funds would be closed and distributed to holders. We have estimated our loss on the Reserve Funds to be approximately \$2.2 million based upon information publicly disclosed by the Reserve Funds relative to our holdings and remaining obligations. We recorded an impairment charge of \$1.2 million and \$1.0 million during the first quarter of fiscal 2009 and second half of fiscal 2008, respectively, in “Other, net” in our Condensed Consolidated Statements of Operations, thereby establishing a new cost basis for each fund.

On April 17, 2009, we received a distribution of \$1.1 million from the Reserve Funds and we expect that the remaining distribution of \$1.1 million from the Reserve Funds will occur over the remaining three months as the investments held in the funds mature. While we expect to receive substantially all of the current carrying value of our holdings in the Reserve Funds within the next three months, it is possible we may encounter difficulties in receiving distributions given the current credit market conditions. If market conditions were to deteriorate even further such that the current fair value were not achievable, we could realize additional losses in our holdings with the Reserve Funds and distributions could be further delayed. See Note 5 of Notes to our Condensed Consolidated Financial Statements.

Auction Rate Securities

Auction rate securities are variable rate debt instruments with interest rates that, unless they fail to clear at auctions, are reset approximately every 7 to 49 days. The “stated” or “contractual” maturities for these securities generally are between 20 to 30 years. The auction rate securities are classified as available for sale under Statement of Financial Accounting Standards, or SFAS, No. 115, “Accounting for Certain Investments in Debt and Equity Securities,” or SFAS No. 115, and are recorded at fair value. We estimated that the auction rate securities held with a stated par value of \$21.1 million and \$26.1 million as of March 29, 2009 and December 28, 2008, respectively, would be valued at approximately 90% and 91%, respectively, of their stated par value, or \$19.0 million and \$23.6 million, respectively, representing a decline in value of approximately \$2.1 million and \$2.5 million, respectively. Due to the length of time that has passed since the auctions failed and the ongoing uncertainties regarding future access to liquidity, we have determined the impairment is other-than-temporary and recorded impairment losses of \$0.1 million and \$2.5 million in the first quarter of fiscal 2009 and fourth quarter of fiscal 2008, respectively, in “Other, net” in our Condensed Consolidated Statements of Operations. If market conditions were to deteriorate even further such that the current fair value were not achievable, we could realize additional impairment losses related to our auction rate securities. All our auction rate securities as of March 29, 2009 and December 28, 2008 have failed to clear at auctions in subsequent periods. On February 4, 2009, we sold an auction rate security with a carrying value of \$4.5 million as of December 28, 2008 for \$4.6 million to a third-party outside of the auction process. See Note 5 of Notes to our Condensed Consolidated Financial Statements.

Investments in Non-Public Companies

Our investments held in non-public companies expose us to equity price risk. As of March 29, 2009 and December 28, 2008, non-publicly traded investments of \$3.1 million are accounted for using the cost method and \$30.3 million and \$29.0 million, respectively, are accounted for using the equity method. These strategic investments in third-parties are subject to risk of changes in market value, which if determined to be other-than-temporary, could result in realized impairment losses. We generally do not attempt to reduce or eliminate our market exposure in these cost and equity method investments. We monitor these non-publicly traded investments for impairment and record reductions in the carrying values when necessary. Circumstances that indicate an other-than-temporary decline include valuation ascribed to the issuing company in subsequent financing rounds, decreases in quoted market price and declines in operations of the issuer. During the fourth quarter of fiscal 2008, we recorded an other-than-temporary impairment charge of \$1.9 million in our Condensed Consolidated Statement of Operations related to our non-publicly traded investment accounted for using the cost method, due to the recent deterioration of the credit market and economic environment. If the recent credit market conditions continue or worsen, we may be required to record an additional impairment charge, which could be material. There can be no assurance that our cost and equity method investments will not face additional risks of loss. See Note 9 of Notes to our Condensed Consolidated Financial Statements.

Convertible Debt

The fair market value of our senior convertible debentures is subject to interest rate risk, market price risk and other factors due to the convertible feature of the debentures. The fair market value of the debentures will generally increase as interest rates fall and decrease as interest rates rise. In addition, the fair market value of the debentures will generally increase as the market price of our common stock increases and decrease as the market price 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 estimated fair value of the 1.25% debentures and 0.75% debentures was approximately \$339.1 million and \$310.7 million as of March 29, 2009 and December 28, 2008, respectively, based on quoted market prices as reported by an independent pricing source. A 10% increase in quoted market prices would increase the estimated fair value of the debentures to approximately \$373.0 million and \$341.8 million as of March 29, 2009 and December 28, 2008, respectively, and a 10% decrease in the quoted market prices would decrease the estimated fair value of the debentures to \$305.2 million and \$279.7 million, respectively. See Note 10 of Notes to our Condensed Consolidated Financial Statements.

Item 4. Controls and Procedures

Evaluation of Disclosure Controls and Procedures

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

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

Changes in Internal Control over Financial Reporting

We maintain a system of internal control over financial reporting that is designed to provide reasonable assurance that our books and records accurately reflect our transactions and that our established policies and procedures are followed. There were no changes in our internal control over financial reporting that occurred during the three months ended March 29, 2009 that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

PART II. OTHER INFORMATION

ITEM 1. LEGAL PROCEEDINGS

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

ITEM 1A: RISK FACTORS

In addition to the other information set forth in this report, you should carefully consider the risk factors discussed in “PART I. Item 1A: Risk Factors” in our Annual Report on Form 10-K for the year ended December 28, 2008, which could materially affect our business, financial condition or future results. The risks described in our Annual Report on Form 10-K are not the only risks facing our company. Additional risks and uncertainties not currently known to us or that we currently deem to be immaterial also may materially adversely affect our business, financial condition or future results. We have updated these risk factors to reflect changes during the first quarter of fiscal 2009 for the three months ended March 29, 2009.

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

In order to return to profitability, we will need to generate and sustain higher revenue while maintaining reasonable cost and expense levels. In the first quarter of fiscal 2009 we experienced a loss. We do not know if our revenue will grow, or if it will grow sufficiently to outpace our expenses, which we expect to increase as we expand our manufacturing capacity. We may not be able to become profitable on a quarterly or an annual basis. Our quarterly revenue and operating results will be difficult to predict and have in the past fluctuated from quarter to quarter. In particular, our Systems Segment is difficult to forecast and is susceptible to large fluctuations in financial results. The amount, timing and mix of sales of our Systems Segment, often for a single medium or large-scale project, may cause large fluctuations in our revenue and other financial results. Further, our revenue mix of high margin materials sales versus lower margin projects in the Systems Segment can fluctuate dramatically quarter to quarter, which may adversely affect our revenue and financial results in any given period. Finally, our ability to meet project completion schedules for an individual project and the corresponding revenue impact under the percentage-of-completion method of recognizing revenue may similarly cause large fluctuations in our revenue and other financial results. This may cause us to miss any future guidance announced by us.

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

Item 6. Exhibits

Exhibit Number	Description
10.1†*	Long-Term Supply Agreement, dated January 6, 2009, by and between SunPower Corporation and Hemlock Semiconductor, LLC.
10.2*	Amendment to Long-Term Supply Agreement, dated January 6, 2009, by and among SunPower Corporation, Hemlock Semiconductor, LLC, and SunPower Philippines Manufacturing Limited.
10.3*	Amended and Restated SunPower Corporation Annual Key Employee Bonus Plan.
10.4*	Amended and Restated SunPower Corporation Key Employee Quarterly Key Initiative Bonus Plan.
10.5*	Amendment to Credit Agreement, dated February 25, 2009, by and between SunPower Corporation and Wells Fargo Bank, National Association.
10.6*	Amendment to Second Amended and Restated SunPower Corporation 2005 Stock Incentive Plan dated March 12, 2009.
10.7*†	Amended and Restated Credit Agreement, dated March 20, 2009, by and between SunPower Corporation and Wells Fargo Bank, National Association.
10.8*	Continuing Guaranty, dated March 20, 2009, by and between SunPower North America, LLC and Wells Fargo Bank, National Association.
10.9*†	Amendment Three to Turnkey Engineering, Procurement and Construction Agreement, dated March 26, 2009, by and between SunPower Corporation, Systems and Florida Power and Light Company.
31.1*	Certification by Chief Executive Officer Pursuant to Rule 13a-14(a)/15d-14(a).
31.2*	Certification by Chief Financial Officer Pursuant to Rule 13a-14(a)/15d-14(a).
32.1*	Certification Furnished Pursuant to 18 U.S.C. Section 1350 as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.

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

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

SIGNATURES

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

SUNPOWER CORPORATION

Dated: May 8, 2009

By: /s/ DENNIS V. ARRIOLA

Dennis V. Arriola
Senior Vice President and
Chief Financial Officer

Index to Exhibits

Exhibit Number	Description
10.1†*	Long-Term Supply Agreement, dated January 6, 2009, by and between SunPower Corporation and Hemlock Semiconductor, LLC.
10.2*	Amendment to Long-Term Supply Agreement, dated January 6, 2009, by and among SunPower Corporation, Hemlock Semiconductor, LLC, and SunPower Philippines Manufacturing Limited.
10.3*	Amended and Restated SunPower Corporation Annual Key Employee Bonus Plan.
10.4*	Amended and Restated SunPower Corporation Key Employee Quarterly Key Initiative Bonus Plan.
10.5*	Amendment to Credit Agreement, dated February 25, 2009, by and between SunPower Corporation and Wells Fargo Bank, National Association.
10.6*	Amendment to Second Amended and Restated SunPower Corporation 2005 Stock Incentive Plan dated March 12, 2009.
10.7*†	Amended and Restated Credit Agreement, dated March 20, 2009, by and between SunPower Corporation and Wells Fargo Bank, National Association.
10.8*	Continuing Guaranty, dated March 20, 2009, by and between SunPower North America, LLC and Wells Fargo Bank, National Association.
10.9*†	Amendment Three to Turnkey Engineering, Procurement and Construction Agreement, dated March 26, 2009, by and between SunPower Corporation, Systems and Florida Power and Light Company.
31.1*	Certification by Chief Executive Officer Pursuant to Rule 13a-14(a)/15d-14(a).
31.2*	Certification by Chief Financial Officer Pursuant to Rule 13a-14(a)/15d-14(a).
32.1*	Certification Furnished Pursuant to 18 U.S.C. Section 1350 as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.

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

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

CONFIDENTIAL TREATMENT REQUESTED

--

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

LONG-TERM SUPPLY AGREEMENT

HEMLOCK SEMICONDUCTOR, LLC, a Delaware limited liability company with its principal place of business at 12334 Geddes Road, Hemlock, Michigan 48626, and SUNPOWER CORPORATION, a United States corporation with its principal place of business at 3939 North First Street, San Jose, California 95134 hereby enter into this Long-Term Supply Agreement.

WHEREAS, Buyer desires to purchase and Seller desires to sell Products pursuant to the terms and conditions of this Agreement for use by Buyer in the solar industry; and

WHEREAS, subject to the terms and conditions herein, Buyer will purchase from Seller specified amounts of Products at specific prices per kilogram over the Term of this Agreement.

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

1. **Definitions.** The terms defined in this Section shall have the meanings specified in this Section. Other terms in this Agreement that are not defined in this Section 1 shall have the meanings ascribed to them elsewhere in this Agreement.

- (a) “Affiliate” of either party means an entity that controls said party, is controlled by said party, or is under common control or common ownership with said party. For purposes of this definition, “control” and “controlled” mean the possession of the power to direct or cause the direction of the management and policies of such an entity, whether through the ownership of voting securities, by contract, by management agreement or otherwise.
- (b) “Agreement” means this Long-Term Supply Agreement.
- (c) “Buyer” means SunPower Corporation.
- (d) “Effective Date” means the date on which execution of this Agreement has been completed by both parties.
- (e) “Gross Price” for each Product means the Gross Price per kilogram for each year of this Agreement as set forth in Section 4 hereof and Tables II A and B, and Tables III A - I, of Exhibit B, subject to the adjustments set forth in this Agreement.
- (f) “Net Price” for each Product means the Gross Price per kilogram minus the Advance Payment per kilogram for each year of this Agreement set forth in Table I of Exhibit B, subject to the adjustments set forth in this Agreement.
- (g) “Net Remaining Advance Payment Balance” for each calendar year is set forth in Table 1 of Exhibit B.
- (h) “Seller” means Hemlock Semiconductor, LLC.

2. **Product.** As used in this Agreement, “Product” or “Products” means solar grade polycrystalline silicon as described in the specifications for the respective Products, as set forth in Exhibit A (the “Product Specifications”). Buyer shall utilize the Products for its manufacturing purposes in solar applications only and shall not, without the prior written consent of Seller, resell or transfer the Products to anyone or use the Products other than in Buyer’s solar manufacturing applications, subject to the following exceptions:

- (a) Buyer may transfer the Products without prior written consent of Seller to wholly-owned or majority-owned subsidiaries of the Buyer (hereinafter together with Buyer referred to as the “Buyer Group”) for Buyer’s manufacturing purposes in solar applications only, and for no other purpose; and
- (b) Buyer may transfer the Products without prior written consent of the Seller to persons who have entered into supply agreements with a Buyer Group member to produce ingots and/or wafers from such transferred Products for such Buyer Group member, for Buyer’s manufacturing purposes in solar applications. Buyer shall notify Seller of each such transfer, provide copies of the Buyer Group transfer agreements upon entering into such agreements and notify Seller upon termination of such agreements.

If so requested by Buyer, Seller may, in its sole discretion, agree to deliver Products to carriers that are shipping to Buyer Group members or persons who have entered into supply agreements with a Buyer Group member (as described in Sections 2(a) and 2(b) hereof) for the limited purposes cited above, and any such deliveries will constitute delivery to Buyer under this Agreement.

Buyer acknowledges that the Products bearing Product Codes HSC DMS-L, HS DMS-L, HSC 900, HS 900, HSC 840, HS 840, HSC 850, HS 850, HSC SCE, HS SCE, HSC PTBS, HS PTBS, HSC PCE, HS PCE, HSC P75, HS P75, HSC P80, HS P80 (for which prices are set forth in Tables III A – I, in Exhibit B) may not be available to Buyer for purchase under this Agreement unless and until Seller, in its sole discretion, elects to offer one or more of such Products for sale to Buyer; and, if Seller so elects, any such sales shall occur upon agreement of Buyer and Seller. Notwithstanding the preceding sentence, Buyer further acknowledges and agrees that Seller, upon agreement with Buyer, may fill Buyer orders for Products bearing Codes HSC DMS, HS DMS, HSC SGB and HS SGB (for which prices are set forth in Tables II A – B) with any combination of Products, including any of the products listed in the first sentence of this paragraph (and priced in Tables III A – I).

3. **Term.** The term of this Agreement shall commence on the Effective Date and (subject to Section 19 hereof) shall continue through December 31, 2020 (the “Term”). Subject to Section 19, the Term may be extended, at Seller’s sole discretion, for a period not to exceed 180 days (i.e., not beyond June 29, 2021) so as to enable Seller to cure any default of its obligation under this Agreement.

4. **Price.** The Gross Price per kilogram for each Product for each calendar year shall be fixed at the respective prices set forth in Tables II A and B, and Tables III A – I, of Exhibit B, and is subject only to adjustments for Cost Structure Adjustments (as provided in Section 8

hereof and Exhibit C) and Taxes or other charges (as provided in Section 18 hereof). The Gross Price per kilogram does not include the cost of shipping. All costs of shipping shall be borne by the Buyer.

5. **Contract Quantity.** “Contract Quantity” means the quantities of Products that Buyer is obligated to purchase from Seller in each calendar year and in the aggregate during the Term of this Agreement. The Contract Quantity is set forth in the aggregate and allocated by calendar year of purchase in Table I of Exhibit B. The Contract Quantity for each calendar year shall be fulfilled based upon Buyer’s purchases among any of the respective Products in that year.

Buyer and Seller acknowledge that in connection with their course of dealings in respect of other purchase and sale agreements that are separate from and unaffected by this Agreement, Buyer periodically issues purchase orders to Seller for product(s) in which Buyer requests specified quantities, delivery dates and delivery locations; and from time to time Buyer issues change orders to such purchase orders. Buyer and Seller hereby agree that (i) notwithstanding such purchase order practices, nothing in this Section 5 shall create any obligation under this Agreement to deliver purchase orders in accordance with their prior purchase order practices, and (ii) in order to constitute a purchase of Product toward fulfillment of Buyer's take or pay purchase obligations under this Agreement, any purchase orders delivered by Buyer to Seller shall expressly reference this Agreement and identify specifically the portions of Product ordered in such purchase order as being purchased under this Agreement, and absent such express reference and identification, such purchases shall not count toward Buyer purchase obligations under this Agreement.

6. **Non-Refundable Advance Payment.** Buyer shall make a non-refundable, unconditional, irrevocable advance payment to Seller in the amount of \$*** (the “Advance Payment”), payable as follows:

Seller understands and acknowledges that Buyer is making the Advance Payment to secure the availability of the Contract Quantity of Products. Buyer acknowledges and agrees that, except as provided in Section 11 and Section 14, there are no circumstances or occurrences that will require Seller to refund to Buyer all or any portion of the Advance Payment. The Advance Payment shall be applied as a credit against the Gross Price of the Products that Buyer is required to purchase during the Term of this Agreement, at the times and in the amounts per kilogram shown on Table I of Exhibit B.

7. **Take or Pay Agreement.** This Agreement is a take or pay agreement such that, in addition to making the Advance Payment required under Section 6 hereof, Buyer is absolutely

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

and irrevocably required to pay the Net Price per kilogram for the Contract Quantity per calendar year over the Term of this Agreement. In the event that Buyer fails to order or take delivery of the Contract Quantity for a calendar year then Seller shall invoice Buyer for the difference between the quantity of Products ordered in that calendar year and the Contract Quantity of Product for that calendar year at the Net Price in effect for HSC DMS and/or HS DMS for that calendar year (subject to any price adjustment provided for in this Agreement, including without limitation, under Section 8 or Section 18), and Buyer shall pay the same in accordance with Section 9 hereof.

8. **Cost Structure Adjustments.** The prices described in Section 4 and set forth in Tables II A and B, and Tables III A – I, of Exhibit B are subject to upward price adjustments based upon the prior years’ cumulative cost increases in accordance with the formulae set forth in Exhibit C (“Cost Structure Adjustments”). The parties acknowledge and understand that the indices used in calculating the Cost Structure Adjustments for electricity, labor and silicon metal (as referenced in Exhibit C) for each of the respective calendar years during the Term of this Agreement, beginning with 2009, will not be available until the following year. Based on past experience, the parties anticipate that the indices for labor and silicon metal will be published in the first quarter of the following year, and for electricity not until the fourth quarter of the following year. Irrespective of the dates that any of the indices are published, commencing in 2009, as soon as is reasonably practicable after Seller learns of the first index to be published, Seller shall determine the Cost Structure Adjustment, if any, attributable to that particular index, and shall notify Buyer of any such adjustment to the Gross Price of the Products, and such adjustment shall be effective retroactively to January 1 of that year. Additional adjustments may be made during that year as the remaining indices are published and the data applied to the formulae in Exhibit C. All price adjustments made in a given year shall be cumulative, and all upward price adjustments shall remain in effect until the respective Cost Structure Adjustment calculations are performed in the following year. In the event that in the following year the calculation of a particular Cost Structure Adjustment determines that no upward price adjustment is triggered for that cost index, or a price adjustment of a different amount is triggered, then Seller shall, within 30 days of performing such Cost Structure Adjustment, so notify Buyer and issue a credit to Buyer, which shall be applied against future purchases required under this Agreement, in the amount that Buyer paid an upward Cost Structure Adjustment for that particular cost index, during a period in which no adjustment or a lower adjustment applied.

For example, if cost increases for labor and silicon metal give rise to upward price adjustments for calendar year 2015 and Seller learns of and so notifies Buyer of those in April 2015, then Seller shall be entitled, in April 2015, to payment for the full price increases for labor and silicon metal retroactive to January 1, 2015. If, thereafter in October 2015, the cost of electricity gives rise to an upward price adjustment and Seller learns of and so notifies Buyer of that in October 2015, then Seller shall be entitled, in October 2015, to payment for the full price of the electricity increase, retroactive to January 1, 2015. The upward price adjustments for each of these three cost components will remain in effect until Seller performs the next annual Cost Structure Adjustment calculations respectively, in 2016. If, upon performing the calculation for labor and silicon metal in, for example, April 2016, no upward price adjustment is triggered (which would have been effective retroactive to January 1, 2016), then, within 30 days, Seller shall issue a credit to Buyer to be applied against future purchases, in the amount of the

applicable 2015 upward adjustment (e.g. for labor, silicon or electricity) per kilogram that Buyer paid from January 1, 2016 until Seller gives notice. If, instead, upon performing the respective Cost Structure Adjustment calculations in 2016, one or more upward price adjustments are triggered, they will be effective retroactive to January 1, 2016.

Under no circumstances will there be any downward Cost Structure Adjustments to the Gross Prices set forth in Tables II A and B, and Tables III A – I, of Exhibit B. Any Cost Structure Adjustment applicable under this Section 8 shall be in addition to and cumulative with any price adjustments for any other price adjustments under this Agreement, including without limitation taxes or other charges provided for in Section 18 hereof.

Buyer acknowledges that, should any of the cost indices referenced in Exhibit C that are components of the Cost Structure Adjustment formulae no longer be published as anticipated, or the data presentation, data provided, or data preparation be changed such that Seller, in its sole and reasonable discretion, determines that the purpose of this Cost Structure Adjustment provision has or will fail to achieve its purpose, then Seller shall select a replacement index or benchmark, which shall be binding upon Buyer's written agreement, which consent shall not be unreasonably withheld.

9. **Payment.** Payment terms are net 30 days from the date of the invoice. Finance charges of ***% per month (***% per annum) shall be assessed on payments past due from the payment due date to the date payment is received. Failure to pay invoices when due or finance charges when assessed may result in delayed or cancelled shipments. No deductions, setoffs, defenses or counterclaims from invoices are permitted. Delay or cancellation by Seller of shipments resulting from Buyer's non-payment will not relieve Buyer from any obligation set forth in this Agreement.

10. **Freight Terms, Title and Risk of Loss.** Freight terms for the shipment of Products hereunder are FCA (Incoterms 2000) from any of Seller's designated shipping points. Buyer shall bear all expenses of shipment, and Buyer shall be solely responsible for the selection and engagement of carriers. Title and risk of loss for all Products shall pass to Buyer upon delivery to carrier.

11. **Termination and Damages.** The parties acknowledge that it is their express intent that Buyer is obligated to purchase and Seller is obligated to deliver the Contract Quantity over the Term of this Agreement, and that the basis and circumstances under which the parties may terminate this Agreement prior to the expiration of the Term of this Agreement are expressly limited to the terms of this Section 11.

- (a) **Default by Seller-Failure to Supply Product.** Upon default by Seller of its obligation to deliver a material amount of the Contract Quantity of Product listed on Table I of Exhibit B, and such failure is not the result of a Force Majeure Event as defined in Section 19 or any default by Buyer, Buyer may serve a written notice of default upon Seller. Seller shall have 180 days (commencing on the date written notice is received by Seller) to cure such default. If such default is not cured within 180 days, and provided there is no uncured Buyer default, Buyer at its option may elect to terminate this Agreement by a second written notice to

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

Seller. If Buyer elects to terminate, Buyer shall be entitled to receive from Seller, within thirty (30) days of Seller's receipt of Buyer's written election to terminate this Agreement, an amount equal to the amount of the Advance Payment that has not yet been applied to the price of Products purchased by Buyer, without interest.

If Buyer, in its sole discretion, elects not to terminate this Agreement under the default circumstances set forth above, then Buyer and Seller shall negotiate in good faith toward modifying the terms of this Agreement, including, among other terms, a new delivery schedule, the quantities to be supplied pursuant to that schedule, and the applicable purchase price.

Delay or cancellation by Seller of shipments resulting from Buyer's non-payment shall not provide Buyer any termination rights or rights to damages set forth in this Section 11.

(b) Limitation of Buyer's Remedies. EXCEPT AS PROVIDED IN SECTION 11(a), SECTION 14, SECTION 15 AND SECTION 17 HEREOF, NO OTHER REMEDY (INCLUDING, BUT NOT LIMITED TO, INCIDENTAL OR CONSEQUENTIAL DAMAGES FOR LOST PROFITS, LOST SALES, INJURY TO PERSON OR PROPERTY, OR ANY OTHER INCIDENTAL OR CONSEQUENTIAL LOSS) SHALL BE AVAILABLE TO BUYER.

(c) Default by Buyer. Upon receipt of written notice from Seller of default by Buyer of its obligation to:

- (i) make any installment of the Advance Payment; or
- (ii) comply with its purchase or take-or-pay obligations; or
- (iii) make payment for the Products;

Buyer shall have 180 days to cure such default. If such default continues for more than 180 days after Buyer received notice thereof, or if any of Buyer's representations and warranties in this Agreement (including without limitation in Section 21) were not true and accurate as of the Effective Date or become untrue or inaccurate during the Term of this Agreement, Seller may, at its option, terminate this Agreement by written notice to Buyer, and Seller will have no further obligation to supply Product to Buyer, and Seller will thereupon be entitled to the following damages:

- A. payment by Buyer to Seller of all Advance Payment amounts due under Section 6 and not yet paid by Buyer to Seller; and
- B. retention of any Net Remaining Advance Payment Balance; and
- C. payment by Buyer to Seller for all Product delivered; and

D. acceleration of payment by Buyer to Seller for all remaining Contract Quantity of Product at the Net Price in effect for HSC DMS and/or HS DMS at the time of Buyer's default, subject to any price adjustment provided for in this Agreement, including without limitation, under Section 8 or Section 18.

Buyer acknowledges and agrees that payments made by Buyer under this Section 11(c) do not constitute a penalty.

Buyer acknowledges and agrees that the 90-day cure period provided in this Section 11(c) is not intended to and shall not extend the payment terms beyond those set forth in Section 9 hereof.

12. **Confidentiality and Trade Secrets.**

- (a) Seller and Buyer acknowledge and agree that certain information each party has received or may receive from the other party or from a Seller or Buyer Affiliate in connection with this Agreement, including information regarding research, technology, technical specifications, product developments, marketing plans or conditions, products, business strategies, and the like, constitutes "Confidential Information" of the other party and shall be deemed disclosed by the other party to the receiving party. The purpose for exchanging Confidential Information is to allow the parties to use Confidential Information solely for the purpose of meeting their obligations and responsibilities under this Agreement. The party receiving any Confidential Information, and its employees, attorneys, financial advisors, officers, directors, shareholders and members who receive Confidential Information, shall not, except with the prior written consent of the disclosing party, (i) use Confidential Information for any purpose other than those purposes permitted under this Agreement, whether for itself or for the benefit of another, or (ii) divulge, disclose, publish or communicate, to any person, firm, corporation or entity, in any manner whatsoever, the terms of this Agreement or any Confidential Information of the disclosing party; provided, however, that (i) each party hereto may use, divulge, disclose or communicate the terms of this Agreement or Confidential Information of the disclosing party to its Affiliates, members, and/or shareholders, and Affiliates of those entities, on a "need-to-know" basis, subject to the provisions of this Section 12, without first obtaining the other party's written consent, and (ii) Buyer may use, divulge, disclose or communicate the terms of this Agreement or Confidential Information of the disclosing party to persons who have entered into a supply agreement with a Buyer Group member (as provided in Section 2(b) hereof) on a "need to know" basis, subject to the provisions of this Section 12, provided that Seller has consented in writing in advance to such disclosure, which consent shall not be unreasonably withheld. Each party further agrees, for itself and for any person to whom a disclosure is permitted and made, to use the same degree of care to maintain as confidential and to avoid non-permitted use or disclosure of the Confidential Information disclosed to it under this Agreement as it employs with respect to its own confidential information, but at all times shall use at least reasonable care to

protect against a non-permitted use or disclosure. Confidential Information does not and shall not include information that:

- (i) was already known to the receiving party at the time such Confidential Information is disclosed by the other party;
- (ii) was or became publicly known through no wrongful act of the receiving party;
- (iii) was rightfully received from a third party without restriction;
- (iv) was independently developed by the receiving party; or
- (v) was required for legal or financial reporting purposes to be disclosed; provided, however, that the party being required to disclose shall, if circumstances permit, provide advance notice to the other party and shall allow the other party a reasonable opportunity to oppose such disclosure, if appropriate, and assist the other party, at such party's sole expense, in obtaining a protective order or other method of maintaining confidentiality of such Confidential Information.

The obligations not to use and not to disclose Confidential Information received by a party under this Agreement shall continue during the Term of this Agreement and for a period of three (3) years thereafter, and thus survive the termination or expiration of this Agreement.

- (b) The parties further acknowledge and agree that certain of the Confidential Information that has been or will be provided to Buyer in connection with this Agreement concerns technical information related to the Products, the design, composition, performance, characteristics, manufacture, and use of the Products, and applications for the Products, including research, test results, and test methodologies, and also constitutes or reflects trade secrets of Seller or an Affiliate of Seller (herein collectively "Seller's Trade Secrets"). Buyer acknowledges and agrees that Seller's Trade Secrets are owned by Seller or an Affiliate of Seller, are secret, are being provided to Buyer in confidence, are the subject of reasonable efforts by Seller to keep them secret, and that Seller has derived value because of their secrecy, as evidenced in part by the parties entering into this Agreement. Buyer agrees for itself and any person to whom a disclosure is permitted and made, to use the same degree of care to maintain as confidential and to avoid any non-permitted use or disclosure of Seller's Trade Secrets as it employs with respect to its own trade secret information, but at all times shall use at least reasonable care to protect Seller's Trade Secrets against non-permitted use or disclosure. The obligations not to use and not to disclose Seller's Trade Secrets shall continue during the Term of this Agreement and, with respect to each Seller Trade Secret, for so long thereafter as Seller and/or Seller's Affiliate maintains such Trade Secret as a trade secret, and thus survive the termination or expiration of this Agreement.

- (c) Buyer will be liable for any breach of this Section 12 by any Buyer Group members or any person to whom Buyer is permitted to disclose Seller's Confidential Information and/or Seller's Trade Secrets. In the event of a breach or a threatened breach of this Section 12, Buyer acknowledges and agrees that Seller will face irreparable injury which cannot be completely or adequately remedied by monetary damages and that Seller shall be entitled, in addition to remedies otherwise available at law or in equity, to a temporary restraining order, a preliminary injunction, and a final injunction enjoining such breach or threatened breach.
- (d) Seller will be liable for any breach of this Section 12 by any person to whom Seller is permitted to disclose Buyer's Confidential Information. In the event of a breach or a threatened breach of this Section 12, Seller acknowledges and agrees that Buyer will face irreparable injury which cannot be completely or adequately remedied by monetary damages and that Buyer shall be entitled, in addition to remedies otherwise available at law or in equity, to a temporary restraining order, a preliminary injunction, and a final injunction enjoining such breach or threatened breach.

13. **Limited Warranty.** Buyer acknowledges and agrees that Seller warrants only that: (i) upon delivery to the carrier, the Products will meet the applicable Product Specifications, as set forth in Exhibit A and (ii) the Products will be delivered free from any security interest, lien or encumbrance. **THIS LIMITED WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, SUCH WARRANTIES BEING EXPRESSLY DISCLAIMED.**

14. **Limited Remedy for Non-Conforming Products.** Seller shall be given reasonable and prompt written notice and opportunity to examine any claim by Buyer that the Products are not compliant with the Limited Warranty set forth in Section 13. Buyer agrees that its sole and exclusive remedy against Seller, in the event of a breach of the Limited Warranty set forth in Section 13, shall be limited, at Seller's sole discretion, to either: (i) the revision, repair or replacement of Products that are not compliant with Section 13 or (ii) refund payment not to exceed the purchase price (including any Advance Payment applied to such purchases) of the specific non-compliant Products. In the event that Seller elects to remedy any breach of the Limited Warranty under section (ii) of the preceding sentence, any quantity of Product for which the purchase price has been refunded will reduce Seller's obligation to supply Product and Buyer's obligation to purchase Product hereunder by an equivalent amount. Buyer further acknowledges and agrees that in the event that Seller elects to make refund payments as provided in the alternate remedy (ii) above, this exclusive remedy provision shall not have failed of its essential purpose. Any replacement or refund is conditional on Buyer giving Seller written notice within 90 days from the date of shipment by Seller that the Products are other than as warranted. Failure by Buyer to give this written notice within the 90-day period shall constitute a waiver by Buyer of all claims under this Agreement with respect to any claim of defect of the Products. If requested by Seller, all unconsumed Products alleged by Buyer to be other than as warranted in Section 13 shall be returned to Seller freight collect.

15. **Limitation on Damages.** THE DAMAGE LIMITATION FOR BREACH OF THE LIMITED WARRANTY OF SECTION 13 IS AS SET FORTH IN SECTION 14 ABOVE. NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, SELLER'S MAXIMUM AGGREGATE LIABILITY FOR ANY OTHER CLAIMS ARISING OVER THE TERM OF THIS AGREEMENT, IF ANY, FOR ALL DAMAGES, INCLUDING WITHOUT LIMITATION CONTRACT DAMAGES AND DAMAGES FOR INJURIES TO PERSONS OR PROPERTY, WHETHER ARISING FROM SELLER'S BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, PRODUCT LIABILITY, STRICT LIABILITY, OR OTHER TORT, IS LIMITED TO BUYER'S NET REMAINING ADVANCE PAYMENT BALANCE, WITHOUT INTEREST, (AS SET FORTH IN TABLE I OF EXHIBIT B) AT THE TIME SUCH LIABILITY IS DETERMINED. IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INCIDENTAL, INDIRECT, CONSEQUENTIAL, OR SPECIAL DAMAGES, INCLUDING WITHOUT LIMITATION LOST REVENUES AND PROFITS. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF THE LIMITED REMEDY OR ANY OTHER REMEDY SET FORTH IN THIS AGREEMENT.

16. **Exclusion and Waiver of Remedies, Liability and Damages As Against Seller's Affiliates.** Buyer acknowledges and agrees that any and all potential claims, remedies, liabilities or damages sought by Buyer against Seller arising directly or indirectly from Seller's performance under this Agreement may be asserted by Buyer against Hemlock Semiconductor, LLC only, and not against any Affiliates of Hemlock Semiconductor, LLC. Buyer further acknowledges and agrees that only Hemlock Semiconductor, LLC will be answerable at law or in equity for the obligations of Seller to perform under this Agreement, and Buyer hereby forever waives any and all claims that it might seek to assert against any Affiliate of Hemlock Semiconductor, LLC relating directly or indirectly to this Agreement.

17. **Patents.** If any suit is brought against Buyer for infringement of any United States Letters Patent, alleging that the Products manufactured by Seller, or an Affiliate of Seller, infringe any United States Letters Patent, Seller shall, at its own expense, defend and control the suit against these allegations only, and shall pay any award of damages assessed against Buyer in the suit only to the extent that the damages are awarded in connection specifically with a final adjudication, with all appeals as of right exhausted or waived, that the Product infringes a not invalid patent claim that is not unenforceable, provided that Buyer has not materially changed the Product by subsequent processes and gives Seller prompt notice in writing of the institution of the suit and, to the full extent of Buyer's power to do so, Buyer permits Seller to defend and control the suit against these allegations. The above fully expresses Buyer's exclusive remedy and Seller's sole responsibility with respect to infringement of any patent by the Products, and Seller EXPRESSLY DISCLAIMS ANY OTHER WRITTEN OR UNWRITTEN, EXPRESS OR IMPLIED, WARRANTY AGAINST INFRINGEMENT with respect to the Products. In no circumstance shall Seller be liable to defend or pay any award of damages assessed against Buyer in any suit or cause of action alleging that the use of the Products infringes any patent.

18. **Taxes and Other Charges.** In the event that any governmental authority (federal, state, local or otherwise) imposes, levies or assesses a tax, surcharge, assessment or any other additional charge on the production, sale, use, transportation, shipment, conveyance or delivery of the Products, Seller may (at its sole option), in accordance with applicable law, add

all or any portion of such tax, surcharge, etc., to the Gross Price of the Products. This tax, surcharge, etc., shall include (but not be limited to): charges associated with environmental factors (e.g., carbon charges, charges associated with green-house gases), emission fees, and charges required for the purchase of carbon or emission off-sets and credits. The price may be adjusted upward regardless of whether such charges are incurred directly by Seller or imposed indirectly upon it (e.g., charges imposed on an energy provider and billed indirectly to Seller).

19. **Force Majeure.** Neither Buyer nor Seller shall be liable for delays or failures in performance of its obligations under this Agreement that arise out of or result from causes beyond such party's control, including without limitation: acts of God; acts of the Government or the public enemy; natural disasters; fire; flood; epidemics; quarantine restrictions; strikes; freight embargoes; war; acts of terrorism; and, in the case of Seller only, a default of a Seller supplier (in each case, a "Force Majeure Event"). In the event of any such delay or failure of performance by Buyer or Seller, the other party shall remain responsible for any obligations that have accrued to it but have not been performed by it as of the date of the Force Majeure Event. When the party suffering from the Force Majeure Event is able to resume performance, the other party shall resume its obligations hereunder. The Term of this Agreement may be extended for a period not to exceed two (2) years, so as to complete the purchase and delivery of Product affected by a Force Majeure Event. The party suffering a Force Majeure Event shall provide the other party with prompt written notice of (i) the occurrence of the Force Majeure Event, (ii) the date such party reasonably anticipates resuming performance under this Agreement and, if applicable, (iii) such party's request to extend the Term of this Agreement.

In addition, if due to a Force Majeure Event, Seller is unable to supply sufficient goods to meet all demands from customers and internal uses, Seller shall have the right to allocate supply among its customers in any manner in which Seller, in its sole discretion, may determine.

Notwithstanding anything in this Agreement to the contrary, in the event that due to a Force Majeure Event the party suffering such event is unable to perform its obligations under this Agreement for longer than two (2) years after the event occurs, the other party shall have the right to terminate this Agreement.

20. **No Third Party Beneficiary Rights; No Rights or Remedies To Buyer Group.**

This Agreement establishes no third party beneficiary rights in any persons or entities not parties hereto, including without limitation any Buyer Group members or persons who have entered into supply agreements with a Buyer Group member (as described in Sections 2(a) and 2(b) hereof); and, no provision in this Agreement shall be construed or deemed in any way to inure to the benefit of any persons or entities not parties hereto, including, but not limited to, any person or entity described in Sections 2(a) and 2(b), so as to constitute any such person or entity as a third party beneficiary of any or all of this Agreement or otherwise give rise to any cause of action to such third party.

No Buyer Group members or other persons who have entered into supply agreements with a Buyer Group member (as described in Sections 2(a) and 2(b) hereof) shall have any rights or remedies against Seller under any provision of this Agreement, including without limitation

21. **Representations and Warranties.** Each of Buyer and Seller hereby represents and warrants to the other as follows:

- (a) **Organization and Good Standing.** Such party is a corporation or limited liability company, as applicable, duly organized, validly existing and in good standing under the laws of its jurisdiction of organization and has the requisite corporate or limited liability company, as applicable, power authority to own, lease and operate its properties and to carry on its business as now conducted. Such party is not in default under or in violation of any provisions of its organizational documents.
- (b) **Authority and Enforceability.** Such party has all corporate or limited liability company, as applicable, power and authority to execute and deliver this Agreement and perform its obligations hereunder. The execution and delivery by such party of this Agreement and the performance by such party of the transactions contemplated hereby have each been duly and validly authorized by all necessary corporate or limited liability company, as applicable, action. This Agreement has been duly executed and delivered by such party and, assuming due execution and delivery by the other party, constitutes a valid and binding obligation of such party, enforceable against it in accordance with its terms.
- (c) **No Conflicts; Consents.** The execution and delivery of this Agreement by such party, the performance by it of its obligations hereunder, and the compliance by it with the terms and conditions hereof, will not: (i) violate any provision of its organizational documents, or (ii) violate any law, rule, regulation, accounting principle, financial disclosure obligation, or order of any court or governmental authority or agency that is applicable to or binding on such party. The execution and delivery by such party of this Agreement and the performance by such party of its obligations hereunder do not require: (a) any authorization, consent or approval of, or notice to, any person or entity under any contract or agreement to which such party is party; or (b) any authorization, consent, approval, certification, license or order of, or any filing with or notice to, any governmental entity.
- (d) **Legal Proceedings.** There are no legal proceedings pending or, to the knowledge of such party, threatened before any governmental department, commission, board, agency, or instrumentality that would prevent the execution and delivery by such party of this Agreement, the consummation of the transactions contemplated hereby or the performance by such party of its obligations hereunder, or that would otherwise adversely affect the validity or enforceability of this Agreement, nor, to the knowledge of such party, is there any reasonable basis for any such proceeding.

22. **Indemnification.** Except as provided in Section 17 hereof, Buyer shall defend, indemnify and hold harmless Seller, its owners, members, Affiliates, officers, directors, employees and agents (collectively the “Seller Indemnitees”) from and against any and all liability, loss, and expense (including reasonable attorneys’ fees) as a result of third party claims or actions arising out of Seller’s performance under this Agreement, the sale or use of the Products or the handling or further processing thereof following delivery by Seller to Buyer hereunder; provided, however, that Buyer shall have no obligation to indemnify the Seller Indemnitees for any liability, loss, claims, or expense (including attorneys’ fees) to the extent established in a final judgment by a court of competent jurisdiction to have resulted from a Seller Indemnatee’s gross negligence or willful misconduct.

23. **Notice.** Any notice, demand or other communication required or permitted to be given under this Agreement shall be in writing and shall be deemed delivered to a party (i) when actually received by the representatives designated below to receive notices, or (ii) (a) when delivered to the designated recipients’ addresses listed below (addressed to the designated recipients) by certified or registered mail (return receipt requested) and (b) when delivered by confirmed facsimile to the recipients’ numbers designated below. Either party may change its addresses or representatives for receiving notices upon notice to the other.

If to Seller to: Hemlock Semiconductor, LLC

12334 Geddes Road

Hemlock, Michigan 48626

Attn.: Vice President of Marketing

Fax No.: (989) 642-7400

With a copy to: Hemlock Semiconductor, LLC

12334 Geddes Road

Hemlock, Michigan 48626

Attn.: General Counsel/Legal Department

Fax No.: (989) 642-7400

If to Buyer to: SunPower Corporation

Attn: Jon Whiteman

3939 North First Street

San Jose, California 95134

Fax No.: (408) 240-5402

With a copy to: SunPower Corporation

Attn: General Counsel

3939 North First Street

San Jose, California 95134

Fax No.: (408) 240-5402

24. **Choice of Law.** This Agreement is made in, and shall be governed and controlled in all respects by the laws of the State of Michigan, U.S.A. (specifically disclaiming the United Nations Convention on Contracts for the International Sale of Goods), without giving any effect to any choice or conflict of law provision or rule that would cause application of the laws of any jurisdiction other than that set forth in this Section. All disputes, including those related to interpretation, enforceability, validity, and construction, shall be determined under the laws of the State of Michigan, without regard to any conflict of law provisions.

25. **Choice of Forum; Time Period.** The parties submit to the exclusive jurisdiction of the Circuit Court for the County of Saginaw, State of Michigan, U.S.A. for all disputes and actions arising, directly or indirectly, out of this Agreement, the performance of this Agreement, or the breach of this Agreement. Any action arising, directly or indirectly, out of this Agreement must be commenced within two (2) years after the cause of action has accrued.

26. **Waiver.** A party's failure to exercise a right or remedy, or a party's acceptance of a partial or delinquent payment, shall not operate as a waiver of any of such party's rights or the other party's obligations under the Agreement and shall not constitute a waiver of such party's right to declare an immediate or a subsequent default.

27. **Severability.** If one or more of the provisions of this Agreement shall be found by the court with jurisdiction to be illegal, invalid or unenforceable, it shall not affect the legality, validity or enforceability of any of the remaining provisions of this Agreement. The parties agree to attempt to substitute for any illegal, invalid or unenforceable provision a legal, valid or enforceable provision that achieves to the greatest extent possible the economic objectives, allocation of responsibility, or limitation of warranties and damages of the illegal, invalid or unenforceable provision.

28. **Merchants/Sophisticated Parties.** Seller and Buyer acknowledge and agree that: (i) both are sophisticated business entities with expertise and experience in all matters relating to this Agreement; (ii) Buyer and Seller are both "merchants," and this Agreement is "between merchants," as those terms are defined and used in the Michigan law; (iii) there was equal bargaining power between the parties in their negotiation and execution of this Agreement; (iv) neither party acted under any duress, economic or otherwise, when considering and entering into this Agreement; and (v) both parties had a full opportunity, and did, consult with their respective counsel before entering into this Agreement.

29. **Integration.** This Agreement and the Exhibits attached hereto, constitute the entire understanding between the parties with respect to the subject matter of the Agreement and supersede any prior discussions, representations, negotiations, agreements, memoranda of understanding and the like. Additional or different terms contained in any Buyer document (including, without limitation, any purchase order, estimate, order acknowledgement, or payment remittance) shall not be binding, and shall not create, nor be construed to create any modification of Buyer's or Seller's rights or obligations under this Agreement. Modifications to the Agreement may be made only in a writing signed by each party.

30. **Assignments.** No assignment of the Agreement or of any right or obligation under the Agreement shall be made by either party without the prior written consent of the other

party, which consent shall not be unreasonably withheld. In the event of a proper assignment, the Agreement shall be binding upon and inure to the benefit of the assigning party’s successors and assigns; and, in the event of a default by the assignee, the assignor will remain liable.

31. **Dollars.** All references to monetary amounts shall be in U.S. Dollars.
32. **Captions.** Captions and section headings in this Agreement are for reference purposes only and are not intended to be substantive portions of this Agreement between the parties.
33. **Agreement Preparation.** This Agreement shall be considered for all purposes as prepared through the joint efforts of the parties and shall not be construed against one party or the other as a result of the manner in which this Agreement was negotiated, prepared, drafted or executed.
34. **Execution Deadline.** This Agreement must be executed by Buyer and returned to Seller before December 31, 2008. If the Agreement is not executed and returned to Seller by that date, Seller’s offer to enter into this Agreement shall be revoked and shall be considered never to have been made.

ACCEPTED AND AGREED:

SUNPOWER CORPORATION	HEMLOCK SEMICONDUCTOR, LLC
By: /s/ Marty T. Neese	By: /s/ Gary R. Homan
Printed Name: Marty T. Neese	Printed Name: Gary R. Homan
Title: Chief Operating Officer	Title: Vice President
Date: January 9, 2009	Date: January 6, 2009

EXHIBIT A

PRODUCT SPECIFICATION

POLYCRYSTALLINE SILICON SPECIFICATION & DESCRIPTION

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

EXHIBIT B

TABLE I

Total Contract Quantity (in Kilograms) ***		Total Advance Payment \$***	
Calendar Year	Contract Quantity Per Year (in Kilograms)	Advance Payment Per Kilogram	Net Remaining Advance Payment at Year-End (to be Prorated for Buyer Payments for Contract Quantity)
2011	***	\$***	\$*** **
2012	***	\$***	\$***
2013	***	\$***	\$***
2014	***	\$***	\$***
2015	***	\$***	\$***
2016	***	\$***	\$***
2017	***	\$***	\$***
2018	***	\$***	\$***
2019	***	\$***	\$***
2020	***	\$***	\$***

Does not include \$* of Advance Payment to be paid to Seller in ***

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

EXHIBIT B (continued)

Table II A

Calendar Year	Product	Type	Package	Gross Price Per kg	Net Price Per kg
2011	HS DMS or HSC DMS	Chunk	Bulk	\$***	\$***
2012	HS DMS or HSC DMS	Chunk	Bulk	\$***	\$***
2013	HS DMS or HSC DMS	Chunk	Bulk	\$***	\$***
2014	HS DMS or HSC DMS	Chunk	Bulk	\$***	\$***
2015	HS DMS or HSC DMS	Chunk	Bulk	\$***	\$***
2016	HS DMS or HSC DMS	Chunk	Bulk	\$***	\$***
2017	HS DMS or HSC DMS	Chunk	Bulk	\$***	\$***
2018	HS DMS or HSC DMS	Chunk	Bulk	\$***	\$***
2019	HS DMS or HSC DMS	Chunk	Bulk	\$***	\$***
2020	HS DMS or HSC DMS	Chunk	Bulk	\$***	\$***

Table II B

Calendar Year	Product	Type	Package	Gross Price Per kg	Net Price Per kg
2011	HS SGB OR HSC SGB	Chunk	10 kg Bags	\$***	\$***
2012	HS SGB OR HSC SGB	Chunk	10 kg Bags	\$***	\$***
2013	HS SGB OR HSC SGB	Chunk	10 kg Bags	\$***	\$***
2014	HS SGB OR HSC SGB	Chunk	10 kg Bags	\$***	\$***
2015	HS SGB OR HSC SGB	Chunk	10 kg Bags	\$***	\$***
2016	HS SGB OR HSC SGB	Chunk	10 kg Bags	\$***	\$***
2017	HS SGB OR HSC SGB	Chunk	10 kg Bags	\$***	\$***
2018	HS SGB OR HSC SGB	Chunk	10 kg Bags	\$***	\$***
2019	HS SGB OR HSC SGB	Chunk	10 kg Bags	\$***	\$***
2020	HS SGB OR HSC SGB	Chunk	10 kg Bags	\$***	\$***

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

EXHIBIT B (continued)

Table III A*

Calendar Year	Product	Type	Package	Gross Price Per kg	Net Price Per kg
2011	HS DMSL or HSC DMSL	Big Piece	10 kg Bags	\$***	\$***
2012	HS DMSL or HSC DMSL	Big Piece	10 kg Bags	\$***	\$***
2013	HS DMSL or HSC DMSL	Big Piece	10 kg Bags	\$***	\$***
2014	HS DMSL or HSC DMSL	Big Piece	10 kg Bags	\$***	\$***
2015	HS DMSL or HSC DMSL	Big Piece	10 kg Bags	\$***	\$***
2016	HS DMSL or HSC DMSL	Big Piece	10 kg Bags	\$***	\$***
2017	HS DMSL or HSC DMSL	Big Piece	10 kg Bags	\$***	\$***
2018	HS DMSL or HSC DMSL	Big Piece	10 kg Bags	\$***	\$***
2019	HS DMSL or HSC DMSL	Big Piece	10 kg Bags	\$***	\$***
2020	HS DMSL or HSC DMSL	Big Piece	10 kg Bags	\$***	\$***

Table III B*

Calendar Year	Product	Type	Package	Gross Price Per kg	Net Price Per kg
2011	HS 900 or HSC 900	Chunk	Bulk	\$***	\$***
2012	HS 900 or HSC 900	Chunk	Bulk	\$***	\$***
2013	HS 900 or HSC 900	Chunk	Bulk	\$***	\$***
2014	HS 900 or HSC 900	Chunk	Bulk	\$***	\$***
2015	HS 900 or HSC 900	Chunk	Bulk	\$***	\$***
2016	HS 900 or HSC 900	Chunk	Bulk	\$***	\$***
2017	HS 900 or HSC 900	Chunk	Bulk	\$***	\$***
2018	HS 900 or HSC 900	Chunk	Bulk	\$***	\$***
2019	HS 900 or HSC 900	Chunk	Bulk	\$***	\$***
2020	HS 900 or HSC 900	Chunk	Bulk	\$***	\$***

Table III C*

Calendar Year	Product	Type	Package	Gross Price Per kg	Net Price Per kg
2011	HS 840 or HSC 840	Chips	10 kg Bags	\$***	\$***
2012	HS 840 or HSC 840	Chips	10 kg Bags	\$***	\$***
2013	HS 840 or HSC 840	Chips	10 kg Bags	\$***	\$***
2014	HS 840 or HSC 840	Chips	10 kg Bags	\$***	\$***
2015	HS 840 or HSC 840	Chips	10 kg Bags	\$***	\$***
2016	HS 840 or HSC 840	Chips	10 kg Bags	\$***	\$***
2017	HS 840 or HSC 840	Chips	10 kg Bags	\$***	\$***
2018	HS 840 or HSC 840	Chips	10 kg Bags	\$***	\$***
2019	HS 840 or HSC 840	Chips	10 kg Bags	\$***	\$***
2020	HS 840 or HSC 840	Chips	10 kg Bags	\$***	\$***

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

EXHIBIT B (continued)

Table III D*

Calendar Year	Product	Type	Package	Gross Price Per kg	Net Price Per kg
2011	HS 850 or HSC 850	Chips	10 kg Bags	\$***	\$***
2012	HS 850 or HSC 850	Chips	10 kg Bags	\$***	\$***
2013	HS 850 or HSC 850	Chips	10 kg Bags	\$***	\$***
2014	HS 850 or HSC 850	Chips	10 kg Bags	\$***	\$***
2015	HS 850 or HSC 850	Chips	10 kg Bags	\$***	\$***
2016	HS 850 or HSC 850	Chips	10 kg Bags	\$***	\$***
2017	HS 850 or HSC 850	Chips	10 kg Bags	\$***	\$***
2018	HS 850 or HSC 850	Chips	10 kg Bags	\$***	\$***
2019	HS 850 or HSC 850	Chips	10 kg Bags	\$***	\$***
2020	HS 850 or HSC 850	Chips	10 kg Bags	\$***	\$***

Table III E*

Calendar Year	Product	Type	Package	Gross Price Per kg	Net Price Per kg
2011	HS SCE or HSC SCE	Carbon Ends	Bulk	\$***	\$***
2012	HS SCE or HSC SCE	Carbon Ends	Bulk	\$***	\$***
2013	HS SCE or HSC SCE	Carbon Ends	Bulk	\$***	\$***
2014	HS SCE or HSC SCE	Carbon Ends	Bulk	\$***	\$***
2015	HS SCE or HSC SCE	Carbon Ends	Bulk	\$***	\$***
2016	HS SCE or HSC SCE	Carbon Ends	Bulk	\$***	\$***
2017	HS SCE or HSC SCE	Carbon Ends	Bulk	\$***	\$***
2018	HS SCE or HSC SCE	Carbon Ends	Bulk	\$***	\$***
2019	HS SCE or HSC SCE	Carbon Ends	Bulk	\$***	\$***
2020	HS SCE or HSC SCE	Carbon Ends	Bulk	\$***	\$***

Table III F*

Calendar Year	Product	Type	Package	Gross Price Per kg	Net Price Per kg
2011	HS PTBS or HSC PTBS	Fall-Out	Bulk	\$***	\$***
2012	HC PTBS or HSC PTBS	Fall-Out	Bulk	\$***	\$***
2013	HS PTBS or HSC PTBS	Fall-Out	Bulk	\$***	\$***
2014	HS PTBS or HSC PTBS	Fall-Out	Bulk	\$***	\$***
2015	HS PTBS or HSC PTBS	Fall-Out	Bulk	\$***	\$***
2016	HS PTBS or HSC PTBS	Fall-Out	Bulk	\$***	\$***
2017	HS PTBS or HSC PTBS	Fall-Out	Bulk	\$***	\$***
2018	HS PTBS or HSC PTBS	Fall-Out	Bulk	\$***	\$***
2019	HS PTBS or HSC PTBS	Fall-Out	Bulk	\$***	\$***
2020	HS PTBS or HSC PTBS	Fall-Out	Bulk	\$***	\$***

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

EXHIBIT B (continued)

Table III G*

Calendar Year	Product	Type	Package	Gross Price Per kg	Net Price Per kg
2011	HS PCE or HSC PCE	Etched CE	10 kg Bags	\$***	\$***
2012	HS PCE or HSC PCE	Etched CE	10 kg Bags	\$***	\$***
2013	HS PCE or HSC PCE	Etched CE	10 kg Bags	\$***	\$***
2014	HS PCE or HSC PCE	Etched CE	10 kg Bags	\$***	\$***
2015	HS PCE or HSC PCE	Etched CE	10 kg Bags	\$***	\$***
2016	HS PCE or HSC PCE	Etched CE	10 kg Bags	\$***	\$***
2017	HS PCE or HSC PCE	Etched CE	10 kg Bags	\$***	\$***
2018	HS PCE or HSC PCE	Etched CE	10 kg Bags	\$***	\$***
2019	HS PCE or HSC PCE	Etched CE	10 kg Bags	\$***	\$***
2020	HS PCE or HSC PCE	Etched CE	10 kg Bags	\$***	\$***

Table III H*

Calendar Year	Product	Type	Package	Gross Price Per kg	Net Price Per kg
2011	HS P75 or HSC P75	Processed Fines	Drum	\$***	\$***
2012	HS P75 or HSC P75	Processed Fines	Drum	\$***	\$***
2013	HS P75 or HSC P75	Processed Fines	Drum	\$***	\$***
2014	HS P75 or HSC P75	Processed Fines	Drum	\$***	\$***
2015	HS P75 or HSC P75	Processed Fines	Drum	\$***	\$***
2016	HS P75 or HSC P75	Processed Fines	Drum	\$***	\$***
2017	HS P75 or HSC P75	Processed Fines	Drum	\$***	\$***
2018	HS P75 or HSC P75	Processed Fines	Drum	\$***	\$***
2019	HS P75 or HSC P75	Processed Fines	Drum	\$***	\$***
2020	HS P75 or HSC P75	Processed Fines	Drum	\$***	\$***

Table III I*

Calendar Year	Product	Type	Package	Gross Price Per kg	Net Price Per kg
2011	HS P80 or HSC P80	Processed Fines	Drum	\$***	\$***
2012	HS P80 or HSC P80	Processed Fines	Drum	\$***	\$***
2013	HS P80 or HSC P80	Processed Fines	Drum	\$***	\$***
2014	HS P80 or HSC P80	Processed Fines	Drum	\$***	\$***
2015	HS P80 or HSC P80	Processed Fines	Drum	\$***	\$***
2016	HS P80 or HSC P80	Processed Fines	Drum	\$***	\$***
2017	HS P80 or HSC P80	Processed Fines	Drum	\$***	\$***
2018	HS P80 or HSC P80	Processed Fines	Drum	\$***	\$***
2019	HS P80 or HSC P80	Processed Fines	Drum	\$***	\$***
2020	HS P80 or HSC P80	Processed Fines	Drum	\$***	\$***

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

* This Product may not be available to Buyer for purchase under this Agreement unless and until Seller, in its sole discretion, elects to offer it for sale to Buyer; and, if Seller so elects, it shall be in Seller's sole discretion to determine the timing and quantity of any such sales. Seller however, upon agreement with Buyer, may fill Buyer orders for Products bearing Codes HSC DMS, HS DMS, HSC SGB and HS SGB (for which prices are set forth in Table II A – B) with this product and/or with any combination of Products.

EXHIBIT C

Electricity Cost Increases: The parties agree that, pursuant to the formula set forth herein, increases in the cost of electricity that exceed the Cumulative Electricity Base Percentage may increase the Gross Price of the Products. Specifically, Seller shall increase the Gross Price of each Product by \$*** per kilogram for each whole percentage point that the Cumulative Average Actual Electricity Percentage exceeds the Cumulative Electricity Base Percentage for a calendar year.

“Cumulative Electricity Base Percentage” means a constant rate of increase of ***% for each calendar year (“Electricity Base Percentage”) commencing with calendar year 2009, compounded annually through the end of the Term of this Agreement.

“Actual Electricity Percentage” means the percentage change from one year to the next in the rate known as the Average Price by State By Type of Provider (industrial price, full service providers) published by the Energy Information Administration (“EIA”). The applicable rate used in calculating the percentage change from year to year shall be an average of the EIA rates for Michigan and Tennessee. The Actual Electricity Percentages will begin with the rate change from calendar year 2007 to calendar year 2008, as reflected in the EIA data that is expected to be published in the fourth quarter of 2009. Such change from 2007 to 2008 will be the Actual Electricity Percentage applicable in 2009. Seller shall make the same calculation annually through the end of the Term of this Agreement, each time comparing the rates for the immediately preceding two years. The parties anticipate that 2019 will be the last year before the end of the Term of this Agreement for which EIA data will be used for purposes of making a price adjustment, if any, effective January 1, 2020.

“Cumulative Average Actual Electricity Percentage” means the percentage change of the Actual Electricity Percentage for each year, beginning in calendar year 2009, compounded annually through the end of the Term of this Agreement.

Example of Electricity Cost Increases

	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Electricity Base Percentage:	***%	***%	***%	***%	***%	***%	***%	***%	***%	***%	***%	***%
Cumulative Electricity Base Percentage:	***%	***%	***%	***%	***%	***%	***%	***%	***%	***%	***%	***%
Actual Electricity Percentage:	***%	***%	***%	***%	***%	***%	***%	***%	***%	***%	***%	***%
Cumulative Average Actual Electricity Percentage:	***%	***%	***%	***%	***%	***%	***%	***%	***%	***%	***%	***%
Price Change / KG:	\$***	\$***	\$***	\$***	\$***	\$***	\$***	\$***	\$***	\$***	\$***	\$***

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

EXHIBIT C (continued)

In the above example, the Annual Electricity Percentage for 2009 is **%, reflecting the rate change from 2007 to 2008. The Annual Electricity Percentage for 2010 is **%, reflecting the rate change from 2008 to 2009. The Cumulative Electricity Base Percentage in 2010 is **%, reflecting the annual compounding of the Electricity Base Percentage beginning in 2009. There is no upward price adjustment for 2009 or 2010 because the Cumulative Average Actual Electricity Percentage does not exceed the Cumulative Electricity Base Percentage by at least one whole percentage point in either year; rather, it is **% lower in 2009 and **% lower in 2010. Notwithstanding that the Cumulative Average Actual Electricity Percentage is lower than the Cumulative Average Electricity Base Percentage, there are no downward price adjustments, and the same is true for 2011. The Gross Price increase of \$** per kilogram effective January 1, 2012, reflects that the Cumulative Average Actual Electricity Percentage of **% exceeds the Cumulative Electricity Base Percentage of **% by **%, or, by at least more than one whole percentage point, thereby triggering an upward price adjustment for electricity.

The upward price adjustment of \$** per kilogram effective January 1, 2012 is in addition to any price adjustment for labor or silicon metal, and remains in effect until Seller performs the Cost Structure Adjustment calculation for electricity in 2013. In this example, there is no upward price adjustment imposed retroactive to January 1, 2013 because the Cumulative Actual Electricity Percentage of **% exceeds the Cumulative Electricity Base Percentage of **% by only **%, or, by less than one whole percentage point. Buyer, however, will have continued to pay the \$** per kilogram that was imposed for 2012 until Seller performed the Cost Structure Adjustment calculation in 2013, and therefore Seller, within 30 days of determining that no upward adjustment applies for 2013, owes Buyer a credit in the amount of \$** per kilogram purchased between January 1, 2013 and the date Seller gives notice of no upward adjustment. In 2016, the upward price adjustment of \$** per kilogram reflects that the Cumulative Average Actual Electricity Percentage of **% exceeds the Cumulative Electricity Base Percentage of **% by two whole percentage points, thereby resulting in an upward price adjustment of \$** per kilogram x 2, for a total upward price adjustment of \$** per kilogram.

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

EXHIBIT C (continued)

Labor Cost Increases: The parties agree that, pursuant to the formula set forth herein, increases in the cost of labor that exceed the Cumulative Labor Base Percentage may increase the Gross Price of the Products. Specifically, Seller shall increase the Gross Price of each Product by \$*** per kilogram for each whole percentage point that the Cumulative Actual Labor Percentage exceeds the Cumulative Labor Base Percentage for a calendar year.

“Cumulative Labor Base Percentage” means a constant rate of increase of ***% for each calendar year (the “Labor Base Percentage”) commencing with calendar year 2009, compounded annually through the end of the Term of this Agreement.

“Actual Labor Percentage” means the compensation cost change, expressed as a twelve-month percentage change in the Employment Cost Index published by the United States Department of Labor for compensation costs for civilian workers not seasonally adjusted (“ECI”). The Actual Labor Percentages will begin with the compensation cost change for calendar year 2008, as reflected in ECI data that is expected to be published in the first quarter of 2009, measuring the change from December 2007 to December 2008. Seller shall, annually through the end of the Term of this Agreement ascertain the ECI data for the immediately preceding December to December period. The parties anticipate that 2019 will be the last year before the end of the Term of this Agreement for which ECI data will be used for purposes of making a price adjustment, if any, effective January 1, 2020.

“Cumulative Actual Labor Percentage” means the percentage change of the Actual Labor Percentage for each calendar year, beginning in calendar year 2009, compounded annually through the end of the Term of this Agreement.

Example of Labor Cost Increases

	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Labor Base Percentage:	***%	***%	***%	***%	***%	***%	***%	***%	***%	***%	***%	***%
Cumulative Labor Base Percentage:	***%	***%	***%	***%	***%	***%	***%	***%	***%	***%	***%	***%
Actual Labor Percentage:	***%	***%	***%	***%	***%	***%	***%	***%	***%	***%	***%	***%
Cumulative Actual Labor Percentage:	***%	***%	***%	***%	***%	***%	***%	***%	***%	***%	***%	***%
Percentage Difference:	***%	***%	***%	***%	***%	***%	***%	***%	***%	***%	***%	***%
Price Change / KG:	\$***	\$***	\$***	\$***	\$***	\$***	\$***	\$***	\$***	\$***	\$***	\$***

In the above example, the Actual Labor Percentage for 2009 is ***%, reflecting the compensation cost change from December 2007 to December 2008, expressed as a percentage. The Actual Labor Percentage for 2010 is again ***%, reflecting the same rate change from December 2008 to December 2009. The Cumulative Actual Labor Percentage for 2010 is ***%, reflecting the annual compounding of the Actual Labor Percentage beginning in 2009.

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

There is no upward price adjustment for 2009 or 2010 because the Cumulative Actual Labor Percentage does not exceed the Cumulative Labor Base Percentage by at least one whole percentage point in either year; rather, it is ***% lower in 2009 and ***% lower in 2010. Notwithstanding that the Cumulative Actual Labor Percentage is lower the Cumulative Labor Base Percentage in 2009 and 2010, there are no downward price adjustments, and the same is true for 2011 to 2017. The Gross Price increase of \$*** per kilogram effective January 1, 2018, reflects that the Cumulative Actual Labor Percentage of ***% exceeds the Cumulative Labor Base Percentage of ***% by ***%, or, by at least one whole percentage point, thereby triggering an upward price adjustment for labor.

The upward price adjustment of \$*** per kilogram effective January 1, 2018 is in addition to any price adjustment for electricity or silicon metal, and in effect until Seller performs the Cost Structure Adjustment calculation for labor in 2019. In this example, there is no upward price adjustment imposed retroactive to January 1, 2019 because the Cumulative Actual Labor Percentage of ***% exceeds the Cumulative Labor Base Percentage of ***% by only ***%, or, by less than one whole percentage point. Buyer, however, will have continued to pay the \$*** per kilogram that was imposed for 2018 until Seller performed the Cost Structure Adjustment calculation in 2019, and therefore Seller, within 30 days of determining that no upward adjustment applied for 2019, owes Buyer a credit in the amount of \$*** per kilogram purchased between January 1, 2019 and the date Seller gives notice of no upward adjustment.

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

EXHIBIT C (continued)

Silicon Metal Cost Increases: The parties agree that, pursuant to the formula set forth herein, increases in the cost of silicon metal that exceed the Cumulative Silicon Metal Base Percentage may increase the Gross Price of the Products. Specifically, Seller shall increase the Gross Price of each Product by \$*** per kilogram for each whole percentage point that the Cumulative Actual Silicon Metal Percentage exceeds the Cumulative Silicon Metal Base Percentage for a calendar year.

“Cumulative Silicon Metal Base Percentage” means a constant rate of increase of ***% (the “Silicon Metal Base Percentage”) for each calendar year commencing with calendar year 2009, compounded annually through the end of the Term of this Agreement.

“Actual Silicon Metal Percentage,” for 2009 only, is calculated as the percentage change between an assumed price of \$*** per kilogram and the December 2008 USA CRU Spot – Import price, as published by CRU International LTD (by subscription only) (“CRU Spot”), which is expected to be published first quarter of 2009. For 2010, the Actual Silicon Metal Percentage will be the percentage price change from December 2008 to December 2009, based on CRU Spot data expected to be published in the first quarter of 2010. Seller shall make the same calculation annually through the end of the Term of this Agreement, each time comparing the CRU Spot price published for December of the immediately preceding two years. The parties anticipate that 2019 will be the last year before the end of the Term of this Agreement for which CRU Spot data will be used for purposes of making a price adjustment, if any, effective January 1, 2020.

“Cumulative Actual Silicon Metal Base Percentage” means the percentage change of the Actual Silicon Metal Percentage for each year beginning in 2009, compounded annually through the end of the Term of this Agreement.

Example of Silicon Metal Cost Increases

	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Silicon Metal Base Percentage:	***%	***%	***%	***%	***%	***%	***%	***%	***%	***%	***%	***%
Cumulative Silicon Metal Base Percentage:	***%	***%	***%	***%	***%	***%	***%	***%	***%	***%	***%	***%
Actual Silicon Metal Percentage:	***%	***%	***%	***%	***%	***%	***%	***%	***%	***%	***%	***%
Cumulative Actual Silicon Metal Percentage:	***%	***%	***%	***%	***%	***%	***%	***%	***%	***%	***%	***%
Percentage Difference:	***%	***%	***%	***%	***%	***%	***%	***%	***%	***%	***%	***%
Price Change / KG:	\$***	\$***	\$***	\$***	\$***	\$***	\$***	\$***	\$***	\$***	\$***	\$***

In the above example, the Actual Silicon Metal Percentage for 2009 of ***% reflects the percentage change between the price of \$*** per kilogram and the CRU Spot price for

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

December 2008. The Actual Silicon Metal Percentage for 2010 is **%, reflecting the CRU Spot price change from December 2008 to December 2009. The Cumulative Silicon Metal Base Percentage in 2010 is **%, reflecting the annual compounding of the Silicon Metal Base Percentage beginning in 2009. There is no upward price adjustment for 2009 or 2010 because the Cumulative Actual Silicon Metal Percentage does not exceed the Cumulative Silicon Metal Base Percentage by at least one whole percentage point in either year; rather, it is **% lower in 2009 and **% lower in 2010. Notwithstanding that the Cumulative Actual Silicon Metal Percentage is lower than the Cumulative Silicon Metal Base Percentage, there are no downward price adjustments, and the same is true for 2011 - 2013. The Gross Price increase of \$** per kilogram in 2014 reflects that the Cumulative Actual Silicon Metal Percentage of **% exceeds the Cumulative Silicon Metal Base Percentage of **% by **%, or, by at least more than one whole percentage point, thereby triggering an upward price adjustment for silicon metal. That upward price adjustment of \$** per kilogram is effective January 1, 2014, is in addition to any price adjustment for electricity or labor, and remains in effect until Seller performs the Cost Structure Adjustment calculation for silicon metal in 2015. In 2015, the upward price adjustment of \$** per kilogram reflects that the Cumulative Actual Silicon Metal Percentage of **% exceeds the Cumulative Silicon Metal Base Percentage of **% by **%, or, by more than two whole percentage points, thereby resulting in an upward price adjustment of \$** per kilogram x 2, for a total upward price adjustment of \$. The upward price adjustment of \$** is effective January 1, 2015 and remains in effect until Seller performs the Cost Structure Adjustment calculation for silicon metal in 2016.

In this example, the Cost Structure Adjustment calculation in 2016 also results in an upward price adjustment of \$** per kilogram. Buyer will have continued to pay the \$** per kilogram that was imposed for 2015 until Seller performed the Cost Structure Calculation for 2016; therefore no credit is due, and the \$** per kilogram upward price adjustment effective January 1, 2016 will remain in effect until Seller performs the Cost Structure Adjustment calculation for silicon metal in 2017. Here, the calculation in 2017 results in an upward price adjustment of only \$** per kilogram. Buyer, however, will have continued to pay the \$** per kilogram adjustment from 2016 until Seller performed the Cost Structure Adjustment calculation in 2017, and therefore Seller, within 30 days of determining that a \$** per kilogram upward adjustment applied for 2017, owes Buyer a credit in the amount of \$** per kilogram purchased between January 1, 2017 and the date Seller gives notice of the \$** per kilogram upward adjustment.

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

AMENDMENT TO LONG-TERM SUPPLY AGREEMENT

This AMENDMENT TO LONG-TERM SUPPLY AGREEMENT, dated as of 1-6-09, is entered into by and between HEMLOCK SEMICONDUCTOR, LLC, a Delaware limited liability company with its principal place of business at 12334 Geddes Road, Hemlock, Michigan 48262 (“Seller”), SUNPOWER CORPORATION a United States corporation with its principal place of business at 3939 North First Street, San Jose, California 95134 (“Parent”), and SUNPOWER PHILIPPINES MANUFACTURING LIMITED, a Cayman Islands business and wholly owned subsidiary of Parent, with a branch office at 100 East Main Avenue, Phase 4, Special Economic Zone, Laguna Techno Park, Binan, Laguna, Philippines 4024 (“Subsidiary”). Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Supply Agreement (defined below).

WHEREAS, Parent and Seller have entered into that certain Long-Term Supply Agreement, dated as of 1-6-09 (the “Supply Agreement”), a true and complete copy of which is attached hereto as Exhibit A, pursuant to which Seller has agreed to sell to Parent, and Parent has agreed to purchase from Seller, the Products; and

WHEREAS, Parent and Seller desire to amend the Supply Agreement to grant the rights to Subsidiary which are granted to Parent in the Supply Agreement, including the right to order Products directly from Seller for Subsidiary’s own use, and to impose the obligations on Subsidiary which are imposed on Parent in the Supply Agreement, including the obligation to pay Seller for Products ordered by Subsidiary; and

WHEREAS, Subsidiary desires to accept such rights and be bound by such obligations, all in accordance with this Amendment and the terms of the Supply Agreement.

NOW, THEREFORE, in consideration of the mutual covenants herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Parent, Seller and Subsidiary, each intending to be legally bound, hereby agree as follows:

1. **Subsidiary Acknowledgement of Supply Agreement.** Subsidiary acknowledges that it has received and had ample time to review a complete copy of the Supply Agreement, and agrees to be subject to and bound by all of the terms and conditions of the Supply Agreement, after giving effect to this Amendment, as of the date hereof.

2. **Amendment of Section 1.** The definition of “Buyer” in Section 1(c) of the Supply Agreement is hereby deleted and replaced with the following:

“‘Buyer’ means, collectively, SunPower Corporation and SunPower Philippines Manufacturing Limited, a Cayman Islands business and wholly owned subsidiary of SunPower Corporation.”

3. Effect of This Amendment.

(a) Parent, Seller and Subsidiary hereby agree that, for all purposes under the Supply Agreement, Subsidiary shall have the same rights and be bound by the same obligations as Parent under the Supply Agreement, including, without limitation, the right to order Products and the obligations to make payments to Seller in respect of such orders, and that all such rights and obligations shall be joint and several among Parent and Subsidiary, including without limitation, in the event of failure of performance or a default by Parent or Subsidiary under the terms of the Supply Agreement. Seller, in its sole discretion, may seek to enforce its rights under the Supply Agreement against Parent and/or Subsidiary, without regard to which of them has failed to perform, defaulted or breached under the Supply Agreement.

For the avoidance of doubt, nothing in this Amendment, including without limitation, the addition of Subsidiary to the definition of "Buyer" under Section 2 hereof, is intended to nor shall it increase or multiply the obligations of Buyer (as redefined herein) or Seller under the Supply Agreement. For example, nothing in this Amendment is intended to nor shall it change the Advance Payment under the Supply Agreement, nor shall it change the Contract Quantity of Product set forth in Table I of Exhibit B to the Supply Agreement, which Seller is obligated to supply and Buyer (as redefined herein) is obligated to purchase.

(b) Except as amended hereby, the terms and provisions of the Supply Agreement shall remain in full force and effect and are hereby ratified and confirmed in all respects.

4. **Modification to Operation of Section 11(a); Parent to Provide Notices of Default and Termination.** Notwithstanding that Subsidiary is included within the definition of "Buyer" under the Supply Agreement as amended hereby, Parent and Subsidiary acknowledge and agree that for purposes of Section 11(a) (Termination and Damages/Default by Seller-Failure to Supply Product) in the Supply Agreement, Parent alone shall have the right and authority, in the event of a default by Seller under the circumstances set forth in Section 11(a), to: (i) serve a "written notice of default upon Seller," (ii) serve a "second written notice to Seller[,] [i]f Buyer elects to terminate" the Supply Agreement, or (iii) negotiate a Modified Anticipated Delivery Agreement with Seller.

5. **Amendment of Section 25.** The phrase "[t]he parties" in Section 25 of the Supply Agreement is hereby deleted and replaced with "Buyer and Seller."

6. **Amendment of Section 33.** The phrase "[t]he parties" in Section 33 of the Supply Agreement is hereby deleted and replaced with "Buyer and Seller."

7. **Termination on Sale of Subsidiary.** Parent shall deliver prompt written notice to Seller in the event that (i) Parent sells, assigns, transfers, encumbers or otherwise disposes of all or substantially all of its equity interests in Subsidiary (including by way of merger, share exchange, recapitalization or reorganization), or (ii) Subsidiary sells, assigns, transfers, encumbers or otherwise disposes of all or substantially all of its assets. Upon receipt of such

written notice, Seller, in its discretion, may terminate this Amendment upon written notice to Parent and Subsidiary.

8. Subsidiary A Merchant/Sophisticated Party. Subsidiary hereby acknowledges and agrees as follows: (i) it is a sophisticated business entity with expertise and experience in all matters relating to this Amendment and the Supply Agreement; (ii) it is a “merchant” and that this Amendment and the Supply Agreement, after giving effect to this Amendment, are between and among “merchants,” as that term is defined and used in the Michigan law; (iii) it had equal bargaining power with the other parties hereto in the negotiation and execution of this Amendment; (iv) it did not act under any duress, economic or otherwise, when considering and entering into this Amendment; and (v) it had a full opportunity, and did, consult with its counsel before entering into this Amendment.

9. Counterparts. This Amendment may be executed in two or more counterparts (including by facsimile), all of which shall constitute one and the same instrument.

10. Governing Law. This Amendment shall be construed, performed and enforced in accordance with the internal laws of the State of Michigan, without giving any effect to any choice or conflict of law provision or rule that would cause application of the laws of any jurisdiction other than that set forth in this Section.

11. Choice of Forum; Time Period. Parent, Subsidiary and Seller submit to the exclusive jurisdiction of the Circuit Court for the County of Saginaw, State of Michigan, U.S.A. for all disputes and actions arising, directly or indirectly, out of this Amendment, the performance of this Amendment, or the breach of this Amendment, and any such action must be commenced within two (2) years after the cause of action has accrued. Subsidiary shall join Parent as a party to any action brought by Subsidiary arising, directly or indirectly, out of this Amendment or the Supply Agreement, performance of this Amendment or the Supply Agreement or the breach of this Amendment or the Supply Agreement.

12. Headings. The headings in this Amendment are for convenience of reference only and shall not be deemed to alter or affect the meaning or interpretation of any provision hereof.

13. Notice. Any notice, demand or other communication required or permitted to be given under this Amendment shall be in writing and shall be deemed delivered to a party (i) when actually received by the representatives designated below to receive notices, or (ii) (a) when delivered to the designated recipients’ addresses listed below (addressed to the designated recipients) by certified or registered mail (return receipt requested) and (b) when delivered by confirmed facsimile to the recipients’ numbers designated below. Any party may change its addresses or representatives for receiving notices upon notice to the other.

If to Seller to:	Hemlock Semiconductor, LLC
	12334 Geddes Road
	Hemlock, Michigan 48626

Attn.: Vice President of Marketing

Fax No.: (989) 642-7400

With a copy to:

Hemlock Semiconductor, LLC

12334 Geddes Road

Hemlock, Michigan 48626

Attn.: General Counsel/Legal Department

Fax No.: (989) 642-7400

If to Parent to:

SunPower Corporation

Attn: Jon Whiteman

3939 North First Street

San Jose, California 95134

Fax No.: (408) 240-5402

With a copy to:

SunPower Corporation

Attn: General Counsel

3939 North First Street

San Jose, California 95134

Fax No.: (408) 240-5402

If to Subsidiary to: SunPower Corporation

Attn: Jon Whiteman

3939 North First Street

San Jose, California 95134

Fax No.: (408) 240-5402

With a copy to:

SunPower Corporation

Attn: General Counsel

3939 North First Street

San Jose, California 95134

Fax No.: (408) 240-5402

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

SUBSIDIARY:
SUNPOWER PHILIPPINES MANUFACTURING LIMITED

/s/ Marty T. Neese
By: Marty T. Neese

Title: C.O.O.

SELLER:
HEMLOCK SEMICONDUCTOR, LLC

/s/ Gary R. Homan
By: Gary R. Homan

Title: Vice President

PARENT:
SUNPOWER CORPORATION

/s/ Marty T. Neese
By: Marty T. Neese

Title: C.O.O.

SUNPOWER CORPORATION

ANNUAL KEY EMPLOYEE BONUS PLAN
(Amended Effective February 11, 2009)

SECTION 1: BACKGROUND, PURPOSE AND DURATION

1.1 Effective Date The amendment and restatement of this Plan is effective as of February 11, 2009.

1.2 Purpose of the Plan The Plan is intended to increase stockholder value and the success of the Company by motivating Participants (1) to perform to the best of their abilities, and (2) to achieve the Company's objectives. The Plan's goals are to be achieved by providing Participants with the opportunity to earn incentive awards for the achievement of goals relating to the performance of the Company. The Plan is intended to permit the payment of bonuses that qualify as performance-based compensation under Section 162(m) of the Code.

SECTION 2: DEFINITIONS

The following words and phrases shall have the following meanings unless a different meaning is plainly required by the context:

2.1 "Actual Award" means as to any Performance Period, the actual award (if any) payable to a Participant for the Performance Period. Each Actual Award is determined by the Payout Formula for the Performance Period, subject to the Committee's authority under Section 3.6 to eliminate or reduce the award otherwise determined by the Payout Formula.

2.2 "Affiliate" means any corporation or other entity (including, but not limited to, partnerships and joint ventures) controlled by the Company.

2.3 "Base Salary" means as to any Performance Period, the Participant's earned salary during the Performance Period. Such Base Salary shall be before both (a) deductions for taxes or benefits, and (b) deferrals of compensation pursuant to Company-sponsored plans and Affiliate-sponsored plans.

2.4 "Board" means the Board of Directors of the Company.

2.5 "Code" means the Internal Revenue Code of 1986, as amended. Reference to a specific section of the Code or regulation thereunder shall include such section or regulation, any valid regulation promulgated thereunder, and any comparable provision of any future legislation or regulation amending, supplementing or superseding such section or regulation.

2.6 "Committee" means the committee appointed by the Board (pursuant to Section 5.1) to administer the Plan.

2.7 "Company" means SunPower Corporation, a Delaware corporation, or any successor thereto.

2.8 "Determination Date" means the latest possible date that will not jeopardize a Target Award or Actual Award's qualification as performance-based compensation under Section 162(m) of the Code.

2.9 "Disability" means a permanent disability in accordance with a policy or policies established by the Committee (in its discretion) from time to time.

2.10 "Employee" means any employee of the Company or of an Affiliate, whether such employee is so employed at the time the Plan is adopted or becomes so employed subsequent to the adoption of the Plan.

2.11 “Fiscal Quarter” means a fiscal quarter within a Fiscal Year of the Company.

2.12 “Fiscal Year” means the fiscal year of the Company.

2.13 “Maximum Award” means as to any Participant during any period of three (3) consecutive Fiscal Years, \$9 million.

2.14 “Participant” means as to any Performance Period, an Employee who has been selected by the Committee for participation in the Plan for that Performance Period.

2.15 “Payout Formula” means as to any Performance Period, the formula or payout matrix established by the Committee pursuant to Section 3.4 in order to determine the Actual Awards (if any) to be paid to Participants. The formula or matrix may differ from Participant to Participant.

2.16 “Performance Period” means any Fiscal Year or such other period longer or shorter than a Fiscal Year but not shorter than a Fiscal Quarter or longer than three Fiscal Years, as determined by the Committee in its sole discretion.

2.17 “Performance Goals” means the goal(s) (or combined goal(s)) determined by the Committee (in its discretion) to be applicable to a Participant for a Target Award for a Performance Period. As determined by the Committee, the Performance Goals for any Target Award applicable to a Participant may be made subject to the attainment of performance goals for a specified period of time relating to one or more of the following performance criteria, either individually, alternatively or in any combination, applied to either the Company as a whole or to a business unit or Subsidiary, either individually, alternatively or in any combination, and measured either annually or cumulatively over a period of years, on an absolute basis or relative to a pre-established target, to previous years’ results or to a designated comparison group or index, in each case as specified by the Committee: (a) cash flow, (b) earnings per share, (c) earnings before interest, taxes and amortization, (d) return on equity, (e) total stockholder return, (f) share price performance, (g) return on capital, (h) return on assets or net assets, (i) revenue, (j) income or net income, (k) operating income or net operating income, (l) operating profit or net operating profit, (m) operating margin or profit margin, (n) return on operating revenue, (o) return on invested capital, or (p) market segment shares. The Committee may provide for the adjustment of any evaluation of performance against the Performance Goals to exclude any objective and measurable events specified at the time the Performance Goals are established, including but not limited to any of the following events that occurs during a Performance Period: (i) asset write-downs, (ii) litigation or claim judgments or settlements, (iii) the effect of changes in tax law, accounting principles or other such laws or provisions affecting reported results, (iv) accruals for reorganization and restructuring programs, (v) acceleration of amortization of debt issuance costs, (vi) stock-based compensation charges, (vii) purchase-accounting related charges, including amortization of intangible purchased assets, acquired in-process research and development charges, and similar charges associated with purchase accounting, (viii) any extraordinary nonrecurring items as described in Accounting Principles Board Opinion No. 30, and (ix) the related tax effects associated with each of the adjustments listed in clauses (i) through (viii) above.

2.18 “Plan” means the SunPower Corporation Annual Key Employee Bonus Plan, as set forth in this instrument and as hereafter amended from time to time.

2.19 “Progress Payment” means a portion of the Target Award or Actual Award for which the Committee has determined in accordance with Section 3.6 has been earned by the Participant as of the end of the Progress Period based on achievement of the applicable Performance Goals and thereby may be paid to the Participant during the Performance Period.

2.20 “Progress Period” means a period shorter than and within the Performance Period for which a Progress Payment may be made.

2.22 “Target Award” means the target award payable under the Plan to a Participant for the Performance Period, expressed as a percentage of his or her Base Salary or a specific dollar amount, as determined by the Committee in accordance with Section 3.3.

2.23 “Termination of Employment” means a cessation of the employee-employer relationship between an Employee and the Company or an Affiliate for any reason, including, but not by way of limitation, a termination by resignation, discharge, death, Disability, retirement (occurring in accordance with the policies established by the Committee (in its discretion) from time to time, or the disaffiliation of an Affiliate, but excluding any such termination where there is a simultaneous reemployment by the Company or an Affiliate.

SECTION 3: SELECTION OF PARTICIPANTS AND DETERMINATION OF AWARDS

3.1 Selection of Participants The Committee, in its sole discretion, shall select the Employees who shall be Participants for any Performance Period. The Committee, in its sole discretion, also may designate as Participants one or more individuals (by name or position) who are expected to become Employees during a Performance Period. Participation in the Plan is in the sole discretion of the Committee, and shall be determined on a Performance Period by Performance Period basis. Accordingly, an Employee who is a Participant for a given Performance Period in no way is guaranteed or assured of being selected for participation in any subsequent Performance Period.

3.2 Determination of Performance Goals The Committee (or its designee described in Section 5.4), in its sole discretion, shall establish the Performance Goals for each Participant for the Performance Period. Such Performance Goals shall be set forth in writing.

3.3 Determination of Target Awards The Committee, in its sole discretion, shall establish a Target Award for each Participant. Each Participant’s Target Award shall be determined by the Committee in its sole discretion, and each Target Award shall be set forth in writing.

3.4 Determination of Payout Formula or Formulae On or prior to the Determination Date, the Committee, in its sole discretion, shall establish a Payout Formula or Formulae for purposes of determining the Actual Award (if any) payable to each Participant. Each Payout Formula shall (a) be in writing, (b) be based on a comparison of actual performance to the Performance Goals, (c) provide for the payment of a Participant’s Target Award if the Performance Goals for the Performance Period are achieved at the predetermined level, and (d) provide for the payment of an Actual Award greater than or less than the Participant’s Target Award, depending upon the extent to which actual performance exceeds or falls below the Performance Goals. Notwithstanding the preceding, in no event shall a Participant’s Actual Award for any Performance Period exceed the Maximum Award.

3.5 Date for Determinations The Committee shall make all determinations under Sections 3.1 through 3.4 on or before the Determination Date.

3.6 Determination of Actual Awards After the end of each Performance Period or, to the extent Progress Payments will be made, after the end of the Progress Period, the Committee (or its designee described in 5.4) shall certify in writing the extent to which the Performance Goals applicable to each Participant for the Performance Period or Progress Period, as applicable, were achieved or exceeded, as determined by the Committee. The Actual Award for each Participant shall be determined by applying the Payout Formula to the level of actual performance that has been certified in writing by the Committee. Notwithstanding any contrary provision of the Plan, the Committee, in its sole discretion,

may (a) eliminate or reduce the Actual Award payable to any Participant below that which otherwise would be payable under the Payout Formula, and (b) determine whether or not any Participant will receive an Actual Award in the event the Participant incurs a Termination of Employment prior to the date the Actual Award is to be paid pursuant Section 4.2 below.

SECTION 4: PAYMENT OF AWARDS

4.1 Right to Receive Payment Each Actual Award that may become payable under the Plan shall be paid solely from the general assets of the Company or the Affiliate that employs the Participant (as the case may be), as determined by the Committee. Nothing in this Plan shall be construed to create a trust or to establish or evidence any Participant's claim of any right to payment of an Actual Award other than as an unsecured general creditor with respect to any payment to which he or she may be entitled. A Participant must be employed by the Company at the time of the payment to receive such payment, unless the Participant has died or become Disabled.

4.2 Timing of Payment Subject to Section 3.6, payment of each Actual Award shall be made as soon as administratively practicable, but in no event later than two and one-half months after the end of the applicable Performance Period or Progress Period; provided, however, that that, in the case of a Performance Period or Progress Period of less than one year payment must occur within two and one-half months of the end of the calendar year that includes the last day of such Performance Period or Progress Period.

4.3 Form of Payment Each Actual Award shall be paid in cash (or its equivalent) in a single lump sum.

4.4 Payment in the Event of Death If a Participant dies prior to the payment of an Actual Award (determined under Section 3.6) that was scheduled to be paid to him or her prior to death for a prior Performance Period, the Award shall be paid to his or her designated beneficiary or, if no beneficiary has been designated, to his or her estate.

SECTION 5: ADMINISTRATION

5.1 Committee is the Administrator The Plan shall be administered by the Committee. The Committee shall consist of not less than two (2) members of the Board. The members of the Committee shall be appointed from time to time by, and serve at the pleasure of, the Board. Each member of the Committee shall qualify as an "outside director" under Section 162(m) of the Code. If it is later determined that one or more members of the Committee do not so qualify, actions taken by the Committee prior to such determination shall be valid despite such failure to qualify. Any member of the Committee may resign at any time by notice in writing mailed or delivered to the Secretary of the Company. As of the Effective Date of the Plan, the Plan shall be administered by the Compensation Committee of the Board.

5.2 Committee Authority It shall be the duty of the Committee to administer the Plan in accordance with the Plan's provisions. The Committee shall have all powers and discretion necessary or appropriate to administer the Plan and to control its operation, including, but not limited to, the power to (a) determine which Employees shall be granted awards, (b) prescribe the terms and conditions of awards, (c) interpret the Plan and the awards, (d) adopt such procedures and subplans as are necessary or appropriate to permit participation in the Plan by Employees who are foreign nationals or employed outside of the United States, (e) adopt rules for the administration, interpretation and application of the Plan as are consistent therewith, and (f) interpret, amend or revoke any such rules.

5.3 Decisions Binding All determinations and decisions made by the Committee, the Board, and any delegate of the Committee pursuant to the provisions of the Plan shall be final, conclusive, and binding on all persons, and shall be given the maximum deference permitted by law.

5.4 Delegation by the Committee The Committee, in its sole discretion and on such terms and conditions as it may provide, may delegate all or part of its authority and powers under the Plan to one or more directors and/or officers of the Company; provided, however, that the Committee may not delegate its authority and/or powers with respect to awards that are intended to qualify as performance-based compensation under Section 162(m) of the Code.

SECTION 6: GENERAL PROVISIONS

6.1 Tax Withholding The Company or an Affiliate, as determined by the Committee, shall withhold all applicable taxes from any Actual Award, including any federal, state, local and other taxes.

6.2 No Effect on Employment Nothing in the Plan shall interfere with or limit in any way the right of the Company or an Affiliate, as applicable, to terminate any Participant's employment or service at any time, with or without cause. For purposes of the Plan, transfer of employment of a Participant between the Company and any one of its Affiliates (or between Affiliates) shall not be deemed a Termination of Employment. Employment with the Company and its Affiliates is on an at-will basis only. The Company expressly reserves the right, which may be exercised at any time and without regard to when during or after a Performance Period such exercise occurs, to terminate any individual's employment with or without cause, and to treat him or her without regard to the effect which such treatment might have upon him or her as a Participant.

6.3 Participation No Employee shall have the right to be selected to receive an award under this Plan, or, having been so selected, to be selected to receive a future award.

6.4 Indemnification Each person who is or shall have been a member of the Committee, or of the Board, shall be indemnified and held harmless by the Company against and from (a) any loss, cost, liability, or expense that may be imposed upon or reasonably incurred by him or her in connection with or resulting from any claim, action, suit, or proceeding to which he or she may be a party or in which he or she may be involved by reason of any action taken or failure to act under the Plan or any award, and (b) from any and all amounts paid by him or her in settlement thereof, with the Company's approval, or paid by him or her in satisfaction of any judgment in any such claim, action, suit, or proceeding against him or her, provided he or she shall give the Company an opportunity, at its own expense, to handle and defend the same before he or she undertakes to handle and defend it on his or her own behalf. The foregoing right of indemnification shall not be exclusive of any other rights of indemnification to which such persons may be entitled under the Company's Certificate of Incorporation or Bylaws, by contract, as a matter of law, or otherwise, or under any power that the Company may have to indemnify them or hold them harmless.

6.5 Successors All obligations of the Company and any Affiliate under the Plan, with respect to awards granted hereunder, shall be binding on any successor to the Company and/or such Affiliate, whether the existence of such successor is the result of a direct or indirect purchase, merger, consolidation, or otherwise, of all or substantially all of the business or assets of the Company or such Affiliate.

6.6 Beneficiary Designations

a. Designation. Each Participant may, pursuant to such uniform and nondiscriminatory procedures as the Committee may specify from time to time, designate one or more Beneficiaries to receive any Actual Award payable to the Participant at the time of his or her death. Notwithstanding any contrary provision of this Section 6.6 shall be operative only after (and for so long as) the

Committee determines (on a uniform and nondiscriminatory basis) to permit the designation of Beneficiaries.

b. Changes. A Participant may designate different Beneficiaries (or may revoke a prior Beneficiary designation) at any time by delivering a new designation (or revocation of a prior designation) in like manner. Any designation or revocation shall be effective only if it is received by the Committee. However, when so received, the designation or revocation shall be effective as of the date the designation or revocation is executed (whether or not the Participant still is living), but without prejudice to the Committee on account of any payment made before the change is recorded. The last effective designation received by the Committee shall supersede all prior designations.

c. Failed Designation. If the Committee does not make this Section 6.6 operative or if Participant dies without having effectively designated a Beneficiary, the Participant's Account shall be payable to the general beneficiary shown on the records of the Employer. If no Beneficiary survives the Participant, the Participant's Account shall be payable to his or her estate.

6.7 Nontransferability of Awards No award granted under the Plan may be sold, transferred, pledged, assigned, or otherwise alienated or hypothecated, other than by will, by the laws of descent and distribution, or to the limited extent provided in Section 6.6. All rights with respect to an award granted to a Participant shall be available during his or her lifetime only to the Participant.

6.8 Deferrals The Committee, in its sole discretion, may permit a Participant to defer receipt of the payment of cash that would otherwise be delivered to a Participant under the Plan. Any such deferral elections shall be subject to such rules and procedures as shall be determined by the Committee in its sole discretion.

SECTION 7: AMENDMENT, TERMINATION AND DURATION

7.1 Amendment, Suspension or Termination The Board or the Committee, each in its sole discretion, may amend or terminate the Plan, or any part thereof, at any time and for any reason. The amendment, suspension or termination of the Plan shall not, without the consent of the Participant, alter or impair any rights or obligations under any Target Award theretofore granted to such Participant. No award may be granted during any period of suspension or after termination of the Plan.

7.2 Duration of the Plan The Plan shall commence on the date specified herein, and subject to Section 7.1 (regarding the Board or the Committee's right to amend or terminate the Plan), shall remain in effect thereafter.

SECTION 8: LEGAL CONSTRUCTION

8.1 Gender and Number Except where otherwise indicated by the context, any masculine term used herein also shall include the feminine; the plural shall include the singular and the singular shall include the plural.

8.2 Severability In the event any provision of the Plan shall be held illegal or invalid for any reason, the illegality or invalidity shall not affect the remaining parts of the Plan, and the Plan shall be construed and enforced as if the illegal or invalid provision had not been included.

8.3 Requirements of Law The granting of awards under the Plan shall be subject to all applicable laws, rules and regulations, and to such approvals by any governmental agencies or national securities exchanges as may be required.

8.4 Governing Law The Plan and all awards shall be construed in accordance with and governed by the laws of the State of California, but without regard to its conflict of law provisions.

8.5 Captions Captions are provided herein for convenience only, and shall not serve as a basis for interpretation or construction of the Plan.

**SUNPOWER CORPORATION
KEY EMPLOYEE QUARTERLY
KEY INITIATIVE BONUS PLAN
(Amended and Restated April 3, 2009)**

Article 1 - KI Plan Objective

1.1 The objective of this Key Employee Quarterly Key Initiative Bonus Plan ("KI Plan") is to provide incentives to key employees of SunPower Corporation and its subsidiaries (collectively, the "Company") based on the Company's quarterly corporate milestones and an individual's performance against set individual key initiatives (KIs). The KI Plan shall be administered by the Compensation Committee appointed by the Board of Directors of SunPower Corporation.

Article 2 - Effective Date

2.1 This quarterly program will be effective as of January 1, 2009. "Plan Periods" under the KI Plan will correspond to the fiscal quarters of the Company.

Article 3 - Eligibility for KI Plan Participation

3.1 All executive officers of the Company, as well as any other key employees approved by the Chief Executive Officer of the Company shall participate in the KI Plan.

Article 4 - Target Bonus Percentages and Calculations

4.1 KI Target Bonus Percentages. Each KI Plan participant will be allocated a KI target bonus expressed as a percentage of his or her base salary. KI target bonus percentages are set by the Compensation Committee. The Compensation Committee may, in its discretion, set maximum caps on the payout amount for KI bonuses. The Compensation Committee may delegate establishing KI target bonus percentages to officers of the Company; provided that executive officer KI target bonus percentages must be approved by the Compensation Committee.

4.2 KI Plan Components.

- (i) Quarterly KI Score. At the start of each quarter the participant will formulate with his or her supervisor a list of key initiatives for such quarter. Each initiative will be allocated a certain number of points, and the quarterly scorecard shall total 100 points. Following each quarter the participant's supervisor will score the participant's achievement of key initiatives (expressed as a percentage).
- (ii) Company Milestone Score. With respect to each quarter the Board of Directors will establish quarterly corporate milestones for such quarter. Each company milestone will be allocated a certain number of points. Following each quarter, the executive officers of the Company will score the achievement of company milestones (expressed as a percentage).
- (iii) PBT Score. At the start of each quarter the executive officers will establish an internal profit before tax financial target for the Company ("Plan PBT"). Following each quarter the actual profit before tax for such quarter will be determined ("Actual PBT").

4.3 Quarterly bonuses under this KI Plan are based on a combination of (a) the participant's number of points achieved on his or her key initiative scorecard for the quarter (expressed as a percentage), (b) the percentage of company milestones achieved for the quarter, and (c) the Actual PBT for such quarter. In particular, the bonus payout is calculated as follows:

- (i) If the Actual PBT is less than 90% of the Plan PBT, no KI bonus payout will be made for the quarter.
 - (ii) If the Actual PBT is equal to or greater than 90% of the Plan PBT, but the company milestone score is equal to or less than 60%, no KI bonus payout will be made for the quarter.
 - (iii) If both the Actual PBT is equal to or greater than 90% AND the company milestone score is greater than 60%, the quarterly KI bonus will be paid as follows:
-

a. Corporate Milestone Score greater than 80%: Full KI score payout. For example, if an individual has a \$100,000 base salary, 20% KI target bonus and a KI score of 80%, s/he would receive a quarterly bonus of $100,000 \times .20 \times .80 = \$16,000$.

b. Company Milestone Score less than or equal to 80%: One-half KI score payout. In the above example, the individual would receive a quarterly bonus of \$8,000.

(iv) If both the Actual PBT is equal to or greater than 90% and the company milestone score is greater than 100%, the quarterly KI bonus may be prorated and paid above 100%, subject to a maximum cap of 110%.

Article 5 - Effect of Base Salary on Target Bonus Adjustments.

5.1 Payout calculations under the KI Plan will be based on the plan participant's base salary at the end of the quarter being measured and not the base salary at the time the milestone and KI portion of the bonus is paid.

5.2 In the event a participant's KI target bonus percentage is changed during the quarter, the new KI target bonus will be effective at the beginning of the immediately following quarter. The participant's KI payout for the current quarter shall be based on the KI target bonus in effect at the beginning of that quarter.

Article 6 - KI Achievement

6.1 KI attainment for the completed quarter and proposed KI for the next quarter are reviewed at the end of each quarter no later than the third Friday of the first month of the quarter.

6.2 In setting KIs, a 0% threshold may be defined for each KI. This threshold, which could be timing and/or deliverable-based, is a point at which a KI score starts to be earned. If a participant does not reach/complete the minimum threshold, such KI will be scored 0% (zero). Progress beyond the threshold earns the participant a pro-rated score up to 110%. The score for a particular KI item cannot exceed 110%. Scoring greater than 100% for a KI item is usually limited to numeric or quantitative goals.

6.3 The Chief Executive Officer's quarterly KI score is the actual corporate milestone score for such quarter.

Article 7 - Eligibility for Payment

7.1 **Employment:** To be eligible for any portion of the bonus payment, the participant must be employed by the Company at the scheduled payment date. A participant who terminates employment prior to the payment date will be ineligible for any and all bonuses not yet paid, except as otherwise provided in this article or any separate agreement approved by the Compensation Committee.

7.2 **New Hires:** New Hires shall be eligible to participate in the bonus program starting the first of the month following the month of hire.

7.3 **Disability:** If a participant is unable to perform the essential functions of his or her job with or without a reasonable accommodation and is eligible to receive disability benefits under the standards used by the Company's disability benefit plan, the participant will receive a bonus calculated as follows: the quarter in which the disability begins will be considered a completed quarter and the KI bonus for that quarter will be paid as though KI attainment was 100%.

7.4 **Retirement:** If a participant retires, i.e. permanent termination of employment with the Company in accordance with the Company's retirement policies, the participant will receive a bonus calculated as follows: the quarter in which the retirement begins will be considered a completed quarter and the KI bonus for that quarter will be paid as though KI attainment was 100%. Thereafter, quarterly participation ceases.

7.5 **Death:** If a participant dies, awards will be paid to the beneficiary designated by the participant or, if no such designation has been made, to the persons entitled thereto as determined by a court of competent jurisdiction. The bonus will be calculated as follows: the quarter in which death occurred will be considered a completed quarter and the KI bonus for that quarter will be paid as though KI attainment was 100%. Thereafter, quarterly participation ceases.

7.6 **Lay-off:** If a participant is terminated by lay-off during a Plan Period, the quarter in which the lay-off occurred will be considered a completed quarter and the KI bonus for that quarter will be paid as though KI attainment was 100%. Thereafter, quarterly participation ceases.

7.7 No bonus will be paid to employees who are terminated for cause.

7.8 All qualified bonus payments including future scheduled payments pursuant to Section's 7.3, 7.4, and 7.5 will be paid in lump-sum.

7.9 The Chief Executive Officer reserves the right to reduce the bonus award of a participant on a pro-rata basis to reflect a participant's leave of absence during the applicable Plan Period.

Article 8 - Miscellaneous

8.1 Unless as defined in article 8.4, no right or interest in this KI Plan is transferable or assignable except by will or laws of descent and distribution.

8.2 Participation in this KI Plan does not guarantee any right to continued employment with the Company.

8.3 Participation in the KI Plan in a particular Plan Period is not a guarantee to participate in subsequent Plan Periods.

8.4 Management reserves the right to discontinue participation of any participant in this KI Plan, at any time, and for whatever reasons.

8.5 This KI Plan is unfunded and the Company does not intend to set up a sinking fund. Consequently, payments arising out of bonus earned shall be paid out of the Company's general assets. Each actual KI bonus shall be paid in cash (or its equivalent value in shares as determined by the Committee or its designee) in a single lump sum. Accounts recognized by the Company for book purposes are not an indication of funds set aside for payment. KI Plan participants are considered as general creditors of the Company and the obligation of the Company is purely contractual and is not secured by any particular Company asset.

8.6 The provision of this KI Plan shall not limit the ability of the Compensation Committee (or its designees) to modify said KI Plan, or adopt such other plans on matters of compensation, bonus or incentive, which in its own judgment it deems proper, at any time.

February 20, 2009

SUNPOWER CORPORATION
3939 N. 1st Street
San Jose, CA 95134

Dear Mr. Arriola:

This letter is to confirm that WELLS FARGO BANK, NATIONAL ASSOCIATION ("Bank") has agreed to extend the maturity date of that certain credit accommodation granted by Bank to SUNPOWER CORPORATION ("Borrower") in the maximum principal amount of Fifty Million Dollars (\$50,000,000.00) pursuant to the terms and conditions of that certain Credit Agreement between Bank and Borrower dated July 13, 2007, as amended from time to time (the "Agreement").

The maturity date of said credit accommodation is hereby extended until July 3, 2009. Until such date, all terms and conditions of the Agreement which pertain to said credit accommodation shall remain in full force and effect, except as expressly modified hereby. The promissory note dated as of April 4, 2008, executed by Borrower and payable to the order of Bank which evidences said credit accommodation (the "Note"), shall be deemed modified as of the date this letter is acknowledged by Borrower to reflect the new maturity date set forth above. All other terms and conditions of the Note remain in full force and effect, without waiver or modification.

Borrower acknowledges that Bank has not committed to make any renewal or further extension of the maturity date of the above-described credit accommodation beyond the new maturity date specified herein, and that any such renewal or further extension remains in the sole discretion of Bank. This letter constitutes the entire agreement between Bank and Borrower with respect to the maturity date extension for the above-described credit accommodation, and supersedes all prior negotiations, discussions and correspondence concerning said extension.

S:\SF_Documentation\TEAM1\PEN\EXT\Sunpower
Corporation.\$50MM.2-09.C-220_CA_DOC; Loan
Extension (Rev. 07/04) au#5681 #7576615169
tk#20090220004

Please acknowledge your acceptance of the terms and conditions contained herein by dating and signing one copy below and returning it to my attention at the above address on or before March 6, 2009.

Very truly yours,
WELLS FARGO BANK,
NATIONAL ASSOCIATION

By: /s/ Matthew A. Servatius
Matthew A. Servatius
Vice President

Acknowledged and accepted as of 2/25/09 :

SUNPOWER CORPORATION

By: /s/ Dennis V. Arriola
Dennis V. Arriola
Chief Financial Officer

S:\SF_Documentation\TEAM1\PEN\EXT\Sunpower
Corporation.\$50MM.2-09.C-220_CA_DOC: Loan
Extension (Rev. 07/04) au#5681 #7576615169
tk#20090220004

AMENDMENT TO SECOND AMENDED AND RESTATED
SUNPOWER CORPORATION 2005 STOCK INCENTIVE PLAN

The Second Amended and Restated SunPower Corporation 2005 Stock Incentive Plan (the “Plan”) is hereby amended effective March 12, 2009 as follows:

A. Section 4(b)(iii) is amended as follows:

(iii) Each Outside Director or non-employee director who is first appointed Chairman of the Board of Directors on or after the date of the Company’s 2009 annual meeting of stockholders, shall receive a grant of 8,000 Stock Units (subject to adjustment under Section 11) on the date of his or her appointment as Chairman of the Board of Directors. Twenty-five percent (25%) of such Stock Units granted under this Section 4(b)(iii) shall vest and become exercisable quarterly over a one-year period, with the first twenty-five percent (25%) of such Stock Units vesting on the day that is the three-month anniversary of the date of grant. Notwithstanding the foregoing, each such Stock Unit shall become vested if a Change in Control occurs with respect to the Company during the Service of the Chairman of the Board of Directors.

B. Section 4(b)(iv) is amended as follows:

(iv) On the first business day following the conclusion of each regular annual meeting of the Company’s stockholders, commencing with the Company’s 2009 annual meeting, the Chairman of the Board of Directors shall receive a grant of 8,000 Stock Units (subject to adjustment under Section 11), provided that the Chairman of the Board of Directors has served on the Board of Directors for at least six months and will continue serving as Chairman of the Board of Directors thereafter. Twenty-five percent (25%) of such Stock Units granted under this Section 4(b)(iv) shall vest and become exercisable quarterly over a one-year period, with the first twenty-five percent (25%) of such Stock Units vesting on the day that is the three-month anniversary of the date of grant. Notwithstanding the foregoing, each such Stock Unit shall become vested if a Change in Control occurs with respect to the Company during the Service of the Chairman of Board of Directors.

CONFIDENTIAL TREATMENT REQUESTED

--

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

AMENDED AND RESTATED CREDIT AGREEMENT

THIS AMENDED AND RESTATED CREDIT AGREEMENT (this "Agreement") is entered into as of March 20, 2009, by and between SUNPOWER CORPORATION, a Delaware corporation ("Borrower"), and WELLS FARGO BANK, NATIONAL ASSOCIATION ("Bank").

RECITALS

Borrower has requested that Bank extend or continue credit to Borrower as described below, and Bank has agreed to provide such credit to Borrower on the terms and conditions contained herein.

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Bank and Borrower hereby agree as follows:

ARTICLE I
CREDIT TERMS

SECTION 1.1. LINE OF CREDIT.

(a) Line of Credit. Subject to the terms and conditions of this Agreement, Bank hereby agrees to make advances to Borrower from time to time up to and including March 27, 2010, not to exceed at any time the aggregate principal amount of Fifty Million Dollars (\$50,000,000.00) ("Line of Credit"), the proceeds of which shall be used for working capital and other corporate requirements. Borrower's obligation to repay advances under the Line of Credit shall be evidenced by a promissory note dated as of March 20, 2009 ("Line of Credit Note"), all terms of which are incorporated herein by this reference.

(b) Letter of Credit Subfeature. As a subfeature under the Line of Credit, Bank agrees from time to time during the term thereof to issue or cause an affiliate to issue standby letters of credit for the account of Borrower (each, a "Subfeature Letter of Credit" and collectively, "Subfeature Letters of Credit"); provided however, that the aggregate undrawn amount of all outstanding Subfeature Letters of Credit shall not at any time exceed Fifty Million Dollars (\$50,000,000.00). The form and substance of each Subfeature Letter of Credit shall be subject to approval by Bank, in its sole discretion. Each Subfeature Letter of Credit shall be issued for an initial term not to exceed three hundred sixty-five (365) days, as designated by Borrower; provided however, that if Borrower requests that Bank issue a Subfeature Letter of Credit hereunder with a final expiration subsequent to the maturity date of the Line of Credit, such Subfeature Letter of Credit shall provide for automatic renewals of the expiration date thereof (up to the final expiration date thereof, to be agreed upon by Bank and Borrower) subject to Bank's right to prevent any such renewal from occurring by sending notice to that effect to the beneficiary not less than 60 days prior to the initial (or any extended) expiration date. The undrawn amount of all Subfeature Letters of Credit shall be reserved under the Line of Credit and shall not be available for borrowings thereunder. Each Subfeature Letter of Credit shall be subject to the additional terms and conditions of the Standby Letter of Credit Agreement previously executed by Borrower and of applications and any related documents required by Bank in connection with the issuance thereof. Each drawing paid under a Subfeature Letter of Credit shall be deemed an advance under the Line of Credit and shall be repaid by Borrower in accordance with the terms and conditions of this Agreement applicable to such advances; provided however, that if advances under the Line of Credit are not available, for any reason, at the time any drawing is paid, then Borrower shall immediately pay to Bank the full amount

drawn, together with interest thereon from the date such drawing is paid to the date such amount is fully repaid by Borrower, at the rate of interest applicable to advances under the Line of Credit. In such event Borrower agrees that Bank, in its sole discretion, may debit any account maintained by Borrower with Bank for the amount of any such drawing. In the event that any Subfeature Letters of Credit remain outstanding on the maturity date of the Line of Credit (and the Line of Credit has not been renewed or extended), Borrower shall on demand by Bank deliver to Bank cash or cash equivalents acceptable to Bank, to be maintained in an account at Bank, in the aggregate amount then available to be drawn under such outstanding Subfeature Letter of Credit (plus the amount drawn and not yet reimbursed under Subfeature Letters of Credit) in which Bank is granted a possessory security interest of first priority.

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

SECTION 1.2. LETTER OF CREDIT LINE.

(a) Letter of Credit Line. Subject to the terms and conditions of this Agreement, Bank hereby agrees to establish a letter of credit line ("Letter of Credit Line") under which Bank shall issue or cause an affiliate to issue commercial and standby letters of credit for the account of Borrower to finance working capital and other corporate requirements (each, a "Letter of Credit" and collectively, "Letters of Credit") from time to time up to and including March 27, 2014; provided however, that the aggregate of all undrawn amounts, and all amounts drawn and unreimbursed, under any Letters of Credit issued under the Letter of Credit Line shall not at any time exceed the principal amount of One Hundred Fifty Million Dollars (\$150,000,000.00). The form and substance of each Letter of Credit shall be subject to approval by Bank, in its sole discretion. Each Letter of Credit shall be issued for a term not to extend beyond March 27, 2014, as designated by Borrower. Each Letter of Credit shall be subject to the additional terms of the Commercial and Standby Letter of Credit Agreements, as applicable, to be dated as of the date of their respective execution, applications thereunder, and any related documents required by Bank in connection with the issuance thereof (each, a "Letter of Credit Agreement").

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

SECTION 1.3. INTEREST/FEEES.

(a) Interest. The outstanding principal balance of each credit subject hereto shall bear interest, and the amount of each drawing paid under any Letter of Credit shall bear interest from the date such drawing is paid to the date such amount is fully repaid by Borrower, at the rate of interest set forth in each promissory note or other instrument or document executed in connection therewith.

(b) Computation and Payment. Interest shall be computed on the basis of a 360-day year, actual days elapsed. Interest shall be payable at the times and place set forth in each promissory note or other instrument or document required hereby.

(c) Letter of Credit Fees. Borrower shall pay to Bank (i) fees upon the issuance and each annual renewal, if any, of each Letter of Credit equal to the Applicable Rate (defined

below) per annum (computed on the basis of a 360-day year, actual days elapsed) of the face amount thereof, (ii) fees upon the issuance of each Subfeature Letter of Credit equal to two percent (2.00%) per annum (computed on the basis of a 360-day year, actual days elapsed) of the face amount thereof, and (iii) fees upon the issuance and each annual renewal, if any, of each Commercial Letter of Credit, or fees upon the payment or negotiation of each drawing under any Letter of Credit or Subfeature Letter of Credit and fees upon the occurrence of any other activity with respect to any Letter of Credit or Subfeature Letter of Credit (including without limitation, the transfer, amendment or cancellation of any Letter of Credit or Subfeature Letter of Credit) determined in accordance with Bank's standard fees and charges then in effect for such activity. The standard fees and charges in effect as of the date hereof are set forth in Schedule 1.3 hereto. "Applicable Rate" means (y) with respect to Standby Letters of Credit in an aggregate undrawn amount (when added to amounts drawn and not yet reimbursed thereunder) equal to or less than the amount on deposit in the Deposit Account, (1) two tenths of one percent (0.20%) if such Standby Letters of Credit have a final expiration date prior to or on July 31, 2012, and (2) thirty-five hundredths of one percent (0.35%) if such Standby Letters of Credit have a final expiration date after July 31, 2012, and (z) with respect to all other Standby Letters of Credit, three quarters of one percent (0.75%). The term "Deposit Account" is defined in Section 1.5 below.

SECTION 1.4. COLLECTION OF PAYMENTS. Borrower authorizes Bank to collect all interest and fees due under each credit subject hereto by charging Borrower's deposit account number 1233809538 with Bank of America for the full amount thereof. Should there be insufficient funds in any such deposit account to pay all such sums when due, the full amount of such deficiency shall be immediately due and payable by Borrower.

SECTION 1.5. COLLATERAL.

As security for all indebtedness of Borrower to Bank in connection with Letters of Credit issued (or deemed issued) under the Letter of Credit Line, Borrower shall grant to Bank security interests in Borrower's deposit account *** maintained at Bank (the "Deposit Account") and Borrower's investment account *** maintained at Bank (the "Securities Account"), in each case including renewals thereof, together with all proceeds thereof. Notwithstanding any provision herein to the contrary, in no event shall Bank be required to issue any Letter of Credit under the Letter of Credit Line unless and until the sum of the amount maintained in the Deposit Account plus the Collateral Value of the Securities Account is equal to or greater than the Exposure Amount (taking into account the Letter of Credit to be issued). The terms "Collateral Value of the Securities Account" and "Exposure Amount" have the meanings ascribed to them in the Amended and Restated Addendum described in the next paragraph.

All of the foregoing shall be evidenced by and subject to the terms of, with respect to the Deposit Account, a Security Agreement (Deposit Account) dated as of July 13, 2007, and with respect to the Securities Account, a Security Agreement (Securities Account) dated as of March 18, 2008, an Amended and Restated Addendum thereto dated as of May 19, 2008 and a Securities Account Control Agreement dated March 18, 2008.

In addition to the foregoing collateral, Borrower shall, on or before April 30, 2009, pledge to Bank 60% of the stock in SunPower Systems SA ("SPSA") to secure up to \$50,000,000 of the obligations of Borrower hereunder, and, in connection therewith, shall by said date, deliver to Bank such documents as Bank may require to evidence such pledge, to include, without limitation, a legal opinion from Swiss counsel in form and substance acceptable to Bank.

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

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

SECTION 1.6. GUARANTIES. The payment and performance of all indebtedness and other obligations of Borrower to Bank under the Line of Credit shall be jointly and severally guaranteed by SunPower Corporation, Systems (formerly known as PowerLight Corporation), a Delaware corporation, and SunPower North America, LLC, a Delaware limited liability company (successor in interest to SunPower North America, Inc., a Delaware corporation) in the principal amount of Fifty Million Dollars (\$50,000,000.00) each, as evidenced by and subject to the terms of a guaranty in form and substance satisfactory to Bank. Borrower shall cause each newly-acquired or newly-formed Domestic Material Subsidiary (as defined in Section 2.12) to execute a joinder to said guaranty within 30 days after its qualifying as a Domestic Material Subsidiary. Each Subsidiary which executes or is required to execute such guaranty or a joinder thereto shall be referred to as a "Third Party Obligor."

ARTICLE II REPRESENTATIONS AND WARRANTIES

Borrower makes the following representations and warranties to Bank, which representations and warranties shall survive the execution of this Agreement and shall continue in full force and effect until the full and final payment, and satisfaction and discharge, of all obligations of Borrower to Bank subject to this Agreement.

SECTION 2.1. LEGAL STATUS. Borrower and each Third Party Obligor is a corporation or limited liability company, duly organized and existing and in good standing under the laws of its formation, and is qualified or licensed to do business (and is in good standing as a foreign corporation, if applicable) in all jurisdictions in which such qualification or licensing is required or in which the failure to so qualify or to be so licensed could not reasonably be expected to have a material adverse effect on Borrower's consolidated financial condition or operations or on the prospects of Borrower's performance of its obligations under this Agreement and the other Loan Documents (a "Material Adverse Effect").

SECTION 2.2. AUTHORIZATION AND VALIDITY. This Agreement and each promissory note, contract, instrument and other document required hereby or at any time hereafter delivered to Bank in connection herewith (collectively, the "Loan Documents") have been duly authorized, and upon their execution and delivery in accordance with the provisions hereof will constitute legal, valid and binding agreements and obligations of Borrower or the party (other than Bank) which executes the same, enforceable in accordance with their respective terms.

SECTION 2.3. NO VIOLATION. The execution, delivery and performance by Borrower and each Third Party Obligor of each of the Loan Documents do not violate any provision of any law or regulation, or contravene any provision of the Articles of Incorporation or Bylaws, or similar organizational documents, of such entity, or result in any breach of or default under any contract, obligation, indenture or other instrument to which such entity is a party or by which such entity may be bound.

SECTION 2.4.

LITIGATION. There are no pending, or to the best of Borrower's knowledge threatened, actions, claims, investigations, suits or proceedings by or before any governmental authority, arbitrator, court or administrative agency which could reasonably be expected to have a Material Adverse Effect other than those disclosed by Borrower to Bank in writing prior to the date hereof.

SECTION 2.5.

CORRECTNESS OF FINANCIAL STATEMENT. The annual financial statement of Borrower dated December 28, 2008, and all interim financial statements delivered to Bank since said date, true copies of which have been delivered by Borrower to Bank prior to the date hereof, (a) are complete and correct and present fairly the consolidated financial condition of Borrower as of such date, (b) disclose all consolidated liabilities of Borrower that were, as of such date, required to be reflected or reserved against under generally accepted accounting principles, whether liquidated or unliquidated, fixed or contingent, and (c) have been prepared in accordance with generally accepted accounting principles consistently applied ("GAAP"). Since the dates of such financial statements there has been no material adverse change in the consolidated financial condition of Borrower, nor has Borrower mortgaged, pledged, granted a security interest in or otherwise encumbered any of its assets or properties except Permitted Liens and security interests and liens in favor of Bank. "Permitted Liens" means (i) liens for taxes not yet due or that are being contested in good faith by appropriate proceedings; (ii) carriers', warehousemen's, materialmen's, repairmen's or other like liens arising in the ordinary course of business that are not overdue for a period of more than 90 days or that are being contested in good faith by appropriate proceedings; (iii) pledges or deposits in connection with workers' compensation, unemployment insurance and other social security legislation; (iv) deposits to secure the performance of bids, trade contracts (other than for borrowed money), leases, statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature incurred in the ordinary course of business; (v) easements, rights-of-way, restrictions and other similar encumbrances incurred in the ordinary course of business that, in the aggregate are not substantial in amount and that do not in any case materially detract from the value of the property subject thereto or materially interfere with the ordinary conduct of the business of the Borrower or any of its Subsidiaries; (vi) any lien granted as a replacement or substitute for another Permitted Lien; (vii) liens existing as of the date of this Agreement and securing indebtedness of Borrower or any Subsidiary, incurred to finance the acquisition of fixed or capital assets (including refinancings thereof); (viii) liens created pursuant to the Loan Documents; (ix) any interest or title of a lessor under any lease entered into by the Borrower or any other Subsidiary in the ordinary course of its business and covering only the assets so leased; (x) liens in favor of customers or suppliers of the Borrower and its Subsidiaries on equipment, supplies and inventory purchased with the proceeds of advances made by such customers or suppliers under, and securing obligations in connection with, supply agreements; (xi) liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods; (xii) licenses of patents, trademarks and other intellectual property rights granted by the Borrower or any of its Subsidiaries in the ordinary course of business and not interfering in any respect with the ordinary conduct of the business of the Borrower or such Subsidiary; (xiii) bankers' liens, rights of setoff and other similar liens existing solely with respect to cash and cash equivalents on deposit in one or more accounts maintained by the Borrower or any of its Subsidiaries, in each case granted or existing in the ordinary course of business in favor of the bank or banks with which such accounts are maintained, securing amounts owing to such bank; (xv) liens that arise by operation of law; (xvi) liens arising out of judgments or awards not resulting in a default under this Agreement; (xvii) liens arising out of conditional sale, title retention, consignment or similar arrangements for the sale of goods entered into by Borrower in the ordinary course of business; (xviii) existing and future liens related to or arising from rebates in the ordinary course of

business; and (xix) existing and future liens in favor of the borrower's bonding company covering materials, contracts, receivables and other assets which are related to, or arise out of, contracts which are bonded by that bonding company; and (xx) other liens so long as the aggregate outstanding principal amount of the obligations secured thereby does not exceed (as to the Borrower and all Third Party Obligors on a consolidated basis) five million dollars (\$5,000,000.00) at any one time; provided, however, that in no event shall any Permitted Lien (except those in favor of Bank) extend to the Deposit Account or the Securities Account.

SECTION 2.6. INCOME TAX RETURNS. Neither Borrower nor any Third Party Obligor has any knowledge of any pending assessments or adjustments of its income tax payable with respect to any year which could reasonably be expected to have a Material Adverse Effect.

SECTION 2.7. NO SUBORDINATION. There is no agreement, indenture, contract or instrument to which Borrower or a Third Party Obligor is a party or by which Borrower or a Third Party Obligor may be bound that requires the subordination in right of payment of any of Borrower's or such Third Party Obligor's obligations subject to this Agreement to any other obligation of Borrower.

SECTION 2.8. PERMITS, FRANCHISES. Borrower and each Third Party Obligor possesses, and will hereafter possess, all permits, consents, approvals, franchises and licenses required and rights to all trademarks, trade names, patents, and fictitious names, if any, necessary to enable it to conduct the business in which it is now engaged in compliance with applicable law except to the extent that non-compliance could not reasonably be expected to have a Material Adverse Effect.

SECTION 2.9. ERISA. Borrower is in compliance in all material respects with all applicable provisions of the Employee Retirement Income Security Act of 1974, as amended or recodified from time to time ("ERISA"); Borrower has not violated any provision of any defined employee pension benefit plan (as defined in ERISA) maintained or contributed to by Borrower (each, a "Plan"); no Reportable Event as defined in ERISA has occurred and is continuing with respect to any Plan initiated by Borrower; Borrower has met its minimum funding requirements under ERISA with respect to each Plan; and each Plan will be able to fulfill its benefit obligations as they come due in accordance with the Plan documents and under generally accepted accounting principles.

SECTION 2.10. OTHER OBLIGATIONS. Neither Borrower nor any Third Party Obligor is in default on any obligation for borrowed money or any material purchase money obligation, lease, commitment, contract, instrument or obligation that could reasonably be expected to result in a Material Adverse Effect.

SECTION 2.11. ENVIRONMENTAL MATTERS. Except as disclosed by Borrower to Bank in writing prior to the date hereof, Borrower and each Third Party Obligor is in compliance in all material respects with all applicable federal or state environmental, hazardous waste, health and safety statutes, and any rules or regulations adopted pursuant thereto, which govern or affect any of Borrower's operations and/or properties, including without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, the Superfund Amendments and Reauthorization Act of 1986, the Federal Resource Conservation and Recovery Act of 1976, and the Federal Toxic Substances Control Act, as any of the same may be amended, modified or supplemented from time to time. None of the operations of Borrower or any or a Third Party Obligor is the subject of any federal or state investigation evaluating whether any remedial action involving a material expenditure is needed to respond to

a release of any toxic or hazardous waste or substance into the environment. Neither Borrower nor any Third Party Obligor has any material contingent liability in connection with any release of any toxic or hazardous waste or substance into the environment.

SECTION 2.12. SUBSIDIARIES. As of the date hereof, the entities named in **Schedule 2.12(a)** hereto are the only entities in which Borrower, directly or indirectly, owns a controlling or majority interest, with Borrower's direct or indirect percentage ownership interest and the state or country of formation set forth in said Schedule. Each entity (whether now existing or hereafter formed or acquired) in which Borrower, directly or indirectly, owns a controlling or majority interest, is referred to as a "Subsidiary." The term "Material Subsidiary" means any Subsidiary whose assets have a book value which exceed 10% of the book value of Borrower's consolidated assets (based on the then most recent fiscal year end financial statement then delivered or deemed delivered to Bank hereunder). The term "Domestic" as applied to a Subsidiary means that such Subsidiary is incorporated or organized under the laws of the United States or of any State thereof. In no event shall any Special Purpose Entity be considered a Material Subsidiary for any purpose under this Agreement. For purposes of this Section 2.12, "Special Purpose Entity" shall mean an entity formed in connection with a specific transaction with a customer, investor, lender and/or financing party of Borrower or any Subsidiary wherein such entity is used solely in connection with such transaction. **Schedule 2.12(b)** lists the Special Purpose Entities existing as of the date hereof. Borrower shall notify Bank of the formation, acquisition, dissolution or disposition of any Subsidiary, including Special Purpose Entities, within 30 days of such formation, acquisition, dissolution or disposition.

SECTION 2.13. OTHER AGREEMENTS. Neither Borrower nor any Third Party Obligor is a party to (or will enter into) any master foreign exchange agreement which covers forward foreign exchange transactions, currency swap transactions, cross-currency rate swap transactions, currency options, or any other similar transactions or any combination of any of the foregoing (however titled) with any party (other than Bank) which includes covenants, defaults or other material provisions which are more restrictive to Borrower or such Third Party Obligor than those contained herein.

ARTICLE III CONDITIONS

SECTION 3.1. CONDITIONS OF INITIAL EXTENSION OF CREDIT. The obligation of Bank to extend any credit contemplated by this Agreement is subject to the fulfillment to Bank's satisfaction of all of the following conditions:

- (a) Approval of Bank Counsel. All legal matters incidental to the extension of credit by Bank shall be satisfactory to Bank's counsel.
- (b) Documentation. Bank shall have received, in form and substance satisfactory to Bank, each of the following, duly executed:
 - (i) This Agreement and each promissory note or other instrument or document required hereby.
 - (ii) LLC Certificate: Continuing Guaranty, in the form previously agreed by Bank and Borrower.
 - (iii) Continuing Guaranty from SunPower North America, LLC.

(iv) Such other documents as Bank may reasonably require under any other Section of this Agreement.

(c) Financial Condition. There shall have been no material adverse change, as determined by Bank, in the financial condition or business of Borrower or any guarantor hereunder, nor any material decline, as reasonably determined by Bank, in the market value of any collateral required hereunder or a substantial or material portion of the assets of Borrower or any such guarantor.

SECTION 3.2. CONDITIONS OF EACH EXTENSION OF CREDIT. The obligation of Bank to make each extension of credit requested by Borrower hereunder shall be subject to the fulfillment to Bank's satisfaction of each of the following conditions:

(a) Compliance. The representations and warranties contained herein and in each of the other Loan Documents shall be true on and as of the date of the signing of this Agreement and on the date of each extension of credit by Bank pursuant hereto, with the same effect as though such representations and warranties had been made on and as of each such date, and on each such date, no Event of Default as defined herein, and no condition, event or act which with the giving of notice or the passage of time or both would constitute such an Event of Default, shall have occurred and be continuing or shall exist.

(b) Documentation. Bank shall have received all additional documents which may be reasonably required in connection with such extension of credit.

ARTICLE IV AFFIRMATIVE COVENANTS

Borrower covenants that so long as Bank remains committed to extend credit to Borrower pursuant hereto, or any liabilities (whether direct or contingent, liquidated or unliquidated) of Borrower to Bank under any of the Loan Documents remain outstanding, and until payment in full of all obligations of Borrower subject hereto, Borrower shall, and (with respect to Sections 4.2, 4.4, 4.5, 4.6 and 4.7) shall cause each Third Party Obligor to, unless Bank otherwise consents in writing:

SECTION 4.1. PUNCTUAL PAYMENTS. Punctually pay all principal, interest, fees or other liabilities due under any of the Loan Documents at the times and place and in the manner specified therein.

SECTION 4.2. ACCOUNTING RECORDS. Maintain adequate books and records in accordance with generally accepted accounting principles consistently applied, and permit any representative of Bank, after reasonable notice (except during the existence of an Event of Default) and during regular business hours, to inspect, audit and examine such books and records, to make copies of the same, and to inspect the properties of Borrower or such Third Party Obligor. Bank's use of confidential information of Borrower shall be governed by that certain Confidentiality Agreement (the "Confidentiality Agreement"), dated June 19, 2007, by and between Bank and Borrower.

SECTION 4.3. FINANCIAL STATEMENTS. Provide to Bank all of the following, in form and detail satisfactory to Bank:

- (a) not later than 120 days after and as of the end of each fiscal year, Borrower's consolidated audited annual financial statements, prepared by a certified public accountant acceptable to Bank, to include balance sheet, income statement, statement of cash flow and footnotes, which may be in the form of Borrower's annual report on Form 10K filed with the Securities Exchange Commission ("SEC"); such report shall be deemed delivered to Bank upon filing with the SEC;
- (b) not later than 45 days after and as of the end of each fiscal quarter, Borrower's consolidated quarterly financial statements, prepared by Borrower, to include balance sheet, income statement and statement of cash flow, which may be in the form of Borrower's quarterly report on Form 10Q filed with the SEC; such report shall be deemed delivered to Bank upon filing with the SEC.
- (c) not later than 20 days after and as of the end of each month, bank and/or brokerage statements reflecting compliance with the Liquidity covenant set forth in Section 4.9 (a) below;
- (d) contemporaneously with each annual and fiscal quarter end financial statement of Borrower required hereby, a certificate of the chief executive officer or chief financial officer of Borrower that said financial statements are accurate and that there exists no Event of Default nor any condition, act or event which with the giving of notice or the passage of time or both would constitute an Event of Default, and with supporting calculations showing compliance with financial covenants; and
- (e) from time to time such other information as Bank may reasonably request.

SECTION 4.4. COMPLIANCE. Preserve and maintain all licenses, permits, governmental approvals, rights, privileges and franchises necessary for the conduct of its business; comply with the provisions of all documents pursuant to which Borrower or such Third Party Obligor is organized and/or which govern Borrower's or such Third Party Obligor continued existence and with the requirements of all laws, rules, regulations and orders of any governmental authority applicable to Borrower, such Third Party Obligor and/or its business, except to the extent that non-compliance could not reasonably be expected to have a Material Adverse Effect

SECTION 4.5. INSURANCE. Maintain and keep in force, for each business in which Borrower or such Third Party Obligor is engaged, insurance of the types and in amounts customarily carried in similar lines of business, including but not limited to fire, extended coverage, public liability, flood, property damage and workers' compensation, and deliver to Bank from time to time at Bank's request schedules setting forth all insurance then in effect.

SECTION 4.6. FACILITIES. Keep all properties useful or necessary to Borrower's or such Third Party Obligor's business in good repair and condition, and from time to time make necessary repairs, renewals and replacements thereto so that such properties shall be fully and efficiently preserved and maintained, except to the extent that non-compliance could not reasonably be expected to have a Material Adverse Effect.

SECTION 4.7. TAXES AND OTHER LIABILITIES. Pay and discharge when due any and all indebtedness, obligations, assessments and taxes, both real or personal, including without limitation federal and state income taxes and state and local property taxes and assessments, except (a) such as Borrower or such Third Party Obligor may in good faith contest or as to which a bona fide dispute may arise, and (b) for which Borrower has made provision, to

Bank's satisfaction, for eventual payment thereof in the event Borrower or such Third Party Obligor is obligated to make such payment.

SECTION 4.8. LITIGATION. Promptly give notice in writing to Bank of any litigation pending or threatened against Borrower or any Subsidiary which is required to be disclosed to the SEC or which could reasonably be expected to have a Material Adverse Effect.

SECTION 4.9. FINANCIAL CONDITION. Maintain Borrower's consolidated financial condition as follows, using generally accepted accounting principles consistently applied and used consistently with prior practices (except to the extent modified by the definitions herein), with compliance determined commencing with Borrower's financial statements for the period ending March 29, 2009:

(a) Minimum Liquidity (defined as unencumbered and unrestricted cash, cash equivalents, and marketable securities acceptable to Bank, which, if cash, is U.S. Dollar denominated, or if held in an account not maintained in the United States, is denominated in any currency for which a U.S. Dollar equivalent is routinely calculated by Bank, and, if other than cash, consist of financial instruments or securities, acceptable to Bank (collectively, "Eligible Assets") equal to or greater than (i) two (2.00) times the Exposure (defined below) under the Line of Credit, with a minimum amount of such liquidity equal to 100% of the Exposure to be held in accounts maintained in the United States, in all instances determined as of the end of each of Borrower's fiscal months. For purposes of calculating U.S. Dollar equivalent value of Eligible Assets not denominated in U.S. Dollars, Bank will convert the value of such assets as of the applicable statement date based on Bank's foreign exchange closing rates for such date. In no event shall "Eligible Assets" include any auction rate securities or auction rate certificates. The term "Exposure" as used herein means the outstanding principal balance of advances under the Line of Credit plus the aggregate amount available to be drawn under outstanding Subfeature Letters of Credit plus the amount drawn and not yet reimbursed under Subfeature Letters of Credit.

(b) Total Liabilities divided by Tangible Net Worth not greater than 2.00 to 1.0, determined as of the end of each fiscal quarter, with "Total Liabilities" defined as the aggregate of current liabilities and non-current liabilities less subordinated debt, and with "Tangible Net Worth" defined as the aggregate of total stockholders' equity plus subordinated debt less any intangible assets and less any loans or advances to, or investments in, any related entities or individuals, in each case on a GAAP basis. Without limitation of the foregoing, Total Liabilities shall include the amount available to be drawn under all outstanding letters of credit (including Letters of Credit and Subfeature Letters of Credit) issued for the account of Borrower and/or any Subsidiary.

(c) Net Income not less than \$25,000,000.00 in each period of four consecutive fiscal quarters, determined as of each fiscal quarter end on a rolling four-quarter basis, and with "Net Income" defined as net income on a GAAP basis. Borrower shall not have a single quarterly net loss of more than \$30,000,000.00 or net losses in any period of two consecutive quarters in aggregate of more than \$30,000,000.00, in each case calculated on a GAAP basis.

SECTION 4.10. NOTICE TO BANK. Promptly (but in no event more than ten (10) business days after an officer of Borrower first has knowledge of the occurrence of each such event or matter) give written notice to Bank in reasonable detail of: (a) the occurrence of any Event of Default, or any condition, event or act which with the giving of notice or the passage of time or both would constitute an Event of Default; (b) any change in the name or the

organizational structure of Borrower or any Third Party Obligor; (c) the occurrence and nature of any Reportable Event or Prohibited Transaction, each as defined in ERISA, or any funding deficiency with respect to any Plan; (d) any termination or cancellation of any insurance policy which Borrower or any Third Party Obligor is required to maintain, or any uninsured or partially uninsured loss through liability or property damage, or through fire, theft or any other cause affecting Borrower's property which could reasonably be expected to have a Material Adverse Effect, or (e) any request for Borrower to perform under the terms of any guaranty permitted under Section 5.4(i).

SECTION 4.11. DOMESTIC SUBSIDIARY ASSET LIMIT. Ensure that the book value of the assets of Domestic Subsidiaries which are not Third Party Obligors represent no more than 25% of the book value of Borrower's consolidated assets (based on the then most recent fiscal year end financial statement then delivered or deemed delivered to Bank hereunder).

SECTION 4.12. OFFSHORE DEMAND DEPOSIT ACCOUNT. Cause SPSA to open an offshore demand deposit account with Bank no later than June 30, 2009 and to maintain such account with Bank thereafter.

ARTICLE V NEGATIVE COVENANTS

Borrower further covenants that so long as Bank remains committed to extend credit to Borrower pursuant hereto, or any liabilities (whether direct or contingent, liquidated or unliquidated) of Borrower to Bank under any of the Loan Documents remain outstanding, and until payment in full of all obligations of Borrower subject hereto, Borrower will not (and, as applicable, will not cause or permit any Third Party Obligor, and as to Section 5.10, SunPower Philippines Manufacturing, Ltd. to) without Bank's prior written consent:

SECTION 5.1. USE OF FUNDS. Use any of the proceeds of any credit extended hereunder except for the purposes stated in Article I hereof.

SECTION 5.2. CAPITAL EXPENDITURES. Make any additional investment in fixed assets in fiscal year ending 2009 in excess of an aggregate of Five Hundred Million Dollars (\$500,000,000.00), on a consolidated basis.

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

obligations under bonding contracts (however titled) entered into in the ordinary course of business, pursuant to which such bonding companies issue bonds or otherwise secure performance of Borrower and Subsidiaries for the benefit of their customers and contract counterparties; (vi) 0.75% senior convertible debentures issued in August 2007 in the aggregate principal amount of Two Hundred Twenty-Five Million Dollars (\$225,000,000.00) plus accrued interest thereon; (vii) unsecured indebtedness to International Finance Corporation in a principal amount not to exceed \$75,000,000.00 and to Union Bank of California in a principal amount not to exceed \$30,000,000.00, provided that prior to Borrower or any Third Party Obligor entering into any definitive or binding agreement with respect to any such indebtedness, Bank shall have reviewed and approved in writing all material terms and conditions of such indebtedness, and (viii) additional indebtedness of Borrower and Third Party Obligors in an aggregate principal amount not to exceed Twenty Five Million Dollars (\$25,000,000.00) outstanding at any one time. For clarity, Bank and Borrower agree that Borrower's or any Subsidiary's trade payables incurred in the ordinary course of business do not constitute indebtedness prohibited or restricted by the terms of this Section 5.3.

SECTION 5.4. GUARANTIES. Guarantee or become liable in any way as surety, endorser (other than as endorser of negotiable instruments for deposit or collection in the ordinary course of business), accommodation endorser or otherwise for any liabilities or obligations of any person or entity, other than (i) in the ordinary course of business (x) Borrower may guarantee the obligations of any Third Party Obligor or any other Subsidiary, and (y) any Third Party Obligor may guarantee (A) the obligations of Borrower or (B) the obligations of other Third Party Obligors or any other Subsidiary, in each case for any obligation other than obligations for borrowed money, (ii) any guaranty in favor of Bank, (iii) guaranties in favor of bonding companies in connection with obligations under bonding contracts entered into in the ordinary course of business, pursuant to which such bonding companies issues bonds or otherwise secures performance of Borrower and Subsidiaries for the benefit of their customers and contract counterparties, (iv) guarantees of indebtedness to International Finance Corporation, subject to the terms of clause 5.3(vii), and (v) guaranties and liabilities that constitute Permitted Indebtedness.

SECTION 5.5. LOANS, ADVANCES, INVESTMENTS. Make any loans or advances to or investments in any person or entity, except (a) any of the foregoing existing as of, and disclosed to Bank prior to, the date hereof, (b) additional loans or advances by Borrower or such Third Party Obligor to employees and officers in the ordinary course of business and in amounts not to exceed an aggregate of Fifteen Million Dollars (\$15,000,000.00) outstanding at any time, (c) investments which are made in accordance with Borrower's Investment Policy as from time to time adopted by its Board of Directors, (d) investments which constitute Specified Transactions, as defined in Section 5.8, below, (e) any of the foregoing that constitute Permitted Indebtedness, (f) advances to, or investments in, a Subsidiary or in Woongjin Energy by Borrower or any Third Party Obligor in the ordinary course of business; and (g) prepayment of obligations to vendors and suppliers in the ordinary course in an amount not to exceed Three Hundred Million Dollars (\$300,000,000.00).

SECTION 5.6. DIVIDENDS, DISTRIBUTIONS. Declare or pay any dividend or distribution either in cash, stock or any other property on Borrower's stock now or hereafter outstanding, nor redeem, retire, repurchase or otherwise acquire any shares of any class of Borrower's stock now or hereafter outstanding (other than repurchases or the like from employees, consultants, officers, and directors in connection with Borrower's stock plan); nor agree (or cause or permit any Subsidiary to agree) with any third party to prohibit, condition or

restrict the payment of dividends and distributions by such Subsidiary to Borrower or to another Subsidiary.

SECTION 5.7. PLEDGE OF ASSETS. Mortgage, pledge, grant or permit to exist a security interest in, or lien upon, all or any portion of Borrower's or such Third Party Obligor's assets (including all intellectual property) now owned or hereafter acquired, nor agree (or cause or permit any Third Party Obligor to agree) with any third party to prohibit, condition or restrict the granting of security interests or liens in the assets of Borrower or such Third Party Obligor, except (a) Permitted Liens, and (b) any of the foregoing in favor of Bank or which is existing as of, and disclosed to Bank in writing prior to, the date hereof.

SECTION 5.8. SPECIFIED TRANSACTIONS. Enter into any Specified Transaction with respect to which the Total Non-Stock Consideration paid or payable by Borrower and/or any Subsidiary exceeds Two Hundred Million Dollars (\$200,000,000.00) in the aggregate per fiscal year; provided, however, that Borrower and any Third Party Obligor may enter into a Specified Transaction regardless of the value of Total Non-Stock Consideration so long as such Specified Transaction involves no unaffiliated third parties and involves only (i) the Borrower and one or more Subsidiaries or (ii) two or more Subsidiaries. "Specified Transaction" means any of the following, provided that the applicable transaction has been approved by the Board of Directors of the entity (i) whose assets or equity interests are being acquired, or (ii) which is merging with Borrower or a Third Party Obligor:

- (a) the acquisition by Borrower or a Third Party Obligor of all or substantially all of the assets of another entity or division of such entity;
- (b) the merger or consolidation of any Third Party Obligor with or into any other entity, provided that the surviving entity shall be a Third Party Obligor;
- (c) the acquisition by Borrower or any Third Party Obligor of a controlling or majority interest in any other entity; and
- (d) investments in other entities, including joint ventures.

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

SECTION 5.9. CHANGE OF CONTROL. In no event shall Borrower (i) merge into or consolidate with any other entity; (ii) make any substantial change in the nature of Borrower's business as conducted as of the date hereof; (iii) cause or permit any Third Party Obligor to engage in any material business substantially unrelated to Borrower's business; or (iv) sell, lease, transfer or otherwise dispose of all or a material portion of Borrower's consolidated assets, or cause or permit any Material Subsidiary to do so, except transfers by and among Borrower and Subsidiaries in the ordinary course of business, and with "a material portion" defined for the purpose of this covenant as 25% or more of the book value of such consolidated assets (based on the then most recent fiscal year end financial statements then delivered or deemed delivered to Bank hereunder) in any fiscal year.

SECTION 5.10. CASH LIMITS. Cause or permit SunPower Philippines Manufacturing, Ltd.'s cash, cash equivalents and marketable securities at any time to exceed, in any fiscal month, an aggregate average daily amount of Twenty-five Million Dollars (\$25,000,000.00). Cause or permit SPSA's cash, cash equivalents and marketable securities at any time to exceed, in any fiscal month, an aggregate average daily amount of Fifty Million Dollars (\$50,000,000.00).

ARTICLE VI
EVENTS OF DEFAULT

SECTION 6.1. The occurrence of any of the following shall constitute an "Event of Default" under this Agreement:

- (a) Borrower shall fail to pay when due any principal, interest, fees or other amounts payable under any of the Loan Documents.
- (b) Any financial statement or certificate furnished to Bank in connection with, or any representation or warranty made by Borrower or any other party under this Agreement or any other Loan Document shall prove to be incorrect, false or misleading in any material respect when furnished or made.
- (c) Any default in the performance of or compliance with any obligation, agreement or other provision contained herein or in any other Loan Document (other than those referred to in subsections (a) and (b) above), and with respect to any such default which by its nature can be cured, such default shall continue for a period of thirty (30) days from the date an officer of Borrower first learned (or had reasonable due diligence been exercised, should have learned) of its occurrence.
- (d) Any default in the payment or performance of any obligation, or any defined event of default, under the terms of any contract or instrument (other than any of the Loan Documents) pursuant to which Borrower or any Third Party Obligor has incurred any debt or other liability to any person or entity, including Bank, and, if the debt or other liability is owed to a party other than Bank, such default accelerates or causes or permits to become immediately due and payable an amount in excess of ten million dollars (\$10,000,000.00).
- (e) The filing of a notice of judgment lien(s) in excess of an aggregate of ten million dollars (\$10,000,000.00) against Borrower or any Third Party Obligor; or the recording of any abstract(s) of judgment in excess of an aggregate of ten million dollars (\$10,000,000.00) against Borrower or any Third Party Obligor in any county in which Borrower or such Third Party Obligor has an interest in real property; or the service of a notice of levy and/or of a writ of attachment or execution, or other like process, in excess of an aggregate of ten million dollars (\$10,000,000.00) against the assets of Borrower or any Third Party Obligor; or the entry of a judgment(s) in excess of an aggregate of ten million dollars (\$10,000,000.00) against Borrower or any Third Party Obligor.
- (f) Borrower, any Material Subsidiary or any Third Party Obligor shall become insolvent, or shall suffer or consent to or apply for the appointment of a receiver, trustee, custodian or liquidator of itself or any of its property, or shall generally fail to pay its debts as they become due, or shall make a general assignment for the benefit of creditors; Borrower, any Material Subsidiary or any Third Party Obligor shall file a voluntary petition in bankruptcy, or

seeking reorganization, in order to effect a plan or other arrangement with creditors or any other relief under the Bankruptcy Reform Act, Title 11 of the United States Code, as amended or recodified from time to time ("Bankruptcy Code"), or under any state or federal law granting relief to debtors, whether now or hereafter in effect; or any involuntary petition or proceeding pursuant to the Bankruptcy Code or any other applicable state or federal law relating to bankruptcy, reorganization or other relief for debtors is filed or commenced against Borrower, any Material Subsidiary or any Third Party Obligor, or Borrower, any Material Subsidiary or any Third Party Obligor shall file an answer admitting the jurisdiction of the court and the material allegations of any involuntary petition; or Borrower, any Material Subsidiary or any Third Party Obligor shall be adjudicated a bankrupt, or an order for relief shall be entered against Borrower, any Material Subsidiary or any Third Party Obligor by any court of competent jurisdiction under the Bankruptcy Code or any other applicable state or federal law relating to bankruptcy, reorganization or other relief for debtors.

(g) Borrower is called upon to satisfy any guaranty obligation or simultaneous guaranty obligations permitted under Section 5.4(i) with an aggregate liability in excess of \$10,000,000.00, where Borrower's performance of such obligations, as substantiated by the beneficiary thereof, is not contingent on any additional condition, including the passage of time.

(h) The dissolution or liquidation of Borrower or, except as otherwise permitted under this Agreement, any Third Party Obligor; or Borrower or, except as otherwise permitted under this Agreement, any such Third Party Obligor, or any of its directors, stockholders or members, shall take action seeking to effect the dissolution or liquidation of Borrower or such Third Party Obligor. The dissolution of a Third Party Obligor shall not constitute an Event of Default if the assets and liabilities of such Third Party Obligor are transferred to Borrower or to another Third Party Obligor by reason of such dissolution.

(i) Any single entity or group of affiliated entities shall acquire all or substantially all of the common stock of Borrower.

SECTION 6.2. REMEDIES. Upon the occurrence of any Event of Default: (a) all indebtedness of Borrower under each of the Loan Documents, any term thereof to the contrary notwithstanding, shall at Bank's option and without notice become immediately due and payable without presentment, demand, protest or notice of dishonor, all of which are hereby expressly waived by Borrower; (b) the obligation, if any, of Bank to extend any further credit under any of the Loan Documents shall immediately cease and terminate; and (c) Bank shall have all rights, powers and remedies available under each of the Loan Documents, or accorded by law, including without limitation the right to resort to any or all security for any credit subject hereto and to exercise any or all of the rights of a beneficiary or secured party pursuant to applicable law. All rights, powers and remedies of Bank may be exercised at any time by Bank and from time to time after the occurrence of an Event of Default, are cumulative and not exclusive, and shall be in addition to any other rights, powers or remedies provided by law or equity.

ARTICLE VII MISCELLANEOUS

SECTION 7.1. NO WAIVER. No delay, failure or discontinuance of Bank in exercising any right, power or remedy under any of the Loan Documents shall affect or operate as a waiver of such right, power or remedy; nor shall any single or partial exercise of any such right, power or remedy preclude, waive or otherwise affect any other or further exercise thereof or the

exercise of any other right, power or remedy. Any waiver, permit, consent or approval of any kind by Bank of any breach of or default under any of the Loan Documents must be in writing and shall be effective only to the extent set forth in such writing.

SECTION 7.2. NOTICES. All notices, requests and demands which any party is required or may desire to give to any other party under any provision of this Agreement must be in writing delivered to each party at the following address:

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

BANK: WELLS FARGO BANK, NATIONAL ASSOCIATION
Peninsula RCBO
400 Hamilton Avenue
Palo Alto, CA 94301

or to such other address as any party may designate by written notice to all other parties. Each such notice, request and demand shall be deemed given or made as follows: (a) if sent by hand delivery, upon delivery; (b) if sent by mail, upon the earlier of the date of receipt or three (3) days after deposit in the U.S. mail, first class and postage prepaid; and (c) if sent by telecopy, upon receipt.

SECTION 7.3. COSTS, EXPENSES AND ATTORNEYS' FEES. Borrower shall pay to Bank immediately upon demand the full amount of all payments, advances, charges, costs and expenses, including reasonable attorneys' fees (to include outside counsel fees and all allocated costs of Bank's in-house counsel), expended or incurred by Bank in connection with (a) the negotiation and preparation of this Agreement and the other Loan Documents, Bank's continued administration hereof and thereof, and the preparation of any amendments and waivers hereto and thereto, (b) the enforcement of Bank's rights and/or the collection of any amounts which become due to Bank under any of the Loan Documents, and (c) the prosecution or defense of any action in any way related to any of the Loan Documents, including without limitation, any action for declaratory relief, whether incurred at the trial or appellate level, in an arbitration proceeding or otherwise, and including any of the foregoing incurred in connection with any bankruptcy proceeding (including without limitation, any adversary proceeding, contested matter or motion brought by Bank or any other person) relating to Borrower or any other person or entity.

SECTION 7.4. SUCCESSORS, ASSIGNMENT. This Agreement shall be binding upon and inure to the benefit of the heirs, executors, administrators, legal representatives, successors and assigns of the parties; provided however, that Borrower may not assign or transfer its interests or rights hereunder without Bank's prior written consent. Bank reserves the right to sell, assign, transfer, negotiate or grant participations in all or any part of, or any interest in, Bank's rights and benefits under each of the Loan Documents. In connection therewith, Bank may disclose all documents and information which Bank now has or may hereafter acquire relating to any credit subject hereto, Borrower or its business, any guarantor hereunder or the business of such guarantor, or any collateral required hereunder; provided, that any such prospective assignee or participant agree to be bound by the terms of the Confidentiality Agreement.

SECTION 7.5. ENTIRE AGREEMENT; AMENDMENT. This Agreement and the other Loan Documents constitute the entire agreement between Borrower and Bank with respect to each credit subject hereto and supersede all prior negotiations, communications, discussions and correspondence concerning the subject matter hereof. Notwithstanding the foregoing, in the event of any conflict or inconsistency between the terms of this Agreement and any existing letter of credit agreement executed in connection with this Agreement, the terms of this Agreement shall prevail. This Agreement may be amended or modified only in writing signed by each party hereto.

SECTION 7.6. NO THIRD PARTY BENEFICIARIES. This Agreement is made and entered into for the sole protection and benefit of the parties hereto and their respective permitted successors and assigns, and no other person or entity shall be a third party beneficiary of, or have any direct or indirect cause of action or claim in connection with, this Agreement or any other of the Loan Documents to which it is not a party.

SECTION 7.7. TIME. Time is of the essence of each and every provision of this Agreement and each other of the Loan Documents.

SECTION 7.8. SEVERABILITY OF PROVISIONS. If any provision of this Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity without invalidating the remainder of such provision or any remaining provisions of this Agreement.

SECTION 7.9. COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, and all of which when taken together shall constitute one and the same Agreement.

SECTION 7.10. GOVERNING LAW. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

SECTION 7.11. ARBITRATION.

(a) Arbitration. The parties hereto agree, upon demand by any party, to submit to binding arbitration all claims, disputes and controversies between or among them (and their respective employees, officers, directors, attorneys, and other agents), whether in tort, contract or otherwise in any way arising out of or relating to (i) any credit subject hereto, or any of the Loan Documents, and their negotiation, execution, collateralization, administration, repayment, modification, extension, substitution, formation, inducement, enforcement, default or termination; or (ii) requests for additional credit.

(b) Governing Rules. Any arbitration proceeding will (i) proceed in a location in California selected by the American Arbitration Association (“AAA”); (ii) be governed by the Federal Arbitration Act (Title 9 of the United States Code), notwithstanding any conflicting choice of law provision in any of the documents between the parties; and (iii) be conducted by the AAA, or such other administrator as the parties shall mutually agree upon, in accordance with the AAA’s commercial dispute resolution procedures, unless the claim or counterclaim is at least one million dollars (\$1,000,000.00) exclusive of claimed interest, arbitration fees and costs in which case the arbitration shall be conducted in accordance with the AAA’s optional procedures for large, complex commercial disputes (the commercial dispute resolution procedures or the optional procedures for large, complex commercial disputes to be referred to

herein, as applicable, as the “Rules”). If there is any inconsistency between the terms hereof and the Rules, the terms and procedures set forth herein shall control. Any party who fails or refuses to submit to arbitration following a demand by any other party shall bear all costs and expenses incurred by such other party in compelling arbitration of any dispute. Nothing contained herein shall be deemed to be a waiver by any party that is a bank of the protections afforded to it under 12 U.S.C. §91 or any similar applicable state law.

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

(d) Arbitrator Qualifications and Powers. Any arbitration proceeding in which the amount in controversy is five million dollars (\$5,000,000.00) or less will be decided by a single arbitrator selected according to the Rules, and who shall not render an award of greater than five million dollars (\$5,000,000.00). Any dispute in which the amount in controversy exceeds five million dollars (\$5,000,000.00) shall be decided by majority vote of a panel of three arbitrators; provided however, that all three arbitrators must actively participate in all hearings and deliberations. The arbitrator will be a neutral attorney licensed in the State of California or a neutral retired judge of the state or federal judiciary of California, in either case with a minimum of ten years experience in the substantive law applicable to the subject matter of the dispute to be arbitrated. The arbitrator will determine whether or not an issue is arbitratable and will give effect to the statutes of limitation in determining any claim. In any arbitration proceeding the arbitrator will decide (by documents only or with a hearing at the arbitrator's discretion) any pre-hearing motions which are similar to motions to dismiss for failure to state a claim or motions for summary adjudication. The arbitrator shall resolve all disputes in accordance with the substantive law of California and may grant any remedy or relief that a court of such state could order or grant within the scope hereof and such ancillary relief as is necessary to make effective any award. The arbitrator shall also have the power to award recovery of all costs and fees, to impose sanctions and to take such other action as the arbitrator deems necessary to the same extent a judge could pursuant to the Federal Rules of Civil Procedure, the California Rules of Civil Procedure or other applicable law. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction. The institution and maintenance of an action for judicial relief or pursuit of a provisional or ancillary remedy shall not constitute a waiver of the right of any party, including the plaintiff, to submit the controversy or claim to arbitration if any other party contests such action for judicial relief.

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

(f) Class Proceedings and Consolidations. No party hereto shall be entitled to join or consolidate disputes by or against others in any arbitration, except parties who have executed

any Loan Document, or to include in any arbitration any dispute as a representative or member of a class, or to act in any arbitration in the interest of the general public or in a private attorney general capacity.

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

(h) Real Property Collateral; Judicial Reference. Notwithstanding anything herein to the contrary, no dispute shall be submitted to arbitration if the dispute concerns indebtedness secured directly or indirectly, in whole or in part, by any real property unless (i) the holder of the mortgage, lien or security interest specifically elects in writing to proceed with the arbitration, or (ii) all parties to the arbitration waive any rights or benefits that might accrue to them by virtue of the single action rule statute of California, thereby agreeing that all indebtedness and obligations of the parties, and all mortgages, liens and security interests securing such indebtedness and obligations, shall remain fully valid and enforceable. If any such dispute is not submitted to arbitration, the dispute shall be referred to a referee in accordance with California Code of Civil Procedure Section 638 et seq., and this general reference agreement is intended to be specifically enforceable in accordance with said Section 638. A referee with the qualifications required herein for arbitrators shall be selected pursuant to the AAA's selection procedures. Judgment upon the decision rendered by a referee shall be entered in the court in which such proceeding was commenced in accordance with California Code of Civil Procedure Sections 644 and 645.

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

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

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first written above. This Agreement amends, restates and replaces the Credit Agreement between the parties hereto dated as of July 13, 2007, as amended from time to time.

WELLS FARGO BANK,
SUNPOWER CORPORATION

NATIONAL ASSOCIATION

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

By: /s/ Matthew A. Servatius
Matthew A. Servatius
Vice President

Goldms\My Documents\sunpower-crAgt-NewNEW3.doc (Rev. 11/06)
AU#5681 #7576615169

--

Schedule 1.3

Price Schedule — Trade Services

As of March 20, 2009

Services	Price
STANDBY LC	
Issuance	20 bps p.a. with a maturity on or before July 31, 2102 and 35 bps pa with maturity thereafter
Amendment—Increase	Same pricing as issuance, based on maturity
Amendment—No Increase	\$65.00 min.
Examination/Payment	Same pricing as issuance based on maturity, \$250.00 min.
Transfer	Same pricing as issuance based on maturity, \$250.00 min.
Assignment	\$500.00 (\$750.00 with LC copy)
Consultation to Structure LC	\$200.00/hr.
Special Handling	\$250.00 min.
Cancellation	\$100.00

Commercial LCs - Services Price**EXPORT LC**

Pre-Advice- \$50.00
 Advice - \$110.00
 Confirmation - \$150.00 min./qtr.
 Confirmation—Standby LC \$500.00 min./qtr.
 Amendment - \$75.00
 Amendment—Confirmed LC Applicable confirmation fee, \$100.00 min.
 Negotiation By arrangement or 1/8%, \$150.00 min.
 Documents Sent Unexamined \$100.00
 Acceptance/Confirmation Deferred Payment By arrangement or 3% p.a., \$150.00 min.
 Deferred Payment—Unconfirmed \$100.00
 Discrepancy \$90.00
 Transfer By arrangement or 1/4%, \$250.00 min.
 Assignment By arrangement or 1/4%, \$250.00 min., \$2,500.00 max.
 Cancellation \$100.00

Goldms\My Documents\sunpower-crAgt-NewNEW3.doc (Rev. 11/06)
 AU#5681 #7576615169

--

1. SunPower North America, LLC, a Delaware limited liability company and wholly owned subsidiary of SunPower Corporation;
2. Pluto Acquisition Company, LLC, a Delaware limited liability company in which SunPower Corporation is the sole member;
3. SunPower Corporation, Systems, a Delaware corporation, formerly known as PowerLight Corporation, and wholly owned subsidiary of Pluto Acquisition Company, LLC;
4. Solar Star TO, LLC, a Delaware limited liability company in which SunPower Corporation, Systems is the sole member;
5. Solar Star YC, LLC, a Delaware limited liability company in which SunPower Corporation, Systems is the sole member;
6. Solar Star I, LLC, a Delaware limited liability company in which SunPower Corporation, Systems is the sole member;
7. Solar Star II, LLC, a Delaware limited liability company in which SunPower Corporation, Systems is the sole member;
8. SunPower Technology Ltd., a Cayman Islands entity and wholly owned subsidiary of SunPower Corporation;
9. SunPower Corporation (Switzerland) SARL, a Swiss entity and wholly owned subsidiary of SunPower Technology, Ltd.;
10. SunPower Philippines Manufacturing Ltd., a Cayman Islands entity and wholly owned subsidiary of SunPower Technology, Ltd.;
11. SunPower Systems SA, a Swiss entity and wholly owned subsidiary of SunPower Corporation, Systems;
12. SunPower GmbH, a German entity and wholly owned subsidiary of SunPower Systems SA;
13. SPWR Energias Renovaveis Unipessoal Limitada, a Portuguese entity and wholly owned subsidiary of SunPower Systems SA;
14. SunPower Energy Systems Spain, S.L., a Spanish entity and wholly owned subsidiary of SunPower Systems SA;
15. SunPower Development Company, a Delaware corporation and wholly owned subsidiary of SunPower Corporation;
16. SunPower Bermuda Holdings, a Bermuda exempted general partnership in which SunPower Corporation and SunPower Corporation, Systems are general partners;
17. SunPower Foundation, a California nonprofit corporation and wholly-owned subsidiary of SunPower Corporation;
18. SunPower Philippines Ltd. – Regional Operating Headquarters (ROHQ), a Cayman Islands multinational company and a wholly-owned subsidiary of SunPower Technology Ltd.;
19. SunPower Malaysia Manufacturing Sdn Bhd, a Malaysian private company limited by shares and a wholly-owned subsidiary of SunPower Technology Ltd.;
20. SPML Land, Inc., a Philippines company and a wholly-owned subsidiary of SunPower Philippines Manufacturing Ltd.;
21. SunPower Energy Systems Korea, a company organized under the laws of Korea and a wholly-owned subsidiary of SunPower Systems SA;
22. SunPower Italia Srl, a company organized under the laws of Italy and a wholly-owned subsidiary of SunPower Systems SA;
23. SunPower Corporation Australia Pty Ltd, an Australian proprietary company limited by shares and a wholly-owned subsidiary of SunPower Systems SA;
24. SunPower France SAS, a company organized under the laws of France and a wholly-owned subsidiary of SunPower Systems SA;
25. SunPower Energy Systems Canada Corporation, an unlimited liability corporation incorporated under the laws of Nova Scotia and a wholly-owned subsidiary of SunPower Systems SA;
26. Helios Solar Star A-1 Company, an unlimited liability corporation incorporated under the laws of Nova Scotia and a wholly-owned subsidiary of SunPower Energy Systems Canada Corporation;
27. Helios Solar Star A-1, LP, a limited partnership organized under the laws of Nova Scotia in which SunPower Energy Systems Canada Corporation and Helios Solar Star A-1 Company are the only partners;
28. Greater Sandhill I, LLC, a Delaware limited liability company in which SunPower Corporation, Systems is the sole member;
29. High Plains Ranch I, LLC, a Delaware limited liability company in which SunPower Corporation, Systems is the sole member;
30. High Plains Ranch II, LLC, a Delaware limited liability company in which SunPower Corporation, Systems is the sole member;
31. Morgan Stanley SunPower Solar 2007 LLC, a Delaware limited liability company in which MS Solar I, LLC and SunPower Corporation, Systems are the only members;
32. MS Solar Star I, LLC, a Delaware limited liability company in which SunPower Corporation, Systems is the sole member;
33. Parrey, LLC, a Delaware limited liability company in which SunPower Corporation, Systems is the sole member;
34. Solar Star Arizona I, LLC, a Delaware limited liability company in which SunPower Corporation, Systems is the sole member;
35. Solar Star BBY CA I, LLC, a Delaware limited liability company in which SunPower Corporation, Systems is the sole member;

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

Schedule 2.12(b) – Special Purpose Entities

1. Solar Star TO, LLC, a Delaware limited liability company in which SunPower Corporation, Systems is the sole member;
2. Solar Star YC, LLC, a Delaware limited liability company in which SunPower Corporation, Systems is the sole member;
3. Solar Star I, LLC, a Delaware limited liability company in which SunPower Corporation, Systems is the sole member;
4. Solar Star II, LLC, a Delaware limited liability company in which SunPower Corporation, Systems is the sole member;
5. Greater Sandhill I, LLC, a Delaware limited liability company in which SunPower Corporation, Systems is the sole member;
6. High Plains Ranch I, LLC, a Delaware limited liability company in which SunPower Corporation, Systems is the sole member;
7. High Plains Ranch II, LLC, a Delaware limited liability company in which SunPower Corporation, Systems is the sole member;
8. Morgan Stanley SunPower Solar 2007 LLC, a Delaware limited liability company in which MS Solar I, LLC and SunPower Corporation, Systems are the only members;
9. MS Solar Star I, LLC, a Delaware limited liability company in which SunPower Corporation, Systems is the sole member;
10. Parrey, LLC, a Delaware limited liability company in which SunPower Corporation, Systems is the sole member;
11. Solar Star Arizona I, LLC, a Delaware limited liability company in which SunPower Corporation, Systems is the sole member;
12. Solar Star BBY CA I, LLC, a Delaware limited liability company in which SunPower Corporation, Systems is the sole member;
13. Solar Star BBY HI I, LLC, a Delaware limited liability company in which SunPower Corporation, Systems is the sole member;
14. Solar Star BBY NJ I, LLC, a Delaware limited liability company in which SunPower Corporation, Systems is the sole member;
15. Solar Star California I, LLC, a Delaware limited liability company in which SunPower Corporation, Systems is the sole member;
16. Solar Star California IV, LLC, a Delaware limited liability company in which SunPower Corporation, Systems is the sole member;
17. Solar Star California VII, LLC, a Delaware limited liability company in which SunPower Corporation, Systems is the sole member;
18. Solar Star California VIII, LLC, a Delaware limited liability company in which SunPower Corporation, Systems is the sole member;
19. Solar Star California XI, LLC, a Delaware limited liability company in which SunPower Corporation, Systems is the sole member;
20. Solar Star California XII, LLC, a Delaware limited liability company in which SunPower Corporation, Systems is the sole member;
21. Solar Star California XIII, a Delaware limited liability company in which SunPower Corporation, Systems is the sole member;
22. Solar Star California XIV, a Delaware limited liability company in which SunPower Corporation, Systems is the sole member;
23. Solar Star California XV, a Delaware limited liability company in which SunPower Corporation, Systems is the sole member;
24. Solar Star Connecticut I, LLC, a Delaware limited liability company in which SunPower Corporation, Systems is the sole member;
25. Solar Star Estancia I, LLC, a Delaware limited liability company in which SunPower Corporation, Systems is the sole member;
26. Solar Star Hawaii I, LLC, a Delaware limited liability company in which SunPower Corporation, Systems is the sole member;
27. Solar Star Hawaii II, LLC, a Delaware limited liability company in which SunPower Corporation, Systems is the sole member;
28. Solar Star Hawaii III, LLC, a Delaware limited liability company in which SunPower Corporation, Systems is the sole member;
29. Solar Star HI Air, LLC, a Delaware limited liability company in which SunPower Corporation, Systems is the sole member;

30. Solar Star Koyo I, LLC, a Delaware limited liability company in which SunPower Corporation, Systems is the sole member;
31. Solar Star Mervyns I, LLC, a Delaware limited liability company in which SunPower Corporation, Systems is the sole member;
32. Solar Star MWHI I, LLC, a Delaware limited liability company in which SunPower Corporation, Systems is the sole member;
33. Solar Star New Jersey II, LLC, a Delaware limited liability company in which SunPower Corporation, Systems is the sole member;
34. Solar Star New Jersey III, LLC, a Delaware limited liability company in which SunPower Corporation, Systems is the sole member;
35. Solar Star New Jersey IV, a Delaware limited liability company in which SunPower Corporation, Systems is the sole member;
36. Solar Star New Jersey V, a Delaware limited liability company in which SunPower Corporation, Systems is the sole member;
37. Solar Star New Jersey VI, a Delaware limited liability company in which SunPower Corporation, Systems is the sole member;
38. Solar Star North Carolina I, LLC, a Delaware limited liability company in which SunPower Corporation, Systems is the sole member;
39. Solar Star Ohio I, LLC, a Delaware limited liability company in which SunPower Corporation, Systems is the sole member;
40. Solar Star Rancho CWD I, LLC, a Delaware limited liability company in which SunPower Corporation, Systems is the sole member;
41. SPWR Galaxy Holdco 2007 LLC, a Delaware limited liability company in which EFS Solar Star Holdings LLC (99%) and SunPower Corporation, Systems are the only members;
42. Solar Star TJX I, LLC, a Delaware limited liability company in which SunPower Corporation, Systems is the sole member; and
43. SSSA, LLC, a Delaware limited liability company in which SunPower Corporation, Systems is the sole member.

WELLS FARGO CONTINUING GUARANTY

TO: WELLS FARGO BANK, NATIONAL ASSOCIATION

1. **GUARANTY; DEFINITIONS.** In consideration of any credit or other financial accommodation heretofore, now or hereafter extended or made to **SunPower Corporation** ("Borrowers"), or any of them, by WELLS FARGO BANK, NATIONAL ASSOCIATION ("Bank"), and for other valuable consideration, the undersigned **SunPower North America, LLC** ("Guarantor"), jointly and severally unconditionally guarantees and promises to pay to Bank or order, on demand in lawful money of the United States of America and in immediately available funds, any and all Indebtedness of any of the Borrowers to Bank. The term "Indebtedness" is used herein in its most comprehensive sense and includes any and all advances, debts, obligations and liabilities of Borrowers, or any of them, heretofore, now or hereafter made, incurred or created, whether voluntary or involuntary and however arising, whether due or not due, absolute or contingent, liquidated or unliquidated, determined or undetermined, including under any swap, derivative, foreign exchange, hedge, deposit, treasury management or other similar transaction or arrangement, and whether Borrowers may be liable individually or jointly with others, or whether recovery upon such Indebtedness may be or hereafter becomes unenforceable. This Guaranty is a guaranty of payment and not collection.

2. **MAXIMUM LIABILITY; SUCCESSIVE TRANSACTIONS; REVOCATION; OBLIGATION UNDER OTHER GUARANTIES.** The liability of Guarantor shall not exceed at any time the sum of (a) **\$50,000,000.00**, (b) all accrued and unpaid interest on any Indebtedness, and (c) all costs and expenses pertaining to the enforcement of this Guaranty and/or the collection of the Indebtedness. Notwithstanding the foregoing, Bank may permit the Indebtedness of Borrowers to exceed Guarantor's liability. This is a continuing guaranty and all rights, powers and remedies hereunder shall apply to all past, present and future Indebtedness of each of the Borrowers to Bank, including that arising under successive transactions which shall either continue the Indebtedness, increase or decrease it, or from time to time create new Indebtedness after all or any prior Indebtedness has been satisfied, and notwithstanding the death, incapacity, dissolution, liquidation or bankruptcy of any of the Borrowers or Guarantor or any other event or proceeding affecting any of the Borrowers or Guarantor. This Guaranty shall not apply to any new Indebtedness created after actual receipt by Bank of written notice of its revocation as to such new Indebtedness; provided however, that loans or advances made by Bank to any of the Borrowers after revocation under commitments existing prior to receipt by Bank of such revocation, and extensions, renewals or modifications, of any kind, of Indebtedness incurred by any of the Borrowers or committed by Bank prior to receipt by Bank of such revocation, shall not be considered new Indebtedness. Any such notice must be sent to Bank by registered U.S. mail, postage prepaid, addressed to its office at **Peninsula Technology RCBO, 400 Hamilton Avenue, Palo Alto, CA 94301**, or at such other address as Bank shall from time to time designate. Any payment by Guarantor with respect to the Indebtedness shall not reduce Guarantor's maximum obligation hereunder unless written notice to that effect is actually received by Bank at or prior to the time of such payment. The obligations of Guarantor hereunder shall be in addition to any obligations of Guarantor under any other guaranties of any liabilities or obligations of any of the Borrowers or any other persons heretofore or hereafter given to Bank unless said other guaranties are expressly modified or revoked in writing; and this Guaranty shall not, unless expressly herein provided, affect or invalidate any such other guaranties.

3. **OBLIGATIONS JOINT AND SEVERAL; SEPARATE ACTIONS; WAIVER OF STATUTE OF LIMITATIONS; REINSTATEMENT OF LIABILITY.** The obligations hereunder are joint and several and independent of the obligations of Borrowers, and a separate action or actions may be brought and prosecuted against Guarantor whether action is brought against any of the Borrowers or any other person, or whether any of the Borrowers or any other person is joined in any such action or actions. Guarantor acknowledges that this Guaranty is absolute and unconditional, there are no conditions precedent to the effectiveness of this Guaranty, and this Guaranty is in full force and effect and is binding on Guarantor as of the date written below, regardless of whether Bank obtains collateral or any guaranties from others or takes any other action contemplated by Guarantor. Guarantor waives the benefit of any statute of limitations affecting Guarantor's liability hereunder or the enforcement thereof, and Guarantor agrees that any payment of any Indebtedness or other act which shall toll any statute of limitations applicable thereto shall similarly operate to toll such statute of limitations applicable to Guarantor's liability hereunder. The liability of Guarantor hereunder shall be reinstated and revived and the rights of Bank shall continue if and to the extent for any reason any amount at any time paid on account of any

Indebtedness guaranteed hereby is rescinded or must otherwise be restored by Bank, whether as a result of any proceedings in bankruptcy or reorganization or otherwise, all as though such amount had not been paid. The determination as to whether any amount so paid must be rescinded or restored shall be made by Bank in its sole discretion; provided however, that if Bank chooses to contest any such matter at the request of Guarantor, Guarantor agrees to indemnify and hold Bank harmless from and against all costs and expenses, including reasonable attorneys' fees, expended or incurred by Bank in connection therewith, including without limitation, in any litigation with respect thereto.

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

5. REPRESENTATIONS AND WARRANTIES. Guarantor represents and warrants to Bank that: (a) this Guaranty is executed at Borrowers' request; (b) Guarantor shall not, without Bank's prior written consent, sell, lease, assign, encumber, hypothecate, transfer or otherwise dispose of all or a substantial or material part of Guarantor's assets other than in the ordinary course of Guarantor's business; (c) Bank has made no representation to Guarantor as to the creditworthiness of any of the Borrowers; and (d) Guarantor has established adequate means of obtaining from each of the Borrowers on a continuing basis financial and other information pertaining to Borrowers' financial condition. Guarantor agrees to keep adequately informed from such means of any facts, events or circumstances which might in any way affect Guarantor's risks hereunder, and Guarantor further agrees that Bank shall have no obligation to disclose to Guarantor any information or material about any of the Borrowers which is acquired by Bank in any manner.

6. GUARANTOR'S WAIVERS.

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

6.2 Guarantor waives any defense to its obligations hereunder based upon or arising by reason of: (a) any disability or other defense of any of the Borrowers or any other person; (b) the cessation or limitation from any cause whatsoever, other than payment in full, of the Indebtedness of any of the Borrowers or any other person; (c) any lack of authority of any officer, director, partner, agent or any other person acting or purporting to act on behalf of any of the Borrowers which is a corporation, partnership or other type of entity, or any defect in the formation of any such Borrower; (d) the application by any of the Borrowers of the proceeds of any Indebtedness for purposes other than the purposes represented by Borrowers to, or intended or understood by, Bank or Guarantor; (e) any act or omission by Bank which directly or indirectly results in or aids the discharge of any of the Borrowers or any portion of the Indebtedness by operation of law or otherwise, or which in any way impairs or

suspends any rights or remedies of Bank against any of the Borrowers; (f) any impairment of the value of any interest in any security for the Indebtedness or any portion thereof, including without limitation, the failure to obtain or maintain perfection or recordation of any interest in any such security, the release of any such security without substitution, and/or the failure to preserve the value of, or to comply with applicable law in disposing of, any such security; (g) any modification of the Indebtedness, in any form whatsoever, including any modification made after revocation hereof to any Indebtedness incurred prior to such revocation, and including without limitation the renewal, extension, acceleration or other change in time for payment of, or other change in the terms of, the Indebtedness or any portion thereof, including increase or decrease of the rate of interest thereon; or (h) any requirement that Bank give any notice of acceptance of this Guaranty. Until all Indebtedness shall have been paid in full, Guarantor shall have no right of subrogation, and Guarantor waives any right to enforce any remedy which Bank now has or may hereafter have against any of the Borrowers or any other person, and waives any benefit of, or any right to participate in, any security now or hereafter held by Bank. Guarantor further waives all rights and defenses Guarantor may have arising out of (i) any election of remedies by Bank, even though that election of remedies, such as a non-judicial foreclosure with respect to any security for any portion of the Indebtedness, destroys Guarantor's rights of subrogation or Guarantor's rights to proceed against any of the Borrowers for reimbursement, or (ii) any loss of rights Guarantor may suffer by reason of any rights, powers or remedies of any of the Borrowers in connection with any anti-deficiency laws or any other laws limiting, qualifying or discharging Borrowers' Indebtedness, whether by operation of Sections 726, 580a or 580d of the Code of Civil Procedure as from time to time amended, or otherwise, including any rights Guarantor may have to a Section 580a fair market value hearing to determine the size of a deficiency following any foreclosure sale or other disposition of any real property security for any portion of the Indebtedness.

7. **BANK'S RIGHTS WITH RESPECT TO GUARANTOR'S PROPERTY IN BANK'S POSSESSION.** In addition to all liens upon and rights of setoff against the monies, securities or other property of Guarantor given to Bank by law, Bank shall have a lien upon and a right of setoff against all monies, securities and other property of Guarantor now or hereafter in the possession of or on deposit with Bank, whether held in a general or special account or deposit or for safekeeping or otherwise, and every such lien and right of setoff may be exercised without demand upon or notice to Guarantor. No lien or right of setoff shall be deemed to have been waived by any act or conduct on the part of Bank, or by any neglect to exercise such right of setoff or to enforce such lien, or by any delay in so doing, and every right of setoff and lien shall continue in full force and effect until such right of setoff or lien is specifically waived or released by Bank in writing.

8. **SUBORDINATION.** Any Indebtedness of any of the Borrowers now or hereafter held by Guarantor is hereby subordinated to the Indebtedness of Borrowers to Bank. Such Indebtedness of Borrowers to Guarantor is assigned to Bank as security for this Guaranty and the Indebtedness and, if Bank requests, shall be collected and received by Guarantor as trustee for Bank and paid over to Bank on account of the Indebtedness of Borrowers to Bank but without reducing or affecting in any manner the liability of Guarantor under the other provisions of this Guaranty. Any notes or other instruments now or hereafter evidencing such Indebtedness of any of the Borrowers to Guarantor shall be marked with a legend that the same are subject to this Guaranty and, if Bank so requests, shall be delivered to Bank. Bank is hereby authorized in the name of Guarantor from time to time to file financing statements and continuation statements and execute such other documents and take such other action as Bank deems necessary or appropriate to perfect, preserve and enforce its rights hereunder.

9. **REMEDIES; NO WAIVER.** All rights, powers and remedies of Bank hereunder are cumulative. No delay, failure or discontinuance of Bank in exercising any right, power or remedy hereunder shall affect or operate as a waiver of such right, power or remedy; nor shall any single or partial exercise of any such right, power or remedy preclude, waive or otherwise affect any other or further exercise thereof or the exercise of any other right, power or remedy. Any waiver, permit, consent or approval of any kind by Bank of any breach of this Guaranty, or any such waiver of any provisions or conditions hereof, must be in writing and shall be effective only to the extent set forth in writing.

10. **COSTS, EXPENSES AND ATTORNEYS' FEES.** Guarantor shall pay to Bank immediately upon demand the full amount of all payments, advances, charges, costs and expenses, including reasonable attorneys' fees (to include outside counsel fees and all allocated costs of Bank's in-house counsel), expended or incurred by Bank in connection with the enforcement of any of Bank's rights, powers or remedies and/or the collection of any

amounts which become due to Bank under this Guaranty, and the prosecution or defense of any action in any way related to this Guaranty, whether incurred at the trial or appellate level, in an arbitration proceeding or otherwise, and including any of the foregoing incurred in connection with any bankruptcy proceeding (including without limitation, any adversary proceeding, contested matter or motion brought by Bank or any other person) relating to Guarantor or any other person or entity. All of the foregoing shall be paid by Guarantor with interest from the date of demand until paid in full at a rate per annum equal to the greater of ten percent (10%) or Bank's Prime Rate in effect from time to time.

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

12. **AMENDMENT.** This Guaranty may be amended or modified only in writing signed by Bank and Guarantor.

13. **OBLIGATIONS OF MARRIED PERSONS.** Any married person who signs this Guaranty as a Guarantor hereby expressly agrees that recourse may be had against his or her separate property for all his or her obligations under this Guaranty.

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

15. **UNDERSTANDING WITH RESPECT TO WAIVERS; SEVERABILITY OF PROVISIONS.** Guarantor warrants and agrees that each of the waivers set forth herein is made with Guarantor's full knowledge of its significance and consequences, and that under the circumstances, the waivers are reasonable and not contrary to public policy or law. If any waiver or other provision of this Agreement shall be held to be prohibited by or invalid under applicable public policy or law, such waiver or other provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such waiver or other provision or any remaining provisions of this Agreement.

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

17. **ARBITRATION.**

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

17.2 **Governing Rules.** Any arbitration proceeding will (a) proceed in a location in California selected by the American Arbitration Association ("AAA"); (b) be governed by the Federal Arbitration Act (Title 9 of the United States Code), notwithstanding any conflicting choice of law provision in any of the documents between the parties; and (c) be conducted by the AAA, or such other administrator as the parties shall mutually agree upon, in accordance with the AAA's commercial dispute resolution procedures, unless the claim or counterclaim is at least \$1,000,000.00 exclusive of claimed interest, arbitration fees and costs in which case the arbitration shall be

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

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

17.4 Arbitrator Qualifications and Powers. Any arbitration proceeding in which the amount in controversy is \$5,000,000.00 or less will be decided by a single arbitrator selected according to the Rules, and who shall not render an award of greater than \$5,000,000.00. Any dispute in which the amount in controversy exceeds \$5,000,000.00 shall be decided by majority vote of a panel of three arbitrators; provided however, that all three arbitrators must actively participate in all hearings and deliberations. The arbitrator will be a neutral attorney licensed in the State of California or a neutral retired judge of the state or federal judiciary of California, in either case with a minimum of ten years experience in the substantive law applicable to the subject matter of the dispute to be arbitrated. The arbitrator will determine whether or not an issue is arbitratable and will give effect to the statutes of limitation in determining any claim. In any arbitration proceeding the arbitrator will decide (by documents only or with a hearing at the arbitrator's discretion) any pre-hearing motions which are similar to motions to dismiss for failure to state a claim or motions for summary adjudication. The arbitrator shall resolve all disputes in accordance with the substantive law of California and may grant any remedy or relief that a court of such state could order or grant within the scope hereof and such ancillary relief as is necessary to make effective any award. The arbitrator shall also have the power to award recovery of all costs and fees, to impose sanctions and to take such other action as the arbitrator deems necessary to the same extent a judge could pursuant to the Federal Rules of Civil Procedure, the California Rules of Civil Procedure or other applicable law. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction. The institution and maintenance of an action for judicial relief or pursuit of a provisional or ancillary remedy shall not constitute a waiver of the right of any party, including the plaintiff, to submit the controversy or claim to arbitration if any other party contests such action for judicial relief.

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

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

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

17.8 Real Property Collateral; Judicial Reference. Notwithstanding anything herein to the contrary, no dispute shall be submitted to arbitration if the dispute concerns indebtedness secured directly or indirectly, in whole or in

part, by any real property unless (a) the holder of the mortgage, lien or security interest specifically elects in writing to proceed with the arbitration, or (b) all parties to the arbitration waive any rights or benefits that might accrue to them by virtue of the single action rule statute of California, thereby agreeing that all indebtedness and obligations of the parties, and all mortgages, liens and security interests securing such indebtedness and obligations, shall remain fully valid and enforceable. If any such dispute is not submitted to arbitration, the dispute shall be referred to a referee in accordance with California Code of Civil Procedure Section 638 et seq., and this general reference agreement is intended to be specifically enforceable in accordance with said Section 638. A referee with the qualifications required herein for arbitrators shall be selected pursuant to the AAA's selection procedures. Judgment upon the decision rendered by a referee shall be entered in the court in which such proceeding was commenced in accordance with California Code of Civil Procedure Sections 644 and 645.

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

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

IN WITNESS WHEREOF, the undersigned Guarantor has executed this Guaranty as of **March 20, 2009**.

SunPower North America, LLC

By: SunPower Corporation, Member

By: /s/ Dennis V. Arriola
Dennis V. Arriola, Chief Financial Officer

CONFIDENTIAL TREATMENT REQUESTED

--

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

**AMENDMENT NO. 3 TO TURNKEY ENGINEERING, PROCUREMENT
AND CONSTRUCTION AGREEMENT**

This Amendment No. 3 to Turnkey Engineering, Procurement and Construction Agreement for Solar Photovoltaic Generating Facility (this "Amendment"), is made and entered into as of this 26th day of March 2009, by and among Florida Power and Light Company ("FPL") and SunPower Corporation, Systems ("Contractor", together with FPL, the "Parties", individually, a "Party").

WITNESSETH:

WHEREAS, the Parties entered into that certain Turnkey Engineering, Procurement and Construction Agreement for Solar Photovoltaic Generating Facility, dated as of July 3, 2008 (as amended by Amendment 1 to Turnkey Engineering, Procurement and Construction Agreement for Solar Photovoltaic Generating Facility, dated as of October 7, 2008 and Amendment 2 to Turnkey Engineering, Procurement and Construction Agreement for Solar Photovoltaic Generating Facility, dated as of November 25, 2008 the "Agreement"); and

WHEREAS, the Parties have agreed to amend the Agreement as set forth in this Amendment; and

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein and in the Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties do hereby agree as follows:

1. Section 1.1.71 shall be amended by deleting the same in its entirety and inserting the following in lieu thereof: "1.1.71 "Guaranteed Provisional Acceptance Date" means ***, the date which Contractor guarantees that the Project shall achieve Provisional Acceptance, as such date may be extended in accordance with the terms hereof."
2. The Agreement shall be amended by deleting Section 7.4.3 of Appendix A Scope of Work in its entirety and inserting the following in lieu thereof: "****
3. The Agreement shall be amended by deleting "Appendix C" of the Agreement in its entirety and inserting "Appendix C" to this Amendment in lieu thereof.
4. The Agreement shall be amended by deleting "Appendix N" of the Agreement in its entirety and inserting "Appendix N" to this Amendment in lieu thereof.
5. This Amendment is executed in connection with, and is deemed to be a part of, the Agreement. Upon the execution of this Amendment, this Amendment shall thereafter automatically become a part of the Agreement. Wherever the terms of this Amendment and the terms of the Agreement are in conflict, the terms of this Amendment shall govern and control. Capitalized terms used herein, unless otherwise defined in this Amendment, shall have the meanings ascribed to them in the Agreement.

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

6. The execution, delivery, and performance of this Amendment has been duly authorized by all requisite corporation action and this Amendment constitutes the legal, valid and binding obligation of FPL and Contractor, enforceable against each Party in accordance with its terms.

7. If any one or more of the provisions of this Amendment should be ruled illegal, wholly or partly invalid or unenforceable by a court or other government body of competent jurisdiction under present or future laws, then: (i) the validity and enforceability of all provisions of this Amendment not ruled to be invalid or unenforceable shall be unaffected and remain in full force and effect; (ii) the effect of the ruling shall be limited to the jurisdiction of the court or other government body making the ruling; (iii) the provision(s) held illegal, wholly or partly invalid or unenforceable shall be deemed amended, and the court or other government body is authorized to reform the provision(s), to the minimum extent necessary to render them valid and enforceable in conformity with the Parties' intent as manifested herein.

8. The Parties acknowledge and agree that this Amendment may be executed in multiple counterparts, and transmitted via telecopy, each such counterpart (whether transmitted via telecopy or otherwise), when executed, shall constitute an integral part of one and the same agreement between the Parties.

9. Except as expressly modified by this Amendment, all of the terms, conditions, covenants, agreements and understandings contained in the Agreement shall remain unchanged and in full force and effect, and the same are hereby expressly ratified and confirmed by the Parties.

[BALANCE OF PAGE INTENTIONALLY LEFT BLANK. SIGNATURES TO FOLLOW]

IN WITNESS WHEREOF, the Parties have affixed their signatures, effective on the date first written above.

FLORIDA POWER & LIGHT COMPANY

By: /s/ William Yeager
Name: William Yeager
Title: Vice President

SUNPOWER CORPORATION, SYSTEMS

By: /s/ Howard Wenger
Name: Howard Wenger
Title: Executive Vice President

[Signature Page to Amendment 3 to Agreement]

APPENDIX C

CRITICAL MILESTONES & MILESTONES

DESOTO

1. Mobilize for Construction	***
2. Begin Bearing Pedestals	***
3. Bearing Pedestals 50% Complete	***
4. Electrical Interconnection Complete	***
5. Bearing Pedestals Complete	***
6. Torque Arms Installed Complete	***
7. PV Modules 100% Delivered	***
8. Communications Infrastructure for DAS Complete	***
9. Tracker Erection Complete	***
10. PV Modules Installed Complete	***
11. Electrical Construction Complete	***
12. Provisional Acceptance	***

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

Revised 3/25/09

APPENDIX N - Termination Payment Schedule

Schedule of Termination of Values

[illegible]

*Termination values are based on a Contract Price of \$***. If the Contract Price is adjusted pursuant to the Agreement, the termination values shall be adjusted to the product of the adjusted Contract Price and the applicable "% Owed of Total Contract Price" for a given termination value.

Note:

The Termination Payment due and payable upon a termination on or prior to January 1, 2009, shall be the applicable amount provided for under the column "Termination Dollars Due" for a termination on or after a date specified under the column "If Terminated After" less the aggregate amount of the Contract Price paid by FPL to Contractor as of such date. The Termination Payment due and payable upon a termination after January 1, 2009 shall be the greater of: (1) the applicable amount provided for under the column "Termination Dollars Due" for a termination on or after a date specified under the column "If Terminated After" less the aggregate amount of the Contract Price paid by FPL to Contractor as of such date and (2) the aggregate amount of outstanding approved and unpaid Requests for Payment made pursuant to the Agreement which entitle Contractor to payment in accordance with the Construction and Milestone Payment Schedule. If FPL issues a Notice to Proceed before January 1, 2009, the parties will consider, in their sole discretion, amending by mutual agreement the dates stated in this Appendix N.

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

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: May 8, 2009

/S/ THOMAS H. WERNER

Thomas H. Werner
Chief Executive Officer
(Principal Executive Officer)

CERTIFICATIONS

I, Dennis V. Arriola, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of SunPower Corporation;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: May 8, 2009

/s/ DENNIS V. ARRIOLA

Dennis V. Arriola
Senior Vice President and Chief Financial Officer
(Principal Financial and Accounting Officer)

**CERTIFICATION OF CHIEF EXECUTIVE OFFICER AND
CHIEF FINANCIAL OFFICER PURSUANT TO
18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Quarterly Report of SunPower Corporation (the "Company") on Form 10-Q for the period ended March 29, 2009 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), Thomas H. Werner and Dennis V. Arriola certifies, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to the best of his knowledge and belief:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and result of operations of the Company.

Dated: May 8, 2009

/S/ THOMAS H. WERNER

Thomas H. Werner
Chief Executive Officer
(Principal Executive Officer)

/s/ DENNIS V. ARRIOLA

Dennis V. Arriola
Senior Vice President and Chief Financial Officer
(Principal Financial and Accounting Officer)

The foregoing certification is being furnished solely pursuant to 18 U.S.C. Section 1350 and is not being filed as part of the Report or as a separate disclosure statement.
